CHAPTER 3
LANGUAGE PLANNING AND POLICY

3.1   Introduction

This chapter presents the broad based and theoretical aspects of language planning and policy, narrowing down to planning and policy in Malaysia and finally the concerns in the Malaysian courtroom, which is pertinent to the 4th research question in chapter one.

3.2   Language Planning and Policy

During the half century following the end of the Second World War, many countries were affected by new political arrangements, either gaining independence from previous colonial control (typically in Africa and Asia), becoming independent as the result of the break-up of multinational unions (the Soviet Union, Yugoslavia), or forming supra-national groupings such as the European Union. Such changes inevitably bring with them problems of language and communication which are addressed by the formulation of language policies officially expressed in legislation, codes of practice and, frequently, the Constitution.

The key language policy decision in relation to the legal system involves the selection of the language(s) to be used in court: the *language(s) of trial* and *of*

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record. This decision affects the administration of justice because it involves not only the language(s) the participants are permitted to use in a trial but also the language(s) used as the medium of education of the Bench and the Bar: in fact the whole legal profession.

Several questions arise at this point: How does the ruling elite decide on the official language(s) for the legal system?; How does this choice relate to the country's language planning and policy, in general?; What theory of language is the policy based on?; How is the policy implemented?; How does the policy affect the administration of justice? And, specifically, in what ways does the policy affect those who work in the courts, particularly, the interpreters?

In the first half of this chapter the nature of language as a system, its relation to systems in general, and the notion of systemic planning are introduced. These concepts themselves are related to elements of macro sociocultural and sociopolitical planning, language planning and policy (theory and practice) and the main issues debated since the early 1960s in the study of language policy making and implementation and its contrasting realisation in five South-East Asian states. The second half of the chapter is concerned more specifically with language planning and policy in Malaysia; the goals of language planning and implementation of the national language policy; the issue of linguistic rights and, finally, the implementation of language policy in the courts.

3.3   Systems, Language and Planning

Although *language planning*, as a field of study, has a fifty-year history, neither of the terms, 'language' or 'planning' has been defined in a way which is universally accepted in linguistics.   This section discusses these two concepts and the way the term 'system' has been typically applied to 'language', and provides working definitions of 'system', 'language', 'planning' and 'language planning' as an introduction to the later concentration on language planning in general, in Malaysia and in the Malaysian legal system.

3.3.1 Systems

It has been commonplace in linguistics to define language as a *system* and for linguists to differ only on the kind of system it is (de Saussure 1916, Sapir 1921, Greenberg 1957, Chomsky 1957). What is strikingly lacking is a definition of 'system' itself. This is provided by *systems theory* (the study of systems, as such) introduced in Chapter 1 (section 1.6): 'a set of elements mutually related such that the set constitutes a whole...' which distinguishes *'hard' closed* systems from *'soft' open* systems (Checkland op cit: 318 provides definitions for both types of system and for 'systems thinking' as a process of intellectual inquiry).

The 'hard', closed system contains a limited number of elements whose relationships are known, it is isolated (relatively or totally) from its environment and its future states are strongly predictable as it changes through time. It possesses, in other words, the properties of (a) *completeness* - the elements

composing it and the relationship between them provide a total description of the system; (b) *stability* - unpredictable change cannot occur within it; and (c) *isolation* - the system is not related to other systems.

The rules which explain the nature and the function of such a system are deterministic in nature, absolute and eternal, and congruent with the mechanistic world-view that the workings of the physical world are wholly predictable, insulated from internal change and external forces.

The future states of the 'soft', open system, in contrast, can only be weakly predicted, since it contains an unknown number of elements whose relationships are not known and is embedded in, influences and is influenced by its environment. Such a 'soft' system is characterised by the opposite properties of the 'hard' system: (a) *incompleteness*, (b) *dynamism* and (c) *connectedness* with other systems. The elements and their combinations constantly change both through internal pressures and external forces.

There are, therefore, no prescribed rules in an open system but only fuzzy probabilities, whether applied to its present state or a predicted future state. Such thinking can easily be applied to language.

3.3.2 Language

A closed-system view takes language to be 'a system of signs (or signals) conforming to the rules that constitute its grammar': a pure, context-free, *code* or a system of communication (Greenberg op cit) and this gives rise to an emphasis on the objective study of its *formal* properties as an abstract system, *langue* (de Saussure op cit), *competence* (Chomsky 1965) or *usage* (Widdowson op cit) and the formulation of *rules* which govern grammaticality.

An open-system view, in contrast, defines language as a 'set of culturally transmitted behaviour patterns shared by a group of individuals' (Greenberg op cit) and shifts the emphasis onto the actual behaviour of the user: the study of *parole* (de Saussure op cit) or *performance* (Chomsky op cit.) or, more broadly, *communicative competence* (Hymes 1972) or *use* (Widdowson op cit).

The goal is not the specification of idealised *knowledge*, shared by the community (de Saussure op cit) or in the mind of the ideal speaker-hearer (Chomsky op cit) but the discovery of the *functions* of language and the *constraints* which regulate communication. The rules are fuzzy rather than precise, and are defined in terms of *acceptability* rather than *grammaticality*. The functional aspect of language falls within the scope of *discourse* and *pragmatics* rather than *syntax* and a narrowly defined *semantics*.

