Joseph-G Turi

Language law and language rights: perspectives on legal intervention and language diversity

First submission: 7 August 2007
Acceptance: 8 august 2008

Language legislation aims to protect or promote the status and use of one or more specified languages. Official language legislation relates to the according of official status to a language or languages, while liberal language legislation pertains to the recognition of language rights and linguistic minorities. Regarding the latter category, a distinction is drawn between the right to the language and the right to a language. The former refers to the right to use one or more specified languages, particularly in an official context, whereas the right to a language refers to the universal right to use one's mother tongue, or any language, particularly in unofficial contexts. Diversity, including linguistic diversity, is an asset that should be acknowledged and preserved — also in a judicial context.

Taalwetgewing en taalregte: perspektiewe op juridiese intervensie en taaldiversiteit

Die doel van taalwetgewing is om die status en gebruik van een of meer gespesifeerde tale te beskerm of te verhoog. Met verwysing na verskeie gevalle van taalwetgewing in verskillende state word veral offisiële taalwetgewing (die verlening van offisiële status aan 'n taal of tale) en liberale taalwetgewing (erkenning van taalregte en taalminderhede) in meer besonderhede bespreek. Betreffende die laasgenoemde kategorie word onderskei tussen die reg op die taal en 'n taal. Die eersgenoemde is die reg om een of meer gespesifiseerde tale, veral in offisiële verband, te gebruik, en die reg op 'n taal die universele reg om jou moedertaal of enige taal veral in onoffisiële verband te besig. Diversiteit, ook linguistiese diversiteit, is 'n bate wat erken en bewaar moet word, ook juridies.

Prof J-G Turi, Research Associate,Unit for Language Management, University of the Free State, P O Box 339, Bloemfontein 9300; E-mail: academy.inter@sympatico.ca

Acta Academica
2009 41(1): 126-143
ISSN 0587-2405

SUN MEDIA BLOEMFONTEIN

In many modern states, the coexistence of numerous — and different — languages has become a common phenomenon, which often leads to a situation of linguistic contacts and inequalities. The coexistence of languages in a dominant-dominated relationship which is indicative of a power struggle tends to result in a conflict between linguistic majorities and minorities. Linguistic conflicts were significant during the twentieth century, and they are still important at the beginning of the new millennium. Linguistic neutrality has been relegated to the past. Linguistic intervention has thus become increasingly prevalent. States must tackle these conflicts and their multidimensional ramifications by means of appropriate linguistic planning policies, which currently tend to translate increasingly into language legislation. Although linguistic policies do not always require the implementation of linguistic legislation, they do so as a rule.

1. Linguistic intervention

Linguistic legislation is aimed at protecting or promoting the status and usage of one or more designated or identifiable languages in a state, at different levels, through legal language obligations and language rights which have been instituted to that end.

This kind of legislation falls within the domain of a new legal science, namely comparative linguistic law, which focuses on the law of languages, the language of law and the relations between law and language. To the extent that language, which is the main tool of the law, becomes both the object and the subject of law, linguistic law becomes metajuridical law. To the extent that linguistic law recognises and enshrines both linguistic rights and the fundamental right of all persons to be culturally different, it becomes futuristic law.

The intervention of public authorities at all levels (national, regional, municipal, local, and so on) in the field of language is a relatively recent development, since it stems from two sets of contemporary phenomena: the democratisation of education and the globalisation of communications.[1]

1 On modern language issues, cf J-G Turi, W Jie, S Jinzhi, *Law, language and linguistic diversity* (Beijing: Law Press China, 2006).

The impact of linguistic legislation has been beneficial for the French language in Quebec (Canada) and the Catalan language in Catalonia (Spain), whereas its effect has been less significant in the case of the Irish language in Ireland. The six key factors leading to successful linguistic policies in Catalonia and in Quebec, in particular, were vigorous popular support; a strong political will; an effective language planning policy; efficient language legislation; a proper definition of political territory where the official language is spoken by a majority as well as the recognition and protection of the historical linguistic minority.

