

# LANGUAGE PROVISIONS IN KENYA'S NEW CONSTITUTION AND THEIR IMPLICATION ON LANGUAGE POLICY

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## **Abstract**

The paper explores language related provisions included in Kenya's new Constitution adopted into law in August 2010. In the introduction, a brief note on Kenya's current language situation is offered and the concept of language planning models practiced in Africa including Kenya is discussed with examples. The discussion moves to critically look at each language provision in the Constitution and evaluates how the implementation of each provision is likely to affect the formulation of language policies in the various sectors. These include: human rights, cultural and artistic expression, communication, education and parliament and by extension, the judiciary. The principles in the model on language planning advanced by Haugen (1966) are referred to. The paper concludes by giving a summary of the major language related achievements attained by the new Constitution.

## **1.0 Introduction Kenya's Current Language Situation**

Kenya, with a population of nearly 40 million, has about 42 indigenous languages which include Kiswahili. The largest linguistic group is Gikuyu spoken mainly in Central Kenya, while some smaller language groups such as the Sanye and the Dahalo (coastal area) and the Oromo and Dorobo (El Molo) (Rift Valley), are fast disappearing. Ordinarily, Kenyans are multilingual; many of them being competent in a vernacular or two and Kiswahili and some 20% having some level of competence in English as well.

English, which, since colonial times (1896 – 1963), has been the official language, enjoys a near-national prestige. Economically, it is regarded as the language of power and endowment and it enjoys the highest social esteem (Mbaabu, 2003 (iii) and King'ei, 2010: 111-11). Kiswahili, which is spoken by over 80% of the population, is the national language. Under the new constitution enacted in August 2010, this language has also been designated Kenya's co-official language with English. Apart from the above languages, there are also a number of foreign languages which include: French, Germany, Arabic, Asian languages, Portuguese and Italian. These foreign languages especially, French, Germany, Chinese and Japanese, are taught in various schools, colleges and universities.

However, in the post-colonial era, Kiswahili has quickly risen to become a national language in Kenya, Tanzania and Uganda and, in addition, it is among the prominent languages spoken in Rwanda, Burundi, Somalia, South Sudan and parts of Zambia, Malawi and DRC. In Tanzania and Kenya, Kiswahili is used as

an official language in Junior Courts of law, government communication, media and also as a medium of instruction at some levels of school (King'ei, 2002:109-110).

## 2.0 The Concept of Language Planning

The first step of language planning is the choice of the language to serve as the official or national language. This is referred to as status planning. In Africa, there are myriad examples of models of status planning where various states have adopted either the colonial model or changed into a different one to suit her post-colonial situation and aspirations. These models of language choice and status assignment reflect both the *exoglossia* (preference for a foreign language regarded as a politically neutral choice) and *endoglossia* (choice of an indigenous language to promote the local cultural and political economy of the state) (see Bell, 1976; Mazrui and Mazrui, 1986 and 1998 and also Wa Thiong'o, 1986 and 1993).

Here are some examples:

1. One indigenous language eg. Kiswahili in Tanzania, Arabic in Sudan, Egypt and Mauritania, Amharic in Ethiopia or Somali in Somalia.
2. One indigenous and One foreign language eg. English and Sotho in Lesotho, Kirundi and French in Burundi, French and Malagasy in Madagascar.
3. One foreign language eg. Portuguese in Angola and Mozambique, French in Niger or English in Nigeria, Zambia or Zimbabwe.
4. One indigenous language and 2 or more foreign languages e.g. Kinyarwanda, French and English in Rwanda.
5. Two foreign languages eg. French and English in the Seychelles.
6. Two indigenous languages and one foreign language eg. Chinyanja, Chichewa and English in Malawi.
7. Three indigenous languages and one foreign language eg. Kikongo, Kilingala, Kiswahili and French in DRC.

Kenya, like most other African countries, has adopted model (2) by choosing Kiswahili, an indigenous language and English, a foreign language to serve as national and co-official languages. In the colonial period, there was a glaring lack of clear and coherent language policy in most, if not all, African states. This lack of interest by the Colonial government to define language roles in the National Constitution arose from their unwillingness to forge political national cohesion in their colonies. Their policy was to maintain a wide gap between the centre and the periphery (Fishman et. al., 1968: 21-22). The lack of language policy situation persisted into the post-colonial experience.

With a possible exception of South Africa, Chad, Ethiopia, Somalia, Zimbabwe and Sudan, many heavily multilingual states in Africa have, for a long time avoided formulating national language policies let alone entrenching such policies in their Constitutions. According to Weinstein (1983) such countries fear causing socio-political instability by appearing to favour one or two languages against the rest. This explains why such nations have preferred retention of languages of their former colonizers. To further justify this glaring policy vacuum, such states argue that it is politically expedient to retain foreign languages for official use over indigenous ones as this helps diffuse socio-political strife and tension. This, of course is a fallacy (see King'ei, 2001: 36-47).

