Law, Language and the Multilingual State includes 16 papers that were presented at the Twelfth International Conference of the International Academy for Linguistic Law, co-presented with the Department of Language Management and Language Practice (University of the Free State), that took place November 2010 at Thaba ‘Nchu, South Africa. The conference also highlighted a colloquium, Language legislation and litigation, that focused specifically on the South African context.

This book is a collection of writings by experts in the multilingual field and emphasises challenges that societies face. Issues such as the drafting and implementation of legislation, the degree and forms of state intervention and the functioning of support structures are addressed. Related issues such as globalisation and diversity, language rights, ideology and legislation, as well as minority and indigenous languages are also discussed.

A truly multilingual state requires linguistic equality and language rights. This book contributes to the promotion and protection of linguistic diversity.
**TABLE OF CONTENTS**

Introduction ........................................................................................................................................ i  
*Theodorus du Plessis & Chrismi-Rinda Kotze*

Foreword ........................................................................................................................................ iii  
*Joseph-G.Turi*

Overview of the conference ........................................................................................................ vii  
*Claudine Brohy*

Programme ....................................................................................................................................... xiii

Message from the Dean | Boodskap van die Dekaan ................................................................. xix  
*Lucius Botes*

Opening address ............................................................................................................................ xxiii  
*Louis Harms*

Towards a legal framework for language charters in Africa ......................................................... 1  
*Beban Sammy Chumbow*

Obstacles in the way of a multilingual South African state ............................................................ 31  
*Hennie Strydom*

In defence of language rights: language commissioners in Canada, Ireland and Wales .................. 45  
*Colin H. Williams*

Law, language and the multilingual state ......................................................................................... 71  
*Joseph-G. Turi*

Italie, pays multilingue: de la protection des minorités linguistiques historiques aux enjeux des nouvelles minorités ................................................................. 85  
*Giovanni Agresti & Silvia Pallini*

Bilingualism and the city: measuring linguistic conviviality with a language barometer .................. 103  
*Claudine Brohy*
La corédaction des textes législatifs comme laboratoire des cultures juridiques et linguistiques au Canada ................................................ 125
   Jean-Paul Chapdelaine

One nation, one language? The response of international law to the multilingual state ................................................................. 143
   Fernand de Varennes

Language rights in New Brunswick: the pursuit of substantive equality: myth or reality? ................................................................. 159
   Michel Doucet

A language act for South Africa? The role of sociolinguistic principles in the analysis of language legislation ................................. 195
   Theodorus du Plessis

La politique linguistique française: réalités complexes et épaisseur des discours ................................................................. 215
   Jean-Michel Éloy

The right to linguistic autonomy in Canadian constitutional law ......................................................................................... 227
   Pierre Foucher

L’introduction des langues africaines dans le système éducatif au Mozambique signale-t-elle le dépassement de l’assimilation? .......... 249
   Michel Lafon

Language rights in the constitution: the “unborn” language legislation of subsection 6(4) and the consequences of the delayed birth ......................................................................................... 269
   Cornelus Lourens

The office of the language commissioner, Ireland. The impact of the commission on Irish language policy and official strategy ......................................................................................... 291
   Colin H. Williams & Peadar Ó Flatharta

La cour suprême du Canada et la réflexion sur la nature, les fondements et les caractéristiques des droits et de la liberté linguistiques ......................................................................................... 313
   José Woehrling
INTRODUCTION

This publication is a selection of the papers presented at the twelfth international conference of the International Academy of Linguistic Law (IALL) that took place 1-3 November 2010 at Thaba ‘Nchu, South Africa. It was co-presented by the International Academy of Linguistic Law and the Department of Language Practice and Language Management, University of the Free State. The theme of the conference, Language, Law and the Multilingual State, was determined to investigate the state-juridical challenges facing multilingual societies. Several related issues were addressed, such as Minority and indigenous languages, Globalisation and diversity, Language rights, Language ideology and Language legislation.

Given the location of the conference, special attention was paid to the South African context by means of a colloquium. The South African society is in a state of socio-political transformation and faces many challenges on state-juridical level, complicated by the linguistics obligations and rights embedded in the eleven-language policy. The colloquium, entitled Language legislation and litigation, was partly sponsored by the Afrikaanse Taalraad (Afrikaans Language Board) and the Vereniging van Regslui vir Afrikaans (Association of Lawyers for Afrikaans). Prominent role-players participated, such as Fernand de Varennes (leading legal expert on language rights), Christo van der Rheede (CEO of the Stigting vir Bemagtiging deur Afrikaans (Foundation for Empowerment through Afrikaans)), Koos Malan (South African expert on constitutional theory), Theodorus du Plessis (professor in Language Management) and Cornelus Lourens (attorney and applicant in the Languages Bill case).

