

**THE RECOGNITION OF LANGUAGE RIGHTS UNDER
INTERNATIONAL HUMAN RIGHTS LAW: ANALYSIS
OF ITS PROTECTION IN ETHIOPIA AND MAURITIUS**

**A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT OF
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Declaration

I Mitiku Mekonnen Chere do hereby declare that this dissertation is my original work and that it has not been submitted for any degree or examination in any other university. Whenever other sources are used or quoted, they have been duly acknowledged.

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Dedication

This dissertation is dedicated to those helpless people who are victim of discrimination only on the mere fact that they do not speak the language of the majority that they are living with.

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List of Abbreviations

ACALAN	African Academy of Languages
ACC	African Culture Charter
ACHPR	African Charter on Human and People's Rights
AHS AU	Assembly of the Heads of State of the African Union
AU	Africa Union
AYC	African Youth Charter
CACR	Charter for African Cultural Renaissance
CADE	Convention against Discrimination at Education
CEU	Charter of European Union
CMW	International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families
CRC	Convention on the Right of Child
ECPH	European Convention on the Protection of Human Rights and Fundamental Freedoms
ECRML	European Charter for Regional and Minority Languages
GA	General Assembly
IACH	Inter American Convention on Human Rights
ICCPR	International Covenant on Civil and Political and Rights
ICESCR	International Covenant on Social, Economic and Cultural Rights
ILO	International Labour Organisation
MIE	Mauritius Institute of Education
UOM	University of Mauritius
NNP	Nation, Nationality and Peoples

OAU	Organisation of African Unity
UDCD	Universal Declaration on Cultural Diversity
UDHR	Universal Declaration on Human Rights
UDLR	Universal Declaration of Linguistic Rights
UN	United Nations
UNDM	United Nation Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
UNESCO	United Nation Education, Science and Cultural Organisation
UNHRC	United Nation Human Rights Committee
WW	World war

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Chapter One: Introduction

1.1 Background of the study

Until recently, there is no clear agreement as to the recognition of the right to language in international law. This allowed states to have unlimited discretion to adopt and implement an abusive language policy. The linguistic diversity of the world is reflected in the existence of an estimated 6000 - 7000 languages worldwide.¹ However, the global tendency today is towards using only a few languages. Consequently, minority and indigenous languages especially are on the verge of extinction.² Only few languages such as English, Chinese, French and Spanish among others, are widely spoken and about 70% of the world population speak only eleven languages.³

While most of African states are multilingual with diverse native languages spoken by the people, it is observed that many states claim to be monolinguals and adopt a strategy to use and promote only one or a few languages.⁴ Even in those states such as Republic of South Africa - which officially recognise all native language, it is observed that only one or few colonial languages are still used predominantly.⁵ Hence, the mere recognition of all languages in the constitution does not suffice for the effective use of these languages in practice.

In some states, only a state recognised official language is used for all public and private transactions. For example, hospitals, schools, medias, parliament and judiciary, among others, use only the official language of the state though most people might not speak it at all. Specifically in Africa, when most states took political control over their countries from former colonisers, they still upheld the languages of the latter to be used as an official language of the state.⁶ Thus, the rights of the people to effectively participate in the democratic process of their government and exploit social services will remain in vain.

Unwillingness of states to recognise the right to language and accommodate linguistic diversity is also known to be the causes for ongoing conflicts amongst ethnic groups in many states.⁷ Apart from the possibility of causing conflicts, the absence of proper policy or legal framework ensuring the use of mother tongue at least at certain levels will lead to gross human rights violations.

¹ *Education in a Multilingual World*: UNESCO Education Position Paper (2003), available at <http://unesdoc.unesco.org/images/0012/001297/129728e.pdf> (accessed on 03 Nov 2009).

² S Ulrike *Language change and Ethnic Identity of Minorities*, European Centre for minorities issue, (2008) 2.

³ As above.

⁴ Open society for southern Africa, 'Language inclusion; participation and expression' (Vol.2, Issue 3 Nov.2008)8.

⁵ As above 11.

⁶ B Brock-Utne & R Kofi Hopson 'Educational Language Contexts and Issues in Postcolonial Africa' in B Brock-Utne & R Kofi Hopson ed. *Language of Instruction for African Emancipation* (2000)3.

⁷ Open Society (n4 above) 16.

1.2 Relevance of the study

The recognition of the right to language under international human rights arena is still an ongoing debate. By examining the nature, extent and adequacy of the protection accorded to linguistic rights in international human rights laws, this paper will try to provide solutions for this ongoing debate. In addition to resolving the issues in international law, it will also reveal the extent of protection accorded to linguistic rights in Mauritius as well as under the express linguistic and ethnic form of Ethiopian federalism. Having compared the practice and language policies of the two states in lights of international standards, issues that should further be addressed will be pointed out.

1.3 Statements of the problem

As it has been explained above, there is a debate as to the recognition of the right to language under international human rights law. As a result, states do not respect and adopt appropriate measures that enable the use of one's own language at least at a certain possible level. The absence of comprehensibly agreed international human rights law on linguistic rights, inter alia, political and economic dilemmas are used as an excuse for the failure of most states to recognise and respect language rights. Hence, the basic questions that will be addressed in this research paper are:

- Is there right to language under international human rights law as such?
- ✚ More specifically:
 - ❖ Which other fundamental human rights can be used to protect linguistic rights?
 - ❖ Is there a need to have a convention on linguistic rights?
 - ❖ What are the nature of the policies and laws adopted by Ethiopia and Mauritius concerning language rights inline with international standards?
 - ❖ Is federalism as adopted by Ethiopia useful for the effective recognition of individual or group linguistic rights?

1.4 Literature review

The right to language has not yet found clear legal bases to be claimed as any other human rights so far. The European Court of Human rights ruled that there is no right to language and states have an absolute and unqualified discretion to choose language of instruction at public school in the *Belgium Linguistic case*.⁸ However, De Varennes asserted that the International Convention on Civil and political Rights (ICCPR) has many other fundamental

⁸A case relating to certain aspects of the laws on the use of languages in education in *Belgium v Belgium* ECHR (23 July 1968) Ser A 6.

human rights with implicit linguistic content that demands state to comply with.⁹ Paen and Kymlicka argued that the existing human rights standards set only minimal limits on the domestic policies that a state will adopt.¹⁰ They further went on arguing that linguistic right can be seen as part of traditional individual human rights which includes freedom of expression, freedom of press, freedom of association and non-discrimination.

Rubio-Marín for his part noted that language has an intimate relationship with nationalism, culture and identity of a certain group.¹¹ Schilling actually argued that 'it is a characteristic of human rights that they protect nearly every aspect of human activity and human choice, and it, therefore, would be surprising if language rights were not so protected.'¹² For Gromacki,¹³ the evolution of the right to language has the concurrent developments of two independent theories of linguistic protection; the negative "individual" protection of any discrimination on ground of language and the other one which gives positive protection to "group" linguistic rights in minority context.

The United Nation Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UNDM) is the first international document to expressly deal with the right to language of linguistic minorities.¹⁴ However, De Varennes¹⁵ noted the presence of many other treaties such as the 1516 Treaty of Perpetual Union between the King of France and the Helvetic state which contained a provision identifying those who were to receive certain benefits as the "Swiss who speak no language other than German" in history. Ramsey Clark¹⁶ further confirmed the presence of a treaty which obliged the Central East European states to promote and protect the language rights of minorities after World War I (WW). Similarly, the International Court of Justice was given a mandate to enforce the treaty bodies and the same court decided a case on the Minority schools in Albania in 1935.¹⁷

Simon argued that the use of a particular mother tongue has been a marker of identifying one's identity and in most cases ethnicity will be badged after the language that an individual

⁹ De Varennes, 'Law, Language and Multi Ethnic State' in *Language, Society and the Law*, Vol.16 No. 3 Elsevier Science Ltd (1996)293.

¹⁰ A Paen & W Kymlicka 'Language rights and Political theory' in W Kymlicka & A Patten (ed.) *Language Policy and Political Theory* (2003) 33-34.

¹¹ R Rubio-Marín 'Language Rights: Exploring the Competing Rationals' in A Paen & W Kymlick (n10 above) 52-54.

¹² T Schilling 'Language rights in the European Union' (2008) 09 (10) *German Law Journal* 1226.

¹³ PJ Gromacki, 'Protection of Language Rights in International Human Rights Law: A Proposed Draft Declaration of Linguistic Rights' (1991- 1992) 33 *Virginia Journal of International Law* 519.

¹⁴United nation Declaration on rights of Persons belonging to National or Ethnic, Religious or Linguistic Minorities (UN Declaration on Minorities) (1992) art 4.

¹⁵Fernand de Varennes, 'To speak or not to speak ; The rights of persons belonging to linguistic minorities' A Working Paper prepared for the UN Sub-Committee on the rights of minorities,(Murdoch University, Australia (21 march 1997).

¹⁶R Clark, 'A legal opinion on international law, Language and the future French speaking Canada' memorandum prepared for the *Mouvement Québec français* New York (15 June 1993) 24.

¹⁷ Minority schools in Albania (Advisory opinion) 1993PCLJ (Ser A/B) No.64, as cited by R Clark (n16above).

is speaking.¹⁸ Paulston asserted that having language policy is one of the solutions to solve language problems at the national level.¹⁹ Furthermore, De Varnnes argued that the rights to use one's language is not only limited to the business of the government but it is all about free use of language in public as well as in private transactions.²⁰ Currie and De Waal have also offered the same argument.²¹ Thus, states should facilitate the use of one's own languages in private, public and governmental businesses.

Jackson further stipulated that creating separate and indeed homogeneous political communities on the bases of linguistic affinity is the only appropriate response for linguistic diversity.²² Nonetheless, Barry²³ advocated for cultural group rights than worrying much about language marginalisation for whatever reasons.

The 1998 Oslo Recommendations²⁴ specifically covers issues related to the use of languages by linguistic minorities in media, private business activities, and public administration, religious ceremony and in judicial proceedings as much as possible.

Similarly, the Vienna declaration²⁵ stipulates that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion and to use their own language in private and in public, freely and without interference or any form of discrimination.

Besides, ICCPR²⁶ in addition to prohibition of discrimination on ground of language, it recognises linguistic rights of minorities to use their language and criminally charged person's right to a free conditional interpreter and his right to be informed of the reasons for his arrest in the language that he understands clearly.

The Ethiopian Constitution has provided the rights of Every Nation, Nationality and Peoples (NNP) to speak write and develop its own language.²⁷ The constitution further stipulates for equal protection of the law without any form of discrimination on the grounds of language.²⁸

¹⁸H Gurba 'Language and Identity in Nigeria' in S Bekker et al (eds) *Shifting African Identities; Identity; Theory, Politics, History*, V II (2001) 7.

¹⁹CB Paulston 'Language policies and Language rights' (1997) 26 *Annual review of Anthropology* 78.

²⁰ Fernand de Varennes 'A guide to the Rights of Minorities and Language' COLPI Paper No.4 (Nov 2001)9.

²¹I Currie & J de Waal *The Bill of Rights Hand book* 5th ed. (2005)632.

²²JJ Preece *Minority Rights: Between diversity and Community* (2005)112.

²³Barry (2001) in DD Laitin & R Reich 'A Liberal Democratic Approach to Language Justice' in Kymlicka & Patten (n10 above) 86.

²⁴The Oslo recommendations regarding the Linguistic Rights of National Minorities (Oslo Recommendations) (1998).

²⁵Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993.

²⁶The International Covenant on Civil and political Rights (ICCPR) (1966). Art 19 freedom of expression and opinion without mentioning the right to language. Articles 24(1) & 26 on non discrimination against children on ground of language and equality respectively. See also art 27.