Kenya, like other African countries, seems to adopt, to some extent, the universal theoretical model of language planning proposed by Haugen (1966, 1983) as outlined in Mbaabu (1996). This model specifies 4 stages, in the process, which are:

*Norm Selection:* This is the selection of a language where there are two or more languages being considered.

*Norm Codification:* This is the regularization of the grammar, orthography and lexicon of the selected language. It is commonly called the "standardization" process.

*Functional Implementation:* This is the spreading of the usage of the standardized language through such avenues as the media, education and government official announcements.

*Functional Elaboration:* This stage involves corpus planning whereby expansion and modernization of the lexicon is carried out by officially instituted language planning bodies. Its aim is to enable the language to keep up with new concepts in science and technology. Since the standardization of Kiswahili in 1930 to date, Kenya has been carrying out all the above stages of language planning although stages 2-4 have not been fully or systematically done. This half-hearted approach has largely been due to lack of supporting legal and institutional provisions. For instance, Kenya does not have a National Swahili (or Languages) Council to plan and direct development of Kiswahili and other languages in the country. It also lacks specialised public language research institutions apart from language teaching departments in the local universities. In order to effectively implement the language provisions in the new Constitution, Kenya will need to establish these institutions.

### 3.0 Language Provisions in the New Constitution

For the first time in Kenyan history, the national Constitution has included a detailed statement of provisions related to issues of language choice and usage. These provisions revolve around the issues of status of various languages, language as a human and cultural right, link between language and culture, communication and the oral and performed arts, language rights for people with special needs and so forth. The main relevant provisions are discussed below.

#### 3.1 Legal Basis of Language Policy

For the first time in Kenya's history, issues on language and culture have been enshrined in the Constitution giving these matters legal constitution and backing. Firstly, under Article 7, Kiswahili has, two important statutes, namely that:

##### 3.1.1 National Language Status: Co-official Language with English Status

The assignment in (2) above is important in that it has ended the hitherto state of ambivalence which, since independence in 1963, has been given rise to by the fact that English, a foreign language, was the only official language while Kiswahili, the indigenous national language, had no official function. Kiswahili's new status will definitely have far-reaching implications for all institutions (both public and private) and at all levels of social life. For instance, all public documents and communication will have to reflect the bilingual status of the Republic. As a starting point, provisions for translation and interpretation between the two languages will create enormous opportunities for the relevant experts or professionals.

##### 3.1.2 Language as a Human Right

The new Constitution also, for the first time, bequeaths linguistic rights to all citizens by providing for the promotion and protection of Kenya's linguistic diversity as a crucial national cultural resource (3, a). In this respect, the Constitution calls for the promotion and development of indigenous languages. More importantly, the Constitution recognizes other formats of communication such as sign language, braille and all technologies accessible to persons with disabilities. This is a significant step as people with special needs have been relegated to the background for a long time as far as their communication needs are concerned. These needs have now become part of the basic human rights.

Further, the new Constitution also recognises the importance of "culture as the foundation of the national and the cumulative civilization of the Kenyan people. Article 11 (2) (a) commits the state to:

*"promote all forms of national and cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media publications, libraries and other cultural heritage".*

The inclusion of the dimension of language as the basis of communication in the wider cultural perspective is historical. The concepts of linguistic communication successfully linked cultural expression through verbal and performed arts. The import of this move, among other things, will be to sensitize the society of the need to pay much more attention to matters of language use in the arts.

This step will require formulation of a detailed and inclusive national policy on culture and the arts. Lack of such a legal framework has been blamed for mushrooming of cyber kiosks which expose under-age persons to pornography, virtual violence and other unethical material. Under the envisaged policy, Kiswahili will feature prominently as the official and national language, which will now also serve as the medium of cultural and artistic expression.

Additionally, the new policy should seek to put Kiswahili in its rightful place in cultural and artistic sectors by, among other regulations, requiring the mass media industry to devote at least 50% of their air-time to programmes with local content and in Kiswahili. In the same vein, an alien who applies for citizenship of Kenya through registration (Article 14) may, under this policy also be required to demonstrate competence in Kiswahili.

In an effort to further cement the human linguistic rights, the new Constitution categorically outlaws any form of discrimination based on one's language of birth (Article 27 (4)).

Similarly, the new law bequeaths the individual the explicit right to hold communication in a language of choice (32 (d)). This part ties in with the right for the individual to *"seek, receive or impart information or ideas, artistic creativity, academic freedom and scientific research"* (33, (1)). The import of these provisions is to underscore the fact that the individual person has a right to communicate or receive any piece of communication in a language of that person's choice, even if that choice is neither Kiswahili nor English. Thus, linguistic right here has become an inalienable democratic right.

