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## Uno sguardo oltre i confini europei

### Language and cultural heritage, a kenyan perspective

di [Eva Nyambura Maina](#) [\*]

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Kenya is a complex multi ethnic, multi lingual nation with a rich cultural heritage. Although they are all interconnected, the phenomena of ethnic communities, languages, and cultural heritage are sometimes seen as separate realities in a legal context. Interestingly, in Kenya, indigenous African languages have often been neglected and relegated as something from a bygone era with little legal legitimacy. This was done, among other things, to promote nation-building by bringing together the many ethnic communities under an English or Kiswahili hegemony. The paper posits that greater legal recognition of indigenous languages, including the distinctive way that language is cultural heritage, and subsequent efforts to promote the use of indigenous languages would lead to greater appreciation for cultural diversity and, in the long run, will aid in the effort of nation building. This argument is supported by an examination of how Italy has managed the balancing act of legal recognition of minority languages alongside the development of the Italian language, which is rightly considered as a cultural asset.

**Keywords:** Local languages; Cultural Heritage; Kenya.

#### 1. Introduction

Kenya like most African nations is a multi-ethnic, multilingual nation. This is because of the nearly forty-three different ethnic communities that call her borders home. Each of these groups has a rich history that includes a variety of distinct languages. While Kiswahili is the country's endoglossic official language and is also used for some government administration and informal interethnic communication, English is the exoglossic official language utilised in nearly all government functions, international business, diplomacy, etc. [1] Kiswahili [2], however, is not the native tongue of most Kenyans and even amongst most Kenyans, not all are fluent enough to engage in serious discussions or debates in Kiswahili [3].

Despite the various legal frameworks through which the law and legal scholars view language, there is one perspective, that of cultural heritage law that may not always be prominent when language and the law are conceptualised in Kenya. This is quite surprising considering that language is a component of culture, and culture is a component of language; the two are so intricately intertwined that one cannot separate the two without losing the significance of the other, making culture and language inseparable [4]. Language is a mirror of culture that can be used to understand a people's culture. Language is the visible part of an invisible culture, similar to how an iceberg is the visible part of what lies beneath the sea [5]. Language and culture are mutually reinforcing; language is learned culturally, and culture is largely acquired and expressed through language [6]. As such the indigenous or local languages of Kenya are an integral element of Kenyans' cultural legacy.

This paper therefore seeks to examine how, indigenous African languages that are a component of the national Kenyan cultural heritage should be legally protected and promoted by the Kenyan government. This essay will start by providing some historical background on the appraisal of how languages have been treated by various administrations in Kenya. The concept of language as a cultural heritage will be discussed next providing a framework for adopting this perspective. The author will review Kenya's current legal framework for language protection and how it may be enhanced by using a comparative analysis with Italy which has well established legal protection for linguistic minorities and whose legal norms can be instructive to Kenya as it continues on its path of nation building. The author will finally propose legal reforms that Kenya may adopt to bolster the protection of its languages and the cultural identity of all Kenyans. This is because by safeguarding the languages of each ethnic community, the Kenyan government will be able to secure each Kenyan's cultural identity and, ideally, be able to forge a unified national identity for Kenya.

#### 2. Historical perspective on the use of local languages in Kenya

Languages in Kenya have been viewed in different ways in colonial and post independent Kenya but a common thread

of the two, is a clear superiority of the English language and the subtle disdain for local languages. This contempt of local languages, particularly by younger Kenyans, if left unchecked, might result in the loss of Kenya's priceless linguistic and cultural heritage. During colonial times [7], the treatment of local languages was inchoate and vacillating such that there were occasions when measures were put in place to promote or deter its learning. Nevertheless, due to the social and economic realities of the time, Kenyans were incentivised to study English since this was seen as a launching pad to a white-collar job and a better life [8]. Accordingly, from the 1920s, the Agikuyu of Kenya started independent schools to learn English [9]. After the Second World War, British colonialists, reading the signs of the times and fearing the imminent independence of Kenya, started a campaign to create some westernized educated elite. It was anticipated that such an elite would preserve British objectives in an independent Kenya. When Kenya attained independence on 12 December 1963, English was then designated as the official language and the medium of communication for all governmental services [10].

Even after independence, local languages did not fare that much better especially in the education sector. This is despite the numerous commissions advocating for the use of local languages in education, particularly in the early formative years. As Martin C. Njoroge and Moses Gambia Gathigia detail in their article, a number of educational commissions namely the Kenya Education Commission of 1964 (Ominde Commission) [11]; the Bessy Report of 1972 [12]; the National Committee on Educational Objectives and Policy of 1976 (Gachathi Report) [13]; the Presidential Working Party on the Second University of 1981 (Mackay Commission) [14]; the Presidential Working Party on Education and Man-power of 1988 (Kamunge Report) [15]; the Commission of Inquiry into the Education System of Kenya of 1999 (Koech Commission) [16]; and the Taskforce on the Re-alignment of the Education Sector to the Constitution of Kenya 2010 (Odhiambo's Task Force of 2012) [17]; have almost always advocated for the use of local languages or Kiswahili in urban settings for early education in Kenya. In reality, this is not typically the case, particularly in urban areas where sometimes children are even disciplined for speaking in local languages or Kiswahili in school. This is due to the fact that most schools strive to have their children speak English from the very beginning of their education since English is thought to be the key to achieving social mobility [18]. Additionally, there aren't enough teachers and materials available in the local languages to facilitate education in indigenous languages since publications exist in approximately 22 of the 42 Kenyan languages [19].

In respect to government activities, most of the official documents like forms are issued in English and occasionally in Kiswahili, but never in the local languages [20]. It is also puzzling that, despite Kiswahili being Kenya's national language [21], most, if not all, legislation, rules, and court decisions – with the exception of the Constitution – are published in English alone. This has a wide range of impacts. First, some people – particularly those in the older generations – might not be able to fully comprehend laws published in English which just perpetuates the idea of an African Westernized elite. Second, these actions appear to support the idea that only English-language laws and legal processes are "legitimate" or "superior". Additionally, this indirectly relegates customary laws and norms to the sidelines. This prioritisation of English also fosters the notion that success is defined as that which most closely resembles the "westernised" way of life as opposed to that which is more African. In addition, this disdain for indigenous languages results in a commensurate loss of indigenous music, proverbs, folktales, dances and even the history of the tribe. This is particularly problematic in Kenya and Sub-Saharan Africa as a whole, since a significant portion of the people's history and cultural legacy is still undocumented and the only way these can be transmitted is through oral tradition which is difficult if younger generations do not speak their own languages.

### 3. A paradigm shift. Language as cultural heritage

As lawyers, it is crucial to accurately identify or characterise particular phenomena in order to prescribe rules that are appropriate for such a reality. When it comes to realities such as language, culture and cultural heritage adequate descriptions are required. This is because, in the absence of an appropriate description, something falling outside the classification may end up receiving legal protection while something deserving of such protection is left out. In the case of language, this could be especially dangerous because the overregulation of language could stifle the natural development of language or silence people since they would not be able to express themselves the way they wish. At the same time, inadequate language regulation can result in the loss of language or forceful assimilation of people to speaking some other language.