Language is both a closed and an open system: de Saussure's *langage* which combines both *langue* and *parole*. This has been recognised in linguistics in

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the continuing shift, since the 1960s, from an exclusive focus on the form of the code to its function - from closed to open system – and from the context-free code to the context-sensitive medium of communication: in general systems terms, a shift from 'hard' to 'soft' (Bell 1975a).

For the purposes of this study, the view of language as 'soft', open, context-sensitive system of human activity is particularly attractive and revealing. Such an orientation allows us to recognise that language is a system for expressing meaning (Halliday 1978) embedded in the society, forming a significant part of its culture (Sapir op cit; Whorf 1962) and playing a profound role in social interaction, in the transmission of cultural and social values, shaping and at the same time being shaped by political, social and cultural processes.

The systems approach can give some methodological clues which may lead to a more focussed discussion and description which locates the Malaysian court interpreting system within the wider macro socio-political system and provides an explanation within the framework of language planning.

In addition to the open-closed distinction, some linguists argue that language is not primarily a system or code but an *instrument* or *tool* – an idea derived from Aristotle's *organon* (Hörmann 1971; Bell 1976: 61) and, as such, can not only be evaluated, altered, corrected, regulated and improved and new forms of it and functions for it be created or discovered (Tauli 1968) but, given that it is amenable to influence, it can be viewed as a *resource* (Fishman 1968b and further discussion in section 3.4).

As a resource, language, therefore, has great societal value. It performs the functions of conceptualising ideas and systematically expressing thoughts without which society could not exist and, because of this enormous value, cannot be left to evolve on its own or be influenced by random societal forces. It must be planned (Asmah 1992).

Language changes over time, in systems terms, moves from one state to another, and can be allowed to evolve 'naturally' or be manipulated into changing in a particular direction, hence the notion of planning. Manipulation requires the imposition of an ideology and the control of the development of the language for the achievement of certain goals, preferring one over another (section 3.3.3 below).

3.3.3 Planning

Planning can be defined, in systems terms, as:

The purposeful intervention by agents between an existing state of a system and a predicted future state, with the intention of manipulating the movement of the system towards the attainment of a different future state.

Bell 1975c: 3

Applied to language as an open system, the definition assumes that the agents within it understand the working of the system, are able to predict future states, and have reasons to prefer one alternative future to another and, at the same time, possess the means to exert pressure on appropriate elements of the system so as to divert it from its original path.

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Implicit within the definition is the motivation for planning that is, to draw upon resources which could otherwise be made available for other purposes in order to solve 'problems'. The planner perceives in the present state of the system some 'unsatisfactory' feature which, if left 'untreated', might cause the system to evolve into a more unsatisfactory future state.

The traditional four-stage planning model (in Bell 1976) given below, reflects the thinking of most planners at the time (for example Brickner and Cope 1977) and provides a starting point for a discussion of planning for a system like that of court interpreting in Malaysia.

The model consists of a number of *steps* within four *stages*, each step being divided into different *tasks*. The four stages are: (a) the recognition, description and explanation of the problem, (b) the setting of objectives which are expected to remove or at least diminish the severity of the problem, (c) the selection of agents and means for the implementation of policy expressed in the objectives and (d) the evaluation of the process and its results.

All stages and steps are linked by feedback loops which allow for constant monitoring and, if and where necessary, modifications to any of the stages or steps. For this reason, the order in which the model is presented is not fixed and assumes iteration and modification.

Does this concept of planning coincide with language planning? Does it have any similarity with language planning and policy? If not what theory or model, if any, has been followed by nations engaged in language planning?

3.4 Language Planning

Bringing together the two concepts 'language' and 'planning', *language planning* refers to the *activity* of deliberate, practical efforts to change the language(s) used in a community. It has been practised in the guise of social control, for as long as human societies have existed but, as an abstract academic discipline studying that phenomenon, it is a relatively new area (hardly 40 years old) which, nonetheless, seems to have exhausted further development, with current issues having moved on to questions of *planned inequality* (Toleffson 1991), *linguistic rights* (Skutnabb-Kangas and Phillipson 1994) and *linguistic discrimination* (Pütz 1995).

As a discipline, language planning developed rapidly, particularly in its early years in the 1960s when it was mainly concerned with model-building and theory-construction. At the time, the problems related to nation building and nationhood in newly independent countries were a matter of international concern and became the subject of the research projects undertaken by scholars world-wide. Many of them focused their attention and energy on developing grammars, writing systems and dictionaries for indigenous languages. As a result, there was a preponderance of literature on corpus planning covering areas of graphisation, standardisation, and modernisation for countries across the globe. Representative

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works can be found in Fishman, Ferguson and Das Gupta (1968), Fishman (1968) and Rubin and Jernudd (1971).

According to Ricento (2000), in the early period of the 1950s through to the 1970s, the influences which have been instrumental in shaping language planning as a distinct field of research can be summarised in terms of three factors: (a) macro socio-political, such as decolonisation, state formation; (b) epistemological that is, the predominance of structuralism in the social sciences, and (c) strategic that is, the belief that language problems could be solved through language planning, especially within the public sector, led to much of the development in language planning as a distinct field of research.

In common with all new disciplines, language planning still lacks a clear definition of scope and, even, the actual object of its study. This vagueness is clearly indicated in the confusingly large number of definitions of the field depending on the orientation of the scholar and the aims of the process.

These cover a very wide range of extra-linguistic, semi-linguistic and specifically linguistic aims: (a) changing the use of a language in society (including its spread or reduction or the revival of a 'dead' language), (b) adopting particular forms of writing, spelling and/or pronunciation and (c) enlarging vocabulary and standardising phonology, morphology and syntax and style (Rabin 1971).

