Introduction

Kenya was not like some other multilingual countries where language has been absolutely central to constitutional debates. Examples are India, Sri Lanka, Malaysia, Belgium, Finland (Åland Islands) and Canada, where linguistic issues have led to major constitutional changes, such as federalism or other forms of autonomy. Kenya indeed adopted a system of devolution, but not to protect languages.

Nor is Kenya a country in which there has been an effort to force on (or even persuasively to advocate to) the people the use of the language of a dominant local group. The largest linguistic/ethnic group is now only about 20% of the population, and its tongue not suggested
as a “national” language. The two unifying languages are English—the language of the coloniser—and Kiswahili—the language of a small coastal community.

This chapter considers how Kenya has coped, especially since the Constitution, with the tensions between unity and diversity, national and local, specific and national identity in the context of language: English, Kiswahili and indigenous Kenyan languages. Our interest here is in the relationship between language, national unity and pluralism, and how far the current constitutional provisions have led to changes in laws, attitudes and practice. ¹

Recognition of the diversity of Kenya is a theme of the constitution adopted in 2010 as a matter of rights but also as a matter of unity; as the Preamble says, “PROUD of our ethnic, cultural and religious diversity, and determined to live in peace and unity as one indivisible sovereign nation”. The Constitution does attempt to promote pluralism, through the protection, and indeed support, of different cultures, languages, and religions, and personal (community) law. At the same time, it seeks to promote national unity: through the use of Kiswahili as well as English, through its provisions on equality, and through its emphasis on a set of national values.² Its very recognition of different languages is intended not to be divisive but to be integrative by reducing senses of alienation and exclusion. “National unity will be encouraged if people feel that their cultures are respected.”³

Rights and arguments

Perhaps the most comprehensive statement of language rights is the Universal Declaration of Linguistic Rights.⁴ This is not an international declaration like that on the Rights of Indigenous Peoples,⁵ but was adopted by NGOs, academic institutions and individuals. It proposes that “universalism must be based on a conception of linguistic and cultural diversity which prevails over trends towards homogenization and towards exclusionary isolation”. It recognises a concept of “language community” (“any human society established historically in a particular territorial space” which includes “the social and functional space vital to the full development of the language”). And there is also the “linguistic group” (“any group of persons sharing the same language which is established in the territorial space of another language community [such as] immigrants, refugees, deported persons and members of diasporas”). The rights/obligations spelled out for language communities are very wide ranging, including:

¹ There is very little discussion of Asian languages, and, as far as one can tell, no pressure from the “Asian” communities for any governmental action in relation to those languages. On a daily basis, Gujarati and Hindi/Panjabi are spoken. Younger generations often speak them less well. In the Asian community some speak more than one Asian language well. At cultural events, Hindi or Urdu is often used. Numbers of speakers from non-Asian communities are usually small. But especially younger members of the Asian community may struggle with the Urdu, especially if it is heavily Persian or very poetic.
² Article 10.
⁵ That Declaration was adopted by the UN General Assembly in 2007. It is not binding even on those countries that supported it. See www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.
• various rights that their language should be used in all official contexts (like law and courts) in the relevant geographical areas, and to relate to officialdom in their own language

• that their language should be supported by the education system, including that it must be the subject of study and research at university level.

For linguistic groups, the rights are less extensive, and include:

• the right for their own language and culture to be taught

• the right of access to cultural services, and to “an equitable presence” of their language and culture in the media;

• the right to receive attention in their own language from government bodies and in socioeconomic relations.

This one might describe as the high water mark of articulation of language rights. From a strictly human right perspective it is hard to quarrel with: why should people who happen to be born into one community be unable to use their language for everyday purposes, and not be able to study their own language when those born into other communities can? It is a violation of equality. But some of it is unrealistic in many countries, including Kenya, as this chapter will show. But it stands as a beacon, or a measure of what nations achieve. It ought to be possible for a community that asks “why can’t we have laws published in our language, or be taught in our own language?” and be given a reasoned response, rather than be fobbed off with “of course not”, or “we’ve never done it”.

Rights are by no means the only reason for recognising languages. The Kenyan issue is a three-cornered one: English, Kiswahili and most of the other languages. “Most of” because some, particularly Asian languages, are not part of any debate. And in each corner there is a different set of arguments. For English: a world language, a useful tool, with which many Kenyans are already conversant, and with unifying potential without being the language of any politically significant group. For Kiswahili: a unifying language without any serious colonial taint, a African language —so attuned to our culture, and a language which many Kenyans are comfortable using. For other languages: “our heritage: the songs, the comedy, the proverbs, the folklore”, repositories of our experience, the languages in which children would most effectively begin to learn, and in which services and information may be most effectively delivered to some, and to neglect which would make communities feel neglected in our multi-cultural nation. Indeed, for some, God-given gifts so must be preserved.

A broader view is well expressed by Professor wa Mberia:

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6 Quoted in “The Cutting Edge” column in the Saturday Nation June 3 2017, from a letter by Mwangi Wanjohi.
Loss of language, any language, is a loss not only to the community speaking the language but also to the entire humankind. … Like libraries and archives, languages contain important information and knowledge. Furthermore, they also carry a community’s memory and world view. Each language is a unique expression of a community’s history, philosophy, fears and aspirations. Losing a language is to irrecoverably lose vital human heritage.

Moreover, studying languages is a window through which we see how the human mind works.

There are many other angles to the language debate, in Kenya as elsewhere: issues of access to power through language—which means nationally and internationally significant languages—of the risk of divisiveness, the practicalities of operating in many languages, and of teaching many languages, some of which have no script.

Many of these issues and arguments will recur in accounts of the history and current developments in this paper.

Language in Kenya today

I sketch first the current linguistic scene.

The number of individual languages listed for Kenya is 68. Of these, 67 are living and 1 is extinct. Of the living languages, 60 are indigenous and 7 are non-indigenous. Furthermore, 12 are institutional, 34 are developing, 15 are vigorous, 2 are in trouble, and 4 are dying.

This concise summary is from Ethnologue’s, *Languages of Kenya.* This goes on to outline the numbers of first language speakers. Eight languages have one million to 9,999,999 speakers each, between them accounting for 65% of the population. The real complexity comes perhaps from the next group: languages with between 100,000 and 999,999 speakers. There are 37 such languages with 33% of the population. Of the remaining 2% of the population, 1.66% speak one of 15 languages that have between 10,000 and 99,000 speakers each. And there are seven other living languages—though four

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9 It is described as based on information from Lewis, M. Paul, Gary F. Simons, and Charles D. Fennig (eds.) *Ethnologue: Languages of the World,* 19th edition (Dallas, Texas: SIL International, 2016).
are in the category of “dying”. One of the languages is sign language – with 340,000 users.

The largest language family is the Niger-Congo with 3 languages, and 61% of the speakers. These include Gikuyu and Kamba, with the smallest languages being Taveta (21,000 speakers in the 2009 census) and Kiwilwana (16,800 speakers). The group also includes Kiswahili because, though much of its vocabulary is Arabic, the structure of the language is Bantu. The second group is the Nilo-Saharan (including Maasai and Dholuo with the smallest non-“moribund” language being Ogiek (with 79,000 speakers in 2009) with 15 languages and 30% of the speakers. There are 12 Afro-Asiatic languages (such as Somali and Arabic, with 7.7% of the speakers, with the smallest language not on the verge of extinction being Waata with 12,600 speakers). There are four Indo-European languages (English, Gujarati, Punjabi and Goan or Konkani) and one Arabic-based Creole (Nubi).

There is a close but not precise relationship between languages and what are usually referred to as ethnic groups. A few languages are reported as having no speakers who speak only that language (including the Aweer, Kitharaka and Turkana). Yet these communities have a clear sense of identity. A recent press report said that one of the tiniest communities, the El Molo, numbering all of 1000 in their traditional area with about the same number scattered elsewhere, are increasing as a result of inter-marriage, but very few speak the language. Two of the big five or six ethnic groups are recorded by Ethnologue as having not one language but several. The Luhya (second biggest group) are recorded as having 12 languages – there is no Luhya language. The Kalenjin speak nine languages (in fact the “Kalenjin” are a creation of the colonial government). The Mijikenda also are formed of nine “tribes”, though the grouping was driven by those communities themselves.

Communities may gradually give up their “own” language and begin to speak another. For example the Suba—a Bantu people—have undergone a “massive language shift” towards speaking Dholuo—a Nilotic language.

Some authors would say the Ethnologue work overestimates the number of indigenous languages, and would put them closer to 40, because some are mutually intelligible, and the

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11 The latest Ethnologue publication does not mention Cutchi, a local language in Gujarat. In Issue 15 it was mentioned (http://archive.ethnologue.com/15/show_country.asp?name=KE) as having 10,000 speakers. It states that most Kacchi do not understand Gujarati.


14 Ethnologue identifies Chichonyi, Chidigo, Kigiryama and Chiduruma as Mijikenda languages.


boundaries between languages are not rigid. One find, for example, references to both the “Kalenjin language”\(^\text{18}\) and to various languages as “Kalenjin languages”.\(^\text{19}\)

Of Kenya’s 47 counties, a few are listed by Ethnologue as mono-linguistic: Bomet and Kericho (Kipsigis), Kirinyaga, Murang’a and Nyeri (Gikuyu), and Kitui, Machakos and Makueni (Kamba). Kakamega is the most linguistically diverse in one sense, having 12 languages but most of these are Luhy languages. The smallest county, Lamu, is truly varied with speakers of Omani Arabic, Aweer, Dahalo, Kipfokomo, Orma, Somali, Swahili and Waata. This ignores the “upcountry” people, often Luo, Kikuyu or Kamba who are found in all the coastal counties.\(^\text{20}\) And it is curious to see that the only really indigenous speakers in Nairobi are listed as the Kikuyu (along with the speakers of the three Indian languages and of Nubi). But the population of Nairobi is very varied, with large numbers especially of Luo and Kamba. In reality no county is monolingual.