A typology of language legislation will be compiled on the basis of language legislation in various countries. Because the language situation differs from country to country, the way in which a particular country should formulate its language legislation cannot be prescriptively determined. By taking the objectives and outcomes of the different categories of language legislation into account, language planners and language legislators — also in the case of South Africa — can prevent or deal with possible conflict situations.

In the first section, a brief exposition of the objectives and nature of language legislation will be provided, followed by a typology of language legislation. One of the outcomes of successful language legislation is the assurance of the continued existence of language diversity — an asset of inestimable value. A subsequent section will reflect on the value of language diversity. Finally, a few conclusions will be drawn — also with reference to the language situation in South Africa.

2. Typology of linguistic legislation

Linguistic legislation is divided into two broad categories (with a fair expanse of grey areas in between), in accordance with its field of application: official or public legislation and non-official or private legislation.

In addition, linguistic legislation may also be divided into four categories, according to its functions: official, institutionalising, standardising or liberal.

2.1 'Official linguistic legislation'

This legislation aims to make one or more designated or identifiable languages legally compulsory — whether explicitly or implicitly, totally or partially, symmetrically or asymmetrically — as official or national languages in the official fields of legislation, justice, public administration and education. Education is considered to be the most important of these fields, comprising the target of the majority of modern language legislation.[2] A national language is the historical language, or one of the historical languages, of a country. An official language is the language, or one of the languages, of a state. In fact, the difference is not always so clear from a legal perspective. In some countries, the official and national language(s) may coincide. In China,Putonghua is defined as the "common" and "national" language, as well as the written language of the country; but it is also described as "official" in some translations. Generally, knowledge of official language or of one of the official languages is a condition to become a citizen of a country.

One of two principles is applied to official languages in a given territory: linguistic territoriality (the obligation to use one language) or linguistic personality (the public obligation to use more than one language and the private right to choose between available languages).

Making one or more languages official does not necessarily entail major legal consequences. The legal definition of officialisation depends on the actual legal treatment accorded to languages. In some countries, there are *de jure* and *de facto* official languages. In Morocco, the only *de jure* official language is Arabic, but French is still the important *de facto* official language, since it is regularly used in official domains. In New Zealand, Maori is the *de jure* official language, while English is the *de facto* official language. From a constitutional standpoint, many states do not have *de jure* official languages, for example, Argentina, Japan, Germany, Britain and the USA (at federal level). In these countries, Spanish, Japanese, German and English,

2 Cf J-G Turi, P H Nelde & T Fleiner (eds), *Law and languages of education – Droit et langues d'enseignement*. Institut du Fédéralisme de Fribourg (Bâle, Genève, Munich: Helbing & Lichtenhahn, 2001).

respectively, are the *de facto* official languages, coinciding in each case with the language in which the constitution is drafted.

Many modern states are, in one way or another, officially unilingual. However, numerous states are bilingual or multilingual. In China, more than 50 national languages are recognised at the regional levels. In India, 18 languages are constitutionally protected. Moreover, with a few exceptions, bilingualism or multilingualism is the norm at the federal level, in the 28 member states and in the seven territories. According to the census of 1971, there are 166 mother tongues in the Indian state of Karnataka. In Singapore, there are four official languages; in Luxembourg, three, and in Switzerland, four at the federal level. In some countries of the ex-USSR, there are important linguistic problems between Russian and national languages. In some countries of ex-Yugoslavia, significant linguistic problems are encountered within the same language. For instance, in Bosnia-Herzégovina, the same language is called Croatian, Bosnian or Serbian. The recognition and/or protection of autochthonous languages is still a very complex linguistic issue. Arabic, Chinese, English, French, Russian and Spanish are the six working languages of the Executive Committee of Unesco.