²⁷The Constitution of the Federal Democratic Republic of Ethiopia(FDRE Constitution) Proclamation No.1/1995, art 39(2)

²⁸As above arts 25 & 38.

The right to a free interpreter during a criminal case court proceedings and the right to freedom of expression are all guaranteed by the constitution.²⁹ Though all languages have been accorded equal recognition and though each federating states has the autonomy to choose their own working language, Amharic is declared to be the working language of the federal government.³⁰

Also, the Constitution of Mauritius declares English as the official language of the Assembly while addressing the Chairperson in French is allowed.³¹ It also guaranteed the rights of arrested and detained persons to be informed of the charges against them in the language they can understand.³² The rights to conditional free interpretation of criminal court proceedings³³ and the right of person whose freedom of movement is restricted to be informed in the language he can understand the reasons for restrictions of his liberty are all provided.³⁴ Nevertheless, the constitution clearly barred the right of a person to be elected as a member of the Assembly if he is not capable of taking part actively in the proceeding of the Assembly due to his English fluency.³⁵

1.5 Methodology

This research paper will adopt a critical analytic approach. Hence, while doing this research, literature review of books, journals, and consultation of different International and Regional Human rights conventions and soft laws will be conducted. Desk top research, case analyses and interviews with relevant individuals will be also employed.

1.6 Limitations

This research paper will mainly concentrate on determining the recognition of the rights to language under international human rights laws. The main aim here is to undertake an informed examination of different international human rights instruments to reach on a certain conclusion on the very existence of linguistic rights. Hence, this research paper may not necessarily explain the normative content of linguistic rights deeply as such.

1.7 Over view of the chapters

Chapter two of this research paper will mainly focus on the normative content of the right to language under different international and regional human rights laws. Only basic human

²⁹As above arts 20 (7) & 29.

³⁰As above art 5.

³¹The Constitution of the Republic of Mauritius (RM Constitution) (1968) art 49.

³²As above art 5.

³³As above art 10.

³⁴As above art 15.

³⁵As above art 33.

rights laws and non-binding international documents that have expressly recognised right to language will be analysed.

Chapter three, after the exhaustion of discussion on international instruments that recognises language right expressly under the second chapter, deep examination of other fundamental human rights that right to language can be inferred from will be discussed.

Chapter four then primarily deals with the basic laws and policies of Ethiopia and Mauritius on language rights. Their constitutions and other relevant laws, policies and practices will be discussed.

Chapter five will finally wind up the whole discussion by providing the summary of the same and it will present observations, conclusions and fundamental recommendations.

Chapter two: Linguistic rights under international and regional human rights laws

2.1 The normative content of right to language

2.1.1 Language defined

Before discussing issues concerning language rights, it is important to first agree on a consensual understanding of what the term language refers to. There is no internationally agreed definition for the word language so far. The dictionary meaning of language is 'the method of human communication, either spoken or written, consists of the use of words in an agreed way'.³⁶ This definition envisages the need to have symbols, sounds, syntax and so on to be recognised as a language. It is also mandatory to have at least two individuals that can understand it.

Also, McDougal defined it broadly as signs, symbols, both phonetic and phonemic which are used for the sake of expression and communication.³⁷ Hence, language can be understood as agreed system of signs, symbols both phonetic and phonemic through which a standard of right and wrong conducts are communicated among individuals or within or between communities. This definition will enable one understand the link between language, individuals and the community as well.

2.1.2 Meanings of linguistic and language rights

Many writers have used the phrases language rights and linguistic rights in many instances interchangeably. While the understanding of these terms may differ from state to state laws, they usually relate to the regulation of language uses in public life, schooling, religious activities, politics and administration of justice, among others, by individuals and minority ethnic groups.³⁸ However, the meanings of both terms are similar and are used to refer to the same thing. Hence, this author also uses them interchangeably.

According to Gromacki, linguistic rights can be explained from two contexts as follows:

First {...} the right to use one's own language in the course of one's personal human experience. This definition characterizes language rights as "positive" in nature. As absolute and fundamental human rights, they may exist either as an individual rights, independent of any external or group context, or as collective rights. The second approach, closely linked to the first, contemplates the protection of linguistic rights not only where language forms the basis for distinct cultural group, but also in instances of individual assertion of linguistic rights. This

³⁶Oxford English Dictionary (1989).

³⁷M S McDougal et al 'Human Rights and World Order: The Basic Politics of an International Law of Human Dignity' (1980) cited by Gromacki (n13 above)514.

³⁸Paulston (n19 above) 74.

linguistic protection is “negative” in nature-it secures freedom from both individual and group discrimination, but provides no additional positive guarantees, such as the rights to use one’s own language.³⁹

In the first approach, he noted that positive obligations to fully realise the rights to language as a fundamental human rights will impose onerous obligation on the states. For that reason, this approach is not mostly appreciated in international human rights laws and linguistic rights will only be recognised contingent on the context of the rights claimed.⁴⁰ Accordingly, it can be understood that language rights include the rights to use one’s own language be it in private or public life and the rights to be recognised and be protected from any form of discrimination by the state or private actors.

2.2 Protection of linguistic rights under international human rights law

2.2.1 International conventions that explicitly recognise linguistic rights

Unlike other human rights which are recognised by international conventions unequivocally since 1945, explicit recognition to linguistic right is relatively denied. Nonetheless, it is difficult to conclude that linguistic rights do not exist at all. In fact, language rights are one of the basic human rights which are part of a set of inalienable and universal norms for just enjoyment of human’s civil, political, economic, social and cultural rights.⁴¹ It will not be plausible to argue that this fundamental right is not recognised in international human rights sphere.

A. Linguistic rights under the ICCPR

Linguistic rights are frequently addressed by ICCPR either in a direct or indirect ways. While only those provisions which the author thinks guaranteed the rights to language directly are analysed under this specific sub-title, other provisions which have link with linguistic rights implicitly will be dealt under the third Chapter.

Whereas the majority of the international human rights laws referred to language from negative point of view, only prohibition of discrimination on ground of language, Article 27 of the ICCPR has for the first time virtually recognised it as a right and imposed duty on state party to refrain from denying the rights to language of linguistic minorities. It has provided that:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to

³⁹ Gromacki (n13 above) 516.

⁴⁰ As above.

⁴¹ Phillipson & Eskutanab-Kangas(1995) 483 as cited by Paulson (n19 above)81.

enjoy their own culture, to profess and practise their own religion, or to use their own language.⁴²

This provision accords linguistic minorities' a wider range of rights to use their own mother tongue. Nonetheless, questions such as who are linguistic minorities? Who has the rights to determine minority status? are yet unsettled concerns. These of course are not the concerns of this research paper. Also, other contentious issues whether this right is for a group or for an individual? Also it is ambiguous regarding the protection of immigrant, indigenous or non national linguistic minorities.

Nevertheless, the UN Human Rights Committee (UNH Committee) plainly stressed that Article 27 of the ICCPR affords individuals belonging to linguistic minorities both individual and collective rights to use their language among themselves, in private or in public.⁴³ The ambiguity associated with the nationality or citizenship requirement of minorities to be beneficial from this provision is also clarified by the same in saying that there is no need to be a national or a citizen to be protected by Article 27.⁴⁴ Hence, linguistic rights of such specific groups are expressly guaranteed by ICCPR.

ICCPR has also covertly guaranteed the rights to language of everyone in case of criminal prosecution. Article 14 (3) reads as:

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

- a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
- f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

Accordingly, the right to language in case of criminal proceeding is for everyone. This provision imposes an absolute duty to be fulfilled at all costs. In addition, unlike most of its provisions which only prohibits language not to be used as a discriminating ground, this article is articulated in an explicit positive language. The right for free assistance of an interpreter for instance, is framed in the way a state cannot refuse to provide it even for economic or any other justifications.

⁴²ICCPR (n 26 above) art 27.

⁴³UN Human Rights Committee, General Comment No. 23 (1994) para 5.3.

⁴⁴As above para 5.1.

B. The express recognition of linguistic rights under other UN Conventions

The Convention on the Rights of the Child (CRC) has also replicated the provision of ICCPR concerning the rights of children belonging to linguistic minorities. Minorities and indigenous children are therefore entitled to use their own language, among others.⁴⁵ Though the same problems raised at Article 27 of the ICCPR are also apparent here, the doubt regarding the question on the inclusion of indigenous children is verified.

Likewise, CRC has expressly guaranteed the rights of every child alleged as or accused of having infringed the penal law to have free assistance of interpretation in case he cannot understand the language used by the court.⁴⁶ Unlike Article 27 of the ICCPR and Article 30 of the CRC, the right to language during criminal proceeding is guaranteed to everyone irrespective of belonging to any groups.

Similarly, the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (CMW) safeguarded the rights to free interpretation and be informed in the language they can understand.⁴⁷ What makes this convention different is that the right to free assistance of interpreter during criminal proceeding is framed up on express condition of its necessity which indirectly implies the consideration of paying capacity and the very need of the interpretation itself.

Migrant workers' children and indigenous people to be educated in their mother tongue are vividly recognised under the International Labour Organisation Conventions (ILO) No. 107 and 169.⁴⁸ Likewise, the International Convention against Discrimination in Education approved conditional rights of minorities to use and teach their own language at the schools which they can establish.⁴⁹ There are many more International conventions which expressly emphasised the use of language in different contexts.

The Geneva Convention III confirms the questioning of prisoners of war to be carried out in the language they can understand.⁵⁰ And the Geneva Convention IV stresses that inhabitants will not be penalised for a penal provisions enacted by Occupying Power which

⁴⁵Convention on the Rights of the Child (CRC) (1990) art 30.

⁴⁶As above art 40(2) (b) (VI).

⁴⁷International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (CPRMMF) (1990) arts 16(8) & 18(3) (a), (f).

⁴⁸See arts 45(3) & (4) of CPMMF and arts 23 & 28(1) of the International Labour Organisation Convention No.107 and 169 respectively.

⁴⁹UNESCO Convention against Discrimination at Education (1960) art 5(1) (c).

⁵⁰Geneva Convention Relative to the Treatment of Prisoners of War (1949) art 17 para 6.

are not published and brought to their knowledge in their own language.⁵¹ As a result, it can be concluded that language right is expressly guaranteed under different international laws though only to specific groups.

In sum, from all the aforementioned discussions, explicit linguistic right protections have been accorded to only exceptional groups and individuals in distress. Having a look at all these beneficiaries and the contexts of the protection closely, it is clear that there is a need to bestow especial attention for such persons and such circumstances. As a result, as it will be explained latter, the mere presence of express provisions here and there which apparently appears only to recognise linguistic rights of minorities and few individuals cannot lead to the conclusion that language right is not recognised for other individuals or groups.

2.3 International soft laws on linguistic rights

2.3.1 UN Documents

Soft laws are a body of standards, joint statements or declarations of policy or intentions, commitments, resolutions adopted by the UN General Assembly or other multilateral bodies.⁵² Although their binding nature and acceptance is another ongoing debate, their use and contribution for the development of international customary law and binding treaties is not disputed.

Arguments that these soft laws do not bind state do not hold true if they are concerned with human rights protection and if their source is the UN General Assembly's resolution.⁵³ Consequently, the main criteria should be based on the intention contained in the resolution and its broad acceptance.⁵⁴ Hence, the values of those soft laws on the rights to language should not be undervalued.

The 1992 UNDM is the first document to broadly recognise the rights to language of at least linguistic minorities. This document was adopted by the Sub-Commission on the Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights up on the request of the UN General Assembly to elaborate more specific rules on the rights of minorities as early as 1948. The Declaration has been adopted by broad support of the

⁵¹Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949) art 65.

⁵²A Casses, *International Law* (2001) 191.