The Council of Europe Framework Convention on the Value of Cultural Heritage for Society, 2005 also known as the Faro Convention, defines cultural heritage as

a group of resources inherited from the past which people identify, independently of ownership, as a reflection and expression of their constantly evolving values, beliefs, knowledge, and traditions. It includes all aspects of the environment resulting from the inter-action between people and places through time [22].

Language is a vital tool for both human communication and self-expression forming part of a person's identity [23], creating a channel through which a person can share their inner world with others [24]. However, language is social and communal as much as it is individualised [25]. Language connects people who speak the same language, creating a sense of belonging. This deep connection that languages, particularly native languages, fosters is about more than just communication; it is about a sense of belonging to a people, to a distinct community. Language can therefore be aptly described as shared resource which a people identify with.

Cultural heritage has a quality of inter-generational wealth, where it is passed down from generation to generation being constantly being re-created [26]. Language like any culture is transmitted from generation to generation, is constantly re-created, and presupposes certain knowledge and skills [27]. Since language is constantly reinvented, each community and generation leaves a distinct imprint on the language they speak, moulding the language to reflect the community's experiences, beliefs, and values [28]. An example of this can be seen clearly in the Spanish speaking world. Even though they speak the same language, the Spanish spoken in Chile differs from that spoken in Spain.

Language also offers unique insight on a community, its way of life, values, core beliefs, and traditions. It is a marvel

that some languages have words that depict a certain reality that other languages do not. The Kikuyu language, spoken by the Agikuyu people of Kenya, is an example of this. These people have strong communal ties that are based on a patriarchal system. As a consequence, one's paternal uncles are likened to one's father. In Kikuyu, therefore, one refers to their father's brothers as either *Baba M?kur?* (big father) or *Baba M?nini* (small dad). As such, losing this language means losing an appreciation for the social structure of this community. Further, an English translation to the term 'uncle' may never fully transmit the reality of these people.

Cultural heritage also has an irrational, illogical nature in which one can describe the effects of participating in a cultural activity but cannot logically explain why a certain ritual, dance, or painting moves them [29]. Language behaves similarly. Perhaps this phenomenon is most pronounced when one is in a foreign country and hears or meets someone who speaks their language, especially their native tongue. The feelings of joy at such a connection may be regarded as irrational.

Applying the different descriptions of the elements of language detailed above, one can assert that languages, particularly indigenous languages, are cultural heritage. This may explain why, when one thinks of cultural heritage, particularly intangible cultural heritage, one often thinks of language [30]. Given these distinct characteristics of language as cultural heritage, language has intrinsic value beyond its utility as a means of communication, justifying protection of languages in and of itself [31].

#### 4. The legal framework governing language in Kenya

##### *The Constitution of Kenya, 2010*

Kenya's constitution significantly recognises the country's cultural and linguistic diversity. The preamble to the Constitution of Kenya, 2010 (2010 Constitution) emphasises the country's pride in its ethnic, cultural, and religious diversity, as well as its determination to live in peace and unity as one indivisible sovereign nation. Article 7 of the 2010 Constitution then asserts that Kiswahili shall be the national language of Kenya [32], that both Kiswahili and English shall be the official languages of Kenya [33], and that the State has a responsibility to promote and protect the diversity of language among Kenyans, as well as the development and use of indigenous languages [34]. Furthermore, according to the 2010 Constitution, culture is the foundation of the nation as the cumulative civilization of the Kenyan people and nation, and the Kenyan government is required to promote all forms of national and cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries, and other forms of cultural heritage [35].

##### *International legislation*

Article 2(5) and 2(6) of the 2010 Constitution recognise that the general rules of international law, as well as any treaty or convention ratified by Kenya, forms part of Kenyan law. As a consequence, certain treaties ratified by Kenya, such as the Universal Declaration of Human Rights [36], the International Covenant on Civil and Political Rights that protect language and linguistic diversity by establishing language as a protected non-discrimination ground, form part of Kenyan law.

Most importantly for the purposes of this article, Kenya has ratified the UNESCO 2003 Convention for the Safeguarding of Intangible Cultural Heritage (2003 Convention). The goal of this convention was to protect Intangible Cultural Heritage (ICH), ensure its respect, raise awareness of ICH at the local, national, and international levels, and provide for international cooperation and assistance [37]. Intangible cultural heritage is defined in the 2003 Convention as practises, representations, expressions, knowledge, and skills, as well as the instruments, objects, artefacts, and cultural spaces associated with them, that communities, groups, and, in some cases, individuals recognise as part of their cultural heritage [38]. Furthermore, Article 2(2) of the 2003 Convention states that ICH manifests itself as:

- a) oral traditions and expressions, including language as a vehicle of the intangible cultural heritage.
- b) performing arts.
- c) social practices, rituals, and festive events.
- d) knowledge and practices concerning nature and the universe.
- e) traditional craftsmanship.

In terms of language, Article 2(2) of the 2003 Convention is oddly drafted. Language appears to be a vehicle or medium through which ICH passes through and may not be considered ICH in and of itself. This means that the emphasis is not on the languages themselves, but on their role as a 'vehicle' for expression and transmission of the focus of the domain under consideration [39]. This issue of the place of language in relation to ICH is not new. UNESCO previously faced a similar problem with the Proclamation of Masterpieces of Humanity's Oral and Intangible Heritage programme, which was designed to raise awareness of the value of intangible cultural heritage and the importance of preserving it [40]. 'The Garifuna Language, Dance, and Music' (Belize, supported by Honduras and Nicaragua) and 'The Oral and Cultural Manifestations of the Za'para People' (Honduras and Nicaragua) were two masterpieces declared in 2001. The relevant countries' action plan included revitalising these languages, particularly among younger generations. However, following this proclamation, the program's jury decided that language should not be designated as a masterpiece [41].

Despite this negative treatment towards the recognition of language as a manifestation of ICH, several elements of languages have been inscribed on one of the lists provided by the 2003 Convention. These are:

- The whistled language of the island of La Gomera (Canary Islands), the *Silbo Gomero*, inscribed by Spain in 2009

on the Representative List [42].

- The whistled language inscribed by Turkey in 2017 on the List of Intangible Cultural Heritage in Need of Urgent Safeguarding.
- The living culture of three writing systems of the Georgian alphabet inscribed by Georgia in 2016 on the Representative List.
- The language, dance, and music of the Garifuna, first proclaimed in 2001 under the Living Human Treasure program [43] [44].
- Further, the Operational Directives for the implementation of the Convention for the Safeguarding of the Intangible Heritage, has references language by virtue of the fact that they encourage the inclusion of language in the promotion of intangible cultural heritage (the promotion of vernacular language [45], and use of local media to promote vernacular languages [46].

Broadly speaking states can recognise language as ICH and take precautions to protect it, when implementing the 2003 Convention. States appear to be doing so by combining language with other manifestations of ICH, such as the Garifuna language, which was bundled with music and dance; or by emphasising distinctive aspects of a language, such as a whistled language.