A study a few years before the constitution was adopted commented on: \(^\text{21}\)

… the role indigenous languages play as the people’s initial identity markers and as major tools for small-scale businesses in rural areas that allow ordinary people to carry out transactions in the informal sector. These languages also serve important roles in religious and community development projects. At the local level, local languages facilitate administrative work which is carried out by local leaders such as the village headman, the sub chief and chief. It is important to note that without Kenya’s indigenous languages, official policies would not be implemented.

Muaka found that rates of perception of declining use of local languages was greater in rural areas than urban, but not as marked as might be expected. But inter-marriage, and radio and television were producing changes in language use.

Muaka also found that,

students, especially those in rural areas are … convinced from the onset that in order for them to succeed they have to abandon using their local languages and instead focus on speaking and writing in English as the only window to success.\(^\text{22}\)

His conclusion was that,

This study is important because it shows that Kenyan local languages are still vibrant. The only undoing agent is the Kenyan official position which continuously attempts to curtail the vitality that Kenyan languages enjoy among their speakers.

While filling in the linguistic background, it is important to note the situations of English, Kiswahili – and Sheng.

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\(^\text{18}\) Kibiwott P Kurgatt, “Challenges Facing the Harmonisation and Standardisation of the Kalenjin Language” https://www.academia.edu/2044992/Challenges_Facing_the_Harmonisation_and_Standardisation_of_the_Kalenjin_Language.


\(^\text{20}\) Oddly enough, Mombasa, which is very varied, seems to have gone missing from the Ethnologue county list.

\(^\text{21}\) Muaka, above section 2.1.3.

\(^\text{22}\) S. 4.1.
English

English is the main medium of instruction at school. However, some have estimated that as few as 25% use it with ease. On one day the media reported that in Nairobi 49% of mothers were unable to read a standard two story book even though 95% of them had gone to school, and that a number of police officers undergoing “vetting” were unable to speak English fluently and had to switch to Kiswahili. A later Uwezo report says that only 36.3% of class 3 boys (and 43.4% of girls) could do class 2 work in English, in its 2015 study. After primary school (eight years) English would be the only medium of instruction (except for Kiswahili classes). Government figures show that completion rates for primary are quite high. In 1016 the Net Enrolment Rate (enrolment of children of the appropriate age cohort) was 51.3%. But still many children stop formal English (and Kiswahili) studies at about age 14. There are also constant complaints about declining standards of English (by no means unique to Kenya of course). Standards of spoken English among many urban residents are, on the basis of informal evidence, fairly high among those who interact regularly in the language.

There is considerable literature in English, including novels and poetry, and some films.

Kiswahili

Kenyans from different communities commonly communicate with each other in Kiswahili. The language has a Bantu structure but a vocabulary drawn from Arabic to a considerable extent, with some English derived and some India derived words. It is now written in Roman script, though Arabic was originally used. This process, and one of standardization of the language, using the form current in Zanzibar, was a long drawn out one, much of it done by the Inter-territorial Language Committee to the East African Dependencies set up in 1930; it worked for the next 34 years.

It has been a remarkable achievement of Kenya to bring that language to the position of a national lingua franca.

Although Kiswahili is widely spoken, it is not, outside the coastal area, well-spoken. Interestingly, there was some resistance on the part of some Western missionaries and some

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23 The Standard, May 27 2016, “45pc of mums can’t read Class Two book” citing a report by Uwezo.
24 The Star May 27 2016 “Kavuludi shock at cops without fluent English”.
25 P. 11 Available at http://www.uwezo.net/publications/reports/.
27 Ibid. p. 50.
28 One study says that before 1950 there were no known works of literature in English, and just four in Kiswahili. But ever since 1960, English works have far exceeded those in Kiswahili. The peak period for both was 1990-99 (82 in English and 40 in Kiswahili)—following the end of the most politically repressive period. Few are noted in other languages. See Esther K Mbithi, “Multilingualism, language policy and creative writing in Kenya” (2014) Multilingual Education 4:19 available at https://multilingual-education.springeropen.com/articles/10.1186/s13616-014-0019-9.
30 The story is told in detail in Marshall above.
British civil servants to the use of Kiswahili because of its connections to Arabic and Islam. Kenyans are very conscious that Tanzanians speak much better Kiswahili. One Kenyan commentator has observed that “anything goes” which may have contributed to the widespread use of the language but

the variety commonly used in many areas of the country, apart from the coast region of Mombasa, is marked by one common feature: (wilful) breaking of the rules of standard language. This is the norm rather than the exception in Kenyan spoken Kiswahili. This variety is spoken even in official functions where the standard variety is expected.

Although Kiswahili developed in a particular part of the country, it is not associated with any sort of dominance of that region, nor specially connected to that region, other than that the quality of Swahili on the Coast is generally recognised to be better than in most of the rest of the country. This makes Kenya different from some other countries where language use is associated with political dominance. In Nigeria it has been impossible to adopt an indigenous national/official language because the obvious choice would be Hausa, which is associated with a major dominant group, (though since 1979 the Constitution has said “The business of the National Assembly shall be conducted in English, and in Hausa, Ibo and Yoruba when adequate arrangements have been made therefor” (s. 55)). In South Africa the status of Afrikaans and English (not now the only official languages) was associated with the two, often rival, coloniser communities. And in Eritrea, the refusal to designate an official language is partly connected with the divisive policies of the – British colonial – past, that recognised two main groups: Muslim/Arabic speaking and Christian/Tigrinya speaking.

Kiswahili is important for three, interlinked, reasons at the national level. The first is the need for a lingua franca in a country with so many languages. Second is an anti-colonial sentiment, that it is an African language and more appropriate as a lingua franca for an African country – as is clear from the comments by Kibaki quoted earlier.

The third reason for supporting Kiswahili is that Kenyans seem more at home in the language, even if it is not their mother tongue, and even though most have not been taught in the language. Again, for this reason, Kiswahili is often seen as a more suitable lingua franca. It does seem that it is better taught—or better learned—than English. Uwezo reported that 42.2% of class 3 boys (and 49.9% of girls) could do class 2 work in Swahili, in its 2015 study, slightly better than the English competence.

It is a language from the coast, a product of interaction between Arabs from the Gulf and the coastal people of East Africa. So from the perspective of the coastal people, for many of whom it is their mother tongue, the use of Kiswahili also has inclusionary significance.

31 Andrew Tyler Marshall, *Kiswahili and Decolonization: The Inter-Territorial Language Committee and its successor organisations 1930-1970* (MA Dissertation in International Affairs, American University, 2015) p. 18
34 Above fn ??.
All Kenya’s languages (other than Arabic and the Indian languages) are written in Roman script, distinguishing Kenya from countries where different forms of writing may mean that even street signs are incomprehensible to different language users.

A final point of significance is that Kiswahili has an important role in the East African Community (comprising at present Uganda, Kenya, Tanzania, Burundi, Rwanda and South Sudan, with Somalia as a possible future member). Article 137.2 of the Treaty says “Kiswahili shall be developed as a lingua franca of the Community.” In 2015 the East African Kiswahili Commission, envisaged in a 2007 Protocol to the Treaty, came into existence. In 2016 the East African Legislative Assembly passed a resolution calling upon the Summit of Heads of State to amend the treaty make the language an official language of the community.

**Sheng**

Sheng is a form of urban slang, with a Kiswahili structure and mixture of Swahili and English vocabulary with words also from local languages especially Gikuyu and Dholuo. It generates a rather predictable range of controversy, some dismissed it as having no consistency, and undermining the ability to speak other languages “properly”. The former Chief Justice Mutunga caused a bit of a stir by tweeting an Easter message in Sheng, eliciting a complaint that this was condescension, and the comment that “You cannot ascend to the powerful or influential positions of any society without having been socialised in the cultural nuances, which include mastery of the dominant dialect of the language of that society. Sheng or slang is a language of the minority or generally those without the instruments of power, authority and influence.”

Social media have given it a major boost among the young – who are its originators and users.

Through the liberalized airwaves …, Sheng has now transcended socioeconomic class boundaries and is used by many youths irrespective of social class or gender. It is now gradually spreading to some rural areas by way of radio and young people who travel between urban and rural areas. This variety has also attracted the attention of business people and politicians who use it to promote their products and policies to young people.


38 There is a website – Sheng Nation – that includes the ability to search translations and collects information of usage and origin: [http://www.sheng.co.ke/kamusi/](http://www.sheng.co.ke/kamusi/). The British government funds a weekly young person’s pull-out comic in Sheng in the *Nation* newspaper.

39 *Muaka*, section. 2.1.4.
Asian languages

There is a tendency to overlook non-Africans in discussion of language and nation, and unlike South Africa the constitution has no specific recognition of Asian languages. English is the medium of instruction, and the topic of debate, not because some people have it as their mother tongue but because of the colonial past and the global present.

The main language of Asians when they arrived in Kenya would have been Gujarati, Punjabi or Konkani (Goan). In the 1970s it was stated that 70% were Gujarati speaking, 26% Punjabi speaking and 4% Goans speaking English or Konkani. By the end of the 20th century a study suggested that the figures for mother tongue were little different: 68% Gujarati, 19% Punjabi, 4% English and 10% others such as Malayalam or Tamil. The same study found that 97% of Kenyan Asians knew English and 92% used it. Seventy-five per cent knew Gujarati and 56% used it, 29% knew Punjabi and 19% used it, 64% knew Hindi and 14% used it, 15% knew Urdu and 4% used it, 83% knew Kiswahili and 13% used it. Earlier generations would have drawn little distinction between spoken Hindi, Punjabi and Urdu, though study at school would have made them more aware of differences. Indeed, the various communities spoke what they would have called Hindustani, something encouraged by the universally popular Indian films. But the Partition of India would have sharpened the Hindi/Urdu divide and consciousness.

Facility in other Kenyan languages was unusual, but the small shopkeepers in provincial town would often be able to speak competently the local language, a skill that did not pass to generations that moved into the professions and larger scale industry and business.

During the colonial period schools were segregated. In the early years of schooling, as in schools for Africans, mother tongues were used: Gujarati, Punjabi or Hindi/Urdu. The curriculum in government Indian schools partly emulated colonial practice in the sub-continent: boys learned in Urdu and girls Hindi. Girls often attended community rather than public schools (a practice that combined with social structures to make women not only isolated from other races bit even from other Asian communities). The polyglot nature of urban Asian schools made curriculum planning difficult, and from 1958 trials began with using English only for instruction in Nairobi Asian schools, and the practice was extended to African schools.