⁵³S Trifnovska, *Factors affecting the Applicability and Efficiency of International Norms Protecting Linguistic Rights of Minorities* (2002)240.

⁵⁴As above 241.

member states of the UN⁵⁵ and it might be possible to argue that its provisions are parts of customary law though there are no such other evidences.

UNDM has a provision which gives wider and elaborative protection of linguistic rights even though it is more of an explanation to what is accorded under Article 27 of the ICCPR.⁵⁶ In fact, it has explicitly provided the rights of linguistic minorities to use their own language either in private or in public freely without interference or discrimination.⁵⁷

The General Assembly's Resolution on Multilingualism is the other pertinent document which virtually envisages the duties of state to protect languages and encourage multilingualism. While the primary goal of this Resolution is to protect, promote and preserve linguistic diversity within UN itself, it also affirmed the need to recognise People's rights to use their own language all over the globe.⁵⁸ This resolution has precisely proclaimed that activities and training materials of the UN should be in a local language of the beneficiaries to the extent possible.⁵⁹ Most importantly, it calls on all states to promote and protect all languages used by the people throughout the world.⁶⁰ Generally, this Resolution has shown a progressive and explicit initiative asking states to take positive measures for the promotion and protection of all languages spoken by their people.

2.3.2 Universal Declaration of Linguistic Rights (UDL)

UDL is the most prominent document which exclusively deals with universal linguistic rights.⁶¹ Although its binding nature is highly doubtful, its vivid and comprehensive provisions which explicitly recognise the rights to language of individuals, groups and language communities universally will help for the possibility of having binding laws in this regards.⁶² Both the preliminaries and Preambles of this declaration confirmed that its adoption is based

⁵⁵It was adopted without vote during the 92nd plenary meeting of the General Assembly on 18 Dec 1992.

⁵⁶Schulte-Tenckhoff & Ansbach (1995) 66 as cited by K Henrard 'Language Rights and Minorities in South Africa' (2001) 3 (2) *International Journal on Multicultural Societies* 93.

⁵⁷ UN Declaration on Minorities (n14 above) art 2(1).

⁵⁸General Assembly Resolution on Multilingualism: 2A/RES/61/266 (16 May 2007), Preamble para 1 & 2.

⁵⁹As above para 8.

⁶⁰As above para 24 & 25 (a).

⁶¹A World Conference on Linguistic Rights was held at Barcelona, Spain, from 6 to 9 June 1996 on the initiative of International PEN. More than 100 Associations, NGOs, Institutions concerned with language issues and Persons all over 90 states come together and participated for the final adoption of the Universal Declaration on linguistic Rights. This final Declaration has gone through 12 drafts before.

⁶²Universal Declaration on Linguistic Rights (Declaration on language) (1996) art 3.1.

on the linguistic rights recognised under different international human rights instruments.⁶³ Hence, it can also be argued that this document is a comprehensive interpretation of those linguistic rights scattered all over different international instruments.

Article 3.1 of this declaration has termed some language rights as an 'inalienable personal rights'. It provides that:

1. This Declaration considers the following to be inalienable personal rights which may be exercised in any situation:
 - the right to be recognized as a member of a language community;
 - the right to the use of one's own language both in private and in public;
 - the right to the use of one's own name;
 - the right to interrelate and associate with other members of one's language community of origin;
 - the right to maintain and develop one's own culture;
 - the right to maintain and develop one's own culture;
 - and all the other rights related to language which are recognized in the International Covenant on Civil and Political Rights of 16 December 1966 and the International Covenant on Economic, Social and Cultural Rights of the same date.

It is imperative that these rights are '*inalienable personal rights*' and will be exercised in any situation without any limitations. The rights of 'Linguistic community' to official use of their language; the Rights to education in their own language; Everyone's rights to carry out all activities in public, in the personal and family spheres in his language and the rights of linguistic communities to get laws published in their own language are some of the basic linguistic rights guaranteed under this declaration.⁶⁴ The declaration has comprehensively recognised linguistic rights of individuals and groups universally.

2.4 Linguistic rights under regional human rights systems

2.4.1 The European Human Rights system

The European Convention on Human Rights (ECPH) contains few specific provisions that give rise to express positive linguistic right. Article 6 (2) & (3) of this Convention reads as:⁶⁵

⁶³Preliminary and the preamble of the Universal Declaration on Language: available at <http://www.unesco.org/most/lnngo11.htm>, (accessed on 05 September 2009).

⁶⁴Declaration on language (n62 above) arts 25, 12 & 18.

⁶⁵The European Convention for the Protection of Human Rights and Fundamental Freedoms; adopted by the Council of Europe on 4 November 1950.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him...
3. Everyone charged with a criminal offence has the following minimum rights:
 - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him...
 - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Similar to many other instruments, although there is no doubt that these provisions have accorded a positive right to any individual, it is highly doubtful if the convention has guaranteed the rights to language in general. This author entirely agrees with Gormacki's⁶⁶ remark explaining that:

It should be noted that these guarantees do not precisely fit the conventional definition of positive linguistic rights (i.e., the rights to use one's own language). Both provisions are limited in scope in that they protect linguistic rights only as far as due process would require. For example, no provision of the European Convention requires that a person be informed of his offence or provided an interpreter if he understands the official language of the state. Some scholars (Thomas Buergenthal, *Human Rights in National and International Law* (1968)161.) claim that while the European Convention fails to permit the accused person to choose the language used in the proceedings, the phrase "in a language which he understands" refers not only to the language of the information but also to the nature of the information. Such interpretation renders the provision much more meaningful.

However, the European human rights system has quite many other developments concerning the rights to linguistic minorities.

Primarily, the Charter of the European Union requires the Union to respect linguistic diversities.⁶⁷ The European Charter for Regional and Minority Languages (ECRML) is enacted mainly for the purpose of protection and promotion of the historical regional or minority languages of Europe, maintaining and developing Europe's cultural traditions and heritages and ensuring the respect for the right to use a regional or minority language in private as well as in public life.⁶⁸ While this Charter sets specific measures for the use of minority languages at education, judiciary, media, public and private life, it fails to directly

⁶⁶Gormacki (n 13 above) 564.

⁶⁷Charter of the European Union (2000) art 22. See also Article 21 on the prohibition of discrimination based on language, Article 41 on everyone's right to use one of the union's languages and to be replied by the same.

⁶⁸European Charter for Regional and Minority Languages (1992) Article 10-14.

confer linguistic rights to individuals who speak these languages.⁶⁹ Nevertheless, it is clear that the speakers will definitely be benefited from this protection indirectly.

The European Human rights system has also many other documents concerning linguistic rights.⁷⁰ The Framework Convention for the Protection of Minority Languages imposes a duty on states to be tolerant and take measures for the promotion of linguistic diversity.⁷¹ It also provides the rights of everyone belonging to a national minority to use his surname and first names in his own language and the right to be officially recognised by these names.⁷² Likewise, the right to education by a minority language is provided by article 14 of the same convention.

Although there are few cases on language use, most of the decisions were based on other rights such as, the rights to non-discrimination, freedom of association, expression and the rights to family life which are all the subject matter of the discussion under the next chapter.

2.4.2 The Inter American Human Rights System

Unlike the European human rights system, the Inter-American human rights system has not yet well established language rights protection. There is no any specific binding as well as non-binding instruments even regarding the right of minorities in general. The only way to protect linguistic rights and culture of minorities under this jurisdiction is by invoking the provisions of the Inter-American Convention on Human Rights (IACH) concerning the rights to non-discrimination and the rights to equality.⁷³ However, the right to be assisted by an interpreter during criminal proceeding is provided by the IACH.⁷⁴ Sadly, IACH does not guarantee the right of arrested or criminally charged persons to be informed of the reasons or charges in the language they can understand.

The other pertinent document which does not enter into force yet in the American human rights system concerning the rights to language is the Draft American Convention on the

⁶⁹RM Letschert *The Impact of Minority Rights Mechanisms* (2005)217.

⁷⁰Concluding Document of the Stockholm Conference on Confidence and Security-Building Measures and Certain Aspects of Security and Disarmament in Europe(1986) , Concluding Document of the Conference for Security and Co-operation in Europe Follow-Up Meeting, Vienna Charter of Paris for a New Europe(1990), Document of the Moscow Meeting of the Conference on the Human Dimension of the Conference for Security and Co-operation in Europe(1991), Helsinki Summit Decisions(1992) and Declaration on National Minorities by the Summit Meeting of the Council of Europe(1993).

⁷¹Framework Convention for the Protection of National Minorities (Framework Convention); Signed by Members of the Council of Europe (1998).

⁷²As above) art 11(1).

⁷³Li-ann Thio, *Managing Babel: The International Legal Protection of Minorities in the Twentieth Century* (2005) 268-271.

⁷⁴American Convention on Human Rights (1978) art 8(2).

Rights of Indigenous People.⁷⁵ It recognises the rights of indigenous people to use their own language.

2.4.3 The African Human Rights System

Most African states have adopted the general framework of language policy inherited from their coloniser.⁷⁶ On top of that, the existence of too many conflicting ethnic and linguistic communities competing for socio-political power, the domination of foreign languages in economic and education fields and the role of western educated African leaders are some of the other reasons for the adoption of anti- African languages linguistic policies.⁷⁷ Despite the gravity of the issue, the African Human rights System has no as such a clear and specific rules regarding linguistic rights. However, it does neither mean that there are no avenues to claim language right nor no steps taken to solve these problems.

The Charter of Organisation of African Union (OAU) plainly provides that ‘the working language of the Organisation and all its institutions will be, if possible, African languages, English and French’.⁷⁸ This charter has showed exemplary arrangements by envisaging the use of African languages even at OAU level.

Sadly, the African Charter on Human and Peoples’ Rights (ACHPR) has no any specific provision concerning language issues save Article 2 and its preamble which prohibit use of language as a ground for discrimination. To make matters worse, it has no *express* individual linguistic right protection even during criminal prosecution similar to IACH.

Article 17(ii) of the African Charter on the Welfare of Child however provides for the rights of juvenile offender to promptly be informed in the language he understands and to get free interpretation provided that he does not understand the language used by the court.

The African Culture Charter (ACC) recognizing the ‘depersonalisation’ of African peoples’ culture and language by former colonisers, it provides that language is an integral part of culture and demands states to develop policy which expressly requires the use of African languages in education, administration of justice, economic and development activities with a view of ensuring cultural advancement and accelerating economic and social development of the whole population.⁷⁹ Although Article 19 of this charter states that ‘the introduction of African languages at all levels of education should have to go hand-in-hand with literacy work among the people at large’, same Charter has granted states absolute discretion to choose

⁷⁵See the Draft American human rights system is Draft American Convention on the Rights of Indigenous People, approved by the Inter-American Commission on Human Rights on February 26 1997 at its 1333rd session, 95th regular session. Arts II, VII, VIII, IX & XVI.

⁷⁶B Heine, ‘Language Policy in Africa’ in B Weinstein (ed), *Language Policy and Political Development* (1990)173.

⁷⁷As above) 167-173.

⁷⁸Organisation of African Unity Charter (1963) art 29.

⁷⁹Culture Charter for Africa (1990) arts 17, 18 & 19.

language of instruction at school.⁸⁰ The latter provision therefore vanishes what has been provided by the former.

Article 2 of the African Youth Charter (AYC) recognises the rights of ‘young people from ethnic, religious and linguistic marginalized groups or youth of indigenous origins {...} to use their own language in community with other members of their group.’⁸¹

Similarly, Article 20(1) of AYC obliges states party to:

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

It is also worth to mention the 2000 Asmara Declaration on African Languages and Literatures which read as:⁸²

(1) All African children have the unalienable right to attend school and learn their mother tongues and that every effort should be made to develop African languages at all levels of education.