Despite the equivocal wording of Article 2(2) of the 2003 Convention, Kenya may be justified in taking a broader and more nuanced view of language as ICH. It should not be overlooked that the wording in Article 2(2) of the 2003 Convention was a compromise reached because some states could not agree on the proper status of language [47]. According to James Nafziger, the prolixity and ambiguity of the phrase – language as the vehicle of the ICH – indicates a degree of drafting timidity aimed at increasing ratification of the 2003 Convention by State Parties [48]. Some states argued that including language would result in the recognition of some languages as ICH but not others, establishing an inappropriate value judgement that would be contrary to the principle of equality [49], or that it would inadvertently interfere with the status of minority languages. Other countries, primarily African countries, as well as Spain, Peru, and Vanuatu, however, supported the explicit inclusion of languages as a manifestation of ICH [50].

In the case of Africa, perhaps the desire for a clear recognition of language as ICH stems from the fact that Africa has a rich, beautiful cultural heritage iconised by various ethnic groups, with different languages. It is approximated that the number of languages spoken in Africa varies between 1000 to 2,500 depending on estimates and definitions [51]. Most of these languages, particularly those spoken in Sub-Saharan Africa, are undocumented and were largely unknown until the early twentieth century. Furthermore, due to a variety of factors, including colonialism and religious puritanism [52], this cultural and linguistic heritage has been misinterpreted by many Africans including African governments, as a bygone heritage unfit for the present world [53]. As previously mentioned, Kenya is a prime example of a Sub-Saharan nation whose culture and history before the advent of colonisation in the 20th century may be lost, if its indigenous languages are not safeguarded. This is because there is no library which hosts all the iconic proverbs of the Ogiek people of Kenya or the tales and myths of the Pokot community.

### *Statute law or Acts of Parliament*

The Protection of Traditional Knowledge and Cultural Expressions Act, No. 33 of 2016 was enacted in 2016. As aptly named, this law is intended to protect traditional knowledge and cultural expressions. This law defines cultural expressions as any tangible or intangible form in which traditional culture and knowledge are expressed, appear or are manifested, and comprise of the following:

- (a) verbal expressions including stories, epics, legends, poetry, riddles; other narratives; words, signs, names, and symbols;
- (b) musical expressions including songs and instrumental music;
- (c) expressions by movement, including dances, plays, rituals or other performances, whether or not reduced to a material form;
- (d) tangible expressions, including productions of art, drawings, etchings, lithographs, engravings, prints, photographs, designs, paintings, including body-painting, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metal ware, jewelry, basketry, pictorial woven tissues, needlework, textiles, glassware, carpets, costumes; handicrafts; musical instruments, maps, plans.

It should be noted that this law makes no mention of language, even language as a vehicle of ICH. This law, on the other hand, mentions specific verbal cultural expressions that the Kenyan government is expected to protect. Such actions, however, would be futile, unless steps are taken to protect indigenous languages. An understanding of indigenous language as cultural heritage would only aid the protection of verbal expressions as anticipated in this law.

## **5. Objections to legal protection of language as cultural heritage**

As demonstrated by the nuanced characterisation of language in Article 2 (2) of the 2003 Convention, it is evident that the concept of languages and their protection is a delicate matter both domestically and internationally. This gives rise to understandable misgivings to any broader language recognition and legal protection especially with indigenous

languages. This is particularly the case in Kenya and throughout Africa, where it is indisputable that ethnic and cultural tensions have been and continue to be the source of strife leading to stagnant development. The key concerns are enumerated below.

### *a) National Unity and Nation Building*

The notion of a group's cultural heritage or identity can be a double-edged sword, acting for both good and bad, uniting and dividing people in one fell swoop. A strong aggressive assertion of identity, whether national or ethnic, to the exclusion of all other people, can lead to armed conflict in which the destruction of cultural monuments – the symbols of the cultural identity of the other party – becomes a weapon of war. At the same time, this concept of identity and belonging has tremendous potential for cultivating group cohesion, whether it is in a self-identified ethnic minority within a State, a nation State, or even a supranational body [54]. Given the ability of cultural heritage, particularly language, to unite and separate at the same time, it is understandable that states would object strongly to protecting languages as cultural heritage or having specific recognition for language based on reasons of national unity and sovereignty. In this respect, some argue that unless a country speaks a single, common language, it will never be united in purpose and endeavour, while others contend that whether a country has a de facto common language or not, is inconsequential in its struggle for national identity [55].

This overarching need for national unity may be one of the reasons why many states decide to designate national or official languages, because a national language, at its most basic level, provides a country with a means of communication among its citizens, can also serve as a symbol and expression of national identity [56]. Some states may therefore consider it prudent, for the sake of national unity, to suppress or limit certain languages while promoting some other common language. At the same time, other states have adopted the approach of recognising several languages and designating them as official or national languages. This is sometimes problematic since even developed countries with multiple national languages, such as Canada, Belgium, and Switzerland, still have internal strife among the different language speakers [57]. Simultaneously, in other countries, such as the Philippines, various ethnic groups speak different languages but still share feelings of ethnic solidarity [58]. It therefore seems that there is no magic formula where it can be said that one common language equals a united nation.

This fear of division can appear more ominous in the African context, which consists of relatively new, fragile democracies that have already experienced significant conflicts between different ethnic and linguistic groups. This destructive notion of cultural identity is not foreign in Kenya, which, experienced violent post-election conflict in 2007-2008, resulting in the deaths of over 1200 people and the displacement of more than 300,000 people [59]. Many politicians used language to divide Kenyans in the run-up to this election, ostensibly to ensure the prosperity of a specific ethnic group to the exclusion of other ethnic groups. As a result, especially during election years, Kenyans are wary when they hear someone speaking in their native language, particularly if they are from a different ethnic group.

Due to the difficulties in nation building, it is not surprising that after independence, Kenya, like many other African countries, preferred to continue using ex-colonial languages in public rather than local indigenous languages because these languages per se do not belong to anyone and thus would be less likely to stir up conflict and threaten national integrity [60]. On the surface, this concept of non-threatening foreign languages appears to be a way to bring people together. However, if people never seem to own these languages or see them as something foreign imposed on them, it is questionable whether this would lead to the desired unity and cohesion. Kenya, for example, had a clearly established national language and official language since 1963. Yet despite this clear preference of English and Kiswahili, this has not seemed to create a united Kenya. Perhaps the lack of clear promotion of local languages, as well as the fear of losing one's language and culture, fuels part of the negative ethnic narrative. There may be less distrust among ethnic groups if the Kenyan government could demonstrate that it understands the value of each community and language, and that none is superior because it has more speakers. Such recognition would begin by claiming language as cultural heritage and safeguarding it as such.

This current situation also raises a number of other issues, including the cultural significance of the learned European languages that have been adopted as the lingua franca of these African countries. Should African governments protect these languages, which do acquire unique characteristics over time? Should African governments promote native African languages or the "Kenyan English" that is spoken in Kenya or the unique French that is spoken in Niger? Unfortunately, this is a question that is difficult to answer but may be connected to the identity of the community.