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41 Herzig, p. 132.
42 Herzig, p. 13.
43 Hindustani was described by a member of the Legislative Council in 1962 as “a sort of conglomeration of …over 200 language of Kenya” (Mr. Zafrud-Deen, Kenya National Assembly Official Record (Hansard) Oct 16 - Dec 20, 1962, on 24th October, col.s 206-7).
45 Information from Yash Ghai. The spoken languages were largely similar, but the written scripts very different. They have since grown apart, as the official languages respectively of Pakistan and India.
Now most Asian children attend private schools, established by the community, international schools or private schools. It has been reported that the Ministry of Education has directed that all schools teach some Kiswahili.  

A Note on History

Debate on the place of language in education goes back at least to 1909, and has not concluded. Colonial policy on language reflected concerns such as not providing so much education in English that Africans got ideas above what was expected to be their station, minimising instruction in local languages for fear that this strengthened local nationalism, and weakening use of Kiswahili because of value in developing a national identity. 

Use of mother tongue in the first three years of education is a long-standing policy, going back to missionaries in 1909, and a colonial Report of the Education Commission of the East Africa Protectorate in 1919. The 1924 Phelps-Stokes Commission recommended that Kiswahili, Gikuyu, Luo and Luhya be used as first languages of instruction and English as the second. Neither of these commissions favoured the idea of Kiswahili as a lingua franca. But a later Directors of Education Conference on language favoured the latter, a least to the extent that facility in the national language should be achieved before moving to English. Later committees favoured moving to English as the lingua franca, a move that was suddenly intensified with the outbreak of the May Mau rebellion. Later in the 1950s there was a move towards English only for instruction.

Soon after independence, the Minister for Commerce and Industry said on Parliament:

I do not agree that vernacular language needs to be promoted.

When a child begins to speak, it speaks the language in which it is spoken to by adults. …it is therefore for us to make a political decision, that in order to bind our future generations together as one nation, we speak to them at that early age in the language we think can form a common basis. The only language that could form that common basis in Kenya today is Swahili.

That was Mwai Kibaki, later President (2002-2013). He not unopposed in his view. Kibaki was a little inconsistent since he also said children would be taught their mother tongue for the first few years.

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49 Ibid. p. 70.
50 Ibid.
51 P. 71.
52 Hansard, December 2nd 1966, col. 2308.
53 Col. 2309.
54 Col. 2310.
The government set up a committee on education, to which evidence was given of the need to promote Kiswahili for reasons of national and pan-Africa unity. Kiswahili was introduced as a school subject at primary level, but did not become an examination subject until the 1980s.\textsuperscript{55} The same report, however, recommended English as the medium of instruction right the way through school.\textsuperscript{56}

A later committee observed,\textsuperscript{57}

Most of the children in the rural areas can only speak their vernacular language at the time of starting primary education. Yet they are expected to have learnt adequate English by the end of seven years to be able to do the Certificate of Primary Education in English. On the other hand they cannot wait to learn English first before starting to learn other subjects of primary education once they have entered primary schools. The Committee has come to the conclusion that the education system should make much better use of the local languages for instruction at the beginning of primary education. English should, however, be taught as a subject from Primary I and then used as a language of instruction in the upper primary classes.

It recommended the use of the dominant mother tongue in an area for the first four years, though did not seem to apply this to areas like Nairobi where students were more conversant with English.\textsuperscript{58}

**Language policy before the Constitution**

At the policy level, the principal document cited from the pre-constitution period, and still constantly referred to, is Vision 2030. The only language that features in that document is English. The ambition to be the “top offshoring destination in Africa” required “targeting of BPO services to capture markets in English-speaking countries”, which implied “Importance of reading, writing, and speaking in English”. In support of this, and other elements of the national vision, “The vision for the education sector for 2030 is “to have globally competitive quality education, training and research for sustainable development”.

The vision of the constitution, as this book shows, is rather different from Vision 2030. At around the same time as Vision 2030, a National Policy on Culture and Heritage was adopted.\textsuperscript{59} In this the government undertook to encourage the teaching of indigenous languages at all levels of education, to promote Kiswahili as a language of instruction and encourage families, educational institutions and media to develop resources promote “a mastery of indigenous languages in order to evolve a base on which other languages could be

\begin{itemize}
  \item \textsuperscript{56} Ibid.
  \item \textsuperscript{57} Report of The National Committee on Educational Objectives and Policies 1975-6 (Gachathi Report) available at \url{http://www.kenyalaw.org/kg/index.php?id=5697}.
  \item \textsuperscript{58} Para. 6.2.4.
  \item \textsuperscript{59} See fn ??? above.
\end{itemize}
learnt". This somewhat limited enthusiasm for indigenous languages was a little at odds with its earlier statement that,

Kenya’s indigenous languages have the capacity to awaken people’s imagination. The loss of these languages would result in a total loss of knowledge of the bio-diversity and its interaction with the environment as well as the culture of the community they represent.

**Constitutional provisions**

The constitution in force until 2010 dealt with language in the context of Parliament and law-making. In 1974 Jomo Kenyatta decreed that Kiswahili must be the language of parliamentary debate. But the following year the constitution was amended to provide that English was to be the language of legislation. This would have led to more confusion if parliament had devoted serious attention to legislation but Kenya was then a *de facto* one-party state. But the qualifications for membership did not change, meaning that members had to be competent in both languages. And in 1979 President Moi initiated amendment of the Constitution so that either language could be used for parliamentary debate.

Rights of persons arrested and charged or detained included being informed of why in a language they understood, and to have an interpreter in the proceedings. And naturalisation as a citizen required knowledge of Kiswahili.

The situation under the new constitution is very different.

Language was not a major issue of discussion in the Kenyan constitution making process. Groups did propose provisions reflecting the International Covenant on Civil and Political Rights recognition of the right to use one’s own language. Some seemed to want specific recognition of all languages. A committee on the National Constitutional Conference (2003-4) did propose various provisions on culture, including a right to transmit one’s language, the establishment of a National Council for the Promotion and Protection of Cultural Heritage with responsibilities including “Promoting the development of the Kiswahili and other indigenous languages through education and media” and “Encouraging the development, preservation and enrichment of all Kenyan languages”, that in the constitution “all Kenyan

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60 Section 2.1.11.
61 Mazrui p. 287.
63 S. 34.
64 Mazrui p. 289. S. 53.
65 Ss. 72, 77 and 83.
66 S. 93.
69 P. 115
70 P. 118.
languages shall enjoy equal status and recognition”, and cultural, linguistic and religious communities should have a right to establish educational institutions, including the right to providing education in their own language.

The Constitution of Kenya Review Commission debated a paper from one of its committees as it prepared the 2002 draft constitution. That committee recommended a constitutional requirement for policies targeting encouragement of learning and use of local languages generally, in the media, in governance especially at local levels, in the economy and encouraging the use of sign language. Concretely it proposed that local languages might be used at the district level (then expected to be the unit for devolution). It proposed that Kenyan foreign missions abroad should endeavour to establish institutes where Kiswahili would be taught on a commercial basis. It proposed that national documents (such as legislation) should therefore be made available in the two languages. As well as recognizing Kiswahili as the national language the Constitution should accord it a “requisite status during national functions”. Kiswahili competence should be a prerequisite for conferment of citizenship and work permits to foreigners. And it should oblige the Government to make budgetary allocations for promotions of national languages, sign language and Braille.

The provisions mentioned in the previous paragraph were not adopted. There was some concern about the possible divisiveness of too much use of local languages. On the other hand, Professor Wanjiku Kabira (a commissioner whose academic expertise is particularly in oral literature) said,

But we need to develop the languages at the local level and probably we should make provision for that whether it is through schools and so on. We have experience with teaching of oral literature, we were told, for instance, that if you introduce oral literature you are introducing ethnicity and so but it has become a national culture. You know where you are able to develop those languages, you are able to collect information and you build a national culture through appreciation of all the other people’s languages and so on.

The compromise was the provisions that essentially form part of the constitution now – also based on that committee report.

The provisions adopted (which are explored below) remained essentially unchanged through the drafts of the Committee of Experts (CoE) (2009-10). When the revised draft prepared by the CoE in 2010 was considered by a committee of MPs, they removed provisions about protecting linguistic diversity and promoting indigenous language use, and on minorities. It did not explain this in its report, but perhaps it can be partially understood in the light of its view that “culture need not be entrenched in the Constitution”. However, the CoE reinstated

71 P. 120
72 PP. 121-2.
73 “Verbatim Report of Plenary Meeting Held at Leisure Lodge, Mombasa September 12, 2002”
the language provisions, citing the statute creating the CoE, which required the committee to respecting ethnic and regional diversity and communal rights.\textsuperscript{75}

**National and official languages**

The 2010 Constitution gives a new and special status to Kiswahili: “The national language of the Republic is Kiswahili.”\textsuperscript{76} But, in recognition of realities, and of an intention to keep using English for legal purposes at least, “The official languages of the Republic are Kiswahili and English.”\textsuperscript{77} Special status is given to these languages by continuing the provision that “official languages of Parliament shall be Kiswahili, English”.\textsuperscript{78}

The significance of being a “national language” is unclear. One writer has suggested that “A national language is a language that a nation adopts for symbolic purposes (in addition to, for example, the national flag or emblem”).\textsuperscript{79}

Not everyone would accept that a national language is a matter only of symbolism. In an Indian case the court drew a distinction between a national and an official language, and held that Hindi is the principal official language of the country but not declared a “national language” – and thus rejected the petitioner’s basis for demanding that all food labels be in Hindi. It is not clear whether, had the Constitution described Hindi as a “national language”, it would have granted the petition.\textsuperscript{80}

Indeed, even the significance of the expression “official language” is not clear. Many countries have no legal or constitutional provision about official language.