However, it was generally agreed by the early 1970s that language planning consisted of deliberate problem-solving and that the motivation for this was implicitly or explicitly political:

> ...deliberate language change; that is,, changes in the system of a language code or speaking or both that are planned by organisations that are established for such purposes or given a mandate to fulfil such a purpose. As such, language planning is focused on problem-solving and is characterised by the formulation and evaluation of alternatives for solving language problems to find the best decision...

> Rubin and Jernudd (op cit. xvi)

Weinstein (1990) adopts an essentially similar orientation:

> Language policy and planning means deliberate and conscious choices of language form and/or language function made by institutions believed to be capable of long-term implementation over a significant area and among a significant population.

> Weinstein 1990:5

Language planning can be seen as an attempt to interfere, in some way, with the development of a language or one of its varieties. It may focus on either its status with regard to some other language(s) or on its internal condition, or on both of these, since they are not mutually exclusive. The former orientation is *status planning*; the latter *corpus planning* (both terms from Kloss 1968).

The acceptance of the political dimension leads to two further views on the nature and implications of language planning: (a) that language is a societal *resource* (Jernudd and Das Gupta 1971; Rubin and Shuy 1973; Cooper 1989) which can be planned in the same way as other resources, admittedly difficult to

analyse quantitatively (Fishman 1972) and (b) that its planning requires language planners to become more aware of more general planning theories and processes (Fishman op cit), since the enterprise is a multidisciplinary and co-operative one. Jernudd and Das Gupta (op cit) argue that:

> The logic of language planning is dictated by the recognition of language as a societal resource. The importance of this resource is due to the communicational and identific values attached by the community to one or more languages.

> Jernudd & Das Gupta op cit 196

And Thorburn (1971), working in the area of planning in public administration, brings the microeconomist's perspective on this notion which he takes further by applying the techniques of cost-benefit analysis to the problem of the adoption of a language at national level:

> ...language planning as a conscious choice on a national level between alternative languages intended for defined geographical areas and media as well as for an intended dominance [and]...founded on a systematic forecast of consequences of alternatives

> Thorburn op cit 255

It follows, from seeing language as a resource, that

> an optimal design of a plan would require the co-ordinated attention of political, educational, economic, and linguistic authorities. It is important to recognise the relations of interdependency among the above authorities because, otherwise, the social rationale for language planning may become subordinated to a predominantly normative linguistic rationale, or hidden by method

> Jernudd and Das Gupta op cit. 197

As far as theory is concerned, language planning has been almost exclusively based on the position of Haugen (1966a) which is, in turn, based on the experience of the planning of the Norwegian language. He identified four major tasks in the process of language planning. These are (1) code or language selection, (2) codification, (3) implementation, and (4) code elaboration; all essentially form-rather than function-oriented processes.

The first task, *code selection*, involves the choice of a particular language or variety for the purpose of communication at the local, national, or regional level. The second, *codification*, addresses the procedures of standardisation: graphisation, spelling, and the policy regarding selection of vocabulary, including loan words. The third, *implementation*, is the process of executing the policy that has been adopted, and the fourth, *code elaboration*, refers to the modernisation of the language in terms of the expansion of its registers and styles to accommodate the communicative needs to which the language is put.

Tasks 2 and 4 came to be known as *corpus planning* (section 3.4.1 below) and tasks 1 and 3 *status planning* (section 3.4.2 below: both terms are from Kloss op cit) marking the distinction between the relatively context-free manipulation of the form of the code by linguistic scholars and academics, and the strongly political and context-sensitive activities of decision-making by organised authoritative bodies, manipulating the social and communicative *functions* of the code.

Cobarrubias and Fishman (1983) refer to both types of planning as 'linguistic innovation', seeing status planning as linguistic innovation that relates to the allocation of language functions of a language or language varieties in a given speech community and corpus planning as linguistic innovation that relates to the structure of a language or a language variety.

A number of studies have led to important modifications in the stages of the process by emphasising the equal significance of status and corpus planning. The currently accepted view of language planning that incorporates Haugen (1983) and subsequent research (Neustupný 1974; Rubin et al 1977) is given below.

Figure 3.1
Schematic View of Language Planning

	Form Policy Planning	Function Language Cultivation
Status Planning (Society)	**1. Selection of norm** (decision-making procedures) Identification of Problems Allocation of norms	**3. Implementation** (educational spread) Corrective procedures Feedback/evaluation
Corpus planning (Language)	**2 Codification** (standardisation procedures) Graphisation Grammaticalisation Lexicalisation	**4. Elaboration** (functional development) a. Terminological modernisation b. Stylistic development

(Pütz M. op cit:14)

3.4.1 Corpus Planning

In terms of the development of language planning as a distinct field of study, *corpus planning* predates status planning and involves the linguist-planner in making decisions which affect the *form* of the code that is, manipulating the language in order to bring about changes in its structure. In the 1960s and 1970s, in the work of Haugen (1966a, 1983, Ferguson and Das Gupta (op cit.), Fishman (1968), Tauli (op cit) and Rubin and Jernudd (op cit.), the focus was on the graphisation, standardisation, modernisation of indigenous languages in countries world wide: South East Asia to Africa and Northern Europe; the Americas, the Pacific and Australasia, through the introduction of new vocabulary, scripts, regularisation of spelling and morphology and the publication of grammars and dictionaries which presented these newly created norms in permanent form (Ferguson op cit.).