If a state is officially bilingual, only public authorities have the obligation to be bilingual, while citizens may use the official language of their choice. An officially bilingual state may promote bilingualism among its population. In other cases, the contrary may apply in practice, for cultural or political reasons, or if the state is officially bilingual. However, when one official language is more important than the other, the people who speak the less important language will tend to learn the other official language.

The language that is declared official is not necessarily the most widely spoken language in the country. In many countries of black Africa, the official language is still the language of the ancient colonisers, even though it is not the most widely spoken language. Local languages are defined as "national". This is not the case in Ethiopia (where Amharic is the "working language" of the federal government) and South Africa (which has eleven official languages). In Indonesia, the official language is Indonesian-Malay, the lingua franca in the country, while the most widely spoken regional language is Javanese.

2.2 'Institutionalising linguistic legislation'

This legislation seeks to make one or more languages — whether explicitly or implicitly, totally or partially, symmetrically or asymmetrically — the normal, usual or common language(s) in the non-official fields of labour, communications, culture, commerce and business. Communication is the most important of these fields. The majority of modern language legislation does not belong to this category.

2.3 'Standardising linguistic legislation'

This legislation is aimed at ensuring that one or more languages, considered as objects, conform to certain language standards in some specific official and non-official fields. In the twentieth century, Afrikaans, Hebrew, Hindi and Indonesian were standardised in certain fields. The majority of modern language legislation does not belong to this category.

The oral and, in particular, the written forms of a language as a medium rather than its content as a message are targeted by legal norms dealing explicitly with language. Linguistic content may comprise the object of legislation that is not explicitly linguistic in civil, criminal or constitutional norms. In addition, the quantity or the presence (the "status") of a language is generally the object of language legislation, while the quality or correct usage (the "corpus") of a language belongs to the realm of example and persuasion in non-official fields, and to the domain of schools and governments in official fields.

The quality issue of a language is not a recent phenomenon or problem. The ancient Greeks spent much time quibbling over analogy, understood in terms of an almost religious respect for the rules of grammar and linguistic tradition, and anomaly, regarded as a synonym for linguistic freedom and creativity. Similar discussions were held some years ago with the establishment of their Constitution of 1952, of which article 107 stipulated that "[t]he official language of the country is the language in which the Constitution is written", because the Greek language was not generally understood in the same way. The mentioned article also prohibited any attempt to corrupt the official language. The situation has changed since the introduction

of the Constitution of 1975 (which states that the text of the Holy Scriptures must remain "unaltered"). The "popular" Greek language has won its secular battle against "classical" Greek, having become the *de facto* official language of the country.

There is a similar situation in respect of the Swiss Constitution. Article 70 of that Constitution states that French, German, Italian and Romansch are the official languages of the Swiss Confederation. Does "German" refer to "classical" German or "Swiss" German?[3]

Linguistic legal rules are less rigid than grammatical rules. As an individual and collective way of expression and communication, language is a cultural phenomenon, difficult to appropriate and define legally (and culturally, as is the case, for example, in former Yugoslavia). While grammatical rules are based on teacher-pupil relations, legal rules are applied, and applicable, insofar as they are in keeping with local custom and the behaviour of reasonable people. Thus, linguistic legal sanctions, like criminal sanctions (fines or imprisonment) and civil sanctions (damages, partial or total illegality), which are different from social sanctions (such as low marks at school, loss of social prestige or loss of clients), are often limited to low or symbolic fines or damages.