This selection of papers delivered at the conference reflects the assortment of challenges facing multilingual states on so many levels, whether in Africa, Europe, the UK or Canada.

Following a survey on language policies and legislation in Africa, Chumbow proposes a comprehensive legal framework to guide member states of the African Union. The main obstacles to the establishment of a truly multilingual South African state are identified by Strydom. Williams compares the roles of the Language Commissioner in Canada, Ireland and Wales, and provides an
TOWARDS A LEGAL FRAMEWORK FOR LANGUAGE CHARTERS IN AFRICA

Beban Sammy Chumbow
University of Yaoundé, Cameroon
sammybchumbow@yahoo.fr

Abstract

The African Union’s Language Plan of Action for Africa (AU 2006) requires that members of the Union should have language policies that envisage the use of African languages for national development in conjunction with the official languages of the colonial legacy (English, French, Portuguese, Spanish, etc.) as partner languages. Such policies should be explicitly articulated in a framework that has the force of law.

A survey that was conducted by us on the existence and nature of language policies in Africa revealed that language policies are non-existent in some countries, or exist only in the form of vague, implicit principles that are not articulated. In some other countries, language policy statements are vaguely and briefly formulated, and merely comprise one or two articles of the constitution. Moreover, in many other countries where language acts or language laws do exist, they are often inadequate, defective or incomplete. Glaring omissions include, inter alia, the absence of provisions on language rights for education, the courts and governance, as well as provisions for the implementation of national development objectives, etc.

The problematisation of this state of affairs, as presented in this paper, underscores the need for a legal framework to serve as a model and guide for the formulation of a comprehensive language policy. Specifically, we aim to provide a proposal for a legal framework for the conceptualisation and framing of a language charter, a language act, or a language bill for Africa, on the basis of an analysis of the AU’s Language Plan of Action for Africa, the United Nation’s Human Rights provisions, and – in particular – the acclaimed “advocacy for Language Rights”, either in the form of Linguistic Human Rights (Skutnabb-Kangas 1998, 2000) or Linguistic Citizenship (Stroud 2001).
The model also takes account of thorny issues such as the usual gap between policy and implementation, the lack of provision for the protection of linguistic human rights under the law, as well as issues of enforcement, impunity, allocation of resources, etc.

In short, we aim to motivate and justify a proposed legal structure that would provide statutory articulations and elements of language policy at the levels of status planning (policy formulation) and corpus and acquisition planning (policy implementation), in terms of language-related and language-dependent provisions that are crucially relevant to the social, economic and political transformation of African nations, with a view to national development.

Résumé

Dans son Plan d’Action Linguistique pour l’Afrique (AU 2006), l’Union Africaine exige de ces membres, l’adoption d’une politique linguistique dument garantie par un cadre juridique mettant en exergue l’utilisation des langues nationales pour le développement de la nation en partenariat avec les langues officielles issues de la colonisation (comme le français, l’anglais, le portugais, etc.).

Or, il ressort d’une étude que nous avons menée sur les politiques linguistiques en Afrique, qu’il existe des pays africains sans politique linguistique ou éventuellement envisagée comme un principe vague, inarticulé et implicite. Dans d’autres cas, la politique linguistique est réalisée comme des énoncés sommairement parsemés dans un ou deux articles de la constitution. Dans le meilleur des cas, des lois et décrets existent mais ils sont tous simplement défectueux, déficients ou incomplets. Les omissions les plus évidentes comprennent, entre autres, l’absence de dispositions concernant les droits linguistiques dans l’enseignement, les tribunaux et en matière de gouvernance, etc.

Notre modèle tient également compte des problématiques souvent constatées en Afrique comme le décalage entre une politique et sa mise en œuvre, l’absence de dispositions en vertu de la loi, les questions d’exécution de la loi, l’impunité, et l’allocation des ressources pour la mise en œuvre de la politique linguistique.

En somme, le modèle présente et justifie un cadre juridique qui comprend les articulations statutaires et les éléments fondamentaux d’une politique linguistique et les dispositifs d’un aménagement linguistique. Ainsi le cadre tient compte de toutes les dispositions qui, de loin ou de près, touchent aux questions de langues et leur développement dans l’entreprise de transformation sociale, économique et politique des pays (africains) en voie de développement.