The orientation of these linguists to their projects was technical, pragmatic and a-political. Haugen (1969) in Norway provides a clear example. He sees involvement in 'preparing a normative orthography, grammar, and dictionary for the guidance of writers and speakers in a non-homogeneous speech community' as part of the on-going effort in Norway to modernise, promote, and implement policies for the creation and development of a national language and recognises that the process has the aim of settling problems related to 'the presence of conflicting norms whose relative status needs to be assigned'.

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Their commitment was to helping developing nations to achieve goals of political integration, modernisation and nation building:

> Precisely because the developing nations are at an earlier stage in development... the problems and processes of nationhood are more apparent in such nations and their transformation more discernible to the researcher...

> Fishman et al (eds)1968a: 6

And

> The use of planning for developing a nation's income and welfare has become a matter of necessity in the case of the new states...

> Das Gupta and Ferguson in Rubin J. et al 1977:3

But underlying this orientation (and all corpus planning, as European scholars with their much stronger political awareness were quick to point out: Calvet 1996: 7-8) were assumptions and value judgements related to the level of 'development' of the society concerned and the comparative adequacy of competing languages or varieties involved.

Perhaps not surprisingly, linguists began to realise that even corpus planning was not a socially neutral activity and there was a growing awareness of the inherent limitations of planning theory and models, and a 'realisation that sociolinguistic constructs such as diglossia, bilingualism and multilingualism were conceptually complex and ideology-laden and could not be easily fit into existing descriptive taxonomies' (Ricento op cit.: 202).

3.4.2 Status Planning

Status planning, in contrast with corpus planning, does not involve changing the structure of the code, but is concerned with decisions which affect the function of the code vis-à-vis other languages or with the language needs of a national government. The aim reflects a shift from *form* to *function*: not to do something *to* a language but to do something *with* it.

Allocations of language functions are generally influenced by extra-linguistic factors which may often entail changing the corpus of a language in order to fulfil a specific function. However, in most cases the allocation decisions are made before those on corpus which were, at least initially, the focus of attention of most linguists in the field.

The status of a specific language is, necessarily, context-dependent and, therefore, liable to change over time. Kloss (op cit) suggests four categories related to language status:

(a) the origin of the language used officially with respect to a speech community

(b) the developmental status of a language

(c) the juridical status of the language

(d) ratio of its users to total population

In the case of (a), *origin*, the language may be indigenous or imported. If the language is indigenous, the state is *endoglossic* and if it is imported it is *exoglossic*. Most exoglossic states are also heterogeneous, having a large number of non-standard languages that are considered unfit for the functions of modern government. Usually an ex-colonial language is chosen, at least for a limited period after Independence, for these purposes: a 'mixed' solution which makes the state partially exoglossic and partly endoglossic.

In terms of (b), *developmental status of a language*, Kloss (op cit) distinguishes six types of language status, ranging from modernised, mature, standard language to unstandardised and pre-literate language with no writing system.

As regards (c) *juridical status*, a language may be (1) the *sole national official language*; for example Malay in Malaysia; (2) a *joint official language*; co-equal with at least one other in terms of use for governmental functions; for example all the three major languages of the ethnic groups with English as additional official language in Singapore, (3) a *regional official language*; the official language of a constituent state or region of a larger political entity for example Ibo in eastern Nigeria (example from Bell op cit. 182) (4) a *promoted language*; lacking official status but used by government agencies for example West African Pidgin English in Cameroon (Bell op cit), (5) a *tolerated language*: neither promoted by public agencies or government nor cultivated, its existence being officially recognised but actually ignored; for example languages of the other ethnic groups in Malaysia, (6) a *proscribed language* whose speakers are not

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allowed to speak it in public or use it for printing for example the Norman-French patois of the Channel Islands during the Nazi Occupation during the Second World War (Bell op cit).

In category (d), the status of language will be contingent upon the ratio of users to the total population but it has been demonstrated that the percentage of people speaking a certain language does not necessarily determine language status; Indonesia and Singapore provide examples of this (3.6).

The terms 'national language' and 'official language' have both been used but, so far, without definition. In the literature of language planning each is seen as the result of policy responses to two distinct demands: *nationalism* (national language) and *nationism* (official language).

In an established nation-state such as the United Kingdom or Japan, for example, the distinction is collapsed into a single national-official language: English and Japanese, respectively. New nations or groupings of nations are faced, at least for several decades, with the 'requirements of satisfying the two potentially conflicting needs of nationalism and nationism' (Bell op cit 168).

Nationalism refers to the search for a nation's own ethnic identity as it attempts to overcome local, tribal, religious and other communal loyalties which are in conflict with loyalty to the state, whereas *nationism* refers to the 'operational efficiency' that the government must arrive at.

The solution to the problem has frequently been the adoption of a mixed policy: an indigenous *national* language as a symbol for unity and identity (an *endoglossic* policy on nationalism) and the ex-colonial language as the *official language* to perform the functions of government at both central and local levels (an *exoglossic* policy on nationism).

Language planning is characterised as an explicit and systematic effort to resolve language problems as perceived by the agents of a state (Pütz op cit: 11) and achieve related goals through institutionally organised intervention in the use and usage of languages (or language varieties). It therefore refers to deliberate efforts to influence the behaviour of others with respect to the acquisition, structure, or functional allocation of their language codes (Cooper 1989: 45).