Linguistic terms or linguistic concepts (for example, "mother tongue") are the focus of language legislation only to the extent that they are formally understandable, intelligible, translatable, usable or identifiable, or have some meaning in a given language. In the Forget case of 1988, the Supreme Court of Canada declared that

> [t]he concept of language is not limited to the mother tongue but also includes the language of use or habitual communication [...] there is no reason to adopt a narrow interpretation which does not take into account the possibility that the mother tongue and the language of use may differ.[4]

The problem of the understandability of a legal text is also a serious issue. For this reason, the State of New York has enacted two consumer

3 Cf F Redard, R Jeanneret & J-P Métral (eds), *Le Schwyzertutsh, 5e langue nationale?* (Neuchâtel: CILA, 1981).

4 Nancy Forget *v* Quebec, [1988] 2 S.C.R. 100.

protection laws which state that some contracts must be written in "understandable" or "plain" language.[5]

Article 58 of the Quebec Charter of the French Language (Bill 101) states that, allowing for exceptions, non-official public signs should be solely in French (the practical target of this prohibition being the English language). But what does "French" mean from a legal standpoint? If a word (for example, "ouvert") is posted and understandable in French, it is legally a French word; in this case, the public sign is legal. If a word is posted and is not understandable in French (for example, "open"), it is not legally a French word, if it only has meaning in another specific language and is translatable into French.

Linguistic legislation is aimed not only, objectively, at the language itself (as a cultural heritage of a nation), but also, subjectively, at the speakers of a language (as linguistic consumers and users), unless the legislation is clearly a public policy law in some specific official or non-official field or fields. Such a law consists of fundamental norms that are, in general, absolutely imperative or prohibitive; the related legal sanctions can be formidable, such as total illegality. In the Sutton case of 1983, confirmed by the Quebec High Court in 1983, and in the Miriam case of 1984, the Montreal Court of the Sessions of the Peace and the Quebec Court of Appeal declared that, in certain given situations, Quebec's language legislation only applies to francophones if they explicitly request to be served in French. It was thus concluded that francophones can renounce their language rights, which suggests that the legislation in question is not deemed to be a public policy law.[6]

In the France Quick case of 1984, the Cour d'appel de Paris acquitted a firm accused of using the terms "giant", "big", "coffee-drink", "bigcheese", "fishburger", "hamburger", "cheeseburger", and "milkshake", on the grounds that the terms and expressions were either fanciful, or were understood by the French consumers. True, the

5 Cf Chapter 747, 1977, and Chapter 199, 1978, of the Statutes of New York State.

6 Sutton case, February 23, 1983 (R *v* Sutton, 1983, CSP, 101), confirmed by the Quebec High Court on August 15, 1983 (decision No 500-36-0000136-831); Miriam case, March 22, 1984 (SFPC *v* Miriam, 1984, CA, 104).

French Cour de cassation declared, in the France Quick case of 1986 that the goal of the French language legislation was the protection of the French language rather than francophones.[7] In 1987, the Cour d'appel de Versailles declared in respect of the same case that terms such as "spaghetti" and "plum-pudding" were legally French terms because they were "known to the general public".[8] This legislation therefore protects both the francophones and the French language. Legally speaking, a francophone is anyone whose mother tongue or language of use is French.

A similar flexible interpretation was given in the 1991 European Peeters case, which allowed, in the Flemish region of Belgium, the use of an "easily understood" language on product labels (a non-official domain), even if the understandable language, French, was not the local one, Dutch.[9]

Quebec's Court of Appeal in the Miriam case of 1984, Quebec's High Court in the Gagnon case of 1986, and the French courts, in numerous decisions, including the Steiner case of 1985, all confirmed these essential points.[10] In the Miriam case, the Quebec Court of Appeal, in an *obiter dictum*, concluded that Article 89 of the Charter of the French Language, which allows the generalised use of both French and another language, and the Preamble of the Charter (which provides that the Act must be enforced in a "spirit of justice and open-mindedness"), enshrined the principle of linguistic freedom in Quebec for all practical purposes.

7 For the France Quick case, of December 14, 1984, see decision No 1327-84 of the 13e Chambre des appels correctionnels de la Cour d'appel de Paris, Section B For the France Quick case, of October 20, 1986, cf decision No 85-90-934 of the Chambre criminelle de la Cour de cassation.

