

# briefing

minority  
rights  
group  
international

## A rights-based framework for minority and indigenous languages in Africa: From endangerment to revitalization

Silvia Quattrini



### **About the author**

Silvia Quattrini is the Middle East and North Africa Programmes Coordinator at Minority Rights Group International (MRG). She joined MRG in 2014, working from Tunisia until 2017. Her areas of interest include minority rights, women's rights, gender issues and cultural activism in the MENA region. She holds a Masters in Translation Studies (Arabic – English) from the School of Oriental and African Studies, University of London, and recently completed an LLM in International Human Rights Law at the University of Essex. She would like to thank her supervisor at the University of Essex and the reviewers of the briefing for their helpful comments.

### **Minority Rights Group International**

Minority Rights Group International (MRG) is a non-governmental organization (NGO) working to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples worldwide, and to promote cooperation and understanding between communities. Our activities are focused on international advocacy, training, publishing and outreach. We are guided by the needs expressed by our worldwide partner network of organizations, which represent minority and indigenous peoples.

MRG works with over 150 organizations in nearly 50 countries. Our governing Council, which meets twice a year, has members from 10 different countries. MRG has consultative status with the United Nations Economic and Social Council (ECOSOC), and observer status with the African Commission on Human and Peoples' Rights (ACHPR). MRG is registered as a charity and a company limited by guarantee under English law: registered charity no. 282305, limited company no. 1544957.

© Minority Rights Group International 2019

All rights reserved

Material from this publication may be reproduced for teaching or for other non-commercial purposes. No part of it may be reproduced in any form for commercial purposes without the prior express permission of the copyright holders. For further information please contact MRG. A CIP catalogue record of this publication is available from the British Library.

**ISBN 978-1-912938-21-6. Published November 2019.**

**A rights-based framework for minority and indigenous languages in Africa: From endangerment to revitalization** is published by MRG as a contribution to public understanding of the issue which forms its subject. The text and views of the author do not necessarily represent in every detail and all its aspects, the collective view of MRG.

# A rights-based framework for minority and indigenous languages in Africa: From endangerment to revitalization

## Contents

Key findings	4
Introduction	5
Legal framework	7
Causes of language endangerment and impacts on human rights	15
Conclusions	18
Recommendations	19
Notes	20

# Key findings

## Key findings

- **It is estimated that between 6,000 and 7,000 languages are currently spoken worldwide, of which approximately half, if not more, will disappear by the end of this century:** A large proportion of these endangered languages are spoken by minorities and indigenous peoples, and are often inseparable from their particular traditions, cultural practices and beliefs. This is especially relevant in the context of Africa, where around a third of the world's languages are based.
- **As a small number of dominant languages gain an increasing hold, the pressure on communities speaking minority and indigenous languages will grow:** this situation is especially acute when their speakers are among the most marginalized groups in society, as language endangerment is frequently driven by exclusion in other areas. African states therefore need to support language revitalization efforts not only through education, but also through measures to address issues such as land evictions, discrimination and lack of access to development.
- **Language plays a central role not only for the preservation of identity and culture, but also in matters of non-discrimination and access to a variety of rights:** these include the rights to development, education, a fair trial, health and political participation. In addition to being a potential cause of discrimination, language policies have also contributed to the outbreak of conflict. Promoting language rights is therefore an important element in ensuring a safe and equitable future for all communities in Africa and elsewhere.
- **African states should revise their laws and policies, in line with current understanding of language rights, to ensure minority and indigenous language rights are respected:** this should include specifically referencing language as a ground for discrimination in national legislation, the active promotion of the mother tongues as a medium of instruction as well as access to health care, justice and other services in languages that are understood by the population, particularly minorities and indigenous peoples.

# Introduction

Following the passage of United Nations (UN) General Assembly resolution 71/178 in 2016, the UN proclaimed 2019 as the International Year of Indigenous Languages. The initiative, led by UNESCO with the involvement of other UN actors, such as the Permanent Forum on Indigenous Issues, the Special Rapporteur on the rights of indigenous peoples and the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), has been celebrated throughout the year. On 9 August, commemorated every year as the International Day of the World's Indigenous Peoples,<sup>1</sup> the thematic focus of the event was 'Indigenous languages'.

At the same time, the UN Special Rapporteur on minority issues selected the theme 'Education, language and the human rights of minorities' for the 2019 UN Forum on Minority Issues, with three regional fora (in Brussels, Bangkok and Tunis) convened to discuss this topic. This will be followed by the publication of the annual report to the Human Rights Council in 2020 on this theme. This clearly points to the increasing interest among UN agencies in the languages and language rights of indigenous peoples and minorities.

It is estimated that between 6,000 and 7,000 languages are currently spoken worldwide, of which approximately half, if not more, will disappear by the end of this century.<sup>2</sup> A large proportion of these endangered languages are spoken by indigenous peoples and minorities, and are often inseparable from their particular traditions, cultural practices and beliefs.<sup>3</sup> The extent of the risk each faces and the pace of this process of language endangerment (or even extinction) may vary according to several factors, such as number of speakers, community fragmentation and wider forces such as social discrimination, economic marginalization and political exclusion.

Already in 2008, the International Year of Languages, the UN Educational, Scientific and Cultural Organization (UNESCO) emphasized that 'cultural diversity and intercultural dialogue, the promotion of education for all and the development of knowledge societies... are not possible without broad and international commitment to promoting multilingualism and linguistic diversity, including the preservation of endangered languages.'<sup>4</sup> The reality is that monolingual countries are an exception rather than the norm. Although language is often treated as an isolated phenomenon, the causes of language endangerment are largely political, social or economic, and interlinked with broader inequalities. In most cases, the forces that give rise to social marginalization are the same ones driving language shift.<sup>5</sup> Colonialist legacies and policies of forced cultural assimilation, justified by claims

of national unity and literacy development, alongside the framing of minority and indigenous languages as mere dialects or as inappropriate for modern education, all demonstrate that state policies are frequently a major driver of language endangerment.<sup>6</sup>

While states have no choice but to select at least one language for the conduct of their affairs, the dominance of one language in a country – for instance, through official communication and provision of services in that language – necessarily benefits individuals who are proficient in that language while disadvantaging those who are not.<sup>7</sup> Language therefore plays a central role not only for the preservation of identity and culture, but also in matters of non-discrimination and access to a variety of rights, such as the right to education, health, political participation, development and many others. Moreover, in addition to being a potential cause of discrimination, language policies have also contributed to the outbreak of conflicts across the world.

This briefing will focus on minority and indigenous languages, many of which are endangered, in the African context.<sup>8</sup> Because language endangerment is the result of protracted language rights violations, it requires going beyond general language rights protection to rectify historical, long-term injustice. Given that language is instrumental not only to the preservation of culture and identity, but also to access a variety of substantive rights, the briefing provides a regional and international perspective on language rights and its connection with language endangerment. It argues that language maintenance is a linguistic right of minorities and indigenous peoples, and that states have an obligation to support these efforts.

Looking into the African linguistic situation and its correlation with the human rights of minorities and indigenous peoples is particularly important because the maintenance of minority and indigenous languages has not historically been framed in the African context: while the first has developed around the specific situation of Europe, the latter has been primarily developed in English-speaking countries previously part of the British Empire, such as Australia, Canada and New Zealand. The African continent is characterized by several distinctive features including, but not limited to, the imposition of external colonial languages and a strong multilingualism: North African countries, the least diverse of the continent, have at least three languages, while others like Ethiopia have over 80. For these reasons, legal frameworks, language policies and models for language maintenance cannot and should not simply be imported from other contexts. .

## Structure of the briefing

The first section is dedicated to existing international and African regional human rights standards relating to linguistic human rights. While discussing the legal framework, it will explore how language is key to accessing several substantive rights and examine those concepts that have been historically relevant for minorities and indigenous peoples, with a focus on how these developed in international and regional mechanisms and case law.

The second section will look at the causes of language endangerment, as well as provide a short overview of the specific circumstances of language rights and policies in the African context. The focus here is on language endangerment because, although there is a growing international interest on this issue, the connection between

this phenomenon and recognition of broader human rights of minorities and indigenous peoples is still lacking.

## Methodology

This briefing is based on desk-based research through an inter-disciplinary approach. Besides analysing international and African regional standards concerning language rights, it also looks into sociolinguistic studies on language endangerment. The aim is to present a human rights-based understanding of language preservation and revitalization, as a contribution to the ongoing discussion between human rights lawyers, sociolinguists, academics and practitioners on this issue.