Key words: legal framework, status planning and corpus planning laws, mother-tongue-based multilingual education, linguistic human rights, economic valorising functions, social engineering provisions, impunity, protection under the law

PART ONE: GENERAL BACKGROUND CONSIDERATIONS

1. INTRODUCTION

1.1 The African Union’s requirement of a language law

As mentioned above, the African Union’s Language Plan of Action for Africa (AU 2006) requires that member states should formulate language policies that envisage the use of African languages for national development in conjunction with the current official languages of the colonial legacy (English, French, Portuguese, etc.) as partner languages. Such a policy should be explicitly articulated in a framework that is statutorily endorsed.

The objectives and principles of the Language Plan of Action for Africa, as articulated in Section 1.7, include the following, inter alia:

a) To encourage each member state to have a well-defined language policy.

b) [To ensure] that African languages ..., by means of ... appropriate legislation and effective promotion, assume their legitimate role as official medium[s] of communication in official matters of each member state along with the European languages that [have] hitherto assumed this function.
1.2 **Overview of the current situation in respect of language charters in Africa**

A survey of African countries in respect of their language policies revealed that each of these countries can be classified under one of three categories:

1.2.1 **Category A: Countries with no language policy**

These are countries with no visible policy in the form of a clear pronouncement on language policy. In some cases, the existence of a policy can only be inferred on the basis of a vague and inarticulate implicit principle or tradition. For example, in Mauritius, there is a tradition in terms of which English is used as the language of administration and French as the language of official interaction, while Creole – the mother tongue of about 75% of the population, and spoken by 95% of the population (some as a second language) – enjoys no recognition at all. There is no official policy statement that consolidates this state of affairs. Despite the fact that an increasing dissatisfaction with the marginalisation of Creole has arisen amongst many speakers of the language, led by the non-governmental organisation, *Ledikasyon pur Travaye*, no official policy is available to redress the situation (as in June 2011). Of course, the lack of a policy might actually in itself comprise an intentional and well-calculated “policy of no policy”, geared towards the maintenance of the *status quo*.

1.2.2 **Category B: Countries with some form of policy statement regarding language and language use, limited to one or two articles in state laws**

Policy intentions may be explicitly expressed and recorded, for instance, in the constitution (the fundamental law of the land), or as articles in an education law or act, where the language(s) to serve as medium(s) of instruction in the school system at the various levels may be mentioned. However, in these countries, there is no distinct law on language and language issues that spells out the various considerations in the policy formulation or status planning decisions – and indeed, there are no details in terms of policy implementation procedures specifying obligations and responsibilities. Cameroon and most francophone African countries fall into this category.

1.2.3 **Category C: Countries with language laws or language bills**

In these countries, an attempt has been made to introduce a comprehensive provision for language policy, with the inclusion of responsibilities, rights and obligations. The few countries in this category, such as Nigeria, Ethiopia and
South Africa (where the language bill is yet to become a law), have different conceptions of an appropriate legal framework for language policy, reflecting their different concerns in the matter. In most cases, they do not take account of all the concerns and desired objectives of the African Union and its Language Plan of Action for Africa (LAPA).

### 1.3 Advantages and merits of a language law

Given the African Union’s requirement that not only should every member country have a language policy that clearly provides for the development of indigenous African languages to be used for national development along with the official languages of the colonial legacy, but that such a policy should also have statutory legal status, the need for a legal framework for language acts or language charters is obvious.

Such a legal framework putatively has enduring advantages, including the following, amongst others:

- It can serve as a *policy guideline* to facilitate the endeavour of framing language laws across the continent.
- It ensures the comparability of language laws and language charters on the continent, without the obligation of uniformity, since language situations and the ethno-linguistic composition of societies and general linguistic landscapes vary and may warrant different policy details.
- It aims to ensure that all language laws will be sensitive to and compatible with the essential basic cardinal and universal concerns that underlie such laws, such as human rights, language rights, responsibilities, obligations and protection under the law.
- It ensures effective conformity by African nations with common ideological positions, since the proposed framework is determined by overall ideological positions and concerns of the United Nations and the African Union, to which individual members of the Union are legally committed *ipso facto*, i.e. by virtue of their position as member states.

### 2. LINGUISTIC HUMAN RIGHTS

One of the weaknesses of the language policy instruments of African nations (where policies exist), is that they are either silent or very vague on the issue of *linguistic human rights* – as envisaged in the United Nations Charter on Human Rights and in various UN conventions, as articulated by many scholars, for
linguistic citizenship.