The above articles are in agreement with Article 44 (1 and?) which gives every person at the individual level the right to choose the language to use in any given situation and also the right to participate in any aspect of cultural life using that individual's preferred language of self-expression. These rights are further extended to include the right of a person or community to form, join or maintain a linguistic community or association and other organs of civil society. This implies that legally and politically, no language will be restricted in as far as its cultural or

civic roles are concerned. Again, all languages will be treated equally before the law.

The new Constitution also recognises, for the first time, the language right of an arrested person at the time of arrest and also during the hearing of the case in a court of law. Under Article 49, an arrested person has the right to be informed of the reason for being arrested and the rights that person enjoys as an arrested person. Secondly, under Section 50 (m) the state is obliged to provide the accused person with an interpreter, if that person does not understand the language used by the trial court. This right has been often abused by the police and the courts to the disadvantage of persons under trial.

### **3.1.3 Language in Education Policy**

Kenya has been operating an ambivalent trilingual policy of language in education. Under this arrangement, in non-urban areas, the language of instruction for the first 3 years of school is the relevant local vernacular of the language of the schools catchment. In this situation, Kiswahili and English are only taught as subjects.

In urban schools, teachers may choose between Kiswahili and English as the medium of instruction. However, in upper primary classes, English takes over as the medium of instruction in all subjects which Kiswahili becomes a compulsory subject.

In secondary schools, the above status is maintained while at the tertiary and university level, Kiswahili is relegated to the background but English is the sole language of instruction in all academic disciplines. This policy has over the years, created serious dilemmas to parents, teachers and learners alike (Muthwii, 2002:iv). For instance, the criteria for determining the medium of instruction has been a nightmare; add to that lack of books and poor preparation of teachers to teach in mother tongue and so forth.

The inconsistencies and ambiguities in the above policies have worked against Kenya's declared objective of providing adult literacy in an effort to fight ignorance. Probably, the new policy will address some of the grey areas in the hitherto existing policy. Some of these areas include teaching and learning medium at both primary and secondary levels, teacher training curriculum and publication of educational materials, among other problems (King'ei, 1999:409-418).

### **3.1.4 Language Policy in Parliament**

In Parliament, the new law specifies clearly that the official languages of the House will be English, Kiswahili and a Kenyan Sign Language. I believe that

Braille may be presumed under the name, “*Sign Language*” for the purpose of defining languages of Parliamentary business (120)(1).

However, is it not clear why the Constitution did not specify the procedure to follow in solving disputes which arise during the interpretation different versions of the law written in both Kiswahili given that such disputes may arise in future regarding the correctness in meaning of such versions (120) (2).

Simply saying that the version signed by the President will prevail does not help solve the issue as, in normal practice, it is expected that the laws will be written in both languages. There is need to specify through an Act of Parliament that the President will sign both versions or, if not, which version will be assented to.

In fact, the above Article directly contradicts Article (259) (2) which states thus:

*“If there is a conflict between language versions of this Constitution, the English language version prevails.”*

This may seem to imply that the English language is deemed to be better equipped to handle legal concepts than Kiswahili. It may also imply that the laws will be originally drafted in English before they are translated into Kiswahili. The application of these two Articles will definitely generate some debate among linguists and legal scholars.

#### **4.0 Conclusion**

This article has attempted to explore the language-related provisions in Kenya’s new Constitution and to suggest some probable language policy implications that may arise in the implementation of these provisions. It has done that by reviewing provisions related to judicial and legal institutions, communication, culture, human rights, education and language use in parliament. In summary, a critical look at the new Constitution will reveal that this historical document has achieved the following:

1. Clarified the statuses of Kiswahili and English thereby removing the ambivalence that existed hitherto.
2. Recognised and specified the individual and community language rights.
3. Recognised culture, communication and language preference as a basic human right.
4. Expanded the concept of language rights to include legal, communicative, creative and cultural expression.

As observed above, this new Constitution is historical and unique in that it is one of the very few in the world that offers detailed legal guidance on matters of language choice and also language behavior.

The new Constitution has entrenched linguistic rights and provided a clear and detailed framework in which to conceptualise, institutionalize and develop a rich, democratic and all-inclusive linguistic culture. The onus is now on Kenyans through the legislature to formulate relevant and practical laws and policies to give life and meaning to the Constitutional provisions on language matters. The new law should help Kenya to confront the disproportionate prestige and esteem accorded former coloniser's languages such as English at the expense of the indigenous languages. It should also help remove the stigma and negativity associated with local languages which have often been seen as tools of negative ethnicity. This seems to be the view that informed the recent motion approved by Parliament to ban use of "vernaculars in public offices" which stated, "...the use of vernaculars was a threat to national unity and an impediment to patriotism." (Daily Nation, June 8<sup>th</sup>, 2011).



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