8 For the Versailles Court of Appeal France Quick case, of June 21, 1987, cf decision No 69-87 of the 7e Chambre de la Cour d'appel de Versailles.

9 Peeters case (June 18, 1991), European Court Report 1991, p. I-297RCS 1 (No 69/89).

10 For the Miriam case, cf *supra*, footnote 6. For the Gagnon case, of December 15, 1986, cf Charles Gagnon *v* the Attorney General of Quebec, decision No 200-36-000035-86. For the Steiner case, of November 27, 1985, cf decision No 85-1233 of the 13e Chambre des appels correctionnels, Section B, Cour d'appel de Paris, and judgement No 148-705 of the Tribunal de Police de Paris.

In the Gagnon case, Quebec's High Court recognised as French the apparently English term "office", used in a motel instead of the French word "réception", because it was an expression peculiar to Quebec, not forbidden by the law, and understood in Quebec.

In the Steiner case of 1985, the Cour d'appel de Paris confirmed the judgement handed down by the Tribunal de Police de Paris of 1984, recognising as French the word show, "because it is found in all good French dictionaries and is easily understood by all, as well as the word showroom, since there is no French translation of the expression and it would be inquisitional and abusive to enforce the use of the term hall or salle d'exposition" (translation).

Thus, any terminology that is linguistically "understandable" or "neutral" in non-official fields is not generally targeted by language legislation.[11]

2.4 'Liberal linguistic legislation'

This legislation is designed to enshrine the legal recognition of language rights and language minorities, explicitly or implicitly, totally or partially, symmetrically or asymmetrically. While linguistic rights are subjective inasmuch as they belong to any person, linguistic law, viewed objectively (as a set of legal norms relating to language), makes a distinction between the right to "the" language and the right to "a" language. The former is the historical right to use one or more designated or identifiable languages which belong to the majorities or to some specific minorities, especially in official fields, while the latter refers to the universal right to use one's mother or native tongue or any language, particularly in non-official fields. These linguistic rights, which belong to natural persons and, to a certain extent, to artificial persons are similar to the principles of territoriality and personality. They are generally individual rights from a strict legal point of view, especially in relation to members of linguistic minorities, although

11 Cf Quebec's Regulation regarding the language of commerce and business: "Any inscription, any sign or poster, and any commercial advertising may be presented by pictographs, by figures, by any artificial combination of letters, syllables or figures, or by initials" (RSQ, c C-11, r.9, A 20).

naturally, they are individual and collective from a cultural point of view. They are also individual rights from a political point of view, since states tend to be afraid of any possible coincidence between collective linguistic rights and the right to self-determination. That being said, the linguistic rights of aboriginal peoples are generally considered to be collective ones. A peculiar situation prevails in New Brunswick (Canada) where the French and English communities are legally equal and possess collective linguistic rights.

Linguistic rights are fundamental rights. For this reason, Article 58 of Bill 101 was declared anticonstitutional, in the Ford and Devine cases of 1998, by the Supreme Court of Canada, as far as this article stated that public signs should be "only" in French.[12] The article was repealed after the Human Rights Committee of the United Nations in 1993, in the McIntyre case, declared it incompatible with freedom of expression.[13] In the Ford case, the Supreme Court declared that

> [l]anguage is so intimately related to the form and content of expression that there cannot be true freedom of expression by means of language if one is prohibited from using the language of one's choice.