(2) The effective and rapid development of science and technology in Africa depends on the use of African languages.

(3) African languages are vital for the development of democracy based on equality and social justice.

(4) African languages are essential for the decolonisation of African minds and for the African Renaissance

Apart from all these, Cultural renaissance has become one of the key agenda for the Commission of the African Union.⁸³ In 2006, the Assembly of the Heads of State of the African Union (AHS AU) in its meeting in Khartoum, Sudan, dedicated this year as the “Year of African Languages” and the African Academy of Languages (ACALAN) has been given recognition and mandate to be the Africa Union’s specialised office charged with coordinating and planning language policies and issues on the continent and to advise member states regarding linguistic issues.⁸⁴ On the same date, being inspired by the ACC, another new Charter for African Cultural Renaissance (CACR) which strongly emphasised on the use of African languages in different contexts is adopted.

⁸⁰As above art 18.

⁸¹African Youth Charter Adopted July 2006 and entered in to force on 08/08/2009.

⁸²The Asmara Declaration on African Languages and Literatures of January 2000.

⁸³See the 2004-2007 Action plan of the Commission for African Union.

⁸⁴African Union News (AUC News) Issue 10 July 2006.

To sum up, although there are few provisions in different binding and non-binding documents of the African human rights system on linguistic rights, it will not be viable to reach on the conclusion that the African human rights system has protected individual language rights adequately. However, the uniqueness of African Human rights system in allowing the African Human Right Commission in accordance with Article 60 & 61 of the ACHPR and the African Human Right Court in accordance with Article 7 of its establishing Protocol to use other international conventions and international principles in which the disputant states are party can fill the lacuna. Also, many rights that the right to language can be inferred from are guaranteed.

Chapter three: Human rights in which linguistic rights can be inferred from

The explicit recognition of linguistic rights either to a specific group or to everyone under different international and regional human rights instruments are discussed in the previous chapter. This chapter is therefore devoted to discuss those relevant human rights that the rights to language can be inferred from.

3.1 The right to culture

As it has been reiterated under the first chapter, many scholars have agreed that language is well identified as a cultural marker of a certain group such as ethnicity, depending on different cases.⁸⁵ Language is used to create a certain boundary between different groups. Fishman has noted as:

Child association patterns come to be associated with a particular language, that cultural styles of interpersonal relations come to be associated with a particular language, that the ethical principles that Under gird everyday life come to be associated with a particular language and even material culture and aesthetic sensibilities come to be conventionally discussed and evaluated via figures of speech that are merely culturally (i.e. locally) rather than universally applicable.⁸⁶

Thus, language is a key instrument for one's cultural identity and it is not possible to talk about culture by disregarding the linguistic issue. They cannot be understood in isolation. Makgoba has noted that 'language is a culture and in language we carry our identity'⁸⁷ Hence, language is the most visible expression of one's culture and history. This well established link will therefore demand that the protection of one be extended to the other.

Article 5 of UNESCO Universal Declaration on Cultural Diversity provides that human rights are universal, indivisible and interdependent and of course cultural rights are an integral part of human rights. It specifically stipulates that 'all persons have therefore the right to express themselves and to create and disseminate their work in the language of their choice and particularly in their mother tongue'.⁸⁸ It has been also understood that several other rights such as freedom of thought, conscience, religion, expression and the rights to use one's own language are parts of participation in cultural life.⁸⁹ The UNESCO Education position paper

⁸⁵S May, *Language and Minority Rights; Ethnicity, Nationalism and the Politics of Language* (2001)129.

⁸⁶Fishman (1991), as cited in May (n 86 above) 134.

⁸⁷Makgoba (1999) as cited in E Maloka & E le Roux (eds.) *Africa in the New Millennium, Challenges and Prospects* (2001) 34.

⁸⁸UNESCO Universal Declaration on Cultural Diversity (2001) art 5.

⁸⁹A Laaksonen (Entrants foundation), 'Measuring Cultural Exclusion through Participation in Cultural Life, 3rd Global Forum on Human Development: Defining and Measuring Cultural Exclusion' Paris (17, 19 January 2005) 3.

has also provided that language is a fundamental cultural identity for both individuals and groups.⁹⁰

Having examined their interconnection, a discussion on provisions that recognise right to culture is now needed.

According to Article 7 (1) of The UDLR, language is an expression of a collective and of way of perceiving and describing realities. Similarly, the Universal Declaration on Human Rights (UDHR) has provided that protection of cultural rights, among others, is mandatory for human dignity and the free development of one's personality.⁹¹ On top of that, an explicit right to culture which includes participating in cultural life of a community freely is guaranteed.⁹² As it has been explained above, participation will necessarily require the use of language and thus protection of the right to culture will definitely be extended to linguistic right.

Article 15 of the International Covenant on Social, Economic and Cultural Rights (ICESCR) has accorded wide range of the rights to culture to every individual.⁹³ Similarly, minorities have also got protection to enjoy their culture by the ICCPR.⁹⁴

In general, right to culture has been recognised by many international as well as regional human rights documents.⁹⁵ As a result, the effective exercise of right to culture will demand state to give effect to linguistic right.

3.2 Freedom of expression

Article 19 of the ICCPR has guaranteed a wide range of freedom of opinion and expression including the rights to expression, the rights to receive and seek information either orally, in written or by any other means.⁹⁶ It will not be prudent to guarantee these rights to an individual while he has no mean to exercise it. This provision has safeguarded the rights to use one's own language implicitly if not expressly. Non recognition of the right to language will definitely paralyse the basic rights to freedom of expression, assembly and association.

⁹⁰UNESCO Education position paper (n 1 above).

⁹¹The Universal Declaration on Human Rights (UDHR) (1948) art 22.

⁹²As above art 27.

⁹³International Covenant on Social, Economic and Cultural Rights (ICESCR) (1966) art 15.

⁹⁴ICCPR (n 26 above) art 27.

⁹⁵See also Art 13 of the 1948 of the American Declaration on the Rights and Duties of Man, Art 22 of the 1986 of ACHPR, Art 28 of the 1988 Body of Principles for the protection of All Persons Under and form of Detention or Imprisonment and Arts 30 & 31 of CRC, Art 2 of the UN Declaration on Minorities (14 above).

⁹⁶ICCPR (n 26 above) art 19.

It has been provided that the right to freedom of expression which guaranteed the right to communication through seeking and receiving information further guaranteed other many related rights such as, the rights to practice and express one's own culture including the rights to use one's own language, among others.⁹⁷ The rights under this provision are also considered as the rights of groups to use its own language.⁹⁸

Similarly, the UNHR Committee, in *Ballantyne, Davidson & McIntyre v. Canada* case while interpreting Article 19 has asserted that denying the right to use of minority languages falls within the ambit of Article 19 and hence, the committee declared that the Quebec law requiring commercial signs to be written in French violates freedom of expression.⁹⁹ Likewise, the Supreme Court of Canada in the *Brown's Shoe case*, unanimously confirmed that "language is so intimately linked to the form and content of expression that there can be no real freedom linguistic expression if one is forbidden to use the language of one's choice".¹⁰⁰ Freedom of expression is also one of the basic vehicles for the democratisation and prevalence of rule of law.

Unless the right to language is recognised to everyone, the people will not have the ability to exercise their freedom of expression, association and assembly at all. Consequently, this will amount to discrimination on ground of Language.

3.3 The right to equality

The right to equality is amongst the main pillars of fundamental human rights values. For linguistic case, it is possible to view the issue from the principle of equality between languages and the equal treatment of individuals in the course of using their own language. Apart from individual right to equality, language rights are also based on two other fundamental principles, the 'principle of the dignity of all languages and the principle of equality of all languages'.¹⁰¹ Consequently, these two principles are interdependent and any sort of linguistic discrimination of linguistic hierarchy cannot be accepted.¹⁰² Jeseoph-G Turi has noted the following concerning equality between languages:

⁹⁷ World Submit on the Information Society, Statement on the right to communicate by Article 19 Global campaign for free expression, London February 2003.

⁹⁸ JJ Lador-Lederer, *International Group Protection: Aims and Methods in Human Rights* (1968)25.

⁹⁹ *Ballantyne, Davidson & McIntyre v. Canada*, CCPR/C/47/D/359/1989 & 385/1989/Rev. 1 (Mar. 31, 1993).

¹⁰⁰ *Ford v. Quebec (Attorney General)*, [1988] 2 S.C.R. 712.

¹⁰¹ J Turi 'The importance of the Conference theme: Language and equality' in K Prinsloo et al (eds.) *Language, Law and Equality*; Proceedings of the third International Conference of the International Academy of Language Law (IALL) held in South Africa (1992) 18.

¹⁰² As above.

However, not all languages are equal from a historical point of view. There are dominant and dominated languages, leading to situations of linguistic minorities and thus creating negative situation in linguistic and non-linguistic fields. Language equality, we said, does not mean language uniformity. Nor does language equality among thousands of languages and dialects in the world mean absolute equality among them, It means that all languages, precisely because they are vitally different, must live and let others live equally in different ways.{...} so we must proclaim solemnly the principle of equality and the principle of the dignity of all human languages. We must avoid any kind of unacceptable linguistic hegemony.¹⁰³

The above assertion indicates that although it is not likely to demand exact equal treatment of languages in the national policy of a given state, it is mandatory to note that all languages should get opportunity to be used in different ways. A state policy that adopts the use of only one or few languages for official or other communications in the presence of others will contravene these essential principles.

On the other hand, the argument on equality and non-discrimination will basically work for individuals in accordance to human rights laws. In a simple note, the use of language for the exercise of the rights to culture and freedom of expression as discussed in the aforementioned parts are necessary and if linguistic right is respected only to a certain group of people, probably people who speaks the official language of the state, the other section of the people are discriminated from enjoying such rights indirectly. As De Varennes pointed out, if a state limits the private or public use of minority language, for example, this will amount to violation of freedom of expression and then discrimination based on language.¹⁰⁴ Hence, the right to equality will protect the right to language indirectly.

3.4 The right to non- discrimination

The right to non-discrimination on ground of language is a fundamental human right recognised under most of the international conventions. Article 3(1) of the UN Charter has included language among other three grounds in which discrimination is prohibited.¹⁰⁵ As Gormicko¹⁰⁶ pointed out, the inclusion of language upon which discrimination is prohibited can have the following two benefits. Firstly, it is a clear indication that the UN Charter has supported the importance of the protection of language and linguistic rights. Secondly, this provision has become a base for other Conventions for the protection of fundamental human rights without any discrimination on ground of language, among others.

¹⁰³As above.

¹⁰⁴De Varennes 'The existing Rights of Minorities in International Law' in M Kontra *et al* (eds), *Language: A Right and a Resource: Approaching Linguistic Human Rights*, (1999) 177.

¹⁰⁵The United Nations Charter (1945) art 3(1).

¹⁰⁶Gormick (n13 above) 533.

Even though this provision do not impose a duty on government to protect the rights to language (positive right), the UN Nations has involved in promotion of local language in its trust territories under the International trusteeship system as provided in the Charter historically.¹⁰⁷ Apart from Article 1(3) of the Charter, prohibition of using language as a ground for discrimination has been mentioned in many other bodies of the charter.¹⁰⁸

The prohibition of discrimination on the basis of language is also guaranteed under other many international human rights laws. Article 2 of the UDHR plainly prohibited any kind of discrimination on the enjoyments of fundamental rights and freedoms provided by it on ground of language, among others.¹⁰⁹ Unlike the UN Charter, language is expressly mentioned only in this specific provision. Article 7 of UDHR has also provided that everyone is entitled to equal treatment for the enjoyment of the rights guaranteed thereto.