# Legal framework

## Definitions

As no official definition of minority has been adopted by the UN, a few common elements are now generally agreed on – such as the presence of a shared religion, ethnicity or language – whereas others, such as the numerical dimension, are still disputed. One widely accepted working definition is that a minority is ‘a group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.’<sup>9</sup> This definition leaves room for the possibility that non-numerically inferior groups in a non-dominant position could still be considered minorities because they are faced with situations of socio-economic and political oppression.<sup>10</sup>

As for indigenous peoples, there is also no official definition adopted by the UN. However, the principles first propounded by Martínez Cobo as Special Rapporteur to the Sub-Commission<sup>11</sup> are still used today: ‘Self-identification as indigenous peoples at the individual level and accepted by the community as their member; historical continuity with pre-colonial and/or pre-settler societies; strong link to territories and surrounding natural resources; distinct social, economic or political systems; distinct language, culture and beliefs; form non-dominant groups of society; resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.’<sup>12</sup>

However, when it comes to the African context, the distinction between minorities and indigenous peoples is often less clear-cut. For instance, some communities self-identify as ‘indigenous minorities’, in order to reflect both their indigeneity and their excluded minority status. In an advisory opinion, the African Commission on Human and Peoples’ Rights (ACHPR) stressed the specificity of the African context with regard to indigenous peoples, where ‘the term indigenous populations does not mean “first inhabitants”’.<sup>13</sup> While keeping in mind this consideration, the Commission also stressed the findings of the Working Group on Indigenous Populations, which identified the three main identifying characteristics:

- ‘Self-identification;
- A special attachment to and use of their traditional land, whereby their ancestral land and territory have a fundamental importance for their collective physical and cultural survival as peoples;

- A state of subjugation, marginalization, dispossession, exclusion or discrimination because these peoples have different cultures, ways of life or mode of production than the national hegemonic and dominant model.<sup>14</sup>

With this in mind, the briefing focuses on linguistic rights concerning both minority communities and indigenous peoples, analysing concepts that are applicable to both groups, such as non-discrimination, while drawing a distinction between the two when relevant.

Scholars developed different terminologies when addressing language issues and human rights involving language. Language rights were described as ‘fundamental rights protecting language-related acts and values’.<sup>15</sup> Others attempted to make a distinction between language rights and linguistic human rights, where the latter are language-related fundamental human rights which should not be violated.<sup>16</sup>

Some make a distinction between ‘core linguistic rights’, basically the right to speak one’s language, and ‘ancillary rights’, without which the right to speak a language becomes less valuable for the right-holders.<sup>17</sup> Others distinguish between ‘tolerance-oriented’ and ‘promotion-oriented’ rights, where the former involves non-interference from the state (what is usually referred to in international human rights law as negative obligations) and the latter positive measures (positive obligations).<sup>18</sup>

Language endangerment refers to the phenomenon leading towards the extinction or death of a language. There are different levels of endangerment and several criteria that are used to assess the level of threat of extinction faced by a language. Language endangerment ‘may be the result of *external* forces such as military, economic, religious, cultural or educational subjugation, or it may be caused by *internal* forces, such as a community’s negative attitude towards its own language.’<sup>19</sup> Language endangerment is an issue faced particularly by minorities and indigenous peoples.

Although minority and indigenous languages frequently refer to those spoken respectively by minorities and indigenous peoples, it is important to stress that minority languages can actually be spoken by non-numerical minorities. This might be the case when the language of a majority in a state has no recognition or is relegated to private use, or when there is no numerical majority in a state, which is therefore composed of several minorities. This is particularly relevant in the African context, where a great diversity of ethnolinguistic groups is present. For instance, in Nigeria most of the more than 400 languages spoken could be considered minority languages: however, a number of these have more than 1 million speakers.<sup>20</sup>

Language preservation and language maintenance usually describe how the use of a language is maintained by a community (its survival), and thus may entail a variety of activities that are implemented to prevent language endangerment. Activities implemented to revert the decline of a language are usually described as language revitalization. Language revitalization is the attempt to halt or reverse the decline of a language or to revive an extinct one. Language documentation, which consists in the documentation of unrecorded or partially recorded languages, may be a step towards language revitalization. Some of those issues will be touched upon later in this briefing.

## Language in international human rights law

While existing human rights standards address language rights, they are often overlooked. Initially conscribed to ‘tolerance rights’, requiring the state not to actively obstruct individual rights, the international understanding of ‘promotion rights’ – a more active approach that sees states take positive steps to promote minority and indigenous language use – has much developed in the last decades.<sup>21</sup> They are in fact explicitly or implicitly addressed in several treaties, declarations and commentaries.

The next section will first look at language rights within an individualist human rights framework and then move to the collective dimension, mostly applicable to indigenous peoples. Because of the scope of this work, it will focus on international and African regional standards relating to language rights for minorities and indigenous peoples. However, it should be mentioned that a series of relevant texts have also emerged over the last few decades in other regional systems, particularly the European context, such as the European Charter for Regional or Minority Languages (Council of Europe, 1992) and the Oslo Recommendations regarding the Linguistic Rights of National Minorities (Organization for Security and Cooperation in Europe, 1998).

## Relevant substantive individual rights

Several Articles in the International Covenant on Civil and Political Rights (ICCPR), ratified by every African country with the exception of South Sudan, imply language rights if they are to be properly implemented. Provisions in a number of different Articles in the ICCPR provide a clear framework for language rights, even if these are not referenced directly.

For instance, laws prohibiting the private use of certain languages are a clear example of violation of the right to private and family life (Article 17).<sup>22</sup> For instance, the still existing Tunisian Decree Law no. 59-53 of 1959, which

prohibits the use of ‘names that do not have an Arabic root, unless they have a long-established usage in the Arab Maghreb’, has been used to prevent the registration of Amazigh names.<sup>23</sup> Although it is technically still in effect, the 2018 Law No. 50 against racial discrimination should abolish all previous discriminatory policies.

Another straightforward application of language rights concerns the right to political participation: according to Article 25 of the ICCPR, all citizens have the right to vote and to stand for elections ‘without any of the distinctions mentioned in Article 2’, including on the basis of language. However, several countries require individuals to demonstrate proficiency in the official or dominant language to hold political office, which may amount to a violation of this right. For instance, the Constitution of Malawi, a state where more than 50 per cent of the population speaks Chichewa, requires proficiency in English to be eligible for the Parliament (Article 51) and as a Minister (Article 94).<sup>24</sup>

The typical scenario in most African countries is that a former colonial European language (usually English, French or Portuguese) is still the official language of the country, with local languages having different levels of recognition: they might also be official languages, have some limited recognition at the national or local level, or lack any recognition at all. This means that the affairs of a typical African country, such as its government, law and administration, are usually conducted in a language that is not anyone’s mother tongue or is at best the mother tongue of a small privileged section of the population.<sup>25</sup>

As for Article 19 of the ICCPR on freedom of expression, it seems to be generally accepted that language is a constituent of it in so far as it is a necessary component of the expression of opinions.<sup>26</sup> Several cases have been brought before the UN Human Rights Committee concerning the relation between Article 19 and language. For instance, in *Ballantyne v Canada* (1993), the claimants were prohibited from displaying outdoor commercial signs in English in Quebec because the law provided for signs only in French. While the state argued that freedom of expression applies only to personal ideas and political, cultural or artistic expression, the committee found that it also applies to other matters, such as news, commercial publicity and signs. It therefore ruled that this was in violation of Article 19(2) because the restrictions applied by law were not necessary: Quebec amended the law following this case.

It is also usually accepted that the state should refrain from prohibiting the use of language not only for private purposes, but also in public settings: for example, the use of non-official languages in media or to address conferences. For instance, in Algeria, the 1991 decree on the generalized use of the Arabic language<sup>27</sup> prohibited the use of any language other than Arabic in various circumstances, and was used to prevent gatherings and conferences in Tamazight. That is no longer the case as

Tamazight was granted official status in the 2016 Constitution.

Although the state has the right to choose at least one language to conduct its affairs, this does not mean that its choice cannot be challenged. Certain language policies might indeed be considered unreasonable or unjustified because of the right to equality and non-discrimination on the ground of language.<sup>28</sup> Indeed, every major international human rights instrument includes language (alongside other factors such as sex, ethnicity and religion) as a ground on which there should not be any discrimination: the Universal Declaration of Human Rights (UDHR) (Article 2), the ICCPR (Article 2(1)), the International Covenant on Economic, Social and Cultural Rights (ICESCR) (Article 2(2)) and the Convention on the Rights of the Child (CRC) (Article 2(1)), with Article 26 of the ICCPR also specifically prohibiting discrimination (including on the basis of language) in the law.

The Human Rights Committee in its General Comment 18 on Non-Discrimination (1989) stated that ‘the term “discrimination” as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as... *language...* and which has the purpose or *effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms*’ [paragraph 7, emphasis added]. The effect of nullifying or impairing the recognition of all the rights set forth in the ICCPR, but also in other treaties, because of discrimination based on language, is rarely understood and hardly reflected in most national legislations. Language is in fact often dealt with as a marker of ethnicity/national origin and addressed as a consequence of racial discrimination, but the two are not always the same.