However, if this broader understanding of language as ICH is adopted, it will not exclude these unique manifestations of what were originally European languages. It may even be a boost to encourage the development of a distinct 'Kenyan English', because there will be a foundational understanding that languages, by definition, evolve and are recreated as they are transmitted.

Invariably, given the challenging task of nation-building, it may seem reasonable to encourage a common non-ethnic language. Nonetheless, it is critical to safeguard and promote language as a cultural heritage, particularly indigenous languages. This is because language is inherently valuable. Bruno De Witte quoting a UNESCO study stated:

The extinction of each language results in the irrecoverable loss of unique cultural, historical, and ecological knowledge. Each language is a unique expression of the human experience of the world ... Every time a language dies, we have less evidence for understanding patterns in the structure and function of human language, human prehistory, and the maintenance of the world's diverse ecosystems. Above all, speakers of these languages may experience the loss of their language as a loss of their original ethnic and cultural identity [61].

It is obvious that any damage or loss of culture, and in this case, any loss of lingual property to a community, means damage to the cultural heritage of all mankind, because each community contributes to the culture of the world [62]. This international or global perspective of ICH is clearly expressed in the 2003 Convention's Preamble, which states, "Being aware of the universal will and the common concern to safeguard the intangible cultural heritage of humanity"



[63] and “Considering that the international community should contribute, together with the States Parties to this Convention, to the safeguarding of such heritage in a spirit of cooperation and mutual assistance” [64]. Given this understanding, safeguarding local languages and ICH is a common concern for all state parties [65]. There could be several reasons for this international understanding of cultural heritage. On a fundamental level, however, if one cannot appreciate the beauty of another person’s culture and history, it may be more difficult to appreciate and respect the person, their communities, and their ideas. There may be a false dichotomy at work in which local languages or ethnic communities, and a united nation are perpetually at odds. A message that emphasises the fact that each language and culture is valuable and not superior to the other may inspire good will and patriotism among all communities. This effort to protect all communities’ cultural heritage especially indigenous languages can be a project that connects people together rather than separating them. Recognising that each language is valuable cultural heritage and putting measures in place to protect all languages may lead to more unity and less distrust amongst Kenyans because all people will know that their past, their heritage, will be protected. The message should be that if one community values their language and heritage, it is only natural for other communities to do the same.

### **b) Existing legal recognition of language**

Language and linguistic diversity have traditionally been the subject of human rights law, including international human rights law and constitutional law. When one thinks of legal protection or recognition of language, one naturally thinks of certain human rights, such as the right to speak one’s native language [66], freedom of speech [67], freedom from discrimination based on language [68], and the right to due process, which includes having legal proceedings in a language one understands [69]. One may also consider language recognition from the standpoint of constitutional law and what the constitution has designated as a national language, official language, or any other designation. It may thus be deemed superfluous to protect language through the lens of cultural heritage law.

However, simply encapsulating language in the human rights space is insufficient in light of the current loss of language, language diversity, and culture which has led to the use of the concept of “endangered languages” and increased focus on indigenous perspectives on languages [70]. It may appear strange to consider language, or any other intangible cultural heritage, as endangered. This is because language and cultural practises are constantly evolving, and language splits and mergers may be regarded as natural phenomena [71], a part of the ebb and flow of the development of a community. It cannot be denied, however, that the scale at which languages and elements of intangible cultural heritage are disappearing now appears to be unprecedented since the emergence of the nineteenth-century model of the nation state and the current state of globalisation. The unnatural pace of development necessitates the use of expanded legal tools to assist communities in preserving their languages and continuing to develop their intangible cultural heritage.

In the case of Kenya, perceiving language through the cultural heritage lens is important because the decline of language can be attributed to a lack of both inherent and instrumental value of language as cultural heritage. The worldview that these languages and, to a lesser extent, cultural practises are supposedly inferior is a major reason for their decline. This challenge can therefore be addressed through cultural law because this specific legal framework emphasizes the inherent value of cultural expressions and pride in such heritage.

### **c) Globalisation, development, and urbanisation**

Globalisation, development, and the technological revolution have benefited all nations, but they can also be regarded as a threat to cultural heritage. It is worth mentioning that during the drafting of the 2003 Convention on Intangible Cultural Heritage, it was acknowledged that globalisation, intolerance, and a lack of safeguarding resources are threats to intangible cultural heritage, leading to its deterioration, disappearance, and destruction [72]. The 2003 Convention’s Preamble specifically states,

Recognizing that the processes of globalization and social transformation, alongside the conditions they create for renewed dialogue among communities, also give rise, as does the phenomenon of intolerance, to grave threats of deterioration, disappearance, and destruction of the intangible cultural heritage, in particular owing to a lack of resources for safeguarding such heritage [73].

This phenomenon is more visible with languages. As the world becomes more global, and as trade expands and new places open up, there will inevitably be a push to learn more “international languages”. For example, it is generally believed that English is the general language for conducting business, particularly international business [74]. As a result, individuals who want to participate in the global economy face pressure to learn and speak English, which sometimes comes at the expense of speaking native languages. In such a globalised world, states may question the wisdom of protecting language as cultural heritage: it may appear to be a protectionist trait which undermines upward social mobility.

In the case of Kenya, it is obvious that speaking only a language such as ‘Kikuyu’ would be insufficient if one wishes to travel or conduct business. English is infinitely more powerful on a global scale while Kiswahili is extremely useful on a regional level. As a direct consequence, it may appear prudent for the law to optimise the use of English and possibly Kiswahili over other languages. Such actions, however, could result in the destruction of valuable cultural heritage. It may actually be fair to say that because of all these rapid changes brought about by globalisation and urbanisation, then more protection for indigenous languages is required.

In 2017, the Italian Constitutional court had to adjudicate whether part of a law (Article 2(2)(1) of Law no. 240 of 30 December 2010) which permitted the use of a foreign language such as English as the primary language of instruction for some university courses was constitutional [75]. The aim of this law was to encourage the enhancement of internationalisation in the education sector. The court in this case recognised that in the wake of the current multilingualism in Italy and globalisation, ‘the primacy of the Italian language is not only constitutionally unavoidable but indeed – far from operating as a formal defence of a relic from the past, which is incapable of appreciating the changes

brought by modernity – has become even more crucial for the continuing transmission of the historical heritage and identity of the Republic, in addition to safeguarding and enhancing the value of Italian as a cultural asset in itself' [76]. This realisation can be extended to the situation in Kenya. The Kenyan government, therefore should take proactive and deliberate actions to ensure that the precious cultural assets that languages are are safeguarded from the vaguaries of modern development. Additional legal recognition and protection is therefore necessary.

## 6. A comparative approach: the case of Italy

Italy has a rich history consisting of numerous city states, each of which had its own distinct dialect and culture. Further, due to its proximity to other countries, Italy also contains a sizeable population who are native speakers of other languages, such as German or French, and whose cultures are very similar to those of Italy's neighbours. Against this backdrop, Italy has been able to weave a seamless protection of linguistic diversity while forging a strong Italian identity.