**Other languages**

However, other languages are given recognition in various ways. The State is required to “promote and protect the diversity of language of the people of Kenya” and “promote the development and use of indigenous languages”.\textsuperscript{81} To “protect” implies shielding against the impact of some other forces. “Promote” suggests action to encourage something—by education, publicity campaigns and possibly incentives. Promoting the use and development seem to envisage the strengthening and enhancement of the role of these languages. In fact, the State is required to create affirmative action programmes designed to ensure that minorities and marginalised groups “develop their cultural values, languages and practices”.\textsuperscript{82} Here the development is not limited to indigenous languages. Minorities might be advantaged groups, but they are less likely to need state assistance—one thinks particularly of the Asian

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\textsuperscript{76} Art. 7(1).

\textsuperscript{77} Art. 7(2).

\textsuperscript{78} Art. 120(1). It continues: “and sign language”.


\textsuperscript{80} Suresh B Kachhadia v Union of India Civil Application No. 2896 of 2009 (Gujarat High Court) http://indiankanoon.org/doc/169332/

\textsuperscript{81} Article 7(23)(a) and (b).

\textsuperscript{82} Art. 56.
and European minorities. And there are rights to use one’s language, and not to be discriminated against because of language (discussed below). The provision that “All State organs and all public officers have the duty to address the needs of vulnerable groups within society, including … members of minority or marginalised communities, and members of particular ethnic, religious or cultural communities” must have some implications for language, for how can those needs be addressed if they cannot be communicated?

The wording of the provisions for the protection of accused persons and others embroiled in the criminal justice system has changed a bit. An arrested person now has the right to be informed promptly, in language that the person understands of the grounds for arrest etc. The phrase underlined is intended to mean not just a language (Kiswahili or Luo, for example) but a comprehensible level of words (“stolen” and not “appropriated” for example). The same phrase appears in Art. 50(3) about information generally to those who are charged.

Within the system of devolved government, “Language policy and the promotion of official and local languages”, are matters for the national government. That policy should be framed within the constitutional vision of promotion and protection of linguistic diversity, specifically promotion of development and use of indigenous languages, and affirmative action programmes for minorities and marginalised groups. The policy, and the administrative practice, would have to take account of the provisions about people being able to use their language – without discrimination. In other words it is not just a matter for study.

The draft Languages Policy for Kenya points out that there are also various international instruments touching on language. Under the constitution, international agreements are part of Kenyan law (provided they do not contradict the Constitution). The truth is that most of these instruments do not add much to the major treaties, and if they do are not binding, but rather soft international law, or from other regions. One report comments that,

The failure of many African states to recognise cultural and language rights, hence an admission of culture diversity, is based on the fear that it is bound to open a ‘can of worms’ referring to fears of separatism. There is no African document specifically on language rights. However, The OAU Cultural Charter of does include the commitments that “The African States recognize the imperative need to develop African languages which will ensure

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83 Art. 44.
84 Art. 27.
85 Art. 21(3).
86 Art. 49(1)(a).
87 Fourth Schedule Part 1 Item 5.
88 That policy has not been finalised or adopted, but I have been able to see a copy of the draft.
89 What the position is if they contradict statute has not been finally resolved.
their cultural advancement and accelerate their economic and social development and to this end will endeavour to formulate a national policy in regard to languages.”

Language rights

Not all the language provisions are couched in terms of rights—nor was the constitutional debate only in such terms. More instrumental issues—national unity and creating senses of belonging tended to dominate. But Article 44 is within the Bill of Rights and thus has the potential to override inconsistent legislation and practice. Every person has the right to use the language “of their choice”, which is not limited to that person’s own mother tongue. And members of cultural or linguistic community have the right, with other members of that community, to use their language. No-one may be discriminated against on the basis of their language.

These provisions are within the tradition of the International Covenant on Civil and Political Rights but, unlike that Covenant, not limited to members of minorities. In Kenya every group is ethnically a minority. In fact, the language is more directly drawn from the South African Constitution.

There is some duplication in the Article 44 (1) and (2) rights. Neither seems to be phrased as a group right, but to reply on 44(2) one would have to show that one was part of a group, and presumably that one wanted to use that language with that group or its members. Article 44(1) is less restricted: the language does not have to be of one’s group. Indeed on the face of it, it may be too broad. One cannot have a right to use in any full sense of the word the language one chooses in any situation. Language is used for communication. If a person encounters a public office and chooses to speak in Croatian or Aramaic but no-one can or chooses to respond, is that person really able to use that language? The problem is enhanced by the constitutional obligation on the part of the state not only to respect but also to promote or fulfil rights, and by the strict limits on the possibility of restricting rights contained in Article 24.

Example of South Africa

As the CKRC committee acknowledged, it drew to some extent on the Constitution of South Africa. But that country recognises eleven official languages. And it provides “Recognising the historically diminished use and status of the indigenous languages of our people, the state must take practical and positive measures to elevate the status and advance the use of these languages” – words a little stronger than the Kenyan Constitution. It also requires a Pan South African Language Board to be established. That body has responsibility not just for South African languages but for those used by non-indigenous groups – the main ones of which are listed. It includes among its goals creating “settings that are conducive to

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92 Article 17.
93 Art. 44(1).
94 Art. 44 (2).
95 Art. 27(4).
96 S. 30.
97 Article 21(1).
98 The Board’s website is at www.pansalb.org.
nurturing language development, use and discourse within the multilingual interplay among [the] coexistence of the official South African languages, Khoi, San and Nama, South African Sign Language and their associated varieties”, and “platforms that advance the equitable use” of those languages “with a meaningful leaning towards the previously marginalised indigenous South African languages.”

**After the Constitution**

Have government and institutions at the national level taken account of the language provisions, and have they in any way changed the law and their practices? And at the county level: the purposes of devolution include fostering national unity by recognising diversity, giving powers of self-governance to the people and enhancing participation, recognising the right of communities to manage their own affairs and protecting and promoting the interests and rights of minorities and marginalised communities (Article 174). It is hard to imagine the achievement of these objectives having no linguistic implications.

Beyond the level of official action, one might expect some difference within society. Firstly the human rights provisions apply “horizontally”: everyone is bound, for example not to discriminate. Secondly, an enhanced level of respect for the various languages might lead to a greater interest in them and commitment to their use and preservation.

There is little information about public attitudes. Busia county, considering setting up its own radio station, conducted a survey into people’s preferences for listening to the radio. It reported:

“Majority of the respondents would like to receive radio broadcasts in Kiswahili (68.4%) followed by English (45.8%). Relatively few people preferred broadcasts in the indigenous languages of the county.”

However, a recent press report of public participation in the review of the current school curriculum suggests that “Kenyans want children taught good manners and their mother tongue”. It gave no more detail than that.

On the other hand, in a Taita Taveta county study on primary education, pupils were reported as recommending that,

“Pupils play in the language that they are articulate in the four sub-counties and this has led to poor performance: for Taita in mother tongue, Voi in English, Mwatate and Taveta in Kiswahili. Since KCPE [Kenya Certificate of Primary Education] is set in English apart from Kiswahili paper, pupils need to be encouraged to speak the two languages with more emphasis on English ….”

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But analysis in the report showed that overall only 9.56% of children even played in their mother tongue, and overall 67.83% used English when at play. This may reflect school policies about use of language. And the pupils’ own comments show the impact of examinations even on such young children (primary school is currently up to 14).

**National government**

In 2011 the Government (then Ministry of Heritage and Culture) set up a Technical Committee to oversee the development of a Languages of Kenya Policy. In 2013 the Commission on the Implementation of the Constitution reported that issues requiring resolution included how to give direction on promotion and use of indigenous languages, Kenya Sign Language and Braille, the role of counties, and the scope of the constitutional obligations. The draft policy was finalised in 2014, but it is not clear how far it has worked its way through the system. Meanwhile, a draft Languages of Kenya Bill was widely available in 2015.

The draft policy observes that “The constitutional directions on language are supposed to address multilingualism in Kenya”, and says that the draft policy itself is “aligned to government’s goals for economic, socio-political and educational growth as well as Vision 2030 and Sustainable Development Goals (SDGs)”. These are slightly ritualistic statements – especially that on Vision 2030 – expected of policy drafters but not necessarily with any content; as commented earlier, Vision 2030 has nothing specific on languages other than English.

The stated aims of the policy (to be achieved progressively) are to promote Kiswahili and the “equitable treatment” of Kiswahili and English, facilitate access to public services, knowledge and information; ensure affirmative action for community languages and promote and develop their use, initiate dialogue on multilingualism with all language communities, encourage the learning of Kiswahili and other community languages thus promoting national unity, and cross linguistic and cultural literacy, promote effective language management and use for national development and efficient public service administration, promote public participation in development by all citizens, strengthen and promote the use of Kiswahili and community languages in media, and develop and promote community languages for use as media of instruction in early childhood and lower primary education.

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102 Taita Taveta County Government December 2013, “Causes And Remedies To The Declining Standards Of Education In Taita Taveta County” by The Primary School Task Force (http://taitataveta.go.ke/sites/default/files/Final%20Primary%20Education%20Taskforce%20report.pdf)


104 It is still available online at the CIC website: http://www.cickenya.org/index.php/legislation/item/482-the-languages-of-kenya-bill-2015#.VuPBveJ97IU

105 The connection with the SDGs (not themselves clarified until 2015) is not spelled out. Most relevant would be the quality education goal (Goal 4) which refer to “free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes” (target 1), literacy and numeracy (target 6) and “appreciation of cultural diversity and of culture’s contribution to sustainable development” (target 7). And Goal 10 (equality) includes “empower and promote the social, economic and political inclusion of all” (target 2) and “Ensure equal opportunity and reduce inequalities of outcome” (target 3).
Only eight of its 32 clauses are concerned with issues of substance. The rest relate to setting up of the Kenya National Languages Council and associated administrative matters.

**Kiswahili as the only national language**

The Languages of Kenya Bill gave as its first object the promotion of Kiswahili as the national language.\(^{106}\) Other objects included the encouragement of learning of Kiswahili and promotion of its use. But the Bill does not seem to have any broader concept of the “national language” nature of the language, leaving this to the Language Council to be set up.