According to Pütz (op cit), there are several fundamental questions to be considered by all the states involved in the planning of their languages. These are:

(a) Language planning and policy for whom and for what purpose?

(b) What types of language policies are most appropriate for what purposes?

(c) Who and what actors determine a language policy?

(d) What impact would a selected language policy have on educational, socio-economic, and political development?

(e) What should be the place and role of European languages of wider communication?

These are pertinent questions as the decisions made are not only societal but also highly political and take the issue out of the domain of language and linguistics.

Western sociolinguists in the 1960s tended to agree, despite the success of Swahili in East Africa or Hebrew in Israel, that a European language should be used for formal and specialised domains and a local indigenous language on the other hand, could serve other functions. It was also held at the time that language diversity was not conducive to national development, despite the apparent success of Switzerland with its four national languages, while linguistic homogeneity was associated with modernisation and Westernisation. Furthermore, only 'developed' languages were considered suitable to fulfil the role of 'national' language, since developed languages were written, standardised and adaptable to the demands of technological and social advancement. This idealisation of one nation-one national language still seems to exert an influence on the present language planning models of many decolonised states in Africa, Asia and the Middle East (Ricento op cit.).

In the late 1970s and through the 1990s, similar issues were still being debated. However, it was observed that new developments, potentially having far-reaching effects, began to emerge. These new developments gave rise to terms like 'neo-colonialism' referring to the view that developing countries were more dependent on their former colonial masters. In addition, there were significant global issues of mass-migration, the re-emergence of national ethnic identities and the disintegration of giant states like the USSR, the repatriation of former colonies like Hong Kong and creation of regional coalitions like the European Union. A

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highly relevant issue highlighted in recent debates is the perceived threat to independence from the new electronic communication systems in the late 1990s. This form of the media is seen as having greater power to penetrate into receiving cultures than any previous Western technology and, thus may have a greater influence on these cultures than colonialism itself.

The policy of promoting certain languages and varieties in national language planning had the effect of limiting the utility and influence of thousands of indigenous languages and their speakers in the development of a nation. It also became apparent that the privileged languages do not necessarily conform to the 'enlightened' models of modernity. Linguistic behaviour was social behaviour, motivated and influenced by the attitudes and beliefs of speakers and speech communities, as well as by macro economic and political forces.

However, in terms of the objectives of this thesis, of greater relevance is the emergence of ethical issues in relation to language planning, language legislation, language policy, political development and most significantly, linguistic rights.

In the forefront of the debate on these issues are Cobarrubias and Fishman (op cit.), Wolfson and Manes (1985), Skutnabb-Kangas and Phillipson (1994), Tollefson (1991), Weinstein (1990), Kibbee (1998), Ricento (2000) and their most concrete manifestation, modelled on the United Nations Declaration on Human Rights, the Declaration of Recife: the Universal Declaration of Linguistic Rights (1987).

In the process of changing the status of a language, changes will be made in terms of the allocation or re-allocation of language functions in a community and this, as Cobarrubias points out, raises ethical issues that have not been sufficiently dealt with:

> certain tasks of language planners, language policy makers, educators, legislators, and others involved in changing the status of a language or language variety are not philosophically neutral

> Cobarrubias op cit.: 41

3.5. Language Planning and Ideology

If language planning (even apparently neutral corpus planning as shown in the section above) is 'not philosophically neutral', it is inevitably linked to ideology, whether the planners themselves are prepared to acknowledge it or not; the cases of Turkey, Israel and many African states demonstrating this most clearly.

In Turkey, in the 1930s, Kemal Atatürk abolished the Persian (Arabic) script and adopted the Roman in order to root out 'intrusive foreign elements' notably Arabic and Persian loanwords. The policy was not totally effective, however, since numerous French words were retained (Cobarrubias and Fishman op cit.: 60).

In Israel, in the 1950s, the national language – Hebrew – had lost its native speech community some two thousand years earlier but, within a generation, had

been 'revived' to function as a wholly successful medium of communication in the new state.

In Tanzania, the language policy was clearly stated by the Second Vice-President in 1967 who declared that the use of English or any other foreign language was unnecessary and therefore should cease; only Kiswahili should be used for 'all official business and whenever possible.'

These examples show two linked aspects of status planning: (1) it is carried out by politicians or a policy making body and (2) it conforms to the ideologies of the ruling power elite which may be in conflict with those of other constituent groups in the society.

The ideological aspect of language status–planning is a neglected area of study, despite the fact that it underlies all forms of language planning and reflects a mode of language treatment of one language group with respect to another and necessarily involves value judgements of what is right and wrong.

Cobarrubias (op cit) has described some typical language ideologies:
   (a) linguistic assimilation
   (b) linguistic pluralism
   (c) vernacularisation
   (d) internationalism

Assimilation requires all speakers of languages other than the dominant language, regardless of origin, to speak and function in the dominant language. The dominant language is seen as superior, and the state does not grant equal rights to linguistic minorities. This type of ideology can be imposed through a range of procedures; colonisation, annexation, immigration and migration.

Linguistic pluralism recognises the coexistence of different language groups and their right to maintain and cultivate their languages on an equitable basis. Sometimes it also involves the granting of official status to co-existing languages, for example French and English in Canada, English, Mandarin, Malay and Tamil in Singapore, Sinhalese and Tamil in Sri Lanka, French, German, Italian, and Romansh in Switzerland.