Italy is currently divided into twenty (20) regions, of which five (5) have special (autonomous) status. Additionally, Italy, like many other European countries, has a diverse population that speaks a variety of languages within its borders, making it one of the most linguistically diverse countries in Europe [77]. In order for all to live in harmony, the Italian republican constitution aims to reconcile the need to be *una e indivisibile* (one and indivisible) while also fostering linguistic minorities [78]. This has resulted in highly intricate and prolific legislation at both the national and regional levels, which is also quite adept at striking a balance between the two objectives.

This legal protection and deference to the people's linguistic and cultural diversity has not always been the. Under Benito Mussolini's reign, the fascist government worked to establish a single nation speaking a single language by absorbing different linguistic communities and denying them any basic protection for their cultural differences [79]. During this period, a severe linguistic policy was implemented across the entire nation to standardise the Italian language under the guise that local dialects threatened central authority [80]. There were also efforts to 'Italianize' the German-speaking inhabitants of the Alto Adige or Südtirol; the Slovenian-speakers in Friuli Venezia Giulia as well as the French-speakers in the Valle d'Aosta or Vallée d'Aoste [81]. Consequently, when the Italian republican constitution was effected in 1948, the protection of linguistic minorities was prioritised, and Italy developed a robust legal framework to protect linguistic diversity in Italy [82].

Article 6 of the Italian Constitution, as the supreme law of the land, affirms that Italy will protect linguistic minorities. Further to that, Article 116 of the Italian Constitution grants special autonomy to the regions with the largest and most prominent linguistic minorities - Sicily, Sardinia, Trentino-Alto Adige, Friuli-Venezia Giulia, and Valle d'Aosta. Additionally, the framework law adopted in 1999, recognises and protects other historical minority languages (non - Italian speakers) on the peninsula [83].

Typically, any specific language legislation is territorially limited to one of the five special/autonomous regions or to municipalities that have elected to activate the framework law 489/99 and promulgate specific regulations pertaining to a specific group [84]. The Framework law 482/99 allows for its activation at local levels if a significant group of language speakers is present. In general, the provisions of this law can only be activated if at least 15% of residents or one-third of councillors in a given municipality request it, or if a local referendum is held. Once this law is in effect, the scope of the linguistic rights that may be granted to the affected minorities includes the use of the minority language in the education sector, the local municipal council, dealings with the local administration, and before the Justice of the Peace [85].

Between the provisions of its constitution, the Framework law, and municipal regulation, Italy appears to have struck an ingenious balance between issues of national cohesion and unity, protection of different language speakers and cultures, and territorialism at both the national and municipal levels [86].

### *The case of South Tyrol*

South Tyrol is located in northern Italy, near the Austrian border. Due to this, this region is home to a large number of German speakers. This relationship between German and Italian speakers has historically been a source of contention, culminating in various safeguards and legal recognition for German language speakers [87].

South Tyrol was once a part of the Austro-Hungarian Empire before being annexed by Italy at the end of World War I [88]. The period following the annexation was dominated by Mussolini's fascist regime, during which the government, like in the rest of Italy, launched a campaign to "Italianize" the region. Unlike the rest of Italy, however, Mussolini agreed with Hitler in 1939 to offer German speakers the option of leaving South Tyrol and resettling in the Third Reich or to assimilate completely [89].

Following the collapse of the Third Reich, Italy and Austria signed the Gruber-De Gasperi Agreement, which guaranteed German speakers the following rights: the right to primary and secondary education in German, the right to equal use of German and Italian in public services, official documents, and bilingual place name signs, and the right to re-establish their German last names, which had been Italianized over time [90]. This agreement later gained international legal recognition as part of the Paris Peace Treaties, ensuring the German language group in South Tyrol post-war protection [91].

Unfortunately, the Gruber De Gasperi Agreement was not fully implemented, and Italian remained the dominant language of the public sector in this region, while German-speakers were routinely outvoted on issues affecting them as a group. This motivated the South Tyrolean People's Party (Südtiroler Volkspartei, SVP), which was supported by the Austrian government, to advocate for greater autonomy [92]. This culminated in the adoption of the 1972 Autonomy Statute, which established a decentralised South Tyrolean self-government and guaranteed the protection of German



and Ladin language groups [93]. After the passage of this legislation, three language groups were able to coexist and cultivate their cultural distinctiveness without threatening one another or Italy as a whole [94].

It's interesting to note how strongly German speakers in South Tyrol felt about their German language as well as their Italian identity. German was so deeply ingrained in the identity of German speakers that they were not content with agreements like the Gruber De Gasperi. It is clear from this that language, which was central to the identity of German-speaking South Tyrol, was initially treated as a threat to the unification of Italy, but the actual legal recognition and protection of German and Ladin and this unique heritage actually brought more cohesion in Italy.

Applying this case to the present subject matter, although Kenya did not have a fascist regime attempting to forcibly 'Kenyanise' the country, the effects of colonial rule and an unsupportive post-independence regime has indirectly done what Mussolini did in Italy. The failure to take proactive measures to encourage and promote local African languages has resulted in the gradual subversion of distinct cultural and linguistic voices, particularly amongst the smallest linguistic groups. This has only increased resentment and distrust among various language groups because it is perceived that the only way to promote or preserve your culture and language is if your language group is per se "at the top of the totem pole". This only contributes to fear and mistrust amongst different communities furthering ethnic tensions in Kenya. Adopting the point of view that language is part of cultural heritage and that such cultural heritage is valuable to all people and must be protected, would result in actions to safeguard all languages and cultures, irrespective of the 'ruling' community. South Tyrol demonstrates how recognising the value of minority languages can lead to greater cohesion and that there is unity in diversity.

## 7. Safeguarding language as cultural heritage in Kenya

According to Article 2(3) of the 2003 Convention, safeguarding in respect to ICH refers to "*measures aimed at ensuring the viability of intangible cultural heritage, including identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalization of the various aspects of such heritage*". As already elaborated, the Kenyan government should take active steps to safeguard the precious ICH manifested in languages.

Some of the means that the Kenyan government can employ in this respect are:

### i) *Signature and ratification of the Charter for African Renaissance.*

The African Union's Heads of State and Government agreed on the African Renaissance Charter in 2006. Unfortunately, this Charter has not been ratified by a sufficient number of states, including Kenya, and thus is not yet in force. Nonetheless, the Charter requires states to protect cultural heritage, including language. According to Article 18 of this Charter, African States must "recognise the need to develop African languages to ensure cultural advancement and the acceleration of their economic and social development". States should strive to develop and implement appropriate national language policies in this regard" [95]. This provision proposes that language be actively advanced and promoted by the state, rather than simply recognised. This Article implies a stronger and more active state role in ensuring that African languages not only survive but thrive. This term of cultural advancement is likely to have been used since the drafters of this Charter recognised that one of the primary reasons for the loss of African languages is that these languages are seen to lack any economic and social utility, and instead European languages such as English are considered more viable, particularly among younger generations. Furthermore, the Charter requires African states to plan and implement reforms to incorporate African languages into the education curriculum [96], to ensure that new information and communication technologies are used to promote African culture, and to encourage the establishment of publishing and distribution houses for books, textbooks, children's books, and audio-visual works, particularly in African languages [97].