The ICCPR on its part prohibits the use of language as a base for discrimination.¹¹⁰ The most important and wider safeguard of the rights to language can also be inferred from Article 4(1) of the same convention which further stresses the prohibition of taking discriminatory measures even during an emergency decree while derogating those rights provided by the covenant. The duty of state to take measures of protection for minors without any discrimination on the basis of language, among others, is also provided under Article 24(1) of the ICCPR. The latter can in fact be understood to envisage some positive linguistic rights towards children linguistic rights.

More importantly, Article 2(2) of ICESCR states that:

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹¹¹

Although this provision does not guarantee positive rights to language, it is very essential to note here that individual's socio-economic rights such as right to health,¹¹² right to education,¹¹³ right to work,¹¹⁴ and right to culture,¹¹⁵ among others, must be provided equally

¹⁰⁷As above.

¹⁰⁸UN Charter arts 13(b), 55(c) & 76(c).

¹⁰⁹UDHR (n 91 above) art 2.

¹¹⁰ICCPR (n 26 above) art 26.

¹¹¹ICESCR (n 93 above) art 2(2).

¹¹²As above art 12.

¹¹³As above art 13.

¹¹⁴As above art 6.

¹¹⁵As above art 15.

for everyone without any discrimination. Nonetheless, to benefit from all these rights, the necessity of using one's own language at the very least cannot be subject of disagreement. Meaningful enjoyments of rights to health, education and work for example, requires communication and access to information regarding many issues which in turn can only be possible if the right to use one's own language is guaranteed. In this regards, the Resolution by the African Human Rights Commission, among others, provides that access to medicine or health requires the availability of information to the people at large.¹¹⁶ In general, ICESCR which specifically safeguarded the provision of fundamental and basic social services to all individuals without any discrimination can be used to protect the rights to language in case a state provides such social service only in dominant languages even though it might have impact on economy and administration process to a state. This position is also confirmed by Xabier Arzoz as follows:

Of course, the provision of services in a national minority language may have substantial resource implications. However, as persons belonging to minorities often point out, as taxpayers their needs should be taken into account according to the principles of equality and non-discrimination. Indeed, from the perspective of need, it may well be that special measures are required exactly for smaller groups who otherwise would be disadvantaged and normally would not comprise a sufficient economic base to generate their own financially justified "demand". In fact, economic and financial considerations are arguably over-stated in these cases; careful recruitment policies (for example, engaging bilingual staff) in the relevant services can often respond satisfactorily to particular needs.¹¹⁷

Most interestingly, both the UDHR and ICCPR almost in a similar language have safeguarded the rights of everyone to have 'equal access to public service in his county'.¹¹⁸ The Convention against discrimination at education (CADE) has also provided the rights to non-discrimination on ground of language. Also, the express rights of minorities to use their own language at school provided that certain conditions are met are all guaranteed¹¹⁹. Hence, as far as state parties to this convention are under duty to provide these fundamental social services, the use of one's own language will be an imminent and necessary tool for the meaningful equal enjoyments of the same rights.

¹¹⁶See ACHPR/Res.141 (XXXVIII) 08: Resolution on Access to Health and needed Medicines in Africa.

¹¹⁷X Arzoz, The Nature of Language Rights, available at <http://74.125.153.132/search?q=cache:0bWC6pzCeegJ:www.ecmi.de/jemie/download/2-2007> (accessed on 27 July 2009).

¹¹⁸UDHR (n 91 above) art 21(2) & ICCPR (n 26 above) art 25(c).

¹¹⁹'n 49 above'.

Prohibition of the discrimination on ground of language is also guaranteed in all the three regional human rights system too.¹²⁰

3.5 The right to participation

It is the right and responsibility of all citizens to participate in decisions relating to their own development. This is also a necessary condition for the full and effective exercise of democracy. Promoting and fostering diverse forms of participation strengthens democracy.¹²¹

Thus, right to participation is one of the core elements of democratic process recognised under all major human rights instruments. Everyone's right to freely participate in the government of his country either directly or indirectly is provided under Article 21 of the UDHR. Article 25 of the ICCPR further provides the right to participate in 'conduct of public affairs, directly or through freely chosen representatives' without any discrimination.

Similarly, the Vienna Declaration and Program of Action and ILO convention No. 169 have expressly provided the rights of indigenous people and national minorities to participate in all aspects of the society.¹²² The Right to participate is a broad right which includes participating in election, formulation and implementation of government policies, to hold public office and so on.¹²³ The question then is how can the right to participation be exercised? This author, similar to many others, will definitely argue that the only means to effectively participate in whatever action it might be is through the use of one's own language.

Thus, the right to participation guaranteed under different international human rights conventions protects linguistic right indirectly.

¹²⁰ See art 2 of ACHPR, art 1 of IA CHR, art 14 of ECPHR & art 2 of CRC.

¹²¹ Inter-American Democratic Charter (2001) art 6.

¹²² Vienna Declaration (n 31 above) Para 20 & 31 and ILO Convention No. 169 (1991) art 6.

See also Framework Convention (n 71 above) art 15 and art 2(3) of the UN Declaration on Minorities (n 14 above).

¹²³ See art 7 of Protocol to the African Charter on Women and Peoples 'Rights on the Rights of Women in Africa (2003) & art 9 of CEDAW.

Chapter four: Linguistic rights under the Ethiopian and Mauritian legal system

4.1 Introduction

So far, it has been established that the right to language is protected by international and regional human rights laws either directly or indirectly. Although the importance of this recognition at the international level is unquestionable, the constitutional as well as well-equipped policy frameworks on linguistic right in each state are very crucial. Due to its impact on socio-political situations of a state, the recognition of linguistic right, in most cases, is infrequent in states with high linguistic diversity. Hence, the legal protection accorded to linguistic rights in Ethiopia and Mauritius will be assessed under this chapter. Choosing Ethiopia as the subject matter of this research is valuable since it has unique stand on linguistic and ethnic diversities as it will be discussed below.

4.2 Linguistic rights in Ethiopia

4.1.1 Introduction

Even though Ethiopia has never had any foreign language domination unlike other African states, having a glance at the language use practices of the past regimes reveals the predominant use of only one local language, Amharic, as a measure of successful unification of the diversified Ethiopian societies.¹²⁴ Many kings including emperor Yohannes IV (1872 - 89) who came from non Amharic speaking areas, embarked on an aggressive promotion and use of Amharic as a national language.¹²⁵

However, the explicit recognition of Amharic in written documents appeared during emperor Haileselassie (1930 - 74). This is because, firstly, even though the 1930 Imperial constitution has no any provision on language issue, it was written in Amharic. Secondly, the 1944 directive to control foreign missionaries stipulates that Amharic will be the general language of instruction of Ethiopia and the missionaries were expected to learn Amharic to use it as a medium of instruction.¹²⁶ The full legal recognition of Amharic as an official language of the empire was done in 1955 by the Revised Constitution.¹²⁷ Nevertheless, at the end of the reign of emperor Haileselassie, there was a move to recognise language right. Consequently, Article 45 of the then draft constitution provides as:

¹²⁴G.P.E, Cohen 'Identity and Opportunity: The Implication of Local Languages in the Primary Education System of SNNPR' Unpublished PhD Thesis, London: School of Africa and Oriental Studies, 2000 30.

¹²⁵G Anteneh & D Abdo 'Language Policy in Ethiopia History and Current Trends' (2006) 2(1) *Ethiopian Journal of Education and Science* 59.

¹²⁶Cooper (1976a) in Bender (1976a) in Anteneh & Abdo (n 125 above) 65.

¹²⁷The Revised Constitution of the Empire of Ethiopia (1955) art 125.

Without violating all those statements in other articles of the constitution, Ethiopian tribes and nationalities shall enjoy the right to maintain and develop their language and culture.¹²⁸

However, the adoption of this constitution remained in vain since the emperor was replaced by the new regime, Provisional Military Administration Council (Derg) in 1974.

During Derg, Article 2.5 of the 1987 constitution importantly stated as: 'the peoples Democratic Republic of Ethiopia ensures the equality, respect and development of the nationality languages'.¹²⁹ This Constitution catches attention since there was no any implicit or explicit indication of using one official language by the government. In fact, it asserted the equality of all language speakers and the opportunity to enjoy their rights equally. It was also very imperative to have a look at the documents of the then governing Socialist party or Derg which states as:

The right of self-determination of all nationalities will be recognized and fully respected. No nationality will dominate another one since the history, culture, language and religion of each nationality will have equal recognition in accordance with the spirit of socialism { . . . } each nationality will have regional autonomy to decide on matters concerning its internal affairs. Within its environs, it has the right to determine the contents of its political, economic and social life, use of its own language ...¹³⁰

Although all these provisions seem to guarantee the rights to language to some extent, the practice on the ground was not different from using one language similar to the previous regimes.¹³¹ However, this principle seems to be the source of the contemporary Ethiopian federalism.

4.2.2 Linguistic rights under the current Ethiopian laws

A. Group linguistic lights

Ethiopia is a Federal state comprising of nine self administrative federating Regional states (regions) and two City councils administered by the federal government.¹³² The territories of these regions are 'delimited on the basis of the settlement patterns, language, identity and consent of the people concerned'.¹³³ As Kristin and Stefaan¹³⁴ have affirmed, Ethiopia is

¹²⁸The Draft Constitution of Ethiopia (1974) art 45 cited by Anteneh & Abdo (n 125 above) 68.

¹²⁹The Decree of the Constitution of the Ethiopian Peoples Democratic republic in Inter Africa group 1993 as cited by Antenehen & Abdo (n125 above) 72.

¹³⁰Article 5 of the 'National Democratic Revolution Programme of Socialist Ethiopia' (1976) ML Bender 'Ethiopian Language Policy 1974-1981' (1985) 27(3) *Anthropological Linguistics* 273.

¹³¹Anteneh & Abdo (n 125) above) 74.

¹³²FDRE Constitution (n27 above) art 47(1).

¹³³As above art 46(2).

one of the few African states which has digressed from firm stands of most multiethnic African states on ethnicity and other forms of sub-state nationalism which are considered as 'taboo concept' and as an action against nation building.

Ethiopia is home for multilingual and multicultural groups. There are about 83 different languages and 200 dialects spoken.¹³⁵ 'Every Nation, Nationality and People'¹³⁶ in Ethiopia has been granted the right to speak, write and develop its own language; to express, develop and promote its own culture; and to preserve its history.¹³⁷ Adopting officially recognised ethnic form of federalism and allowing each state to use their language expressly is a watershed in the history of Ethiopia.

Likewise, Article 5 of the constitution has affirmed the equal recognition of all Ethiopian languages.¹³⁸ This provision seems a political response for the past prejudices by the practical language hierarchies created between local languages. Apparently, this provision is a bit similar to the provision of the 1987 constitution which provides for equal respect and developments of all languages. Although this provision does not accord language right to the speakers directly, it will have importance to claim the right to equal use of one's own language based on this linguistic equality adopted by the constitution.

However, Article 5(2) of the constitution states that Amharic will be the 'working language' of the federal government. Though this assertion seems to contradict the very principle of equality of all languages in the out face, the phrase 'working language' is used to tone down the issue. The constitution does not favour to use the phrase official language on the presumption that there is no special language to be official as all languages are declared to be equal.

The recognition of all Ethiopian languages as an official or working language of the federal government might be impractical and unattainable. In fact, South Africa has constitutionally recognised all the eleven languages as working languages of the government.¹³⁹ Yet, it does not as such reap fruit to the majority language speakers apart from its nominal equality on

¹³⁴K Henrard & S Smis 'Recent Experiences in South Africa and Ethiopia to Accommodate Cultural Diversity: A Regained Interest in the Right of Self-Determination' (2000) 44(1) *Journal of African Law* 50.