One justification frequently employed for the imposition of a single language for all is that everyone is treated the same. However:

*‘By adopting a one-language-for-all policy, a state is using a linguistic criteria in determining who will have access to public schooling or public employment opportunities. Even more importantly, it is also creating a distinction, based upon language, on the degree to which individuals will be able to enjoy and benefit from these activities or services: anyone who is not a native speaker of the state favoured language will be more or less seriously disadvantaged, depending upon the type of service or activity involved, his level of fluency, and the language proficiency required by the state.’*<sup>29</sup>

The right to non-discrimination is not an absolute right; it does not entail that a state has an obligation to provide services in all languages spoken in its territory, as this would most likely be unfeasible. Therefore, in order to assess whether a language policy is unreasonable, the

interest of individuals must be balanced with those of the state. However, what is considered reasonable is not clearly defined in international law and governments have some discretion in applying different interpretations based on what is referred to in the European context as margin of appreciation. A starting point in assessing reasonableness is the principle of proportionality which is based on a number of practical factors, such as number and concentration of speakers of the language, the level of demand and availability of resources.<sup>30</sup> For instance, if there is a large number of people concentrated in the same region sharing the same language, it would most likely be discriminatory not to provide services in the people’s language. Beyond demographics, historical and cultural contexts should also be taken into consideration, as well as other factors, such as the degree of disadvantage that the official language places on non-native speakers and the need to correct past oppressive state practices.

The Human Rights Committee recognized indirect discrimination on the basis of language (Article 26 of the ICCPR) in *J.G.A. Diergaardt et al. v. Namibia*. In this case, the authors were representatives of the Rehoboth Baster Community (descendants of indigenous Khoi and Afrikaans settlers who originally lived in the Cape) and they submitted the claim on their own behalf and on behalf of the community. They claimed that they were denied the use of their mother tongue in administration, justice, education and public life. Article 3 of the Namibian constitution makes English the official language, but it also grants that other languages can be used for legislative, administrative and judicial purposes where such languages are spoken by a considerable amount of population. However, a circular issued by a regional administrator instructed civil servants not to use Afrikaans in phone conversations and correspondence, even if they were capable of doing so, and to only use English – an action that the Committee found disproportionately affected Afrikaans speakers.<sup>31</sup>

Various provisions in the ICESCR – ratified by all African countries with the exception of Botswana, Mozambique, South Sudan and Comoros, though the latter has signed it – also imply linguistic human rights if they are to be properly implemented. Article 13 recognizes the right of everyone to education for their ‘full development’. If the child does not understand the language of education or barely understands it, it is obvious that his/her right to education is nullified.<sup>32</sup> What seems less clear to some commentators is that, even when a child can understand the language of education, but it is not his/her first language, the chances of success will dramatically decrease. While some consider the right to learn their language as an ancillary right,<sup>33</sup> others argue that receiving at least elementary education through the medium of one’s mother tongue should be a fundamental right: this is due to several reasons, one of which being that without this foundation, the language would likely die out

after a few generations.<sup>34</sup> Unfortunately this right is often constrained by issues justifying progressive realization, such as lack of funding, despite evidence suggesting that minority schools can ultimately deliver better value due to the higher success rates of enrolled students.<sup>35</sup>

Article 12 of the ICESCR, meanwhile, recognizes ‘the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.’ If health services are not delivered in languages understood by the local population in general, and by minorities and indigenous peoples in particular, their access to those services will dramatically decrease. Women belonging to minorities and indigenous peoples are particularly affected by this phenomenon. For instance, UNESCO recognized the importance of language rights in responding to HIV/AIDS, malaria and other diseases because to be effective, health education needed to be delivered in languages understood by the population.<sup>36</sup> Moreover, forced assimilation through education can have an impact on mental health: for instance, when children receive punishments for speaking their mother tongue at school.

The same reasoning would apply to access to justice. Article 10 of the UDHR and Article 9 of the ICCPR provide for the right to a fair trial. If the person does not understand the charges against him/her, or does not have the ability to defend him/herself properly in a certain language, this right is severely impaired. Several Constitutions in fact provide for the right to an interpreter, such as Kenya,<sup>37</sup> while others even provide for the accused to be tried in a language they understand, such as South Africa.<sup>38</sup>

Even the right to development can be linked to language rights. In addition to the common anti-discrimination clause (Article 6), the UN Declaration on the Right to Development (1986) recognizes that ‘all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development’ (Article 1.1), which implies a right to self-determination (Article 2.1). Noting the fundamental connection between the right to education and the right to development,<sup>39</sup> how can someone fully participate and contribute to the latter if they do not master the language in which the economic, social, cultural and political affairs of their country are conducted?

## Minority rights, right to culture and preservation of identity

The pillars of minority rights include the right to existence and protection of identity. These include: protection from genocide; protection from displacement, forced expulsion and ethnic cleansing; and protection from forced assimilation into the dominant community.<sup>40</sup> If a minority language disappears, the minority will most likely disappear with it, since language is one of the most important expressions of identity: this is why some have

termed it ‘cultural genocide’.<sup>41</sup> Promotion of identity includes the right to enjoy and develop minorities’ language and positive actions are required to ensure diversity.

The right to preserve minority identities is recognized by Article 27 of the ICCPR, which grants that ‘persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.’ The negative wording of this Article has produced dozens if not hundreds of commentaries, divided between those who regard it as purely a non-interference clause, others who believe it implies that states must take positive measures in order to protect this right,<sup>42</sup> and those who argue that it requires states to take positive measures to support its promotion.<sup>43</sup>

Another matter of discussion around this Article is the lack of clarity on whether it is an individual or collective right, since it is granted to ‘persons’ but shall not be denied ‘in community with other members of their group’: ‘the rights in Article 27 are a hybrid between individual rights and collective rights because of the “community” requirement: the right of a member of a minority is not exercised alone; enjoyment of culture, practice of religion, and use of language presupposes a community of individuals endowed with similar rights. Minority rights have therefore been described as benefiting individuals but requiring collective exercise.’<sup>44</sup> Moreover, this right must be guaranteed in agreement with Article 2(1) of the same Covenant (non-discrimination). The same right applies to minority children based on Articles 2(1) and 30 of the Convention on the Rights of the Child.

Article 15 of the ICESCR grants everyone the right to take part in cultural life. The Committee on Economic, Social and Cultural Rights specified in its General Comment No. 21 that there are three aspects of this right: the ability to participate in, access and contribute to cultural life. This comment is particularly relevant for indigenous peoples and minorities as it stresses that ‘states parties should adopt measures and spare no effort to ensure that educational programmes for minorities and indigenous groups are conducted on or in their own language’<sup>45</sup> and that financial constraints cannot always be a justification, since measures are not necessarily economically burdensome.<sup>46</sup>

The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992), as the main normative text related to minority rights, also provides for the right of persons belonging to minorities to learn their mother tongue or to be instructed in it ‘wherever possible’ (Article 4.3). Expressions such as ‘wherever possible’ or ‘dans la mesure du possible’ can prove quite problematic, however, since states may offer a variety of pretexts not to fulfil those rights and to justify the non-implementation of appropriate language policies.

## Indigenous peoples' rights

It should be stressed that all of the above applies to members of indigenous peoples as they enjoy individual human rights, as well as minority rights, when they constitute a minority. In addition to that, indigenous peoples may have a stronger basis for asserting their rights and not need to prove that they met a sufficient threshold of individuals to receive state services such as education in their primary language, due to the specific evolution of international law applying to indigenous peoples.<sup>47</sup>

Generally speaking, indigenous peoples are entitled to a series of collective rights that are derived from their right to self-determination. This is not only due to the fact that self-determination may encompass a right to their own institutions (including schools), but also because cultural rights are inherently linked to the right to self-determination.<sup>48</sup>

Specifically related to matters of indigenous languages, Article 13(1) of the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP) states: 'Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.' Meanwhile Article 14 focuses on the right to access education in their own languages, through effective measures of the state in conjunction with indigenous peoples, though again, 'when possible'.

As we will see in the next section, the endangerment of minority and indigenous languages is often the result of assimilationist practices and policies. Article 8 is therefore of particular relevance for revitalization, as it provides for correction of past injustices through redress for cultural assimilation.