The African Renaissance Charter clearly articulates the very direct role that states can play in ensuring the inherent value of culture and language in society. This document, borne of the African continent's desire to reclaim and advance its culture, would be a powerful impetus for greater recognition and appreciation of the inherent value of cultural heritage, including language.

### ii) *Creation of a robust legal framework for the recognition of indigenous languages and for specific limited use of the same by the government.*

Kenya can and should follow in the footsteps of Italy by enacting national and local legislation that allows government and judicial officers to use local languages in specific circumstances. Any legislation allowing the use of specific local languages in particular municipalities for government services such as courts and education should be territorial and well-defined. This would be similar to the situation in Italy, where minority language protection can only be granted at the local level (a municipality or a fraction thereof) and cannot be extended to the entire territory of a Region. This territoriality principle was confirmed by the Corte Costituzionale when the Italian constitutional court struck down a regional law of Friuli Venezia Giulia because it provided for the possibility of extending the use of Friulian to the entire territory of the Region [98].

Generally, the growth and development of culture and language should occur organically, and law is not always the best tool for ensuring this growth. However, some threatened or critically endangered languages have been successfully revived in recent decades (for example, Hawaiian, Mori, and Welsh, to name a few) as a result of legislation granting legal rights to use those languages and imposing corresponding duties on public authorities to use them [99]. This means that laws encouraging and benefiting people who speak these less popular languages would help to revitalise them.

In Kenya, a limited legal framework may be especially useful in raising the privilege and status of African languages. One of the reasons these languages are no longer spoken is that they are thought to be of little long-term value. These

languages will become more popular if it can be demonstrated that the government actively uses them. As a result, the rule of law can play a key role in the cultural advancement of African languages.

Kenya which practices devolution and has 47 counties, can use these structures to develop language programs that are unique to specific counties. The relevant county governments can therefore issue services in the local languages of the ethnic communities. The county governments can also be responsible to ensure that certain cultural events like plays, dances, performances are organised in the local languages. The official use of these languages by government officials, in the education sector, in workplaces etc, will help change the narrative that African culture including languages have no utility in the modern world.

iii) *Use of local African languages in the education sector.*

It is said that Africa is the only continent where many children begin their education using a foreign language, usually Arabic, English, French, Portuguese or Spanish) [100]. Kenya, is no exception and education in schools is done primarily in English, despite several recommendations to the contrary.

Education, both formal and informal, has been identified as a key tool in the process of safeguarding culture in the definition set out in Article 2(3) of the 2003 Convention. The Kenyan government should therefore ensure that education, particularly education during a child's formative years, is conducted in African languages, specific vernacular languages in local regions that allow for it, and, at the very least, Kiswahili in urban areas [101]. Children can absorb a lot, especially during their formative years. If their education is rooted on an appreciation for the beauty and dignity of the African culture, particularly through indigenous languages, this may begin to change the negative perceptions of African culture as a whole.

iv) *Research and Documentation of local African languages.*

The Kenyan government should encourage more research into Kenya's unique native African languages, as well as more documentation of these languages. This research and scholarship, however, must be adaptable enough to recognise that language, like a living creature, is constantly evolving and changing.

## 8. Conclusion

It appears that native African languages are not valued in many parts of Africa, including Kenya, and are easily abandoned or replaced with other languages that would help them achieve a better socio-economic standing [102]. Perhaps what Kenya needs is an understanding and appreciation for the value of language, particularly local African languages, as a means of communication and, secondly, as a key component of every community's culture, the very identity of such a community. As a result, the advancement of any local language and recognition of its value, would imply a recognition of the value of the speakers' culture and, ultimately, of the speakers of the language.

There needs to be a re-awakening, a sort of renaissance, which emphasises the value of language as cultural heritage and recognises that the loss of language is the loss of the identity of a community. This loss will be felt by the entire world, but especially by Africans who will have lost a link to their past.

Language, as proposed in this paper, is part of the people's cultural heritage. As a result, local Kenyan languages are part of Kenya's cultural heritage, which the state should protect. Due to the number of different language groups in Kenya, any efforts in this regard would be difficult and more complicated than in a country such as Italy. Regardless, this would be a worthwhile endeavour that could eventually lead to greater unity and trust amongst the Kenyan people.

## Note

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[1] Nathan Oyori Ogechi, *On Language Rights in Kenya*, Nordic Journal of African Studies 12(3) (2003), 278.

[2] Kiswahili is the native tongue of the Swahili people who are traditionally found on the East African Coast (in Kenya, Tanzania, Zanzibar, and Mozambique.) Kiswahili however has always been an important language in East Africa and was easily given recognition by the British government and later the independent African governments of Kenya and Tanzania. This may perhaps be related to the fact that Kiswahili was spoken by the people of the Kenyan and Tanzanian coast who were ruled by the Sultan of Zanzibar who was one of the few African leaders recognized by the British. Currently Kiswahili is the only African language recognized as a working language of the African Union. It is also the African language with the most language speakers.

[3] Supra note 1, 278-279.

[4] Wenying Jiang, *The relationship between culture and language*, ELT Journal Volume 54/4, 2000, 328.

[5] Id at 329.

[6] Republic of Kenya, [National Policy on Culture and Heritage](#), Ministry Of Sports, Culture And Heritage.

[7] Kenya was declared part of the British East Africa Protectorate on 1 July 1985. Kenya was thereafter declared to be a British colony on 23 July 1920.

[8] Martin C. Njoroge, Moses Gatambuki Gathigia, *The Treatment of Indigenous Languages in Kenya's Pre- and Post-independent Education Commissions and in the Constitution of 2010*, Advances in Language and Literary Studies, Vol. 8 (6), 2017, 76, See also Wendo Nabea, *Language Policy in Kenya: Negotiation with Hegemony*, The Journal of Pan African Studies, vol. 3, no. 1, September 2009, 123.

[9] Supra note 8 at 77.

[10] Supra note 8 at 78.

[11] This Commission found that most Kenyans wanted a trilingual approach to education where the mother tongue was preferred for verbal communication especially in rural areas, while English and Kiswahili were preferred for education from lower primary to the university. In addition, the commission recommended that schools include a daily period for storytelling in the vernacular up to Grade 3. Unfortunately, despite its noble objectives, the recommendations of the Ominde Commission were not implemented in full.

[12] This report recommended the use of mother tongue, English and Kiswahili in schools. It saw as the ideal language situation where every Kenyan is able to enjoy a good command of his or her mother tongue, competence in Kiswahili and competence in English.

[13] This report recommended that the language of instruction in a school should be the predominant language spoken in the schools' catchment area for the first three years of primary education. This is typically an indigenous language. Second, English was recommended to be taught as a subject from Grade One and then as a language of instruction from Grade Four in primary school to the university.