**Kiswahili and English as official languages: specifically law making**

The official languages of Parliament remain Kiswahili and English. The constitution anticipates that laws may be made not only in English but in Kiswahili: “In case of a conflict between different language versions of an Act of Parliament, the version signed by the President shall prevail”.\(^{107}\) The Constitution does not insist that all legislation must be in both languages.

The draft Languages Bill, however, would do just that. To be accurate, it would do two inconsistent things. At one point it provides that all documents published by the government after the enactment of the Act “will be” in both languages.\(^{108}\) But in the same clause it provides that government must “progressively establish measures” to ensure that all “public documents” are kept and published in both languages. The documents in questions “include” public policies, laws, official documents, official journals and other records. The scope of these concepts – documents “published by the government” and “public documents” – is both imprecise and overlapping.\(^{109}\) But there is clearly conflict between the “will be published” and the “progressive” sub-clauses.

This is not a subject on which the Constitution requires legislation, so has not been given high priority. As of May, 2017, a member of the body preparing the Bill lamented the “little progress”.\(^{110}\) It may be placed on the back burner for various reasons, one of which might be concern about the practicality of clause 18(2), or for improved drafting to take place.

It remains to be seen whether the elections due soon after this draft paper is written will herald any change. The NASA manifesto of the principal opposition groups promises to allocate the resources for Swahili to be used for government business.\(^{111}\) It also undertake to set up the Languages Council and promote all indigenous languages, as well as promoting the

\(^{106}\) Clause 2(a).

\(^{107}\) Article 120(2).

\(^{108}\) Cl. 18(2). As a lawyer, I cannot resist pointing out two problems with this short provision: to say “will be” does not appear to impose any duty. That is usually done by use of the phrase “shall be” (still in Kenya) or “must be” in jurisdictions, like South Africa and Australia, that have embraced clearer drafting. “Will be” is just a statement of prediction. The second issue is what is “Government”? There are now 48 governments in Kenya.

\(^{109}\) “Public documents” as a phrase is used in the County Governments Act to mean documents available to the public (s. 47(4)), and is defined in the Interpretation and General Provisions Act to mean documents produced by government.


\(^{111}\) *A Strong Nation: the National Super Alliance Coalition Manifesto* 2017, p.8.
teaching, learning and academic study of all Kenyan languages. The (incumbent government) Jubilee Manifesto’s only reference to language is to promoting Kiswahili as the main language of communication”.

The problems of bilingual legislation

On March 15th 2015 the National Assembly passed a motion:

unless we, as a nation, lay down mechanisms for translating the Constitution and laws passed by Parliament and County Assemblies into Kiswahili, most Kenyans will continue being partially aware of the law; this House urges the National Council for Law Reporting to progressively translate the laws of Kenya into Kiswahili.

Bi- (or multi-)lingual legislation is a major undertaking. South Africa has had its national legislation in both English and Afrikaans for a long time (subject to what is said a little later). Other places that have embarked on this enterprise are Malaysia (English and Bahasa Malaysia), Ireland (Irish and English), Wales (Welsh and English), Hong Kong (Chinese and English), Canada (French and English), Tanzania (Kiswahili and English), Rwanda (Kinyarwanda and French) and some US states (New Mexico – English and Spanish – and Louisiana – English and French). As one writer has observed, “Drafting legislation in two languages requires more skill, more careful consideration and more time in order to produce consistency.” In the Kenyan context one version is to prevail. In some jurisdictions both versions are authentic.

The version of the Constitution that went to referendum in 2010 had a Kiswahili version. This has never been officially adopted and there have been some criticisms of it. One study observed that “In some instances the translated words were inaccurate in rendering the various meaning[sic]. From the analysis, it was clear that some words and clauses were not translated at all, thus denying the reader the intended message.” Kimani Njogu says,

We had hoped that it would be easy to have our Constitution translated into Swahili in order to demystify governance, but an advisory by the Attorney General that translation awaits the passage of the Languages of Kenya Bill effectively stalled this process.

Why this should be so is completely mysterious. There would be no problem about clarifying which version was to prevail in case of conflict retrospectively, which would seem to be the only legal issue that would arise out a translation.

113 National Assembly Official Report Wednesday, 15th April, 2015 (morning). The motion was introduced on March 25th 2015 (morning). Hansard (the proceedings) is available on the website of Parliament (www.parliament.go.ke) but it may be easier to access the html version on the Mzalendo website at http://info.mzalendo.com/hansard/.
At this rate the prospect of having the Constitution in other languages—as a CKRC commissioner indicated was the ambition, by analogy with the Bible, which is available in many languages—seems remote.

The task, of either translating existing law, or drafting in two languages at the same time, is a daunting one. The Law Reform Commission of Tanzania has the mandate to translate existing law. So far (since 2008) it has translated 15 pieces of legislation, which are mostly concerned with criminal justice. Legislation is drafted in English (except in Zanzibar). A summary is prepared in Kiswahili, which, it has been suggested, is what the MPs read. Debate is in Kiswahili. In Zanzibar, the law written and passed in Kiswahili is translated into English before being signed and published in English.

The Kenya Law Reform Commission was said, by Joyce Lay MP, introducing her motion on translation, to have embarked on a process of translating existing legislation. There is no mention of this on the website of the Commission.

Hong Kong faced a similar, probably even greater task when it decided to “go bilingual” as the return of its sovereignty to mainland China approached. The issues and responses have been spelled out by a Hong Kong drafter:

English legal expressions originate in the English legal system and reflect the socio-cultural context in which that legal system evolved. A legal expression does not exist in isolation. The historical evolution of English law is an interaction of the philosophical, moral, ethical, linguistic and cultural values. Many English legal expressions are historical and often archaic. It is not always possible to identity an existing Chinese expression that can accurately and fully convey the same ideas or concepts behind the English legal expression.

The modern situation was described:

…the drafting of new bilingual laws always begins with the preparation of the English text. Based on the English text, the Chinese text is then prepared. When difficulties are encountered in preparing the Chinese text, the drafter of the English text is able to make changes to the linguistic aspects of the English text to suit the preparation of the Chinese version. It is found that if the English text of a piece of new legislation is drafted in plain language, preparation of the Chinese text is often much easier. As a

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119 As is clear from http://www.parliament.go.tz/bills-list.
120 Taken from the summary by Birgit Brock-Utne and Gunnar Garbo in their introductory chapter “Language is Power” of a chapter by Haroub Othman in the same book, Birgit Brock-Utne and Gunnar Garbo, Language and Power: The Implications of Language for Peace and Development (Dar es Salaam: Mkuki na Nyota Publishers, 2009) at p. 23.
result of this experience, Hong Kong’s legislative counsel became aware of the need to prepare the English texts of the laws in modern, plain language.

But even now, the author concludes, “Continual efforts in training legislative counsel on plain language drafting and in promoting public awareness about the advantages of plain language legislation are still very necessary.”

South Africa has set up a translation unit in the office of the Chief State Law Advisor, which now translates national legislation, only, into all the official languages. But clearly this endeavour is so far limited. A case recently decided by the Supreme Court of Appeal shows how much trouble that country, with more relevant human resources than Kenya, is having in implementing the aspirations of its constitution. Legislation is invariably introduced into the South African Parliament in English, and even existing legislation in Afrikaans has sometimes been amended in English. The court said,

Parliament, the Speaker acknowledged, should do more to advance the use of official languages other than English, but was constrained by resources and time limits. The evidence of another expert, adduced by the Minister, Professor E Meintjes, advised that there are simply not enough trained translators to do what Mr Lourens requires. Universities in the country do not produce sufficient graduates in translating to do the work that would be required by Parliament.

However, the South African Constitution makes it clear that the obligation is to operate in at least two national languages (all eleven are not required of any one government). The government did not deny that it was discriminating. But under the South African constitution, discrimination is only prohibited if it is “unfair”. The court held that the discrimination was not unfair – in a rather weak aspect of the judgment. But their point that if the Constitution envisages only two languages being used, it cannot be unconstitutional not to use eleven is valid.

The South African court’s reasoning about “unfair discrimination” could not be used so readily in Kenya. Our Constitution does not use the phrase. An attempt to get it in at Bomas failed: delegates thought all discrimination was unfair. However, modern dictionaries do give as a meaning of discrimination something like “The unjust or prejudicial treatment of different categories of people, especially on the grounds of race, age, or sex” as well as the original meaning of making fine distinctions. So a Kenyan court might just feel able to decide that the use of English alone is not discriminatory.

It would be good to see the same effect on Kenyan drafters as the necessity to be simpler for translation purposes has had in Hong Kong.

123 Lourens v Speaker of the National Assembly of Parliament and Others (20827/2014) [2016] ZASCA 11; [2016] 2 All SA 340
124 Para. 21. In fact Parliament was in breach of its own Rules which provide, “The official text of the bill must be translated into at least one of the other official languages and the translation must be received by Parliament at least three days before formal consideration of the bill by the House in which it was introduced”—Joint Rules of Parliament, see para. 17 in Lourens case.
Courts

There seem to have been no cases before the courts complaining of discrimination on the basis of language. But how about the courts themselves? The Constitution says little about language in courts – other than what is implied by the statements about official languages. The provision that accused persons have the right to “the assistance of an interpreter without payment if the accused person cannot understand the language used at the trial” is not specific to a multi-lingual country.

Traditionally Kenyan courts operated in English (at least since the abolition of customary courts in 1967). But, since the new Constitution, the Court of Appeal (Organization and Administration) Act, 2015, provides:

33. (1) The official languages of the Court shall be English and Kiswahili.

(2) The Court shall, in appropriate cases, facilitate the use of other languages, by parties, including the Kenyan Sign language, Braille and other communication formats and technologies accessible to persons with disabilities.

Section 33(1) seems to imply that proceedings may be in either language. Section 33(2) is a little unclear: does it refer to the parties only, or does it mean the lawyers also? Since English and Kiswahili are described as “official”, presumably it is not envisaging proceedings in other languages. The description of “Braille and other communication formats and technologies” as being among “other languages” is typical of the poor drafting of Kenyan legislation.