¹³⁵The Initial and Fourth Periodic for African Human Rights Commission Report on the Implementation of ACHPR by Ethiopia (2009)12.

¹³⁶Article 39(2)of constitution has defined it as: a group of people who have or share a large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory.

¹³⁷FDRE Constitution (27 above) art 39(1).

¹³⁸As above Art 5.

¹³⁹Act 108 of 196 sec 6.

paper. It has been asserted that only two colonial languages are still used as medium of communication in key governmental as well as economic activities of the state.¹⁴⁰ There always must exist a crucial balance between possibility of effective implementation and the titular recognition under the constitution inline with the capacity of a given state to practically implement it.

In fact, the constitution does not expressly exclude the use of other languages and this flexibility will allow federal institutions seated in regions to use the language of that region.

Article 5 (3) has duly permitted all federating states to determine their own language.¹⁴¹ Based on this provision most of the federating states have chosen their people's language to be used as a language of instruction at school, language of the judiciary, the executive, legislature and medias of the respective federating states.¹⁴² Furthermore, every small ethnic group that might live within the territory of federating states with a dominant ethnic group has the rights to self-governance and the right to use its language at its very local council level and communicating the federal government.¹⁴³ All these linguistic rights apparently are framed as a group rights for NNP. However, the constitution has also many explicit provisions on individual linguistic rights.

B. Individual linguistic rights

This sub-section is meant to discuss the provisions of the constitution and other relevant documents which accord linguistic rights to individuals without any need to be a member or in the territory of a certain linguistic or ethnic groups.

Thus, the right of arrested and accused individuals to 'be informed promptly in a language they understand'.¹⁴⁴ Moreover, free assistance of an interpreter to anyone during criminal case proceeding provided that he does not understand the language used by the court is plainly guaranteed.¹⁴⁵ In this regard, the constitution has granted better rights to arrested persons compared to the ICCR by granting those additional rights to be informed in the language they understand that the statement they made may be used as evidence against them before a court.¹⁴⁶ However, these rights under each provision do not answer the

¹⁴⁰Open society (n 4 above).8

¹⁴¹ FDRE Constitution (n 27 above) art 5(3).

¹⁴²T Ragassa, State Constitutions in Federal Ethiopia: A Preliminary observation; A summary for the Belligo Conference, (22-27 March 2004) available at <http://www.camlaw.rutgers.edu/statecon/subpapers/regassa.pdf> (accessed on 28 Sep 2009).

¹⁴³ As above & FDRE Constitution (n27 above) art 39.

¹⁴⁴ FDRE Constitution (n27 above) art 19.

¹⁴⁵As above art 20.

¹⁴⁶As above art 19(2).

question whether it is to use one's own language or not? Perhaps, it is more logical to conclude that these provisions guarantee the rights to understand what is going on during crime investigation or during court proceedings. For such reasons, using any language that they can understand might be sufficient. Nonetheless, this will still give high probability of using one's own language at least in such circumstances on the assertion that any person will naturally understand events better in his own language than by others.

These constitutional rights during criminal prosecution are well protected by the criminal procedure code which is the guiding canon of the criminal bench. Article 27 of this code stipulates:

Where the arrested person is unable properly to understand the language in which his answers are to be recorded. He shall be supplied with a competent interpreter, who shall certify the correctness of all questions and answers.¹⁴⁷

The scope of this provision is restricted to the interrogation and recoding processes and only if he is unable to *properly* understand the language used in such processes. Nevertheless, Article 126(2) of the same code obliges courts to select 'qualified interpreter' whenever there is a need for interpretation.

4.2.3 Other rights that can protect linguistic rights indirectly

The right to equality which assures the rights of all persons to equality; and equal and effective protection without any discrimination on ground of language, among others, are guaranteed vividly.¹⁴⁸ Unlike most other provision of the same constitution, which suffers from claw-back clauses, the right to equality is an absolute one and it cannot even be subjected to derogation during an emergency situation.¹⁴⁹

In addition, right of everyone to participate in the affairs of the government directly or indirectly without any discrimination based on language, among others, is vividly guaranteed.¹⁵⁰ Similarly, other rights that the rights to language can indirectly be claimed, such as freedom of expression, Association and Assembly, Rights to access to equal social services and rights to culture, among others, are clearly provided by the constitution.¹⁵¹ Thus, individual linguistic rights can be better claimed based on these provisions too.

¹⁴⁷The Criminal Procedure Code of Ethiopia; Proc. No. 185/161, art 27(4).

¹⁴⁸FDRE Constitution (n27 above) art 25.

¹⁴⁹As above art 93(4) (c).

¹⁵⁰As above art 38.

¹⁵¹As above arts 29, 30, 39 & 41(3).

4.3.4 Language policy and language Practices

Concerning the practical applicability of the system, an independent expert on minority issue to Ethiopia and the Committee on the Elimination of Racial Discrimination have recently confirmed it in affirmative. The former has noted that;

Self-determination is provided for in the creation of nine ethnically-based regional states of the federation, with the right to draft regional constitutions, to promulgate laws, to establish and administer government functions and to secede. The system has enabled the use of minority languages, as official languages of the regional states, to be used in public education and by regional governmental institutions.¹⁵²

It is imperative that the name and members of each federating states, except Southern NNP, reflects the respective language of that specific state. Hence, at least the rights of those people in each state to use their own language in all fields are fully respected.

The constitution of each federating state has also confirmed the equality of languages spoken within their respective territories despite the fact that the working language of that state will remain to be its own language. The constitution of the Southern NNP, for instance, reads as:

1. All languages in the region shall enjoy state recognition.
2. Amharic should be the official working language of the regional state
3. Zones and special woredas may determine their respective working languages in their own council.¹⁵³

In this regard, the Southern NNP, Gambella and Beneshangul/Gumuz states are exception in not using their own language since they consist of diverse range of small linguistic groups within themselves. These are the only federating states to use Amharic as *lingua franca* at state level. Nonetheless, all small ethnic groups within this state have the rights to use their own language in their own local administration.

Concerning the right to use mother tongue at school, the 1994 Education policy of the federal government expressly provides:

¹⁵²Gay McDougall 'Report of the independent expert on minority issues on the Implementation of General Assembly Resolution 60/251 of 15 March 2006 entitled 'Human Rights Council' 27 Feb 2007, Summary para.3, see also para 38 page 12, See also Concluding Observations of the Committee on the Elimination of Racial Discrimination on Ethiopia, March 2007 para 8.

¹⁵³The constitution of the State of the Southern Nations, Nationalities and Peoples (SNNPR 2001) art 5.see also art 5 of the Amhara Regional State Constitution. Most of the provisions of the Regional state's constitutions are the verbal copy of the federal constitution.

Cognizant of the pedagogical advantage of the child in learning in mother tongue and the rights of nationalities to promote the use of their languages, primary education will be given in nationality languages.¹⁵⁴

Anteneh and Abdo have confirmed that about 22 languages are used as language of instruction and also thought as a subject at primary schools.¹⁵⁵ For each 22 languages text books are prepared and published.¹⁵⁶ Teachers are being trained in different languages and some majority languages are taught at universities up to post graduate level.¹⁵⁷

Furthermore, the government is duty bound to take positive measures towards the developments of culture and tradition consistence with 'fundamental rights, human dignity, democratic norms and ideas and the provision of the constitution.'¹⁵⁸ Based on this basic principle, National Culture Policy (NCP) which affirms the detail implementation of this constitutional provision has been enacted.

Accordingly, the NCP has emphasised on the need to insure for the equal respect, development and recognition of all languages in the country. It has also provided for taking positive measures such as, the preparation of scripts, dictionaries, encyclopaedia and grammar texts to those languages which did not have one before and stretching professional assistances in deciding the 'languages of instruction, mass communication and for official use at the federal, regional, zonal and when necessary, at district levels.'¹⁵⁹

Furthermore, the former National Academy of Amharic Language which was responsible to study and develop Amharic during emperor HaileSellasie and which was meant to study all languages latter during Derg is now renamed as Ethiopian Language Research Centre (ELRC) being integrated with Addis Ababa University with specific responsibilities to study, promote all languages, and assist decision makers on language issues, among others.¹⁶⁰ All these arrangements to impose positive duties on the part of the state towards the protection and developments of languages has similarity with the European Framework convention for the protection of regional and national minority languages as discussed under chapter two above.

¹⁵⁴Ministry of Education 'General Education and Training Policy' (1994) 3.3 & 2.2 12

¹⁵⁵Anteneh & Abdo (n 125 above)79.

¹⁵⁶As above 90.

¹⁵⁷As above 80.

¹⁵⁸FDRE Constitution (n27 above) art 91 (1).

¹⁵⁹Ministry of Youth, Sport and Culture of Ethiopia 'National Culture Policy (1997) its Preamble & secs 1.4, 2.7, 6.4, 6.5.

¹⁶⁰Ethiopian Language Research Centre, available at <http://www.aau.edu.et/index.php/academics/ethiopian-languages-research-center> (visited on 10 Sep 2009).

In general, looking at the federal structure of the government and the practices on the ground reveals the fact that language rights have been given due attention than any other times in history. Perhaps, this legal protection for linguistic rights through extreme decentralised form of federalism can be taken as good model for other states with pluralistic societies.

As it can be inferred from the education policy the right to language in the Ethiopian context seems more explicit to groups, i.e. to NNPs, instead of individual children. In fact, the constitutional arrangements is also congruent with this line of interpretation since Article 39 has expressly provided the right to write, speak and develop their own language to NNP.

In this regard, after having tried to see from two points of views, the 'territorial principle' which grants language rights to a specific territory; and from 'personality principle' which accords rights to individuals irrespective of their territory, Smith¹⁶¹ concluded that the Ethiopian federalism is neither of the two since there are also instances where the constitution affirmed language right of linguistic groups outside their ethno-linguistic groups.

It must not be forgotten that any individual can claim the right to use his own language as a member of his nationality though he is alone at any place in Ethiopia. Territorial limitation on linguistic right is not viable in the constitution. Nevertheless, this does not mean that he can exercise it at any time, territory and circumstances. This right like any other rights can be limited to legitimate and practical reasons. It must be also noted that even though group linguistic protection seems much more overt in the constitution, individual linguistic rights are also guaranteed either directly or indirectly as discussed above.

Finally, the provision of the constitution which declares all international instruments ratified by Ethiopia to be parts of the law of the land allows to validly concurring that language rights recognised under international human right laws will also be recognised in Ethiopia.¹⁶² In general, the explicit and implicit provisions of the constitution and policies frameworks of the country reveal the fact that both individual and group linguistic rights are recognised.

¹⁶¹L Smith, 'The Political Context of Language Policy in Ethiopia' Prepared for presentation at the Midwest Political Science Association Annual Meetings April 15-18, 2004 Chicago, IL 13.

¹⁶²FDRE Constitution (n27 above) art 9(4). Also art 13(2) obliges courts to refer to international ratified and *adopted* instruments. However, there is debate that article 72 of the same constitution requires the president to publish them in the official Negarit gazetta. Other subsidiary laws have also obliged courts to take judicial notice of those laws which are published in this gazetta. The issue of language is also the paradox again here, the working language of the federal government is Amharic and for regions their respective languages. Thus, international treaties which are not officially translated to such languages might have no applicability at all. Yet, Ethiopia has ratified conventions such as ICCPR and ICESCR in June 1993, among others.

4.2.5 Pitfalls

There are still critical quandaries that need to be addressed. The demands for formal constitutional recognition of other languages as working language of the federal government, the perceived future negative consequences of learning in different local languages on the unity of the country and prospects of students to work at the federal government in Amharic are some of the issues that need counter balancing strategies.