Vernacularisation involves the restoration and elaboration of an indigenous language and its adoption as an official language. Several processes can be seen at work here: the revival of a dead language (Hebrew in Israel), the restoration of a classical language (Arabic in Syria, Egypt and Morocco) and the promotion of an indigenous language to official status and its eventual standardisation (Pilipino: Tagalog in the Philippines, Malay in Indonesia and Malaysia).

Internationalisation is the adoption of a non-indigenous language of wider communication either as an official language or for purposes of education or trade, for example English in Singapore, India, the Philippines and Papua New Guinea.

The next section provides a picture of the attitudes and policies of five South East Asian nations in relation to language planning.

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3.6   Language Planning in South East Asia

This section gives a comparative view of language planning and policies in Thailand, Indonesia, Singapore, the Philippines and Malaysia. What emerges from this overview is that although language *change* is a natural process, language *policy* is not and constitutes an important instrument employed deliberately by political elites to shape a political community (Alisjahbana 1976; Esman 1990).

Thailand is a good example of the assimilation ideology. Language policy in Thailand has always been straightforward and uncompromising; non-Thai inhabitants are to be merged into Thai society, and ethnic minorities, although tolerated, can never be other than marginal compared to the dominant society.

This objective of the Thai state and Thai nationalism has been clear since the early twentieth century. The whole society (the elite, royalty and commoners, the military and civilians) accepts that the Buddhist faith and Thai language are crucial as factors in a nation-building strategy and that ethnic pluralism is not to be legitimised but dissolved into a homogeneous Thai nation and Thai political community.

The sole national and official language is standard Thai, which is the only medium of instruction in public schools through to university level, though other languages - including English - are taught as subjects.

In Indonesia, although its official and national language is also Malay (known there as Bahasa Indonesia), the process involved in realising the policy has been very different from the Malaysian experience. The main objective of Indonesian nationalism after the Second World War was to find a means of uniting the extremely heterogeneous population in which 250 languages and dialects are spoken in more than 1000 islands. Not an easy task, but the astute political decision in 1928 of selecting Malay, the first language of no more than 8 % of the population but spoken and understood widely as a lingua franca throughout the region, has successfully been implemented and accepted and, at the same time, has prevented Javanese domination: the Javanese constitute half of Indonesian population (Alisjahbana op cit).

Concessions were made in education to the Javanese, Balinese, Madurese, Sundarese, Batak and Makasar vernaculars but not to Chinese. Most Indonesians are now bilingual, speaking their vernacular tongue in matters related to their primary (kin and friendship) social groups and, outside those, the national language as a practical necessity. (Bell op cit.103 outlines the notions of primary and secondary relationships and groups and code choice).

In contrast to the previous two states, Singapore and the Philippines have accepted more than one language as having official status. Singapore, a city state with a population of just over three million (75% Chinese, 15% Malays and 10% other, including Indians and Europeans) gained independence through the formation of Malaysia in 1963 but broke away from the Federation in 1965 because of disagreement regarding the special position of the Malays. It is ruled by

an English-educated Chinese elite through a multi-ethnic single party structure: the People's Action Party.

From the very beginning, the Singapore government was aware that it had to foster rapid economic development despite having no natural resources and, in order to do this, had to rely heavily on the skills of its human resource; its people. This demanded the promotion of a common medium of communication among its ethnic communities and, at the same time, showing symbolic official respect for their respective cultures in return for their allegiance. In addition, Singapore has had to integrate into a dominant Malay environment while forging its own identity. The strategy to achieve these goals has been to accord all four languages, English, Malay, Mandarin and Tamil, official status: at least *de jure*. *De facto*, the situation is that, while the people have the right to communicate with the government in their language of choice and primary and secondary education are available in all four languages, the languages are not exactly equal. English is still crucial for the smooth running of the country, for social and economic mobility (Kuo 1985) and to compete technologically in an international economy, which is the only option open to Singapore.

The choice of a formal policy of multilingualism which implies equal status of the main ethnic communities, while adopting a prestigious yet neutral foreign language for achieving high status and occupational success seems to have had the effect of building up and maintaining the economic strength of the country and, at the same time, successfully managing to prevent ethnic issues from becoming part of the political agenda.

The Philippines is a country with eight major indigenous groups scattered across some 7000 islands. It also has a multilingual policy comprising Pilipino (Tagalog) and several other vernacular languages plus English and Spanish. There is no single *lingua franca* and, according to Esman (op cit), it has only been through the people's sense of nationalism and patriotism that they have managed to create national legal and administrative institutions without one.

When Tagalog was chosen as the national language with English as the official language in 1940, it was the mother tongue of only 25% of the population and was initially, only used symbolically. However, by 1970 over half the population could speak it and an estimate for the year 2000 (Comrie 1987: 208) suggested that 98% of the population would be Pilipino-speaking, either as first or second language users. Pilipino is a medium of instruction at primary level, after which it is replaced by English.

The Malaysian situation, in part resembles that of the Philippines and, in part, Singapore but has its own unique characteristics: the co-existence (for at least a century and a half) of Malays and non-Malays who are now about equal in number and, in contrast to Thai society, ethnic identities flourish and are reinforced by differences in religion, culture, residential patterns and division of labour.