There is an identical provision in the new High Court legislation. Neither the Magistrates Court Act (also 2015) nor the Supreme Court Act makes any reference to language. Yet it is presumably in the magistrates courts that people are most likely to want to use languages other than English.

The Draft Policy says,

Since Kiswahili and English are the official languages, everyone has the right to use them in any oral or written submissions or proceedings before the courts. The right of any person to use English or Kiswahili before the courts applies to persons on trial, counsel/advocates/ witnesses/ judges and other officers of justice. However, for justice to be upheld, the judicial process will ensure that no person is denied their right on account of language. Therefore, where appropriate, community languages can be used in the judicial process in order to ensure access to justice for all citizens.

This sounds fine, but there must be some doubt as to whether in a particular court everyone will be able to operate in Kiswahili with equal facility, and it may not be helpful if individual judges or lawyer choose to use Kiswahili. In Hong Kong, where higher courts sometimes

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125 Article 50(2)(m).
126 High Court (Organization and Administration) Act, 2015.
operate in Chinese this will be done if everyone involved has mastery of the language. And training programmes have been instituted including in writing judgments in Chinese.

A further complexity in a move towards the use of Kiswahili in court is the need for lawyers to be able to think law in Kiswahili. At the University of Hong Kong Chinese-speaking law students are required to study a course on law in Chinese. It seems that in Kenyan legal education there is no course on Kiswahili and law.

In Tanzania, Kiswahili is being used in the lower Primary and District Courts, while there has been some pressure from the public to extend this to higher courts and local land tribunals. In Zanzibar, proceedings may be in Kiswahili even in the High Court but judgment is delivered in English. But in that country, as observed earlier, standards of Kiswahili are far higher than in Kenya.

Courts do sometimes struggle to operate in different languages. Apparently in South Africa the courts have decided that English should be their language. The main impact on this would be on the use of Afrikaans. Various bodies including the Pan-South African Language Board have objected that this is unconstitutional, though one report observed that the courts already mainly use English.

Language in education

Education is largely a matter for the national government, except for early childhood education and village polytechnics. Much of the discussion among the public and in the literature is about language in education especially at the primary level. This is approached from both the rights and the pedagogical directions. One Kenyan author argues on the latter basis, that,

A widespread understanding of Multilingual Education (MLE) programs (UNESCO, 2003, 2005) suggests that instruction takes place in the following stages:

1. Stage I : learning takes place entirely in the child’s home language.

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127 In 2010 41.8% criminal cases in the Court of Appeal were in Chinese, 67.1% in appeals from magistrates court before the Court of First Instance, 25.5% of criminal trials before the Court of First Instance (Trials) 26.1%, 46.2% in the District Court and 80.9% in the Magistrates’ Courts (Legislative Council, Panel on Administration of Justice and Legal Services, “Use of Chinese in Court Proceedings” LC Paper No. CB(2)1353/11-12(01) http://www.legco.gov.hk/yr11-12/english/panels/ajls/papers/a0326cb2-1353-1-e.pdf. The same site includes a number of papers on the subject: see http://www.legco.gov.hk/yr11-12/english/panels/ajls/papers/ajls_1.htm.
130 Birgit Brock-Utne and Gunnar Garbo, above.
132 “Urgent Radical Legislative Intervention is Needed to ensure Multilingualism Within the Judiciary” 19 April 2017 http://www.pansalb.org/media/20%020release.html
133 See “Breaking News…” above.
(3) Stage III: building oral fluency in L2. Introduction of literacy in L2.

(4) Stage IV: using both L1 and L2 for lifelong learning.  

The Constitution recognises the right to education: specifically every child has the right to free and compulsory basic education. This should be read with other constitutional provisions including that no-one must be discriminated against (including in access to education) on the basis of language. But how can a child enjoy the right to education if he or she cannot understand what is being taught?

As mentioned earlier, there is a long-established policy that the early years should be in the mother tongue if possible in the catchment area. The Ethnologue database states that twelve languages it lists are “taught in primary schools”: though one was only in nursery classes, and one language had only a developing script so presumably lacks literacy materials. But this clearly leaves many languages in which no schooling is done, even if the language is written; several of the languages that are not taught in school are listed as having translations of the Bible (partial or full). In fact it seems that in the past teaching materials existed in more languages than teaching now takes place.

Of course, for many children, mostly those speaking the smaller languages, it will anyway not be “reasonably practicable”. Yet the Ethnologue site does not list Somali as being taught in primary schools, though Somali is written, and is the mother tongue of the sixth largest ethnic group in Kenya.

The policy is said to be imperfectly internalised and institutionalised, even when the mother tongue is Kiswahili. One study indicates that the mother tongue is used in the first three years of primary schools only 14.1% of the time. One author writes,

The government says that the LoI ['language of instruction] in the first three years is the 'language of the catchment area’, but goes ahead to provide a syllabus in English for all subjects (except Kiswahili) in these classes, approves teaching and learning materials in English and does not bother to supervise the implementation of the policy.

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135 Article 53(1)(b).


137 Despite some proposals for a distinctive Somali script, the Latin alphabet was adopted as official in 1972.


The, post-Constitution, Education Policy of 2012 reiterates that expectation, but also says,

It is important that whenever possible learners are not confined in their local areas for
the purpose of national integration. For schools located in metropolitan areas such
[sic], Kiswahili shall be adopted as a language of the catchment area.\textsuperscript{141}

This does not seem to imply great commitment to the idea of mother tongue – either for
pedagogical or for identity reasons. Indeed, that paragraph begins: “National and County
Education Boards shall encourage the use of the two official languages Kiswahili and English
both in- and out-of-school as provided for in the Constitution of Kenya (2010).” And in
another document – on education sector development 2013-18 the following is envisaged: “A
Co-ordination Committee is established by MoEST Pre-Primary and Primary Education
Directorate in close liaison with INSET, KICD, KNEC and TSC\textsuperscript{142} to review the current
language policy…..\textsuperscript{143}

One author concludes:\textsuperscript{144}

[T]eachers and parents prefer to use English as the LoIs and yet English is not the
‘language of the catchment area’ for the majority of the Kenyan pupils and the
government has failed to enforce the policy. This explains the high levels of school
failure at the end of the eight years of primary school. When equity is not achieved in
the training and provision of education, the resulting disparity pervades other spheres
of life.

Evidence suggests that many Kenyans feel more comfortable speaking that language than
English. Yet it is not the medium of instruction, except for the first few years where it is the
mother tongue. In reality classes are taught in many schools in a mixture of English and
Kiswahili, at least at the early stages of the switch to notionally English medium.\textsuperscript{145}
Examinations are all in English.

Only a small number of Kenyan languages are the subject of study at university level. English
and Kiswahili are available up to doctoral level in many universities. Kiswahili is not a
medium of instruction other than in degree courses on the subject. It is unlikely that students
would opt to study any other subject in that language. A small number of indigenous
languages are the subject of study including Gikuyu and Dholuo – which can be studied at
certificate level. Linguistics departments (of which there are several) do study the structures
of Kenyan languages. There is also considerable study of oral literature.

\textsuperscript{141} A Policy Framework for Education Aligning Education and Training to the Constitution of Kenya (2010) and
Kenya Vision 2030 and beyond, Sessional Paper 14 of 2012 Para. 2.10
\textsuperscript{142} This alphabet soup means MoEST = Ministry of Education, Science and Technology, INSET= In-Service
Education and Training, KICD = Kenya Institute of Curriculum Development, KNEC = Kenya National
Examinations Council and TSC = Teachers’ Service Commission.
\textsuperscript{143} National Education Sector Plan Volume Two: Operational Plan 2013 – 2018 (2015) para. 3.2.1.
\textsuperscript{144} Kioko, p. 27.
\textsuperscript{145} Nathan Oyori Ogechi, “The role of foreign and indigenous languages in primary schools: The case of Kenya”
Stellenbosch Papers in Linguistics PLUS, Vol. 38, 2009, 143-158,
http://sun025.sun.ac.za/portal/page/portal/Arts/Departments/linguistics/documents/SPILPLUS38-
OyoriOgechi.pdf
New developments

In the post-constitution period, as mentioned, there have been various developments, at the “policy” and legislative levels. This is a new, and so far incomplete, development. One writer comments,

[T]he fact remains that the indigenous languages have not received serious consideration in the government's planning. This lack of commitment to the promotion of indigenous languages, in essence, means that Kenya has neither seriously considered nor recognised the consequences, demands and challenges of multilingualism within its borders.\(^{146}\)

The draft Languages Policy includes government “policy statements” concerning a large number of issues. They include measures to support and encourage the teaching and learning of Kiswahili and community languages as well as English “to promote national unity and linguistic and cross-cultural literacy”; “providing resources for the teaching of all languages of Kenya in schools”; ensuring that the initial medium of instruction is the local language; that teaching and use of Kiswahili is a compulsory subject in all primary and secondary schools. Kiswahili and English are to have “equitable weight” in teaching and learning. Examinations are to be conducted in the medium of instruction. They also mention support for research and documentation, with emphasis on minority and endangered languages and the creation of a National Institute for Kiswahili Research. Read with existing approaches it may mean that in urban areas Kiswahili will remain the assumed mother tongue for early year teaching.

The stress on the equality of English and Kiswahili would reflect a major change. But much of the document is rather vague, so it is not clear how much difference it would make to the existing scene. For example, though it seems to envisages more study of community languages, it does not focus on teaching of these languages.

Interestingly the document includes a commitment that all institutions of higher learning should offer Kiswahili as a compulsory course for professional communication “in relevant areas”. Might this include study of Kiswahili and law?

The recent Basic Education Act lists various values and principles, including:

4. (f) protection of the right of every child in a public school to equal standards of education including the medium of instructions used in schools for all children of the same educational level

(g) without prejudice to paragraph (f) above, advancement and protection of every child in pre-primary and lower primary level of education to be instructed in the language of his or her choice where this is reasonably practicable.\(^{147}\)

\(^{147}\) S. 4.
(g) seems to be more cautious than the draft Policy commitment to “ensuring that the initial medium of instruction is the language of the catchment area”.