CERD General Recommendation No. 23 on Indigenous Peoples (1997) calls upon states to recognize and respect indigenous languages and to 'ensure that indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs and to preserve and to practise their languages'.<sup>49</sup> The CERD Committee has increasingly drawn attention to language-related issues of minorities and indigenous peoples in their Concluding Observations on state Parties' reviews. For instance, in 2017 they acknowledged Algeria's efforts in granting official status to the Tamazight language, but they recommended that its actual use in government offices, courts, social services and other state services was accelerated.<sup>50</sup>

The Committee on the Rights of the Child General Comment 11 on Indigenous Children (2009) stressed that special measures should be put in place to allow indigenous children to access education, information and healthcare services in their languages.<sup>51</sup> Research shows that not only does it take much longer for non-native children to truly understand what they are being taught, but that is also

creates a sense of cultural alienation. The effects of the barriers faced by indigenous children become more pronounced as their education progresses.<sup>52</sup>

The Expert Mechanism on the Rights of Indigenous Peoples emphasized that 'educational programmes and services for indigenous peoples must be developed and implemented in consultation and cooperation with the indigenous peoples concerned in order to address and incorporate their... beliefs, cultures, languages and knowledge'.<sup>53</sup> Implementing programmes in consultation and cooperation with indigenous peoples means that the services are relevant and that there is a sense of ownership, and also avoids wasting resources in services that do not respond to the community's needs. The Expert Mechanism has also subsequently stressed that, in light of all the aforementioned Articles and commentaries, states should adopt measures to support the revival of indigenous cultures and languages.<sup>54</sup> The issue of revitalization and education in indigenous languages has received increasing attention in events such as the Permanent Forum on Indigenous Issues, which recommended in 2003 that governments introduce indigenous languages in public administration in indigenous territories, and later convened an expert meeting on the topic in 2016.

Although the UNDRIP goes further in many respects, the ILO Indigenous and Tribal Peoples Convention of 1989 (No. 169) is the only binding convention concerning indigenous peoples. Article 2 gives states the responsibility for 'promoting the full realization of the[ir] social, economic and cultural rights'. Article 27(3) specifically grants indigenous peoples the right 'to establish their own educational institutions and facilities... Appropriate resources shall be provided for this purpose'. Article 28 specifically focuses on language, whereby:

*'(1) Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language [...]. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective.'*

[emphasis added]

*'(2) Adequate measures shall be taken to ensure that these peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country.'*

*'(3) Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned.'*

Although revitalization of languages is not solely about private and public education, this is clearly a huge component within it, and those Articles speak clearly about those rights.

Unfortunately, the Central African Republic is the only African state that has ratified the ILO Convention No.

169. The Convention has in total been ratified by only 23 states, thus representing a very low level of ratification. Though it is hard to explain why this is the case, it is notable that more countries ratified its precursor, ILO Convention No. 107, which was based on a more assimilationist approach. Another reason that has been suggested for the apparent reluctance of many states to ratify this legislation was the confusion around the applicability of the term indigenous peoples in Africa and Asia.<sup>55</sup> However, Article 60 of the African Charter on Human and Peoples' Rights (1981) says that ACHPR can be inspired by other mechanisms and principles of international law. The Commission has also developed its jurisprudence of indigenous peoples' rights, as described in more detail below.

It must also be stressed that recognition of indigenous languages in national legislation and education in indigenous languages has been granted in several countries since the 1960s, with positive examples coming for instance from Scandinavian countries, several Latin American countries, and New Zealand.

## The role of UNESCO

UNESCO is the main agency that has advocated for decades in support of language rights, and in particular for the preservation and revitalization of indigenous languages around the world.<sup>56</sup> When they sponsored the International Year of Languages in 2008, they recognized the importance of language rights for identity, peaceful coexistence and progress towards sustainable development,<sup>57</sup> linking them specifically to the Millennium Development Goals (MDGs). The linguistic barriers to the realization of the Sustainable Development Goals (SDGs) for 'all people, everywhere' are also currently a major area of debate. UNESCO deemed language rights relevant in particular for the following: the eradication of extreme poverty and hunger (MDG1), because language skills are essential to social participation and language policies have an impact on issues of marginalization; achieving universal primary education (MDG2, discussed above); combatting HIV/AIDS, malaria and other major diseases (MDG6, discussed above); and environmental sustainability (MDG7), because languages transmit knowledge of the natural environment and its management. Indeed, since language is also a means of transmitting traditional knowledge, language endangerment may also result in loss of traditional knowledge. UNESCO also stressed the importance of appropriate language policies for the actual enjoyment of fundamental rights, such as free expression, education, participation in cultural life, and benefiting from scientific progress.

UNESCO works on language through all their five programmatic areas: education, science, social and human sciences, culture, and communication and information.

They also have a mechanism that can be used by minorities and indigenous peoples to submit complaints through a confidential procedure for allegations of violations of their rights under these thematic areas. Following the principle that balanced language policies help prevent or resolve conflicts, UNESCO also advises governments around the world in this regard (through reforming constitutional frameworks and adopting multilingual policies).

Moreover, a variety of other declarations deal with language rights. UNESCO Convention against Discrimination in Education (1960) recognizes 'the right of members of national minorities to carry on their own educational activities, including the... use or the teaching of their own language' (Article 5(1)(c)). The Declaration of Vienna of the World Conference on Human Rights (1993) affirms the right for 'persons belonging to minorities to use their own language' (Article 19).

The UNESCO Universal Declaration on Cultural Diversity (2001) provides for the right of all persons 'to express themselves and to create and disseminate their work in the language of their choice, and particularly in their mother tongue' and 'to quality education and training that fully respect their cultural identity' (Article 5). Language rights are also dealt with in the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (2003); Recommendation concerning the Promotion and Use of Multilingualism and Universal Access to Cyberspace (2003); and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005). There is also a Universal Declaration of Linguistic Rights, which was issued in 1996 by the International PEN Club in collaboration with several NGOs and researchers but has not gained recognition by UNESCO.

In conclusion, the international community has shown an increasing interest in language rights. However, the understanding of language rights and its application has been quite limited in practice, probably due to the treatment of language as a marker of identity, and therefore leading to the assumption that addressing ethnic/racial discrimination would be sufficient. The negative wording of some Articles has also led to an assumption that non-interference with one's ability to speak a language is sufficient. However, in order to respect language rights and a series of other fundamental human rights positive measures are also needed, as has been acknowledged by several treaty bodies and other mechanisms. It is to be hoped that this interpretation may be increasingly applied in international and national case law.

## Language in regional African human rights law

### African Charter on Human and Peoples' Rights

The African Charter explicitly mentions language only in its preamble and Article 2 (freedom from discrimination).<sup>58</sup> However, language rights can also be inferred, similarly to the international legislation discussed earlier, in a number of its provisions: Article 7 (right to a fair trial); Article 9 (right to information); Article 17 (right to education); Article 19 (right of all peoples to equality and rights); Article 20 (self-determination); and Article 22 (right to economic, social and cultural development). The last three rights are collective/peoples' rights.

Article 2(1d) of the OAU Charter (1963) is also particularly relevant as it calls for states 'to eradicate all forms of colonialism from Africa'. Moreover, Articles 24 and 29 of the same document call for the use of African languages as working languages if possible.

The African Union (AU)'s Cultural Charter for Africa, which has been ratified by 34 out of 55 member states and entered into force in 1990, includes provisions explicitly relating to African languages (part V). Article 17 recognizes 'the imperative need to develop African languages'. Meanwhile, Article 18 calls on states to 'prepare and implement the reforms necessary for the introduction of African languages into education. To this end each state may choose one or more languages.'

The African Charter on the Rights and Welfare of the Child (ACRWC) includes an anti-discrimination clause (Article 3) and provides the right to be informed of charges in a language the child understands and to an interpreter if that is not possible (Article 17.2(c)(ii)). It was adopted in 1990 and entered into force in 1999, and has so far been ratified by 49 states.

In 1966, the Organization of African Unity (OAU, now AU) adopted Resolution AH/DEC.8 to establish the OAU Inter-African Bureau of Languages. This was tasked with supporting member states to strengthen linguistic freedoms. It started working in Kampala in 1972 and was closed in 1986. In 1985 it organized a meeting with linguistic experts and drafted the Language Plan of Action for Africa, which was adopted by the OAU in 1987, as an official OAU language document. This called for the use in education of any African language at the national level and the use of major African languages for communication at the intra-African level, in a spirit of liberation from foreign linguistic domination.<sup>59</sup> More recently, the African Academy of Languages was founded in 2000 under the auspices of the AU, with the objectives of promoting the use of African languages and to assist member states in national language policies.