This demographic pattern has led to politics in Malaysia being structured along strictly ethnic lines: the ruling coalition consisting of UMNO (United Malay National Organisation), the MCA (Malaysian Chinese Association) and the MIC (Malaysian Indian Congress). Independence in 1957 saw the creation of the

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Constitution, in which it was agreed between the three parties that the Malay language would become the sole official and national language and that the Malays, being the 'Bumiputras' – 'sons of the soil' – in contrast with immigrant groups (that is, the Chinese and Indians), would occupy a special position in the new nation in that their language, religion, culture and economic well-being would be protected. It was also stipulated that, after ten years of independence, Malay would become the sole official language, replacing English in all official domains (Article 152 of the Federal Constitution).

The policy adopted by the elite is very clear and although there were at an earlier period bitter protests from non-Malay sources, it has now been successfully implemented in public administration and education; Malay (also known as Bahasa Malaysia and Bahasa Melayu), is the medium of instruction in schools and universities, the language of government, television broadcasts and used in trade and the marketplace, commerce and banking (sometimes alongside English) and, as will be shown in greater detail later, is fast making headway in the judiciary.

Tamil and Mandarin education are recognised and supported by the state but only at the primary level. At the secondary and tertiary level, the communities are left to fend for themselves with their demands for state-financed secondary education rejected: a situation reflecting Cobarrubias' taxonomy of official attitudes of unsupported co-existence towards languages other than that (or those) chosen by the state.

The above are examples of developing and new nations engaged in and preoccupied with goals of language planning associated with unification (of a region, a nation, a religious group, a political group, or other kinds of groups), modernisation, efficiency, or democratisation (Rubin op cit).

As Esman (op cit) observes, language policy is one of the instruments used by the elite of a country to shape and influence political development. The policy imposed may take the form of (a) giving unequal status to co-existing languages, as in Thailand and Malaysia, (b) being used to create identity with the state by denying dominant status to the language of the largest community, as in Singapore with regard to Chinese, and Indonesia with regard to Javanese, and, (c) promoting an official bilingualism, since promoting a single indigenous language may provoke hostility from other ethnic communities, as in the Philippines

States have employed language policy as an instrument to impose political and economic control on multiethnic populations for centuries (the imposition of English in Britain and the progressive marginalisation of the indigenous Celtic languages is just one example) and is most apparent today in the policies of post-colonial societies such as Malaysia. Although Indonesia and Malaysia share the same national and official language, language policy in Malaysia has, as we have seen, developed quite differently having its roots in the British educational policy in the late 19th century. While huge numbers of Chinese and Indian labourers were imported by the British into Malaysia to work in tin mines and rubber estates, the native Malays were left under their own rulers, with their own political, religious, economic and social institutions. With the influx of large numbers of immigrants,

most of whom settled permanently in the country, and in the rush for economic gains and wealth, the Malays found themselves in the anomalous position of being a majority treated as a minority in their own country. The Malay language was not taught to nor learned by the Malays until 1821 in Singapore at the recommendation of Raffles. In contrast, the language must have been taught and learned much earlier in Indonesia, since the first Malay inscription dates back to the 5th century, a glossary was compiled in 1521 and, Christian missionaries published the New Testament in Malay in 1731.

Also in contrast with Indonesia, where there were almost 1000 schools for girls by 1917, the first girls' school in Malaysia was only founded in 1885. No effort was made by the British to set up a secondary school, and primary education was only granted for four years (Alisjahbana 1976). This clearly was not a policy to prepare a community either for intellectual or economic growth but, as will be seen later, education and language policy were harnessed as the main tools of the ruling elite to achieve their goals for the nation.

3.7   The Context of Language Planning in Malaysia

It is necessary to re-state the extreme heterogeneity of the population of Malaysia, since this is a reality that has been continually in the minds of planners and policy makers from well before Independence, and up to the present day. The multicommunal and multilingual nature of the country at the time of independence has been shown earlier (Table 1.1) and this feature remains until today (Tables 3.1 and 3.2).

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Table 3.1
Population by Ethnic Group 2000

Ethnicity	Count (millions)	%
Malays	12.07	54.8
Chinese	5.58	25.3
Indians	1.63	7.4
Other Indigenous	2.49	11.3
Other	0.26	1.2
Total	22.03	100.0

Source: Statistics Department 2001

Over a span of thirty years, the Malay population has increased proportionately by 8% and the other indigenous groups, which include Bajau, Dayak, Kadazan of East Malaysia, by 2.6%. This brings the 'Bumiputra' ('sons of the soil') total to a proportional increase of more than 10%. In contrast, both the Chinese and Indian communities show a proportional decrease of 8.8% and 1.6% respectively. Nonetheless, the heterogeneity of the country remains, especially since, in real terms, the 'Other' category – predominantly migrant workers from Bangladesh, Indonesia and the Philippines – has increased from 150,000 to 260,000.

In such a multicultural and multilingual context, the policy maker has to attempt to balance the conflicting demands of language maintenance and the preservation of cultural diversity against the need for a common language or languages and agreed procedures for running society efficiently. Supporting one language can be seen as favouring a particular ethnic group and diverting resources from more important needs. Whatever policy is selected, effective planning and

decision making cannot be achieved without the dedication of adequate resources –
in terms of both finance and personnel – to attaining the goals set by the policy.

In Malaysia, inevitably, language planning and policy is intertwined in the
politics of the country. The three main political parties in the coalition – National
Front - government which has held power ever since Independence are
communally based: the UMNO (United Malay National Organisation) representing
the majority of Malays, the MCA (Malayan Chinese Association) representing the
Chinese, and the MIC (Malaysian Indian Congress) for the Indians.