Moreover, the Court declared that the article was also discriminatory because the distinction based on the "language of use" had the effect of "nullifying" the fundamental right to "express [oneself] in the language of one's choice".[14] According to the Human Rights Committee, article 58 was not discriminatory. However, with regard to Article 35 of Bill 101, which requires that professionals should have an appropriate knowledge of the French language, the Supreme Court, in the abovementioned Forget case, declared that the provisions of this article were non-discriminatory.[15]

In the 1986 MacDonald case, the 1988 Ford and Devine cases and the 1989 Irwin Toy case, the Supreme Court of Canada recognised the distinction between official and non-official fields, as well as between the

12 Ford *v* Quebec, of December 15, 1988, [1988] 2 SCR 712; Devine *v* Quebec, of December 15, 1988, [1988] 2 RCS 790.
13 For the McIntyre case, of May 5, 1993, cf CCPR/C/47/D/359/1989-385/1989.
14 Ford *v* Quebec, [1988] 2 RSC 748.
15 Forget *v* Quebec, [1988] 2 SCR 90.

right to "the" language (the principal constitutional right to use French and English in official fields — an explicitly historical right, owing to the historical background of the country), and the right to "a" language (an accessory constitutional right to speak and understand any language in non-official fields, envisaged implicitly in the Canadian Constitution as an integral part of the human rights category).[16] In the Irwin Toy case, the Supreme Court stated that "[f]reedom of expression ensures that we can convey our thoughts and feelings in non-violent ways without fear of censure".[17] Freedom of speech means, in principle, any content (any message, including commercial messages) in any form (any medium and therefore any language), except violence.

In a country or region, there may be only one linguistic majority, yet one or more linguistic minorities. Since the definition of a linguistic minority is difficult to circumscribe, the most practical and acceptable solution is to describe a linguistic minority as a group or cultural community whose language is spoken by less than 50% of the population of a country or region. Recognised linguistic minorities are generally historical communities with deep and lasting roots in a country or in a given territory. In 1999, Italy declared Italian as its official language, while in the same Act, twelve recognised historical linguistic minorities were declared as "protected" in some official and non-official fields and in some territories.[18] In Quebec, only Canadian "anglophones", for example children of Canadian citizens who have received their tuition in Canada in English, may attend English public schools. By contrast, in Finland, there is freedom of choice between the Finnish and Swedish public schools. The 1992 European Charter for Regional or Minority Languages applies only to historical linguistic minorities.[19] Does this

16 MacDonald *v* City of Montreal, May 1, 1986, [1986] 1 SCR 460.

17 Quebec *v* Irwin Toy Limited, April 27, 1989, [1989] 1 SCR. 970.

18 Act No 482, December 15, 1999 (Norme in materia di tutela delle minoranze linguistiche storiche).

19 However, the Constitutional Council of France stated that the European Charter was incompatible in France with the principle of equality among citizens and with the French Constitution, which declares that French is the language of the Republic (Decision of June 15, 1999).

mean that, ultimately, new linguistic minorities are condemned to linguistic integration or assimilation? However, Article 27 of the 1966 International Covenant on Civil and Political Rights applies to all individual linguistic minority rights, including those of historical minorities, new minorities and new immigrants, according to a 1994 General Comment of the UN Human Rights Committee.[20] This article recognises the right of persons belonging to linguistic minorities to use their own language when communicating with other members of their group.

The 1996 unofficial Barcelona Universal Declaration of Linguistic Rights states that linguistic rights, including "community linguistic rights", are historical, and are also both individual and collective.[21]

The 1979 UN Capotorti Report indicated that, although the use of languages other than the official one(s) in official fields was restricted or forbidden in some countries, the use of such languages in fields of non-official usage was generally neither restricted nor forbidden. It must be pointed out that, according to the Capotorti Report, it is not only the right to be different that comprises a human right, but the right to be assimilated also falls within the category of human rights.[22]

Since then, many states, including Algeria, Malaysia, South Africa, China, 29 member states of the USA, the new states of the former USSR, and the former Yugoslavia and East Timor, have introduced important and often drastic linguistic legislation.

Some of the modern language legislations in the world, in both official and non-official fields, are neither liberal nor equitable, as far as some linguistic minorities are concerned. In the past, for example,

20 General Comment No 23 of the UN Human Rights Committee (April 6, 1994).

21 The author of this article is one of the signatories to the Barcelona Universal Declaration and also a member of the Follow-up Scientific Council.