Crucially, in most heterogeneous federating states minorities and individuals from other part of the country cannot use their language where they do not have small local unit for self-governance. Sadly, the federal system, self administration, is also used to legitimately employ language as a means of excluding others. Of course, this author would like to reiterate and highly emphasis on the concern of the independent expert on minority issues to Ethiopia, McDougall, who noted as:

... Imposition of local or regional languages as the official language of regional states has reportedly resulted in members of some communities of differing ethnic origin effectively becoming functionally illiterate overnight. Claim their land and property, based on the perception that under the system only certain native groups were entitled to land. Some groups have been effectively excluded from participation in the public life of the regions in which they live, as they are not recognized as native to the region, or do not speak official local languages, and so cannot hold certain public offices including regional president or cabinet member.¹⁶³

Every linguistic minority living in different part of federating states, which in fact is accorded the explicit right to language by the ICCPR and other international laws in which Ethiopia is party, has to be given the appropriate protection. There is still a critical need to strive and come up with a better safeguard on rights of everyone living in any part of Ethiopia.

Thus, the language of the constitution on equality is strong enough to accord everyone equal protection of the law. Quite apart from the violation of the right to language, exclusion on ground of language will result in mass violation of fundamental individual's right to participation, equal access to social services and right to education, among others.

¹⁶³McDougall (n 152 above) para17.

4.3 Linguistic rights in Mauritius

4.3.1 Introduction

Although the aim of this research is not to investigate the sociological, historical and arguments on the choice of language for official or non official uses, it will be convenient to have a glance at the factual linguistic situation of the state before analysing the legal and policy frameworks on linguistic rights.

According to the National census held in 2000, the population of Mauritius is comprised of 68% Indo-Mauritian, 27% Creoles, 3% Sino-Mauritian and 2% Franco-Mauritian.¹⁶⁴ In terms of linguistic diversity, while Creole is used by 80.5% of the whole population, other languages such as Bhojpuri, which is Indian by origin, by 12%, French by 3.4% and English only by less than 1% of the population despite the fact that the latter is still the official language and language of instruction in schools.¹⁶⁵

Although Constitutional arrangements on linguistic and ethnic issues come in to picture in 1968, it will be easy to understand that the covert linguistic policy of Mauritius during French colonial administration (1715 -1809) was to exclusively use French in formal as well as informal life pattern of the people.¹⁶⁶ This line of argument is of course supported from the very assimilation policy of French on its colonies.

Similarly, during the colonial rule of Britain (1810-1968), the use of French has been replaced by English and its legacy is still reflected in all policies of the contemporary government. However, while the terms of the 1810 Act of Capitulation officially ceded Mauritius to Great Britain, it also guaranteed the culture, custom, law, religion and property of the then inhabitants from any possible changes.¹⁶⁷ Same arrangements were also confirmed latter by the treaty of Paris in 1814.¹⁶⁸ Hence, it was only in 1845 where the language of the higher court was declared to be English.¹⁶⁹ The consequence of these undertakings is manifested in the persistence use of French in all cases up to now. Mahadeo and many others¹⁷⁰ noted that the influence of French language on Mauritius is still viable and 'French was still regarded as the "true" language of the now British Colony'.

¹⁶⁴ Ministry of Education, Culture and Human Resources of Republic of Mauritius, Draft Education and Human Resources Strategy Plan 2008-2020 (MOECH) Nov. (2008)18.

¹⁶⁵ As above.

¹⁶⁶ SK Mahadeo, *History of English and French languages in Mauritius: A study in language and power*, available at, <http://www.educ.utas.edu.au/users/tle/journal/articles/Mahadeo/Mahadeo4.html#4>, (accessed on 20 September 2009).

¹⁶⁷ Miles, W.F.S. 'The Politics of Language Equilibrium in a Multilingual Society: Mauritius' (2000) 32 (2) *Comparative Politics* 216.

¹⁶⁸ As above.

¹⁶⁹ As above.

¹⁷⁰ Mahadeo (n166 above).

4.3.2 Linguistic rights under the current Mauritian laws

A. Express protection of linguistic rights

Despite its amendments on few issues, Mauritius has only one constitution since independence on 12 March 1968.¹⁷¹ Sections of this constitution which have expressly protected linguistic rights will be dealt under this section.

Hence, Section 5 of the constitution has provided that any arrested or detained person shall be informed the reasons for his arrest or detention 'as soon as reasonably practical'.¹⁷² Similarly, Section 10 of the constitution has guaranteed every person charged with criminal offence to be informed the nature and detail of the offence 'as soon as reasonably practicable' in the language he understands.¹⁷³ The permission to have free interpretation up on the condition that he does not understand the language of the proceeding is also provided.¹⁷⁴ However, the qualification of the phrase 'as soon as reasonably practical' might be used to delay his rights to promptly be informed. This is different from the usual word 'promptly' used by both the ICCPR and the Ethiopian Constitution.

Unlike the case of ICCPR and Ethiopian Constitution, the Mauritian constitution has further expressly guaranteed the rights of detained person and individual whose freedom of movement is restricted to be furnished with the reasons for his detention or for the restrictions of his movement in *written language* at least within seven days from the date of his detention or his request for the case of restrictions of movement.¹⁷⁵ This makes the constitution progressive regarding express inclusion of the rights to be informed in written language.

B. Other language related rights under the Constitution

Compared to the Ethiopian Constitution, the Constitution of Mauritius has guaranteed very limited human rights in which right to language can be inferred. Nonetheless, right to freedom of expression is guaranteed under Section 12 which includes 'right to assemble freely and associate with other persons and in particular, to form or belong to trade unions or other associations for the protection of his interests'.¹⁷⁶ This protection is too general and it needs interpretation of what expression means to include the right to use one's language.

¹⁷¹Constitutional Development, available at <http://www.gov.mu/portal/site/abtmmtius/menuitem.163fea3f13ca22984d57241079b521ca/> (accessed on 02 October 2009).

¹⁷²RM Constitution (n 31 above) sec 5(2).

¹⁷³As above sec 10(2)(b).

¹⁷⁴As above sec10 (2) (f).

¹⁷⁵RM Constitution (n 31 above) art 5(4) (a) & art 15(4) (a).

¹⁷⁶As above art 12(1).

However, the rights to seek receive and impart information and ideas orally, in writing, in print or in any media of his choice which are guaranteed by both the Ethiopian Constitution and ICCPR are missing under the Mauritian Constitution.

C. Rights to equality and non-discrimination

Unfortunately, Section 3 of the constitution which deals with the protection of fundamental rights and freedoms of individuals intentionally skipped the prohibition of discrimination on ground of language while exercising fundamental individual rights and freedoms.¹⁷⁷ Similarly, Section 16 (3) which expressly prohibits enactment of any discriminatory laws does not still recognise language as a ground of this prohibition while races, caste, place of origin, political opinions, colour, creed or sex are provided.

In addition, there is no any provision safeguarding right to equal protection of laws. Right to equality is one of the fundamental rights not only to individual linguistic rights but also for the equal enjoyments of other fundamental human rights. This constitutional arrangement contravenes from the provision of many international and regional human rights instruments in which Mauritius is party. It has been explained above that Mauritius is a multilingual and multicultural state and the need to prohibit discrimination on ground of language and having constitutional provision on the right to equality are not a matter of choice but necessity.

Other basic human rights such as rights to participation, rights to education and rights to culture in which right to language can be impliedly protected are not expressly guaranteed under part II of the constitution dealing on the protection of fundamental rights and freedoms of individuals. Hence, the constitutional protection of these rights and right to language is far less than both the Ethiopian constitution and the ICCPR.

4.3.3 Official language of Mauritius

Although Mauritius has multicultural and multilingual communities, the constitution has proclaimed English to be the official language of the National Assembly while addressing the chair in French is permitted.¹⁷⁸ The most retrogressive provision on linguistic rights as well as other fundamental rights such as the rights to participate in governmental activities directly or indirectly is stipulated by Section 33 of the same constitution which provides as:

Subject to section 34, a person shall be qualified to be elected as a member of the Assembly if, and shall not be so qualified unless, he –

¹⁷⁷As above art 3 (1).

¹⁷⁸RM Constitution (n 31 above) art

(d) is able to speak and, unless incapacitated by blindness or other physical cause, to read the English language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of the Assembly.¹⁷⁹

This provision has put a stringent exclusionary condition requiring skill to speak and write English to be elected as a member of the National Assembly. Apart from its failure to protect the right to use one's own language, the constitution sadly violated the rights of individuals to freely participate as provided under Article 25 of the ICCPR and be protected from exclusion based on the ground of language provided under Section 2 of the same.

4.3.4 Linguistic policies and language practice

Unlike the case of Ethiopia which has both National Culture and Education policies expressly dealing with linguistic issues, Mauritius has not as such had one. Nevertheless, this does not mean that the state has no any known practice which can be taken as a policy on language issues.

As it has been explained before, there are various languages with different number of speakers. Many scholars such as Baker and Stein, who studied language use in Mauritius, noted that each language is associated to different fields. English is associated with "knowledge," French with "culture," Creole with "egalitarianism," and others, as an "ancestral heritage".¹⁸⁰ It is also confirmed that although Creole, is the most widely spoken language all over, French is predominate in the field of mass communication on media, while English is used as an official language and language of instruction at schools.¹⁸¹ Thus, while English is the language of the government, the civil service, education, and all formal and official transactions, French is predominant in media and economic activities of the state.

Despite the blind position of the government to still hold English as an official language of the state, majority of the people do not speak it at all.¹⁸² Creole has no place in the eyes of the government although almost all Mauritians use it in their day to day private as well as public lives.

¹⁷⁹ As above art 33(d).

¹⁸⁰ Mauritius Ethnicity, Religion, and Language, available at, http://www.photius.com/countries/mauritius/society/mauritius_society_ethnicity_religion~416.html (accessed on 23 September 2009).

¹⁸¹ P Eisenlohr 'Creole Publics: Language, Cultural Citizenship, and the Spread of the Nation in Mauritius' (2007) 49(4) *Comparative Studies in Society and History* 974. And Miles (n167above) 216.

¹⁸² Interview with Miss Auckle, Lecturer at University of Mauritius (UOM), Language studies, Reduit, at her Office on 02 September 2009 (Notes on file with the Author). The Author has also observed that most people do not use English at any time and place. He observed that even at schools and universities students use French and Creole predominantly.

There is quite big divergent between the languages used by the people on their daily bases and languages recognised and used by state institutions. The 2009 - 2020 Draft Education Strategic plan of the state itself provides:

The language of instruction in schools is different from the language commonly spoken at home or in the immediate environment of the child. Mauritius faces a situation where the 'official' languages used at school (English and French) are substantially different from the language(s) of the environment from which the learners come.¹⁸³

It is important to take note here that even this draft strategic plan does not want to acknowledge Creole as a language mostly spoken at home or at 'the environment from which the learners come' while it mentions English and French as the official language of instruction in bracket.

4.3.5 The dilemma of Creole

There is an ongoing debate on the recognition of Creole as official language of the state. Many statistics and linguists have approved that Creole is not only the mother tongue of the overwhelming majority of the population (more than 80%) but it is also seen as the symbol of nationhood for Mauritius and Rodrigues.¹⁸⁴

Creole was basically created from the mixes or collusions of French and African languages in the course of African slaves and their masters' communication during the French colonial period.¹⁸⁵ As a result, there are many arguments against the use Creole on ground that Creole is a "French badly pronounced and free from the ordinary rules of grammar."¹⁸⁶ Many Franco-Mauritian officials and scholars argued that the language of instruction at school should be Creole which they meant were French since Creole to them is broken or Corrupted French.