The BEA is depressingly badly drafted. The first puzzle is that “medium of instructions [sic]”. Does it mean the medium must be the same? Or the quality of instruction in whatever medium must be the same? Whatever it means, it is not affected by paragraph (g) – but if the equality is to be in the language there is a direct conflict between (f) and (g). It is tempting to believe that it was intended to mean that the level of attainment should be the same in every language of instruction. But the introducer of this provision, Millie Odhiambo Mabona, said in Parliament,

I am also seeking to insert a new sub-clause (ee) [now s. 4(f)], which basically seeks to equalize the standards of education for all children in the country. Currently, we have different standards, especially by the medium of instruction. In Clause 4(f) [now sub-s. 4(g)], I am basically saying without prejudice to the amendments I have brought ahead, any child can then chose to be instructed in a language they want, because that is also a right. We provide a very clear standard, but every child then has a right.148

There was no discussion, and the amendment had apparently been introduced at a very late stage. These remarks leave us little wiser as to what was intended.

There have been some developments in a recent restructuring of school education. It is indicated that in the first three years students will engage in “language activities” in English, Kiswahili and indigenous languages. Literacy is listed separately. This does not indicate in what language literacy will be acquired. In upper primary and lower secondary English and Kiswahili are listed. But in lower secondary, indigenous languages are listed as optional subjects.149 It does not seem from this that the system has embraced either a commitment to the study of local languages beyond the first three years, or a system of multilingual education. If the draft policy is adopted, further rethinking will be required.

**Media**

In 1965 official policy was opposed to local languages. “As this country is moving towards establishing Swahili as the national language, it is not the intention to encourage vernacular programmes.” This was the response of the Assistant Minister for Information, Broadcasting and Tourism to a parliamentary question about the use of Pokot in Voice of Kenya broadcasts.150

Attitudes have certainly changed – as has broadcasting. The growth in vernacular broadcasting can be traced back to liberalisation of the airwaves in 1998. There are now said

149 From a PowerPoint presentation by Olive Mbuthia on the new system, see www.emu.dk/sites/default/files/KENYAN%20CURRICULUM%20REFORM.pdf (EMU Denmark's learning portal).
to be broadcast in at least 19 local languages.\textsuperscript{151} And it is clear that radio can have a powerful effect on the preservation of languages. One author says of an FM station,\textsuperscript{152} 

[It]… airs programmes on health, sustainable agriculture, fishing, youth empowerment and importantly Suba language and culture. Included in the language and culture are daily Olusuba lessons, Suba music and discussion with Suba elders. Needless to say, the radio station is a major catalyst in revitalizing the Suba language.\textsuperscript{153}

On the other hand, it is interesting to note that when the Communications Authority developed a code of practice for broadcasters, including on local content, it gave very little positive encouragement to the use of local languages. Being in indigenous languages, or Kiswahili or English have equal weight in determining whether content is local.\textsuperscript{154}

The main daily newspapers are in English. \textit{Taifa Leo} (Nation Today) has been published since 1958. But its circulation is well below that of the English language papers (except the free \textit{People’s Daily}). It has been stated (February 2015) that “In the past 30 days, \textit{Daily Nation} had an average readership of approximately 4,379,400 per day, and \textit{Standard} had an average of 2,223,500 per day. This means nationwide, \textit{Daily Nation} has a 40% share while Standard has a 20% share. Lower down, \textit{Taifa Leo} has a 10% share, and \textit{People Daily} has 8%.\textsuperscript{155}

There may be some basis for a fear that vernacular radio might be divisive. A Kenyan journalist was until recently on trial before the ICC accused of having played a part through radio in stirring up the 2007-8 post-election violence.

Kenya Broadcasting Corporation ceased to broadcast in Asian languages long ago, but there are at least two commercial Asian oriented radio station: Sound Asia (music especially from Bollywood films) and East FM (“focuses on Asian religious, music and social and cultural activities”).

**Public participation**

The Constitution has a great deal of emphasis on public participation in decision making. It is a national value under Article 10, it is one of the objects of the system of devolution (Art. 174). It is mentioned in connection with the management, protection and conservation of the


\textsuperscript{153} The Ethnologue publication says of Suba: “…139,000 (2009 census), increasing. Homa Bay county: Lake Victoria east shore, Mfangano and Rusinga islands.Status:5 (Developing) Class:Niger-Congo, … Use: Vigorous. Revitalization efforts have been very effective. Home, social gatherings. All ages. Positive attitudes. All also use Dholuo [luo]. Also use English [eng]…. Taught in primary schools. Poetry. Radio programs. Films”


\textsuperscript{155} http://blog.geopoll.com/data-on-newspaper-magazine-readership-in-kenya. This omits the \textit{Star}, which has a circulation of about 35,000 and a readership maybe 10 times as much.
environment (Art. 69(1)(d)), in relation to the legislative and other business of Parliament and its committees (Article 118), and county assemblies (Article 196), urban areas and cities (Art. 185), and other lower levels (Fourth Schedule, Part II Item 14), and in financial matters (Art. 201). There is an emphasis on the right of specific groups to participate generally: including minorities and marginalised groups, who might not understand the official languages, and older persons, of whom this might also be true.

But a right to participation is meaningless for those who cannot use the language of participation. At the national level both English and Kiswahili may be used, though the author’s impression is that participation processes are mainly in English. There have been complaints (particularly in relation to environmental impact assessment public meetings) that though people can use Kiswahili at the meetings, all the documents (often bulky and complex) are in English.

The counties

Most counties are not monolingual. If they are really to involve more people actively, they should at least use Kiswahili extensively. Kenyan institutions have not yet fully internalised the devolution system. Neither the draft Languages of Kenya Bill nor the National Assembly motion about laws in Kiswahili is clear about whether it is intended to affect counties, though the draft Policy does say “All government structures (National and County) are bound by the provisions of the Languages of Kenya Policy”.

Legislation

It might seem that county laws would more closely affect citizens. But most counties have so far passed little legislation. They face difficulties in drafting law, and would undoubtedly face even greater difficulties than the national government in producing bilingual drafts. But there have been complaints from citizens. Marsabit County Assembly faced repeated calls for Bills to be in Kiswahili as well as English when it presented its County Scholarship Fund Bill for public comment.157

Legislature

The County Governments Act, s. 18, provides that the business of a county assembly may be conducted in English, Kiswahili and Kenyan sign language but in no other language. It seems that documents are in English, and the majority of speeches in the full house in each county are in English.158

The rules can reach a rather ridiculous level, witness the following exchange in the Elgeyo Marakwet Assembly (about the county symbols):

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156 I have observed meetings on the medium term budget framework and on approval of the use of genetically modified cotton. All presentations were in English. I did not stay to the end of the GM cotton meeting at which there might have been people who would have been happier speaking in Kiswahili.

157 A Report on Public Participation by Education, Skills Development, Youth and Sports Committee on the Marsabit County Scholarship Fund Bill, 2014 in Marsabit County


158 This statement is based on looking at county assembly websites.
**Hon. [Thomas] Kigen** At the end of the day whether you talk of the goats, the sheep, the cows, they all represent the reality, the big reality of the origin of where an area which is called the place of milk in mostly the Kalenjin term (*bikap chego*), you know the people of the milk.

**Deputy Speaker:** That is not a national language!

**Hon. Kigen:** Mr. Speaker that is allowed as long as you are able to give its meaning in the other side.

**Deputy Speaker:** That is not the language of the House.

There has some call to change this. The Speaker of the Kakamega proposed it in 2013, saying “During my interactions with the elected representatives, I realised that without such flexibility some members might go for a whole five-year term without uttering a word.”

Opposition politician Raila Odinga and the writer Ngugi wa Thion’o have expressed the same view. Ngugi said,

> If you know all languages in the world but you don’t know your mother tongue or the language of your culture, then that’s colonisation, but if you add all the languages of the world to your mother tongue, that’s empowerment.

But the response seems to have been largely negative. Four county speakers from western counties rejected it emphatically, claiming variously that Odinga was questioning the education qualifications of MCAs, (which he later denied), that it was not practical, and that it was unconstitutional. Encouragement of tribalism and divisiveness has also been cited. For example, one imam was reported as saying

> It is so unfortunate that such suggestions could come from such senior leaders in the country. If we were to go by what they are advocating for, then it will be as good as endorsing tribalism.

Some counties are cosmopolitan, how will people from the minority tribes survive if use of vernacular in public institutions will be legalised?

South Africa is often looked to. Though the national Parliament operates mostly in English things may be rather different at the provincial level. In Gauteng Province (which includes Johannesburg) according to its 2005 Language Policy Framework,

The language of written internal record in GPG will be English and translations into other official languages and Braille will be made available on request where

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practically possible. When it is deemed crucial, certain documents will be translated into any number of the other 10 official languages and distributed without waiting for the public to request this. The Gauteng Legislature will continue to produce records of debates in at least four official languages.

Things are different in Kenya. In Elgeyo Marakwet,

It has been noted with a lot of concern that during the committee meetings, some Members transact business using vernacular language. Be informed the Standing Orders that guide the House apply to the committees and it is inappropriate for any committee Member to transact business using vernacular language.\(^{164}\)

Busia county has indicated that it views “Use of vernacular languages in public offices” as an obstacle to the realisation of national values and ethics.\(^{165}\)

**Public participation in counties**

At the national level participation is in English and Kiswahili, but at the county level there might realistically be more opportunity for the use of other languages. This was recognised in a document prepared for the Ministry of Devolution: “Public Participation Guidelines for County Governments”.\(^{166}\) This document suggests:

The ideal approach counties may adopt is to integrate minorities and marginalised individuals in the mainstream public participation process. However where this may not be possible, the county ought to hold focus group meetings specifically targeting the attendance of mapped out minorities and historically marginalised individuals. To ensure inclusivity, county governments should seek the services of translators, use visual aids, use indigenous languages and translations of official county documents.\(^{167}\)

And,

Strategic communication is key or essential to county governments. This means that communication efforts by the county should be in line with the policy, legislative and development agenda set for specific periods. County governments should be in constant communication with their residents. The county should communicate in a language the residents understands and at the very least in English and Swahili.\(^{168}\)

It is not easy to know what laws counties have passed. But such information as there is suggests that their laws have done little to expand the use of languages beyond English and Kiswahili. In public participation and petitions Acts, they repeat provisions from national law

\(^{164}\) Statement by Assembly Speaker Tuesday 12th, August, 2014


\(^{166}\) Not yet published but I have found it on the website of Taita Taveta county – http://taitataveta.go.ke/public%20participation.