[14] This Commission maintained the language policy proposed in Gachathi Report of 1976 where local languages should be used in the early formative years and thereafter, English used as a language of instruction. In addition, this Commission recommended that Kiswahili be a compulsory subject in both primary and secondary education.

[15] This report proposed that English to be used as the medium of instruction to improve proficiency in English.

[16] This Commission recommended that the medium of instruction in lower primary be the learner's mother tongue or the dominant language within the schools' catchment area and in urban centers (where population is made up of people from different ethnic groups), Kiswahili be the medium of instruction. This was because the use of the learner's mother tongue enhances concept formation and articulation in linguistic communication. Further, it was recommended that English and Kiswahili be taught vigorously as subjects, but English be used as the medium of instruction throughout the country in upper primary. However, the Ministry of Education argued that the report was not implementable and cited cost, structural, and institutional limitations.

[17] This taskforce recommended that the use of the language of a school's catchment area be used in lower primary and be switched to English from Grade 4 onwards. In addition, the taskforce proposed the introduction of international languages especially Chinese in the curriculum.

[18] Nathan Oyori Ogechi, *On Language Rights in Kenya*, Nordic Journal of African Studies 12(3), 2003, 282-283.

[19] Ibid at 285.

[20] Ibid at 290.

[21] The official use of Kiswahili in the provision of government activities especially parliament has been problematic. In 1975, through the Constitution of Kenya (Amendment) Act, No. 1 of 1975, it was prescribed that the official language for proceedings in parliament be Kiswahili. This was later changed four years later through the Constitution of Kenya (Amendment) Act, 1979 which provided for both English and Kiswahili. This change was because of the difficulty of members of parliament to adequately debate in Kiswahili. Even during these early years of the Republic of Kenya, English was already superior to all other languages in Kenya.

[22] Article 2, CETS Series 199, Council of Europe Framework Convention on the Value of Cultural Heritage for Society. Faro, 27.10.2005.

[23] Doris Fernades del Pozo, [Untangling language, intangible cultural heritage and rights](#).

[24] Marie Cornu, *Defining the perimeter of the intangible cultural heritage: focus on language* in INTANGIBLE CULTURAL HERITAGE UNDER NATIONAL AND INTERNATIONAL LAW GOING BEYOND THE 2003 UNESCO CONVENTION (Marie Cornu et al, Edward Elgar Publishing, 2020), 59.

[25] Ibid at 59.

[26] Lyndel V. Prott & Patrick J. O'Keefe, *Cultural Heritage, or Cultural Property*, 1 IJCP 307 (1992), 311. See also Janet Blake, *On Defining the Cultural Heritage*, International and Comparative Law Quarterly, Vol. 49, January 2000, 24.

[27] Rieks Smeets, *Language as a Vehicle of the Intangible Cultural Heritage*, Museum International, 56:1-2, 2004, 156.

[28] Supra note 24 at 61.

[29] John Henry Merryman, *The Public Interest in Cultural Property*, California Law Review, 77 Vol. 1989, 341.

[30] Supra note 27 at 156.

[31] Gilbert Kituyi Wafula, *Cultural heritage conservation and public benefits: effectiveness of Kenya's legal and administrative framework* in HERITAGE CONSERVATION AND SOCIAL ENGAGEMENT (Renata F. Peters et al, UCL Press, 2020), 129. This author explains how Merryman elucidated that there are two ways in which heritage benefits or values are perceived in society: intrinsic values and instrumental values. Intrinsic benefits of heritage are based on the idea that the heritage has an inherent value in and of itself – not merely as a means of acquiring something else. These kinds of benefits are not directly observable in forms such as pleasure, cognitive growth, or empathy. On the other hand, instrumental benefits provide tangible benefits. They offer the means of achieving broad social and economic goals, such as economic growth, enhanced social capital, improvements in learning skills, health, water, etc.

[32] Article 7(1) of the Constitution of Kenya, 2010.

[33] Article 7(2) of the Constitution of Kenya, 2010.

[34] Article 7(3) of the Constitution of Kenya, 2010.

[35] Article 11 of the Constitution of Kenya, 2010.

- [36] Article 2 of the UDHR provides that there should be no discrimination based on several protected grounds including language as a form of distinction.
- [37] Janet Blake, *Introduction: The Convention, from Inception to Young Adulthood* in THE 2003 UNESCO INTANGIBLE HERITAGE CONVENTION: A COMMENTARY (Janet Blake, Lucas Lixinski, Oxford University Press, 2020), 3.
- [38] Article 2(1), the 2003 Convention.
- [39] Supra note 24 at 63.
- [40] Supra note 27 at 159.
- [41] Supra note 27 at 159.
- [42] According to Bruno De Witte, it can be posited that this was accepted for inscription since it is unique way of communicating Spanish and is one of the few fully developed whistled language in the world. See Bruno De Witte, *Language as Cultural Heritage* in THE OXFORD HANDBOOK OF INTERNATIONAL CULTURAL HERITAGE LAW, (Francesco Francioni, Ana Filipa Vrdoljak, Oxford University Press, 2020) 372.
- [43] According to Benedetta Ubertazzi, this language is 'rich in tales (*úruga*) originally recited during wakes or large gatherings', and whose 'melodies bring together African and Amerindian elements, and [whose] texts are a veritable repository of the history and traditional knowledge of the Garifuna'. Further since the language was listed together with the music and dance, it was accepted by the jury.
- [44] Supra note 24 at 61.
- [45] Directive 107, Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage.
- [46] Directive 109, Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage.
- [47] See generally Bruno De Witte, *Language as Cultural Heritage* in THE OXFORD HANDBOOK OF INTERNATIONAL CULTURAL HERITAGE LAW, (Francesco Francioni, Ana Filipa Vrdoljak, Oxford University Press, 2020) 372.
- [48] James A.R Nafziger, *Purposes of the Convention* in THE 2003 UNESCO INTANGIBLE HERITAGE CONVENTION: A COMMENTARY, (Janet Blake and Lucas Lixinski, Oxford University Press, 2020), 9.
- [49] Supra note 24 at 60.
- [50] Benedetta Ubertazzi, *Art. 2(2) Manifesting Intangible Cultural Heritage* in THE 2003 UNESCO INTANGIBLE HERITAGE CONVENTION: A COMMENTARY, (Janet Blake, Lucas Lixinski, Oxford University Press, 2020) 63.
- [51] UNESCO Institute for Lifelong learning, *Why and how Africa should invest in African languages and multilingual education, An evidence and practice-based policy advocacy brief*, 2010, 9.
- [52] George Abungu, *Africa's Rich Intangible Heritage: Managing a Continent's Diverse Resources* in SAFEGUARDING INTANGIBLE CULTURAL HERITAGE (Michelle L. Stefano, Peter Davis and Gerard Corsane, Boydell & Brewer Press, 2012) at 57.
- [53] Id 58. See also Folarin Shyllin, *Africa*, in THE OXFORD HANBOOK OF INTERNATIONAL CULTURAL HERITAGE LAW (Francesco Francioni and Ana Filipa Vrdoljak, Oxford University Press, 2020), 812. See also Mathias Brenzinger and Herman Batibo, *Sub Saharan Africa* in ATLAS OF THE WORLD'S LANGUAGES IN DANGER (UNESCO Publishing, 2010), 22.
- [54] Janet Blake, *On Defining the Cultural Heritage*, International and Comparative Law Quarterly, Vol 49, January 2000, 24.
- [55] Teodoro A. Llamzon, *The Integrative Function of Language: Do We Need a National Language to Unite Us? Philippine Studies*, Vol. 21, No. 3, 1973, 259.
- [56] Ibid at 265.
- [57] Ibid at 265.
- [58] Ibid at 265.
- [59] [UN HUMAN RIGHTS TEAM ISSUES REPORT ON POST-ELECTION VIOLENCE IN KENYA](#) dated 18 March 2008.
- [60] Stephen Omondi Owino, *The language factor in the search for national cohesion and integration in Kenya*, The East African Review, 47, 2013, 63.
- [61] Bruno De Witte, *Language as Cultural Heritage* in THE OXFORD HANDBOOK OF INTERNATIONAL CULTURAL HERITAGE LAW, (Francesco Francioni, Ana Filipa Vrdoljak, 2020) 371.
- [62] John Merryman, *Two Ways of Thinking About Cultural Property*, 80 Am. J. Int'l L. 831.
- [63] The Preamble, 2003 Convention.
- [64] The Preamble, 2003 Convention.
- [65] Janet Blake, *The Preamble*, in THE 2003 UNESCO INTANGIBLE HERITAGE CONVENTION: A COMMENTARY, (Janet Blake, Lucas Lixinski, Oxford University Press, 2020).
- [66] Article 27, International Covenant on Civil and Political Rights, 999 U.N.T.S. 171.
- [67] Article 19, International Covenant on Civil and Political Rights, 999 U.N.T.S. 171.
- [68] Article 26, International Covenant on Civil and Political Rights, 999 U.N.T.S. 171.
- [69] Article 14, International Covenant on Civil and Political Rights, 999 U.N.T.S. 171.