A great deal has been said and done in respect of linguistic human rights in the
last two decades. Much of the action taken in favour of linguistic human rights
arose from the United Nations Charter (UN 1945). In fact, the UN Charter refers
to protection against discrimination on the basis of language in articles 13(6),
55(c) and 76(c).

Since this important advancement, language has been included on a regular basis
in international human rights documents. In 1948, the Universal Declaration of
Human Rights guaranteed the right to freedom from discrimination on the basis
of language, in Article 2. Article 2(2) of the International Covenant of Economic,
Social and Cultural Rights of 1966 provides the same guarantee.

The United Nations Declaration of the Rights of Persons Belonging to National
or Ethnic, Religious and Linguistic Minorities, issued in 1992, stipulates in
Article 2.2 that member states should, inter alia,

... take measures to create favourable conditions to enable persons belonging to
minorities to express their characteristics and to develop their culture, language,
religion, traditions and customs, except where specific practices are in violation
of national and contrary to international standards (Quoted in Skutnabb Kangas
2000. See also Perry 2004).

Amongst its obvious conclusions, this covenant acknowledges that the survival
of cultural and linguistic minorities within the nation-state and within the
community of nations is dependent on the use of their language in education
and in self-actualisation and development. A number of international
conventions and declarations of linguistic human rights have subsequently
extolled the virtues and merits of positive linguistic rights and acknowledged
the consequent need for affirmative action to ensure compliance.

3. CONTENT OF THE LANGUAGE CHARTER

Legal instruments are naturally concerned with both the form and content of
legal provisions. However, in this contribution the focus will fall on the content
of the language act or language charter; rather than on the form thereof (since
the latter is the domain of jurists, who are competent in such matters).

In this regard, we have demonstrated (in Chumbow 2010a, 2011a) that the
African Union’s language plan of action actually encapsulates four strategic
language planning and language engineering activities indispensable for the
cultural, social and economic transformation of Africa, namely the *revitalisation*, *revalorisation*, *instrumentalisation* and *intellectualisation* of African languages for the purposes of national development endeavours.

*Revitalisation* refers to all measures and actions necessary to ensure linguistic *vitality* and *language maintenance*, leading to the preservation of the remarkable quality and degree of cultural and linguistic diversity that characterises the rich heritage of African nations. This is envisaged in terms of, and in consonance with the recommendations of UNESCO (2003a).

*Revalorisation* pertains to all those provisions in the action plan that are geared towards ensuring *added value* for African languages, beyond their basic communication and identity functions within the ethno-linguistic group. This is achieved, for instance, by giving such a language *supplementary, economically valorising functions* as a language of education, a language of official or public affairs in the local government councils, a language of mass communication, etc. (Chumbow 2009, 2010a).

*Instrumentalisation* refers to those *language engineering* measures and activities envisaged in the plan that lead to the standardisation of languages by providing them with efficient norms and codes (norms of orthography, norms of grammar, etc.) to empower them to assume their new supplementary functions in education and other areas of development-related needs; in a nutshell, all measures taken to make the language an effective instrument of empowerment for education and economic development.

*Intellectualisation* complements both *revalorisation* and *instrumentalisation* in that it concerns all measures necessary to ensure the use of African languages in all academic and intellectual spheres, including the development of appropriate terminology for communication and the appropriation of new knowledge in science and technology. For more on the African Union’s language policy in the context of continental development, see Chumbow (2010a, 2011a).

**PART TWO: ARCHITECTURE OF LEGAL FRAMEWORKS FOR NATIONAL LANGUAGE LAWS/CHARTERS/ACTS IN AFRICA**

1. **INTRODUCTION**

The architectural design and structure of legal instruments cannot be identical and uniform from one country to the next, owing to the inherent diversity of the institutional and linguistic situations of countries. Therefore we shall
Law, Language and the Multilingual State includes 16 papers that were presented at the Twelfth International Conference of the International Academy for Linguistic Law, co-presented with the Department of Language Management and Language Practice (University of the Free State), that took place November 2010 at Thaba Nchu, South Africa. The conference also highlighted a colloquium, Language legislation and litigation, that focused specifically on the South African context.

This book is a collection of writings by experts in the multilingual field and emphasises challenges that societies face. Issues such as the drafting and implementation of legislation, the degree and forms of state intervention and the functioning of support structures are addressed. Related issues such as globalisation and diversity, language rights, ideology and legislation, as well as minority and indigenous languages are also discussed.

A truly multilingual state requires linguistic equality and language rights. This book contributes to the promotion and protection of linguistic diversity.