### African Commission on Human and Peoples' Rights (ACHPR)

The Working Group on Indigenous Populations/Communities in Africa has, since 2001, focused on identifying the main characteristics of indigenous peoples in Africa, some of which were mentioned in the introduction, and which have been adopted by the ACHPR. The ACHPR has in turn been developing in the last decades an African understanding of indigenous peoples' human rights, while also looking at the jurisprudence of the Inter-American Court of Human Rights.<sup>60</sup> While stressing that there might be overlap with minorities, the Working Group has pointed to the preservation of traditional lifestyles as a key distinctive element, be it pastoralists, farmers, hunter-gatherers or forest dwellers.<sup>61</sup>

Among the main issues faced by those communities, they highlight eviction from their lands, discrimination, lack of access to justice, violations of cultural rights (no mention of language, but they speak of cultural identity), lack of representation and legislative recognition, poor access to health and education services. Concerning this last point, 'school attendance is often less than 50 per cent below the national level and literacy levels are also usually very low. The reasons for these low figures can be attributed to a range of factors, including the unavailability of schools and the unsuitability of the mainstream school curriculum for indigenous peoples' needs.'<sup>62</sup>

In the case of *Malawi African Association & Others v Mauritania*, where the black population of Mauritania (which is composed of different ethnic groups) had been the object of killings, ill-treatment, displacement and other acts of systematic discrimination, such as not being able to use their language, the ACHPR did not recognize a right to self-determination. However, it did recognize a violation of Article 17 (the right to education and participation to cultural life) among others.<sup>63</sup>

In *Centre for Minority Rights Development and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, the ACHPR found violations by the Kenyan government of the Endorois' rights to religious practice, property, culture, the free disposition of natural resources, and development (Articles 8, 14, 17, 21 and 22 respectively). The Commission found that 'the Endorois culture, religion, and traditional way of life are intimately intertwined with their ancestral lands'.<sup>64</sup> When analyzing the right to culture (Article 17), they stressed that it contains an individual and collective dimension, which implies both a duty of the state to protect and to promote.<sup>65</sup> Although language was not explicitly mentioned, this is intrinsically connected to culture. Because Endorois speak a variety of the Kalenjin language, Kenya used this to argue that they were not distinct to other clans of Tugen tribes.<sup>66</sup>

In the first indigenous peoples' case before the African Court on Human and Peoples' Rights, concerning the

situation of the Ogiek community in Kenya, the Court found violations of Articles 1 (state compliance with the rights enshrined in the Charter), 2 (non-discrimination), 8, 14, 17(2) and (3), 21 and 22 of the Charter, where the violation of the right to culture was linked to the eviction from the Mau Forest. Concerning the claim of being indigenous peoples, the Court agreed by making reference to the same three criteria identified by the Working Group on Indigenous Populations.<sup>67</sup> Aspects of this case have been covered in a previous MRG briefing.<sup>68</sup>

In a case where gross, massive and systematic violations of human rights by the Republic of Sudan occurred against the indigenous black African communities in the Darfur region, in particular members of the Fur, Marsalit and Zaghawa tribes, the ACHPR found that displacement interfered with the right to education in violation of Article 22 (development as a collective right).<sup>69</sup> Violations of the right to education as a consequence of lack of nationality/ID documentation was also found in the *Nubian Community in Kenya vs The Republic of Kenya* (2015).<sup>70</sup>

In conclusion, in most cases before the ACHPR and the African Court, when a violation of the right to education or culture was found (explicitly or implicitly in relation to language), it has so far been connected to issues

of eviction and displacement and not to 'normal' state policies per se. However, that does not exclude it as a potential direction in the future. While the OAU and the AU have taken some steps to promote the issue of African languages, the ACHPR and African Court should explore more fully the concept of language rights and its application in connection to other fundamental rights.

Overall it should be concluded that, although the UNDRIP is non-binding and the ILO Convention has not been ratified by African states (apart from Central African Republic), there are enough international and regional human rights standards (as well as increasing state practice around the world in the last 50 years) to establish the protection and preservation of indigenous peoples' languages as a specific principle of international law, although the principle of proportionality cannot be completely disregarded. Moreover, there is also a well-established international legal requirement to protect and preserve minority languages. Although equally recognised, the needs of minority members should be further assessed against criteria such as number and concentration of minority population and other general principles of non-discrimination. However, issues related to colonialism, development and multilingualism further complicate the African linguistic scenario.

# Causes of language endangerment and impacts on human rights

As discussed earlier, at least half of the 6,000–7,000 living languages in the world face extinction by the end of the century – amounting to the death of a language every two weeks.<sup>72</sup> This risk is heightened by the fact that, as a small number of dominant languages gain an increasing hold over the global population – UNESCO cites figures suggesting that around 97 per cent of the world’s population speak 4 per cent of its languages, while 96 per cent of the world’s languages are spoken by around 3 per cent of its population – the pressure on communities speaking other languages will grow. As the knowledge of most languages is in the hands of a small fraction of the world’s population, the risk of losing the knowledge associated with those languages is already extremely high: however, this situation is even more acute when in many cases their speakers are among the most marginalized groups in society and the resources employed by states to protect those languages have been minimal.

To put it simply, ‘a language is endangered if it is not being passed on to younger generations.’<sup>73</sup> However, there are different levels of language endangerment. UNESCO’s most up-to-date working definition classifies languages on a spectrum as safe, stable-yet-threatened, vulnerable, definitely endangered, severely endangered, critically endangered and extinct. To provide a few examples, Jola-Kassa in Senegal is classified as vulnerable, with 40,850 speakers (2002); Tamazight in Tunisia as severely endangered, with 10,000 speakers (2012); and Molo in Sudan as critically endangered, with 100 speakers (1998).<sup>74</sup> The primary causes of language shift and endangerment may come in the form of clear and immediate drivers such as natural catastrophes, war, genocide and overt repression, but the most common factor of all is societal dominance. This can be a protracted process and encompass a range of factors: economic (for example, rural poverty leads to migration to cities or abroad), cultural (the education needs of minority communities are overlooked), political (government policies exclude, even prohibit, the use of minority and indigenous languages), historical (the legacy of colonialism and land disputes) and attitudinal (the association of the dominant language with progress and minority/indigenous languages with backwardness and poverty).<sup>75</sup>

When it comes to the African context, depending on how one distinguishes between languages and dialects, estimates suggest that there are between 1,250 and 2,100 languages in sub-Saharan Africa,<sup>76</sup> suggesting that when North Africa is included the total number would be even higher. This remarkable variety, however, is under threat: according to the Expert Mechanism on the Rights of

Indigenous Peoples, despite Africa’s remarkable linguistic diversity, ‘many of the languages spoken by its indigenous peoples are the most endangered.’<sup>77</sup> Nor is this diversity reflected in national language policies. Terms such as ‘Anglophone’ and ‘Francophone’ describe the African sociolinguistic landscape from an official perspective and draw on previous colonial distinctions, suggesting a primarily monolingual linguistic landscape – a framing that hides the reality of multilingualism on the ground.<sup>78</sup> Some countries present literally hundreds of languages: for instance, in Nigeria some sources place the number of spoken language at between 410 and 517.<sup>79</sup>

This lack of representation is reflected in education: previous estimates have suggested that less than 10 per cent of African languages are used in teaching.<sup>80</sup> As a result of the decision to use the ‘imported languages’ of colonialism as the official language, most children in Africa only experience for the first time when they begin at primary school.<sup>81</sup> This has a number of consequences. First of all, only those who have access to formal education will learn the official language: as access to formal education is a problem in sub-Saharan Africa in particular, where levels of education exclusion are the highest of any region,<sup>82</sup> a significant number of children will grow up without any knowledge of their country’s official language. Second, since children spend time struggling to understand the language, they have less chance of understanding the content of what they learn, resulting in further dropout. Third, if the language is not practiced outside the school, there are fewer chances to acquire high proficiency, and once the pupil has left school, he/she will most likely lose some proficiency.<sup>83</sup>

Situations of language endangerment are indeed often created by policies of forced assimilation. The previous Independent Expert on Minority Issues expressed concern over the threat to minority languages due to assimilationist policies in her 2012 Report to the Human Rights Council.<sup>84</sup> The same issue was recognized in 2016 by the Expert Group Meeting on the theme ‘Indigenous languages: preservation and revitalization (Articles 13, 14 and 16 of the United Nations Declaration on the Rights of Indigenous Peoples)’.<sup>85</sup> Therefore, providing special assistance to certain languages is a redress ‘to eliminate the effects of this injustice for the future’.<sup>86</sup>

State policies can also endanger languages indirectly by undermining their rights in other areas. This is the case, for instance, when governments make decisions that weaken a community’s control over the management of their land or forcibly resettle them elsewhere. While these measures may not involve any explicit linguistic dimension, in practice

the language of the affected population may become endangered as a result. Indeed, legislation to protect indigenous languages may be nullified if other policies are adopted at the same time that undermine land rights or other freedoms.