However, Eisenlohr¹⁸⁷ noted that this was motivated by the Franco-Mauritian to be recognised as native to Mauritius and expand their language thereby.

Despite all these arguments, there was also a 'political Mauritian Creole nationalism movement' under the slogan of "one sole people, one sole nation" to use Creole as an

¹⁸³MOECH (n164 above) 60.

¹⁸⁴SK Mahadeo 'English Language Teaching in Mauritius: A Need for clarity of vision regarding English Language Policy' The International Journal of Language, Culture and Society, issue18-2006 available at <http://www.educ.utas.edu.au/users/tle/JOURNAL/ARTICLES/2006/18-2.htm>Language Policy (accessed on 29 September 2009).

¹⁸⁵As above & Miles (n 167 above) 216.

¹⁸⁶Council of Education Papers. Annexure I to Minutes of Council of Education No. 5 of 11 June 1891 cited in Eisenlohr (n181 above) 978.

¹⁸⁷Eisenlohr (n 181 above) 980.

emblem of the nation since it is spoken by nearly all Mauritian disregarding any racial and religious differences.¹⁸⁸ In fact, there was a bit move by the pervious regime to give recognition to Creole and *Grafì lermoni*, a document on harmonious writing system of Creole, was submitted by University of Mauritius in collaboration with Mauritius Institute of Education in 2004.¹⁸⁹ However, before its recognition officially, the current political party has taken over power in 2005 and give deaf ear to the issue still now.

Unfortunately, Creole is not recognised either as a people or as a language while the constitution accords reorganisation to Hindu, Muslims, Chinese, and 'general population'. As a result, hundreds of thousands of creoles fall within the general population group along with few thousands (white) Franco-Mauritian and this indirectly de-legitimatized the identity, culture and language of this big group.¹⁹⁰ The case of Mauritius is so irony that there is still burning issue that should be addressed. First of all, it has been noticed that those Mauritian Hindu dominated state insinuations highly support the celebration of ancestral cultural traditions and languages. Eisenlohr further noted that:

Mauritian state institutions, which are dominated by Hindus, strongly encourage the cultivation of diasporic ancestral cultural traditions and ancestral languages. These ancestral languages are Hindi, Urdu, Tamil, Telugu, Marathi, Arabic, and Mandarin, which are never used in everyday life, and were in most cases not even current among the immigrating ancestors of the people who claim them as their ethnic patrimony. They are, however, regarded as important components and mediators of "ancestral cultures" and therefore are very important in marking ethnic differences among Mauritian. Mauritian of Indian origin and Sino-Mauritian claim ancestral languages, while the Creoles lack any such officially recognized affiliations with a particular ancestral linguistic and cultural heritage.¹⁹¹

Eisenlohr pointed out that these ancestral languages are thought in schools and there is a position that 'full membership in a Mauritius nation' is performed by the cultivation of these "ancestral cultures" while the Creoles do not have any recognised culture at all.¹⁹² In short, Creole is not known to the government either as people or as a language.

While all other constitutionally recognised communities have the right to choose one of their languages to study it up to PhD level at the expense of the state in some cases, the Creole

¹⁸⁸As above 983.

¹⁸⁹Interview with Miss Auckle (n 182 above).

¹⁹⁰RM Constitution (n31above) first Schedule 3(4) & Miles (n 167 above) 218.

¹⁹¹Eisenlohr (n181 above) 974.

¹⁹²Eisenlohr (2006a; 2006b) as cited in Eisenlohr (n181 above) 975.

group is unable to do so.¹⁹³ Nonetheless, Creole studies are taught from a sociolinguistic point of view at university despite the lack of administrative regulations.¹⁹⁴

Although most people use Creole at all times, the Author has observed that there are unofficial-official explicit rules that strictly regulate the use of Creole while dealing with students and staffs at universities, clients at governmental offices and in some private institutions.¹⁹⁵ The author has learnt that speaking Creole at these different institutions for official purpose might at least result in inferior treatment and harassments depending on the circumstances.¹⁹⁶

In summary, it is obvious that at least more than 27% of the population is Creole that in fact speaks Creole as mother tongue. Non recognition of this group as it stands now is a vivid mass violation of Creole's group right to identity, culture and language which are all protected under many international and regional human right laws ratified by Mauritius. The financial or institutional backing stretched by the state only towards some of the languages and cultures development is also violation of the right to non-discrimination which of course is not protected by the Mauritius constitution as far as the discrimination is based on language.

Furthermore, it is safe to argue that the people are free to use their own language as far as their daily private or public interaction is concerned. Nevertheless, it is quite obvious that overwhelming majority of the public is excluded from the rights to actively participate in the formal governmental activities. The language policy of the state will automatically make the people handicapped regarding the equal access to take part in the process of democratic participation.

In a simple note, one who cannot communicate in English may not be able to hold public office for the mere reason that he does not know English. The Author has also learnt that proficiency in English, French or at least *acrolect creole* (much frenchified Creole) is a crucial condition to secure job. It has been also noted that Creoles as a people are not as such exposed to these languages despite their effort to learn and become fluent in English and French.¹⁹⁷ As a result of this, the right to work and better standard of life of Creole is also at stake.

¹⁹³ Interview with Miss Auckle, (n182 above).

¹⁹⁴ As above. See also Eisenlohr(n181 above)974.

¹⁹⁵ As above.

¹⁹⁶ The author observed all these while having a general discussion of such issues with many ordinary citizen of Mauritius.

¹⁹⁷ As above.

Although there are some politically motivated Hindu scholars who attached Creole as a language of a single Ethnic group, which apparently seems the persistent refusal of its recognition by the government, the use of Creole as a language *per se* and to be used by the state as an official language has been supported by many other linguists and political activists.¹⁹⁸ It is a language that is used by almost all the people in their day to day activities and it has been used as a language of instruction in the nearby Island, Seychelles at primary school it may have difference though.¹⁹⁹ Furthermore, it has been proved that it has now attained the status of language with all the necessary linguistic requirements. A Creole dictionary has been published and people are buying it until all stocks are running out of it.²⁰⁰

The disguised argument that English is a neutral and an international language useful for the socio-economic development of the country cannot be used to deny and violate the rights of the people to use their language in government institutions. The mere fact that Creole is used by the government does not necessarily mean English is going to vanish.

¹⁹⁸Eisenlohr (n 181 above) 987. He has noted that Jourdan 1995 and a number of postcolonial Mauritian intellectuals and political activists have supported the use of Creole language to constitute Mauritius as a nation.

¹⁹⁹ A Bamgbose 'Language of Instruction and Practice in Africa' available at http://www.unesco.org/education/languages_2004/languageinstruction_africa.pdf (accessed on 29 September 2009).

²⁰⁰ Interview with Dr. Carpooran, Lecturer at UOM and Author of the Creole Dictionary, Rediut at his Office on 02 November 2009 (Notes on file with the Author).

CHAPTER FIVE: CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

5.1.1 Concerning linguistic rights under international human rights law

Language is one of the undisputable key elements of human interaction. It enables all mankind to have interaction among his family, community, government and the whole world at large. Unless language right is recognised, such communication can no longer be effective and this will result in violation of human dignity.

In fact, language is essential to exercise all fundamental rights that human beings are bestowed with. It will not be plausible to think of sound social or individual life with out the appropriate recognition or permission to use one's own language. Needless to mention about its indivisible and inalienable nature with other fundamental human rights such as right to freedom of expression, due process, the right to vote, the right to fair political representation, the rights to participation, the right to culture, the right to a fair trial, access to social services, access to information, the right to equality and non-discrimination, among others. Hence, non recognition of linguistic right will consequently result in mass violation of all these fundamental human rights.

Thus, apart from the express recognition of linguistic rights to a specific individuals and groups in exceptional circumstances by different conventions and declarations, linguistic rights are also duly recognised for all individuals in International and regional human rights laws indirectly.

5.1.2 Ethiopia

Although there are so many sensitive issues that the Ethiopian language policy arrangements should address, federalism has enabled diversified language speakers (NNP) of the country to be accorded legally recognised linguistic rights to use their language at their schools, judiciary, parliament and daily lives. The right to self governance as deep as local council level is a good practice for the exercise of language rights.

Though the right to language might be limited territorially for legitimate, practical and justifiable grounds, the constitution is open to interpretation to include the right of everyone to use his language without a need to show that he is in the territory of his ethnic or linguistic group.

In fact, those constitutionally protected rights including the right to non discrimination, equality, culture, freedom of expression and right to information can be used to seek individual linguistic right protection universally.

In the meantime, minorities or individuals from other part of the country and small ethnic groups which do not establish their own local administration within a given federating states are badly excluded from education, public participation and social service of that state in which they are living. Language is frequently attached with the rights to self-governance and members of other linguistic groups are often treated as an alien.

5.1.3 Mauritius

Although the Mauritian Constitution has guaranteed individual linguistic right in exceptional circumstances, it is very difficult to hold that linguistic rights are well protected. The prohibition of discrimination on ground of language is not expressly guaranteed at all. This has violated one of the normative content of language right which prohibit discrimination based on language.

Other rights to equality and the rights to information are all missing from the constitution. Furthermore, the official language of the state and language of instruction used at school are totally different from the language of the people used on their daily lives. This linguistic policy has violated the rights to use one's own language at school or at government institutions. In fact, the constitution has surprisingly excluded those individuals who cannot speak English from being elected as a member of the National Assembly. Hence, one of the fundamental rights to participate which is recognised by every open and democratic state is expressly limited by the constitution.

The constitution has also failed to recognise the Creole community while recognising other Mauritian groups as people living in Mauritius. This has eroded the right to culture, identity and language of these large numbers of people which they cannot claim it as it stands now. While all the other members of Mauritian communities have the right to learn their own language up to PhD level, Creole speaking population, despite the fact that Creole is their mother tongue, are not given this same opportunity. Quite apart from violation of individual human right and group rights to equality, this has also violated the principle of linguistic equalities.

5.2 Recommendations

5.2.1 Concerning International human rights law

Even though language rights are protected either expressly or impliedly here and there in international human rights laws, it is convenient to have comprehensive and specific convention on universal linguistic rights that can regulate the conduct of states. UN should take measures to make UDLR an international binding convention ratified by all member states after doing all the necessary deliberations on it.

5.2.2 Ethiopia

A strategy that can effectively guarantee the right to language of all individuals throughout Ethiopia should be put in place.

Self- administration should not be used as a legitimate ground to exclude other linguistic groups. Hence, deliverance measures that can reasonably balance this situation must be adopted.

As far as the right to education in one's own language is concerned, the right of every student to be instructed in the language of his choice where this is reasonably practicable must be respected. For that reason, a rule that can require minimum number of students to open one class for different language groups in any school can be adopted.

Where it is reasonable and practical, the state must also ensure the presence of facilities and strategies to avoid inconvenience to an individual from any language groups in the course of his communication with the federal government.

5.2.3 Mauritius

Those constitutional provisions which contravene the provisions of the ICCPR and the rights to language guaranteed by other instruments should be amended. More specifically;

There is a need to guarantee the rights to equality and non-discrimination constitutionally. Thus, the constitution should be amended to include these fundamental human rights.

The constitutional provision that requires English skill as a condition to be elected as a member of the National Assembly must be amended.

The constitution should also be amended to include a provision that guarantee the equal recognition of Creole as a people to enable them have their own recognised culture, identity and language.

National culture and Education policy that will guide the effective use of one's own language and the affirmative actions of the state should be adopted.

Taking the number of the population who speaks Creole as a mother tongue and its capacity to be used as a language, its recognition as an official language of the state and language of instruction at school is at the interest of the whole Mauritian linguistic right.

If the state is keen to use and maintain English, a parallel policy without affecting the right of the people to use their language can be adopted.

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