22 Cf F Capotorti, *Study on the rights of persons belonging to ethnic, religious and linguistic minorities* (New York: United Nations, 1979): 81 & 103, in particular. Cf also J-G Turi, Typology of language legislation, Tove Skutnabb-Kangas & Robert Phillipson (eds), *Linguistic human rights* (Berlin-New York: Mouton de Gruyter, 1994): 111-9.

there have been instances of prohibitive linguistic legislation in Fascist Italy and Francoist Spain, and more recently in Quebec and Turkey, forbidding the use of languages other than the official language in non-official fields such as trade marks, firm names, public signs and communications. However, such recent provisions have subsequently been revoked. In Indonesia, only Latin characters are permitted on public signs. This amounts to an implicit prohibition of signs in the Chinese language. Some countries have good examples of linguistic tolerance and freedom, for instance in Finland (which has two official languages, and where genuine protection is afforded to the Swedish minority), in South Africa (with eleven official languages, and where the right to "a" language is specifically recognised), and in Canada and Australia (where a policy of multiculturalism is upheld).

3. Linguistic diversity

The linguistic diversity of our world is one of its greatest assets. Therefore, legally and explicitly, both the right to "the" language and the right to "a" language, as well as the protection and promotion of linguistic minorities should be recognised and enshrined.

The right to "a" language in official fields should also be enshrined in one way or another in accordance with higher legal norms, and with mandatory provisions, as is generally the case in respect of the right to "the" language. These legal norms should identify the holders and the beneficiaries of language obligations and language rights, as well as the legal sanctions that accompany these obligations and rights.

As a historical fundamental right (which takes into account the historical background of each country), the right to "the" language deserves special treatment in certain political contexts, even if it is not, in itself, a universal fundamental right. As a universal fundamental right, the right to "a" language, even if it enshrines the dignity of all languages, cannot be considered an absolute right under all circumstances. A hierarchy exists, which — in ways which are different but not discriminatory — must take into account the historical necessity for states to assure the linguistic cohesion and security of the nations and individuals concerned, at national, regional and local levels. This

includes the necessity of establishing equitable relationships between several languages that coexist on the same territory.

It is clear that states must at all levels take into account, in an equitable way, the national languages spoken by their citizens and inhabitants just as citizens and inhabitants must at all levels take into account, in an equitable way, the official language(s) of their states. Equity is the key word for finding acceptable solutions in this field. One good solution, among others, would be to make all the national languages of the country legally official or national in a state, in one way or another.

4. Conclusion

The recent political trend in favour of linguistic and cultural diversity is indeed remarkable provided, of course, that its most extreme expression, resembling a kind of a new religion, does not lead to further warmongering among nations. Another tendency has also developed toward the protection of strong historical languages that are experiencing circumstantial problems, for instance the officialisation of the French language in France, or of the English language in 29 member states of the USA. As a matter of fact, the languages that deserve legal protection are the vulnerable ones, for instance the lesser-used languages (spoken by fewer than a million, or not more than a few million speakers), the minority languages, and the languages that are faced with a particularly difficult linguistic situation.

Provisions in the South African Constitution (Act 108 of 1996), which recognises eleven of the most important languages spoken in South Africa as official languages, may serve as an example of liberal language legislation. Although the principle of the equality of languages is recognised *de jure*, an analysis of press reports[23] and

23 South African Language Rights Monitor (SALRM). *Third report on the South African Language Rights Monitor Project, 1 January 2004-31 December 2004* (Bloemfontein: Unit for Language Management, University of the Free State, 2004).
South African Language Rights Monitor (SALRM), *Fourth report on the South African Language Rights Monitor Project, 1 January 2005-31 December 2005* (Bloemfontein: Unit for Language Management, University of the Free State, 2005);

complaints lodged with Pansalb[24] reveals that, in practice, these provisions are not consistently executed *de facto*. Positive state intervention is required in order to ensure the maintenance and consolidation of group rights. A linguistic *laissez-faire* attitude leaves minority groups vulnerable to hegemonic favouritism.