The levels of language endangerment in Africa have been assessed to different extents throughout the continent, with North Africa probably being the best documented situation (though detailed information on several languages is still lacking). Some scholars argue that the most serious threat to endangered languages in Africa does not come from colonial languages, but from major African languages or other minority and indigenous but more locally-dominant languages, to which speakers of minority and indigenous languages are shifting due to processes of urbanization.<sup>87</sup>

In sub-Saharan Africa, meanwhile, military, economic, social and educational forces are a main cause of language endangerment. Because minority and indigenous languages are typically associated with poverty and marginalization, parents often want their children to be educated in majority languages. In many cases language shift in Africa occur simultaneously with a shift or assimilation in lifestyle – for example, a move from a hunter-gatherer to pastoralist society – which shows how interconnected issues of language, culture and ways of life are for many indigenous peoples. This is true of Yaaku (Kenya), Aasax and Akie (Tanzania), who shifted to pastoralism and to the Maa language (which has different varieties spoken by Maasai, Samburu and Camus, and it is an endangered language itself). Similar examples can be found in Gabon, where hunter-gatherers such as Babongo shifted to Masango, Tsogo or Simba, Bakoya to Ungom, Makina to Fang, and Sekiani to Mpongwe.<sup>88</sup>

In the East African Rift Valley, several communities were living on islands on the lakes and their main source of subsistence was fishing, which they had to abandon when it was no longer sufficient to sustain a living: since then, children are shifting to the languages of their neighbours. Elmolo language, which used to be spoken on Lake Turkana in Kenya, is now extinct and Zay (Lake Zway) and Harro (Lake Abaya) in Ethiopia are severely endangered.<sup>89</sup>

Most endangered languages are found in Central Africa, but this is also due to the fact that this area hosts the richest diversity. The most endangered language families in the African region as a whole are believed to be Khoisan (predominantly Southern Africa and now mostly spoken by marginalized former hunter-gatherers), Kordofanian (Sudan) and Kuliak (Uganda). It is important to note that in all three cases, communities are faced with hostile environments.<sup>90</sup>

Recognizing and revitalizing a language can have a number of implications. It can strengthen access to a number of rights mentioned above, such as freedom of expression, education, justice and non-discrimination. It

may also impact positively on the community's physical and mental health. Furthermore, it can lead to better literacy rates and to greater participation in the socio-economic and political life of a country. Finally, preserving languages supports preservation of traditional knowledge and biodiversity. Because of previous colonial and assimilationist policies, 'indigenous peoples' control over their languages can be a tool in their decolonization.<sup>91</sup>

Different methodologies have been developed in the last decades to halt or revert these trends of endangerment. Assessing the vitality of particularly languages through indicators and measurements<sup>92</sup> is important to plan adequate language policies aimed towards language revitalization. Language nests have proven to be particularly effective: an early childhood full-immersion education method where the older speakers of the language are the carers, sometimes with the help of teachers who might be L2 speakers. This is usually followed by classes in primary and secondary education where the medium of instruction is the to-be-revitalized language. They usually also include programmes to learn about traditional knowledge and culture, and they do not exclude learning of the 'major' language. However, revitalization is not only about teaching and training; learning the language through formal education does not guarantee that it will be used in social environments. Efforts should include a number of different stages, ranging from adult language acquisition to the creation of a socially integrated population of active speakers to promote its informal use in local contexts. Language revitalization can also involve advocacy activities, for the official recognition of a language or to encourage the use of the language in compulsory state education, workplace, local government services and mass media. Some internationally celebrated examples include the revitalization of Māori in New Zealand and Hawaiian in the United States.

Most initiatives in Africa so far have focused on language documentation, consisting in small-scale projects often conducted by linguists in collaboration with the local community to create records of the endangered language (through the development of audio-visual content, orthographies, dictionaries and so on). This is probably due to the fact that, apart from major African languages, most local languages are not properly documented, and much attention was focused on the threat of losing the knowledge associated with this linguistic diversity. But while these sorts of measures have an important role to play in establishing a record of languages that could otherwise disappear, they are generally not sufficient alone to revitalize minority and indigenous languages. There is therefore an important distinction to be made between the process of documentation and other activities that are also necessary to achieve revitalization.

Most African governments have not invested meaningfully in language revitalization. However, there are several examples of small-scale community-led

revitalization efforts in the continent. Most of those grassroots initiatives are multi-purpose and attempt to increase the use and knowledge of the language in the community while also transmitting traditional culture and knowledge such as dance, music, biodiversity and

livelihoods. Examples can be found in Kenya, with Masai and Samburu communities, but also in Botswana, Nigeria and Cameroon. Facebook pages and YouTube channels play a role in those revitalization efforts, especially for diaspora communities.<sup>93</sup>

# Conclusions

Language rights and the threat of language endangerment intersect with a variety of issues, such as political marginalization, social discrimination and poverty, that are especially relevant for minorities and indigenous peoples who frequently comprise the most excluded groups. Language rights in Africa are paramount in accessing fundamental human rights, such as the right to education, political participation, health and development. Nevertheless, language rights have often been overlooked in many instruments. This was probably due to a lack of understanding at the time among lawyers and governments about the relevance of language rights. Moreover, claims of national unity were often used to justify monolingual and assimilationist policies, on the basis that a single official language would promote national cohesion and reduce tensions – though in reality the opposite has proved to be true. In the African context, progress is also often used as a justification to impose colonial languages like English and French, as these are believed to provide better access to education, technology and international trade. However, in practice the result is that only a small percentage of the population manages to achieve sufficient proficiency in the language to be able to engage in the socio-economic and political life of the country, in the process leaving out many others who are unable to participate.

Language rights intersect with many other rights, particularly relating to non-discrimination. The non-inclusion of language as a ground for discrimination in many national legislations does not meet international human rights standards, however, and could be easily

corrected by simply incorporating it explicitly into their provisions. Language is also a fundamental component in the full realization of other rights, including health, education, cultural life, free expression, political participation and access to a fair trial.<sup>94</sup>

As for indigenous peoples, developments in international and national legal texts, reports and commentaries show an increasing engagement and understanding of their language rights in recent decades. This is due to the acknowledgment that language is a fundamental component of indigenous peoples' identity and that the endangerment of their languages is due to colonial and assimilationist policies. Several provisions recognize a right to education<sup>95</sup> and a right to revitalization.<sup>96</sup>

Revitalization is often instrumental to securing the right to education when the language is endangered. However, initiatives to protect minority and indigenous languages should not focus on education alone. Improving the social status of a community language by ensuring that it is associated with economic opportunities is also extremely important. Furthermore, creating an environment that protects human rights for all, without exception, can address potential disruptions leading to language loss. For instance, situations of displacement exacerbate language endangerment: addressing land rights for indigenous peoples would therefore indirectly contribute to the protection of some of their language rights, too. Ultimately, the connection of language rights with other human rights is two-fold, reflecting and also reinforcing the degree to which other rights are realized.

# Recommendations

## For national governments:

- Include language as a ground for discrimination in national legislation.
- Promote the use of mother tongues as the medium of instruction in order to ensure that the right to education is not undermined by students' lack of comprehension.
- Take steps to recognize and address other rights violations, such as land evictions and other exclusionary policies, that may be contributing indirectly to language endangerment.
- Ensure access to services (including health, administration and justice) in languages that are understood by the population, and by minorities and indigenous peoples in particular.
- Support the efforts of minorities and indigenous peoples in the revitalization of their languages through consultation and funding allocations that reflect their objectives.
- Involve minorities and indigenous peoples, as well as language and human rights experts when developing language policies.

## For UN human rights mechanisms:

- Explore the interlinkages between discrimination on the basis of language and other forms of discrimination, given that language is fundamental to accessing all rights.

## For the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights:

- Explore language as a potential barrier or factor influencing the application of all human rights enshrined in the African Charter on Human and Peoples' Rights, such as the right to education, health and development.

## For experts, scholars and academic institutions:

- Continue to invest in research into the wide-ranging social and economic impacts of supporting linguistic diversity in order to provide data for advocacy and policy making.
- Human rights lawyers and language experts should work together to further develop a human rights-based approach to language maintenance, in collaboration with the groups concerned.