- [70] These are comments referring to efforts by the UNESCO to safeguard African languages during a presentation by Mr. Mounir Bouchenaki Assistant Director-General for Culture of the United Nations Educational, Scientific and Cultural Organization (UNESCO) on the International Expert Meeting on UNESCO Programme *Safeguarding of Endangered Languages* Paris, 10 March 2003.
- [71] Supra note 27 at 156-165.
- [72] Janet Blake, *The Preamble*, in THE 2003 UNESCO INTANGIBLE HERITAGE CONVENTION: A COMMENTARY, (Janet Blake, Lucas Lixinski, Oxford University Press, 2020).
- [73] The Preamble, the 2003 Convention.
- [74] Tsedal Neeley, *Global Business Speaks English*, Harvard Business Review, May 2012.
- [75] Italian Constitutional Court, [Judgement No. 42 of 2017](#).
- [76] Italian Constitutional Court, [Judgement No. 42 of 2017](#).
- [77] Dragonetti, Massimiliano. *The protection approach towards linguistic minorities: the Italian case*. ALPPI Annual of Language & Politics and Politics of Identity (2007), 43.
- [78] Van der Jeught, *The Protection of Linguistic Minorities in Italy: A Clean Break with the Past*, Journal on Ethnopolitics and Minority Issues in Europe, Vol 15 No 3, 2016, 75.
- [79] Nives Mazur-Kumric, *Legal Status of the German Language Group in the Italian Province of South Tyrol*, 25 PRAVNI Vjesnik 25 (2009), 26.
- [80] Supra note 78 at 62.
- [81] Id 62.
- [82] Id 75.
- [83] Id 62.
- [84] Id 63. See also Dragonetti, Massimiliano, *The protection approach towards linguistic minorities: the Italian case*, ALPPI Annual of Language & Politics and Politics of Identity, 2007, 45.
- [85] Id.
- [86] S. Van der Jeught, *The Protection of Linguistic Minorities in Italy: A Clean Break with the Past*, Journal on Ethnopolitics and Minority Issues in Europe, Vol 15, No 3, 2016, 57-81.
- [87] Nives Mazur-Kumric, *Legal Status of the German Language Group in the Italian Province of South Tyrol*, 25 PRAVNI Vjesnik 25 (2009), 26.
- [88] S.J. Larin and M. Röggl, [South Tyrol's Autonomy Convention is not a breakthrough for participatory democracy – but it shows how power-sharing can transform conflicts](#), October 20th, 2016.
- [89] S. Van der Jeught, *The Protection of Linguistic Minorities in Italy: A Clean Break with the Past*, Journal on Ethnopolitics and Minority Issues in Europe, Vol 15, No 3, 2016.
- [90] Nives Mazur-Kumric, *Legal Status of the German Language Group in the Italian Province of South Tyrol*, 25 PRAVNI Vjesnik 25 (2009), 31.
- [91] Id 31.
- [92] S.J. Larin and M. Röggl, [South Tyrol's Autonomy Convention is not a breakthrough for participatory democracy – but it shows how power-sharing can transform conflicts](#), October 20th, 2016.
- [93] Nives Mazur-Kumric, *Legal Status of the German Language Group in the Italian Province of South Tyrol*, 25 PRAVNI Vjesnik 25 (2009), 34
- [94] Id 41-42.
- [95] Article 18, Charter for African Cultural Renaissance, 2006.
- [96] Article 19, Charter for African Cultural Renaissance, 2006.
- [97] Article 21, Charter for African Cultural Renaissance, 2006.
- [98] Van der Jeught, *The Protection of Linguistic Minorities in Italy: A Clean Break with the Past*, Journal on Ethnopolitics and Minority Issues in Europe, Vol 15, No 3, 2016, 63.
- [99] Bruno De Witte, Part II Substantive Aspects, *Language as Cultural Heritage* in THE OXFORD HANDBOOK OF INTERNATIONAL CULTURAL HERITAGE LAW, (Francesco Francioni, Ana Filipa Vrdoljak, 2020) 373.
- [100] UNESCO Institute for Lifelong learning, *Why and how Africa should invest in African languages and multilingual education, An evidence and practice-based policy advocacy brief*, 2010, 5.
- [101] Martin C. Njoroge, Moses Gatambuki Gathigia, *The Treatment of Indigenous Languages in Kenya's Pre- and Post-independent Education Commissions and in the Constitution of 2010*, Advances in Language and Literary Studies, Vol. 8 (6), 2017, 80.
- [102] George Abungu, *Africa's Rich Intangible Heritage: Managing a Continent's Diverse Resources* in SAFEGUARDING INTANGIBLE CULTURAL HERITAGE (Michelle L. Stefano, Peter Davis and Gerard Corsane, Boydell & Brewer Press, 2012), 57. See also Matthias Brenzinger and Herman Batibo, *Sub Saharan Africa* in ATLAS OF THE WORLD'S LANGUAGES IN DANGER, (UNESCO Publishing, 2010), 22.