Quebec's Charter of the French language recognises this need by ruling, in Article 89, that "[w]here this act does not require the use of the official language (French) exclusively, the official language and another language may be used together". It therefore acknowledges both the right to "the" language and the right to "a" language, by entrenching an interesting hierarchical solution in language legislation.

The increasing legal intervention of states in the field of language shows that the globalisation of communications has assumed such dramatic proportions that it must be controlled by legally protecting and promoting national, regional and local languages and identities, for instance the linguistic and cultural diversity of our world. Language law is therefore synonymous with linguistic localisation.

At the start of the new millennium, the natural Tower of Babel fortunately seems stronger than the artificial and technical globalisation of communications. But we must remain vigilant and take appropriate action.

This is the reason why, in June 2006, the Galway International Conference on Language and Law unanimously adopted the Call to UNESCO for an International Convention on Linguistic Diversity.[25] This Call should circulate, and receive full support, among all concerned persons, organisations and nations who feel strongly about linguistic diversity issues.

South African Language Rights Monitor (SALRM), *Fifth report of the South African Language Rights Monitor Project, 1 January 2006-31 December 2006* (Bloemfontein: Unit for Language Management, University of the Free State, 2006).

24 Pan South African Language Board (PanSALB), *Pan South African Language Board: Annual report 2000/2001* (Arcadia: PanSALB, 2001).

25 Cf Appendix A.

Galway, Ireland, 16 June 2006

Call to Unesco and to member states of the United Nations for an international convention on linguistic diversity

From the participants of the Galway-AIDL/IALL Tenth International Conference on Language and Law.

On October 20, 2005, UNESCO adopted an International Convention on Cultural Diversity, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

The participants of the Galway International Conference on Language and Law and of the 10th International Conference of the International Academy of Linguistic Law (Galway, 14-16 June, 2006) believe that the time has come for UNESCO and the Member States of the United Nations to start intensive negotiations with a view to adopting an International Convention on Linguistic Diversity. There are already many international legal instruments and documents on issues concerning linguistic rights such as the Universal Declaration of Human Rights (1948), the Convention Against Discrimination in Education (1960), the International Covenant on Civil and Political Rights (1966), the Convention on the Rights of the Child (1989), the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992), the Framework Convention for the Protection of National Minorities (1995), the Hague Recommendations regarding the Education Rights of National Minorities (1996), the Oslo Recommendations regarding the Linguistic Rights of National Minorities (1998), the Lund Recommendations on the Effective Participation of National Minorities in Public Life (1999), the Universal Declaration on Cultural Diversity (2001), the European Charter for Regional or Minority Languages (1992), the Charter of Fundamental Rights of the European Union (2000), the American Convention of Human Rights (1969), the African Charter on Human and People's Rights (1981) and the Beijing Declaration and Platform for Action (1995). There are also non-governmental international documents, such as the Barcelona Universal Declaration of Linguistic Rights (1996) and the Pacific Charter of Human Rights (1989).

All these Instruments and Documents are important and very useful. It is now time to take the next step. The linguistic diversity of our world must be recognised in a clear and effective way. We consider, therefore, that an International Convention on Linguistic Diversity is necessary if we want linguistic rights to become effective fundamental rights at the beginning of the new millennium. There are more than 6,000 languages in the world, but many minority languages are under severe pressure from majority languages, from the perspective of speaker networks, speaker ability, and patterns of use. It is now time to act in favour of linguistic diversity. The world needs an International Convention on Linguistic Diversity, hence this call to UNESCO. The

signatories to this letter are naturally available to UNESCO to provide technical assistance on this matter. We are transmitting this call to both public and private international organisations, which focus on issues pertaining to language rights.