# Notes

- 1 This marks the date of the first meeting of the UN Working Group on Indigenous Populations of the Sub-Commission on the Promotion and Protection of Human Rights in 1982.
- 2 The figure of 7,111 living languages is provided by Ethnologue, while the Endangered Languages Documentation Project (ELDP) has a lower estimate of around 6,5000. UNESCO provides a range of estimates in different publications, but includes the figure of 6,000 in its 2010 'Atlas of the World's Languages in Danger'. See *Ethnologue, Ethnologue: Languages of the World*, 2019; available at <http://www.ethnologue.com>; ELDP, 'Language endangerment', accessed on 11 November 2019 at <http://www.eldp.net>; Mosley, C. (d), *Atlas of the World's Languages in Danger*, UNESCO, 2010. ELDP suggests that 'at least half' of the languages currently spoken will be extinct by the end of the century. The linguist David Crystal, when reviewing different estimates, cites figures produced by the scholar Michael Krauss predicting 'the death or the doom of 90 per cent of mankind's languages' during this century, though he himself appears to favour the mid-range estimates of around 50 per cent – a rate that, as he points out, would still mean that 'at least one language must die, on average, every two weeks or so'. Crystal, D., *Language Death*, 2000, pp.18-9. It is also important to note that several endangered languages are sign languages. They will not be the focus of this briefing purely because of scarcity of information and not because of an assumption that they are not 'full languages'.
- 3 UNESCO, 'Endangered languages: endangered thought', 2009, available at <https://en.unesco.org/courier/2009-2>; UNESCO 'Indigenous languages and knowledge (IYL 2019)', available at <https://en.unesco.org/courier/2019-1>.
- 4 UNESCO, *International Year of Languages*, 2008.
- 5 Henderson, B., Rohloff, P. and Henderson, R., 'More than words: Towards a development-based approach to language revitalization', *Language Documentation and Preservation* 8, 2014, pp.75-91.
- 6 De Varennes, F., *Language, Minorities and Human Rights*, 1996, pp.108-109.
- 7 De Varennes, 'Equality and non-discrimination: Fundamental principles of minority language rights', in J. Castellino (ed), *Global Minority Rights*, 2011, p.307.
- 8 In this briefing, 'Africa' refers to the entire continent including North Africa, unless otherwise specified.
- 9 Capotorti, F. 'Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities'. UN Doc E/CN.4/Sub.2/384/Rev.1, 1979.
- 10 OHCHR, *Minority Rights: International Standards and Guidance for Implementation*, 2010, p.2.
- 11 Martinez Cobo, J. R., *Study on the Problem of Discrimination against Indigenous Populations*, UN Doc E/CN.4/RES/1988/48, 1987.
- 12 UN Permanent Forum on Indigenous Issues, 'Who are indigenous peoples=?', undated, available at [https://www.un.org/esa/socdev/unpfii/documents/5session\\_factsheet1.pdf](https://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf)
- 13 ACHPR and IGWIA, Advisory Opinion of the African Commission on Human and Peoples' Rights on the United Nations Declaration on the Rights of Indigenous Peoples, adopted at the 41st Ordinary Session (May 2007).
- 14 *Ibid.*
- 15 De Witte, B., and Mancini, S., 'Language rights as cultural rights: A European perspective', in F. Francioni and M., Scheinin (eds), *Cultural Human Rights*, 2008, p.247.
- 16 Skutnabb-Kangas, T., 'Human rights and language policy in education', In S. May and N. Hornberger (eds), *Language Policy and Political Issues in Education: Encyclopedia of Language and Education*, 2008, p.109.
- 17 De Witte and Mancini, *op. cit.*, pp.247-248.
- 18 Kloss, H., 'Language rights of immigrant groups', *International Migration Review* 5(2), 1971, pp.250-268; Kloss, H., *The American Bilingual Tradition*, 1977.
- 19 UNESCO Ad Hoc Expert Group on Endangered Languages, *Language Vitality and Endangerment*, 2003, p.2.
- 20 Opeibi, T.O., 'Investigating the language situation in Africa' in L.M. Solan and P.M. Tiersma (eds), *The Oxford Handbook of Language and Law*, 2012, p.274. Some estimates put the total number of languages in Nigeria at more than 500, as discussed in footnote 79.
- 21 Tolerance rights are regarded as protecting individuals from state interference with their private use of language (negative obligation). Promotion rights deal with the use of the language in public institutions, such as schools, courts and administrative services (positive obligation).
- 22 See for instance *Coeriel and Aurik v the Netherlands*, *Human Rights Committee, Communication No. 453/1991*, 1994.
- 23 Quattrini, S., *Identity and Citizenship in Tunisia: The Situation of Minorities after the 2011 Revolution*, MRG, 2018, p.10.
- 24 Republic of Malawi, *The Malawi Constitution*, 1994.
- 25 Nguessan, M., 'Language and human rights in Africa', in D.A. Kibbee, *Language Legislation and Linguistic Rights*, 1998, p.262.
- 26 De Varennes, 1996, *op. cit.*, p.38.
- 27 Government of Algeria, 'Loi n° 91-05 du 16 janvier 1991 portant généralisation de l'utilisation de la langue Arabe', 1991.
- 28 *Ibid.*, p.47.
- 29 *Ibid.*, p.55
- 30 UN Special Rapporteur on minority issues, *Language Rights of Linguistic Minorities: A Practical Guide for Implementation*, 2017.
- 31 UN Human Rights Committee, *J.G.A. Diergaardt (late Captain of the Rehoboth Baster Community) et al. (represented by Dr. Y. J. D. Peeters, their international legal counsel) v. Namibia*, Communication No. 760/1997, U.N. Doc. CCPR/C/69/D/760/1997 (2000).
- 32 This was already recognized in the 1957 UN Study of Discrimination in Education by Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities Charles D. Ammoun.
- 33 De Witte and Mancini, *op. cit.*, pp.247-8.
- 34 Skutnabb-Kangas (2012), p.238.
- 35 'The issue of cost-effectiveness of education in a minority language is far less often considered, yet just as important: education is a minority language is more cost-effective, even if it has some initial slightly higher costs in terms of teaching materials or training, because it produces more graduates than a cheaper official language-only education. The cost of public education per successful graduate student has been shown in the few studies looking at this directly to be actually lower than in other public schools because of the higher success rate in minority schools. Schools which also use minority languages to communicate with the parents have been shown to increase their involvement and improve their understanding of their children's education.' Special Rapporteur on minority issues, *Language Rights of Linguistic Minorities: A Practical Guide for Implementation*, 2017, p.15.
- 36 UNESCO, 2008), *op. cit.*
- 37 'Every accused person has the right to a fair trial, which includes the right... to have the assistance of an interpreter without payment if the accused person cannot understand the language used at the trial'. Kenya, *The Constitution of Kenya*, 2010, Article 50(2)(m).