\(^{167}\) Para. 3.6.

\(^{168}\) Para. 3.7.
about petitions using just those two languages. ¹⁶⁹ This based on the Law Reform Commission’s Model Act for counties.

However – also derived from the Law Reform Commission’s Model Act – some counties have provided that public participation should be facilitated by “the use of language that is understandable by the citizens including persons with disabilities” (a phrase that presumably refers to the use of Kenya Sign Language). ¹⁷⁰ Meru has a slightly improved formulation: “provision of meaningful information in a format and language that is readily understandable and tailored to the needs of the target groups”. ¹⁷¹ West Pokot provides for announcements of forums to be in “using the national and official languages, such other languages in common use within the county and sign language.” ¹⁷² It is not entirely clear whether those languages may be used at the forums. Some counties have used the LRC model provision about the responsibility to “put in place affirmative action programmes to ensure that minorities and marginalised groups … develop their ethnic and cultural values, languages and practices”. ¹⁷³

Vihiga’s Public Participation Bill/Act has a wide range of aims including “provision of information in formats accessible to a wide group of people including persons with disabilities and translate to local language where necessary”. ¹⁷⁴ And when communicating with the community, an administrator “must take into account: (a) language preferences and usage in the community”. ¹⁷⁵

Lamu county has a web guide to petitioning the county assembly, which says, “Use the language that you feel most comfortable with. Assembly, as the representative of the people, encourages the use of all official languages and would like all citizens to feel free to participate in the work of the Assembly in the language of their choice.” ¹⁷⁶ This is slightly ambiguous: are the citizens free to choose just between official languages? In reality in Lamu most would feel happy in Kiswahili.

**Language in the counties more generally**

Several counties indicate that promotion of local languages is one of the tasks of their culture Ministry. Uasin Gishu includes “Promotion of Kiswahili, sign language and indigenous languages”. ¹⁷⁷ Nyeri wants to “To revitalize, promote and develop indigenous languages and oral traditions”. ¹⁷⁸ In Nakuru, the mandate of the Ministry includes “carry out research on tangible and intangible Kenyan heritage that gives meaning to our societies, we get tangible

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¹⁶⁹ E.g. Elgeyo/Marakwet Public Participation Act, 2014, s. 26, Machakos Act s. 9(2)(b), the Meru County Act s. 25(b) petition to Assembly and s. 32(b) (petition to county executive).

¹⁷⁰ Elegeyo/Marakwet Public Participation Act s. 22(4)(b), and Machakos PP Act s. 7(4)(b).

¹⁷¹ PP Act s. (a). Nyeri county has an identical provision, as does Elgeyo Marakwet.

¹⁷² County Public Participation Bill, 2014, cl 18(1)(a). It seems that the power is used to announce forums in Kiswahili and Pokot.

¹⁷³ Elegeyo Marakwet s. 25(1)(d).

¹⁷⁴ S. 3(i).

¹⁷⁵ s.7(2).


information from language experts, indigenous knowledge – wazees (known as community libraries)”. Nairobi includes in its Integrated Development Plan projects like “Development and promotion of indigenous knowledge systems and practices” which involves “Promotion of Kenyan languages”.

Taita Taveta also has an Affirmative Action Policy (2014) that recognises past disregard for local languages, “The cultural values, language and practices of some of the marginalized communities have often been considered inferior.” But it does not contain anything specific about how this is to be tackled.

On the other hand, Homa Bay views increased use of national language as important for national unity and cohesion, which it ranks as inadequate.

The national Ministry of Sports, Culture and the Arts has taken on the responsibility of promoting Kiswahili, sign and indigenous languages, saying that it will respond to a “Written request from interested community or County on indigenous languages”. There is no indication of how it will respond. However, apparently the Ministry has been organising seminars “in the effort to formulate proposals on policy and the related legal provisions to guide practice in the use of our indigenous languages, Kiswahili included”.

Public services

Kenya has operated a practice, in various government services, of posting people away from their home areas, and transferring them quite frequently. It applies to the police, to staff in what used to be called “Provincial Administration” (the network of national public servants, not attached to line ministries, who implement national policy and act as the eyes and ears of the national government locally), to the judiciary, especially magistrates, and to teachers. The purpose of this is to try to cut down on corruption but it does mean that the national public servants, including teachers, with whom the public come into contact may well not understand local languages.

The transfer of certain functions to counties may increase the numbers of public servants with command of local languages. Indeed there has been criticism of too much localism in appointments.

There is little indication that Kenyan counties will be trying to offer emulate Gauteng, where

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The language usage for frontline services such as public hospitals, police stations, social service points, housing and the Gauteng Legislature should be sustained, with forms for services offices issued in at least two indigenous languages or where absolutely necessary in all 11 official languages.\textsuperscript{186}

However, Migori plans to use major local languages to communicate its messages to the public.\textsuperscript{187} And West Pokot allows (but does not require) alcohol retailers to display the required notice about not selling to those under 18 “in English or in Kiswahili or any other local language”\textsuperscript{188} – if it is necessary to use another language to get the message across it would seem that the law should require it. To make this permissive is to give a licence to retailers to sidestep the law.

Counties are not responsible for the police, and there is a more limited range of public services available in Kenya than in South Africa. But counties are responsible for much of public health, and hire mostly their own staff. They have limited functions in connection with education, but some have related this to language. Specifically in connection with mother tongue education, Uasin Gishu refers to “Implementation of language of instruction policy.” Kakamega County in its Early Childhood Development Education Act, 2014, provides for values and principles, including (s. 3) one identical to the mysterious Basic Education Acts. 4(f) as well as “(d) protection of a child [sc. every child’s?] culture including language in the catchment area”.

Kirinyaga county includes in its Integrated Development Plan the following projects under “Culture”: “Open local language [sic], Open learning centres within the cultural sites, Initiate a local/vernacular radio station within the county, Schools competition on local dialects i.e. [sc e.g.?] tongue twisters, Initiate a county vernacular magazine”.\textsuperscript{189}

Devolution has arguably given a boost to vernacular radio because of increased local sentiment. But counties wishing to set up their own stations have run into a constitutional hurdle: that radio and television broadcasting is a national government function.\textsuperscript{190} The Communications Authority has refused licences to the twenty that had applied.\textsuperscript{191}

**Reflections**

In certain quarters in Kenya there is great enthusiasm for enhancing national unity through the enhanced use of Kiswahili. This is echoed in the Constitution and the draft language policy.

Even though strengthening the use of Kiswahili should be a manageable undertaking, it will not be easy. The quality of teaching in the language needs to be improved. And the

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\textsuperscript{186} Language Policy Framework of the Gauteng Provincial Government

\textsuperscript{187} http://cog.go.ke/images/stories/CIDPs/Migori.pdf

\textsuperscript{188} West Pokot County Alcoholic Drinks Control and Management Act, 2015, s.31(2)(c).

\textsuperscript{189} http://cog.go.ke/images/stories/CIDPs/Kirinyaga.pdf

\textsuperscript{190} Schedule Four, List 1 Item 18(k).

complexities and cost of putting them on an equal footing are daunting. The difficulties faced by Tanzania and South Africa are not encouraging. It was estimated that in 2006 it cost the federal government of Canada $C279 million (22 billion Kenya shillings at today’s exchange rate) for translation and interpretation – not just for law making.\footnote{François Vaillancourt and Olivier Coche, \textit{Official Language Policies at the Federal Level in Canada: Costs and Benefits in 2006} (Fraser Institute 2009) p. 3. \url{https://www.fraserinstitute.org/sites/default/files/OfficialLanguagePolicies.pdf} Another study in 2012 calculated the cost for the Provinces (\url{https://www.fraserinstitute.org/sites/default/files/official-language-policies-of-canadian-provinces-rev.pdf})}

But how important is it in truth that all the law be available in Kiswahili? How many people would actually read the original text of laws in Kiswahili? How many fluent English speakers read the law in English? Maybe the more urgent priority is to produce accessible information about law in Kiswahili (and English).

When it comes to other languages, the there is great uncertainty in many respects. How far are people committed to the survival of their languages? Couples in Nairobi, even if they are from the same community, do not necessarily attribute great importance to ensuring their children are proficient in their mother tongues.

In rural areas where in theory teaching is in mother tongue for the first few years, it is not clear how far this happens—but evidently not to the full extent even where there is one local language only. The draft Policy does not remedy that. One could contrast it with the Indian three language policy. That policy is controversial, and many reports say it is not working as planned. My point here is that it is a policy with a vision behind it. That vision was that every child should be fluent in at least three languages: Hindi and, usually, English and their mother tongue or regional language (or another language of India if their mother tongue was Hindi).\footnote{This would not necessarily protect mother tongues. But the Constitution permits the national government to order mother tongue education in a state: Art. 350A It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities.}

It is hard to avoid a sense that the various county initiatives may not lead anywhere. Certainly so far they are lacking in specificity: no benchmarks and indicators, outputs and outcomes and other paraphernalia of modern planning. On the other hand, devolution – and modern broadcasting technology – are having significant, if unplanned, impacts on language.

In a situation of extreme linguistic complexity, and of limited resources, what ought to be the priorities? Is it public participation? Or mother tongue education in the early years? Or bilingual laws? Or strengthening small languages? Certainly there seems something wrong with a situation in which no languages, generally speaking, are being properly taught and used.

Finally, maybe it is a mistake to take language as a phenomenon alone. If languages are not used, are the speakers of the languages being properly respected? If public policies and social attitudes treated people with respect, would language issues be easier to solve? Do inclusion policies that focus on getting a few individuals into public elected and appointed office
actually benefit communities? Does a focus on language have the benefit of being more inclusive of whole communities?

But this is taking us beyond the scope of this already overlong paper.