- 38 'Every accused person has a right to a fair trial, which includes the right...to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language.' Republic of South Africa, *The Constitution of the Republic of South Africa*, 1996, Article 35(3)(k).
- 39 Salomon, M.E. and Sengupta, A., *The Right to Development: Obligations of States and the Rights of Minorities and Indigenous Peoples*, Minority Rights Group, 2003, p.39.
- 40 See Article 1 of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992), as well as OHCHR, *Minority Rights: International Standards and Guidance for Implementation*, 2010.
- 41 The term was coined by lawyer Raphael Lemkin in 1944, referring to the situation in Armenia. It was included in the Draft UN Declaration on the Rights of Indigenous Peoples but removed from the final version.
- 42 De Varennes, 1996), *op. cit.*, pp.135-136, 150-157.
- 43 Capotorti, F., Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities, 1979, paragraph 213.
- 44 Thornberry, P., *International Law and the Rights of Minorities*, 1991, p.174.
- 45 UN Economic and Social Council, *General Comment No. 21*, 2009, paragraph 27.
- 46 *Ibid.*
- 47 De Varennes, 1996, *op. cit.*, pp.97-98. For a general overview, see Cobo, J.R.M., *Study on the Problem of Discrimination against Indigenous Populations*, 1987.
- 48 Expert Mechanism on the Rights of Indigenous Peoples, *Role of Languages and Culture in the Promotion and Protection of the Rights and Identity of Indigenous Peoples*, 2012.
- 49 Committee on the Elimination of Racial Discrimination, 'General Recommendation 23: Rights of indigenous peoples', 1997, UN Doc. A/52/18, annex V, paragraph 4.
- 50 Committee on the Elimination of Discrimination, Concluding observations on the combined twentieth and twenty-first periodic reports of Algeria, 2007, UN Doc CERD/C/DZA/CO/20-21, paragraph 14.
- 51 Committee on the Rights of the Child, 'General Comment No. 11: Indigenous children and their rights under the Convention', 2009, UN Doc CRC/C/GC/11, paragraphs 27, 40, 51, 61-62
- 52 UNICEF Innocenti Research Centre, *Ensuring the Rights of Indigenous Children*, 2003, p.11.
- 53 Expert Mechanism on the Rights of Indigenous Peoples, *Expert Mechanism Advice No. 1 (2009) on the Rights of Indigenous Peoples to Education*, paragraph 13.
- 54 Expert Mechanism on the Rights of Indigenous Peoples, 2012, *op. cit.*, pp. 21-2.
- 55 MRG, 'A practitioner's perspective on the rights of indigenous peoples since the adoption of ILO Convention No. 169', 1 July 2019.
- 56 Their first study, 'The use of the vernacular languages in education', was published in 1953.
- 57 UN, 'Message from Mr Matsuura, Director-General of UNESCO, on the celebration of 2008, International Year of Languages', 2008.
- 58 The ACHPR outlined the importance of Article 2 as follows: 'Article 2 of the Charter lays down a principle that is essential to the spirit of this Convention, one of whose goals is the elimination of all forms of discrimination and to ensure equality among all human beings. The same objective underpins the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by the [UN] General Assembly.' This was in relation to the case Association Mauritanienne des Droits de l'Homme vs. Mauritania and cited in S. Fariior (ed), *Equality and Non-Discrimination under International Law: Volume 2*, 2015.
- 59 Mateene, K., 'OAU's resolutions on African languages and the state of their implementation', in Kibbee, 1998, *op. cit.*
- 60 Gilbert, J., 'Indigenous peoples' human rights in Africa: The pragmatic revolution of the African Commission on Human and Peoples' Rights', *The International and Comparative Law Quarterly* 60(1), 2011, p. 247.
- 61 ACHPR, Report of the African Commission's Working Group on Indigenous Populations/Communities, 2003; ACHPR and International Work Group for Indigenous Affairs, *Indigenous Peoples in Africa: The Forgotten People?*, 2006, pp.13-15.
- 62 ACHPR and International Work Group for Indigenous Affairs, 2006, *op. cit.*, p.19.
- 63 ACHPR, *Malawi African Association and Others v. Mauritania*, Comm. Nos. 54/91, 61/91, 98/93, 164/97, 196/97 and 210/98, 2000
- 64 ACHPR, *Centre for Minority Rights Development (Kenya) & Minority Rights Group International on behalf of the Endorois Welfare Council v The Republic of Kenya*, Communication 276/2003, 2010, paragraph 156.
- 65 Communication 276/03, 27th Annual Activity Report of the ACHPR (2009)
- 66 Claridge, C., 'Landmark ruling provides major victory to Kenya's indigenous Endorois', MRG, July 2010.
- 67 *ACHPR v the Republic of Kenya*, Application no.006/2012 Judgment, 26 May 2017.
- 68 Claridge, L., 'Victory for Kenya's Ogiek as African Court sets major precedent for indigenous peoples' land rights', MRG August 2017.
- 69 ACHPR, *Sudan Human Rights Organization & Centre on Housing Rights and Evictions (COHRE) v Sudan*, Communication 279/03-296/05, 2009, paragraph 224.
- 70 ACHPR, *Nubian Community in Kenya vs The Republic of Kenya*, Communication 317/06, 2015, paragraph 132.
- 71 See endnote 2.
- 72 UNESCO Ad Hoc Expert Group on Endangered Languages, *Language Vitality and Endangerment*, 2003, p.2, citing Bernard, H.R., 'Language preservation and publishing', in N. Hornberger (ed), *Indigenous Literacies in the Americas: Language Planning from the Bottom Up*, 1996, pp.139-156.
- 73 Mosley, *op. cit.*, p.9.
- 74 *Ibid.* Figures are clearly approximate and across different timespans as it is very challenging to have exact numbers in the absence of disaggregated data. The figures also depend on whether one is counting proficient speakers only or also those who speak it as their second or third with lower levels of proficiency, and other similar factors.
- 75 Sallabank, J., 'Diversity and language policy for endangered languages', in B. Spolsky (ed), *The Cambridge Handbook of Language Policy*, 2012, pp.103-104.
- 76 Opeibi, *op. cit.*, p.273.
- 77 Expert Mechanism on the Rights of Indigenous Peoples, 2012, *op. cit.*, paragraph 34.
- 78 Makoni, Makoni, Abdelhay, Mashiri "Colonial and post-colonial language policies in Africa: historical and emerging landscapes" in Spolsky, p.256
- 79 See Opeibi, *op. cit.*, p.274; Ethnologue, cited in DW, 'English threatens Nigeria's native languages', May 2019.
- 80 UNESCO, 2003, *op. cit.*, p.5
- 81 Opeibi, *op. cit.*, p.275
- 82 UNESCO, 'Education in Africa' accessed 11 November 2019 at <http://uis.unesco.org/en/topic/education-africa>.

- 83 Nguessan, *op. cit.*, p.265-266
- 84 Human Rights Council, 'Report of the Independent Expert on minority issues, Rita Izsák', UN Doc A/HRC/22/49, 2012.
- 85 Economic and Social Council, 'Permanent Forum on Indigenous Issues: Report on the Fifteen Session', UN Doc E/C.19/2016/10, 2016.
- 86 De Varennes, 1996, *op. cit.*, p.99.
- 87 Lüpke, F., 'Multilingualism and language contact in West Africa: Towards a holistic perspective', *Journal of Language Contact* 3(1), 2010.
- 88 Mosley, *op. cit.*, p.23.
- 89 *Ibid*, p.24.
- 90 *Ibid*, pp.24-25.
- 91 Expert Mechanism on the Rights of Indigenous Peoples, 2012, *op. cit.*
- 92 UNESCO identifies six factors to evaluate a language's vitality and state of endangerment, two factors to assess language attitudes and one factor to evaluate the urgency of the need for documentation. These are: 1) Intergenerational language transmission; 2) Absolute number of speakers; 3) Proportion of speakers within the total population; 4) Shifts in domains of language use; 5) Response to new domains and media; 6) Availability of materials for language education and literacy; 7) Governmental and institutional language attitudes and policies, including official status and use; 8) Community members' attitudes towards their own language; 9) Type and quality of documentation. See UNESCO, 2003, *op. cit.*
- 93 Sands, B., 'Language revitalization in Africa', in K.L. Rehg and L. Campbell (eds), *The Oxford Handbook of Endangered Languages*, 2018.
- 94 For instance, language is a relevant component of Article 9 (right to a fair trial), 19 (freedom of expression) and 25 (right to vote and stand for elections) of the ICCPR; Article 12 (right to health), 13 (right to education) and 15 (right to take part in cultural life) of ICESCR; Article 7 (right to a fair trial); Article 9 (right to information); Article 17 (right to education); Article 19 (right of all peoples to equality and rights); Article 20 (self-determination) and Article 22 (right to economic, social and cultural development) of the African Charter on Human and Peoples' Rights. Language is also clearly a fundamental component of Article 27 of the ICCPR on individuals belonging to minorities. The right of minorities to receive education and other services in one's mother-tongue is recognised by the Committee on ESCR in its GC/21, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, UNESCO Convention against Discrimination in Education and other regional texts. This right might have to be balanced with other factors to prove that it is reasonable and justifiable.
- 95 UNDRIP, 2007, Article 14; ILO, 1989, Article 28(1); Committee on the Rights of the Child, General Comment 11 on Indigenous Children, 2009.
- 96 UNDRIP, 2007, Article 13(1); CERD, General Recommendation No. 23, 1997; ILO, Article 28(3).



# working to secure the rights of minorities and indigenous peoples

minority  
rights  
group  
international

## **A rights-based framework for minority and indigenous languages in Africa: From endangerment to revitalization**

It is estimated that between 6,000 and 7,000 languages are currently spoken worldwide, of which approximately half, if not more, will disappear by the end of this century. A large proportion of these endangered languages are spoken by indigenous peoples and minorities, and are often inseparable from their particular traditions, cultural practices and beliefs. This is especially relevant in the context of Africa, where around a third of the world's languages are based.

*A rights-based framework for minority and indigenous languages in Africa: From endangerment to revitalization* demonstrates how language plays a central role not only in the preservation of identity and culture, but also in matters of non-discrimination and access to a variety of rights, including to education and health. Promoting language rights is therefore an important element in ensuring a safe and equitable future for all communities in Africa and elsewhere.

The situation is especially acute when their speakers are among the most marginalized groups in society, as language endangerment is frequently driven by exclusion in other areas. African states therefore need to support language revitalization efforts not only through education, but also through measures to address issues such as land evictions, discrimination and lack of access to development. This briefing therefore calls on governments, with the support of other stakeholders, to revise their laws and policies to ensure minority and indigenous language rights are respected.

© Minority Rights Group International, November 2019

**Minority Rights Group International (MRG)** is a non-governmental organization (NGO) working to secure the rights of ethnic, religious and linguistic minorities worldwide, and to promote cooperation and understanding between communities. MRG has consultative status with the UN Economic and Social Council (ECOSOC), and observer status with the African Commission on Human and Peoples' Rights. MRG is registered as a charity, no. 282305, and a company limited by guarantee in the UK, no. 1544957.

This briefing is published as a contribution to public understanding.

The text does not necessarily represent in every detail the collective view of MRG or its partners. Copies of this study are available online at [www.minorityrights.org](http://www.minorityrights.org)

**Minority Rights Group International** 54 Commercial Street, London E1 6LT, United Kingdom

**Tel** +44 (0)20 7422 4200 **Fax** +44 (0)20 7422 4201 **Email** [minority.rights@mrgmail.org](mailto:minority.rights@mrgmail.org)

**Website** [www.minorityrights.org](http://www.minorityrights.org)  [www.twitter.com/minorityrights](https://www.twitter.com/minorityrights)  [www.facebook.com/minorityrights](https://www.facebook.com/minorityrights)

ISBN 978-1-912938-21-6

**Visit the Minority Voices online newsroom [www.minorityvoices.org](http://www.minorityvoices.org) for stories and multimedia content from minorities and indigenous peoples around the world.**