Opposition parties outside the National Front are, PAS (Pan Malaysia
Islamic Party) a principal source of Malay opposition to UMNO with an agenda
which includes the establishment of an Islamic state; the DAP (Democratic Action
Party), an essentially non-Malay party with a predominantly Chinese membership;
and PRM (Parti Rakyat Malaysia) and Keadilan (National Justice Party); two
comparatively small parties with multiethnic memberships. The latter was set up in
1999 after the arrest and trial (and eventual conviction) of the then deputy prime
minister.

It has been apparent, even since the early days of Malaysian history, that
'political activity was communal rather than nationalistic' (Mead op cit: 7) and that
the communal nature of the political parties creates a dilemma:

> If they (the political parties) do not try to appeal to a particular
> community or communities, they will lose support to parties which
> do make this type of appeal.

<div align="right">Milne 1967: 87</div>

<div align="right">140</div>

It is not surprising, therefore, that the first leader of UMNO, Dato' Onn Jaafar, failed to persuade the Malay populace in the early 1950s to abandon the idea of communalism and accept members of other races into the party and that the multi-racial party he set up later (Independence of Malaya Party) met a 'quick death' (op cit.) after the Kuala Lumpur municipal elections in 1951.

Nor is it surprising that Independence in 1957 was won by an alliance of the three ethnically-based parties (UMNO, MCA and MIC), which was a condition for the transfer of power that the British had insisted on. Mead argued (1988) that agreement at Cabinet level should not be taken to indicate that there is cross-community goodwill and unity at the grassroots. The pattern prevailing in the political scene in the 1950s and 1960s was that the Malay elite derived power from the traditional political legitimacy (the rulers of the individual states) which was recognised and qualified by the British, and the non-Malay elite from their wealth and their connection with their UMNO colleagues (Wang 1981).

3.7.1   Objectives of Language Planning in Malaysia

In the early 1950s, Malaysia, like the majority of states which were to gain their independence during the second half of the century, faced the challenge of achieving 'sociocultural and political integration' (Bell op cit: 168); the selection of a national language to unite the nation and an official language to run the state. In Haugen's matrix, referred to earlier (Figure 3.1), this can be compared to the status planning phase of the overall language planning and policy implementation in Malaysia.

Even before Independence, in 1957, a movement had existed to establish Malay in both roles that is, as the sole national and official language of the country and elaborate arguments were given (Asmah 1976, 1979, Alisjahbana 1971; 1974) to demonstrate why Malay was the most suitable choice and Chinese or an Indian language was not.

In the main, the arguments focused on one or more of the following assertions:

Malay is:

- the language of the major ethnic group: the Malays, who constituted almost 50% of the population in contrast with 37% Chinese and 11% Indians

- a language indigenous to and identified with the region. Neither Chinese nor the Indian languages could make either claim

- the major lingua franca for the area for upwards of 500 years

- the language of administration in the Malay states for at least five centuries

The non-Malays have always accepted the notion of Malay as the national language, even though there were protests at the initial stage. Language as a symbol (national language) and as a means to economic and academic attainment (official language and medium of instruction) are two quite different things. For the Malay language to perform both functions, it has first to be accepted and then the necessary planning and implementation be carried out. This was the objective of the Malaysian government in drafting Article 152 of the Federal Constitution.

In 1956, just before Independence, the Reid Commission was set up and proposed the Constitution for an independent Malaya. It was accepted with little dissent. Article 152 of the Federal Constitution, known as the Language Act, contained three significant clauses which stipulated that the Malay (later Malaysian) language was to be the national language but other languages would be given a degree of recognition and protection, and that English would continue to be used as an official language for a period of ten years after which it would be replaced by Malay:

> (1) the national language shall be the Malay language and shall be in such script as Parliament may by law provide.
>
> Provided that –
> (a) no person shall be prohibited or prevented from using (otherwise than for official purposes), or from teaching or learning any other language and
>
> (b) nothing in this Clause shall prejudice the right of the Federal Government or of any State Government to preserve and sustain the use and study of the language of any other community in the Federation.
>
> (2) Notwithstanding the provision of Clause (1) for a period of the ten years after Merdeka Day, and thereafter until Parliament otherwise provides, the English language may be used in both Houses of Parliament, in the Legislative Assembly of every State and for all other official purposes.
>
> (3) Notwithstanding the provision of Clause (1) for a period of the ten years after Merdeka Day, and thereafter until Parliament otherwise provides, the authoritative texts –
> (a) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament; and
> of all Acts of Parliament and all subsidiary legislation issued by the Federal Government, shall be in the English language.

<div style="text-align: right;">Federal Constitution Article 152</div>

The wording of the legislation is highly significant, since it indicates very clearly what the intentions of the policy-makers were.

What other languages are offered, under the terms of Clause 1, is by no means a *right*, just a *concession*: expressed in negative terms – 'no person shall be prohibited or prevented' – and there is no *obligation imposed* on Government, at Federal or State level, to do anything at all except not be hindered by the contents of the Clause. The treatment of English is rather different. In Clause 2 'the English language *may* be used...' but in Clause 3 'the authoritative texts... legislation...*shall* be in the English language'.

The language policy was applied in a range of activities, mainly in the public sector, notices and circulars, signboards and traffic signs and, importantly for the topic of this research, in the legal system (section 3.8). But the most prominent, in terms of implementation, was in the area of education, where Malay language textbooks were published, terminologies developed and translations produced and the language progressively replaced English as medium of instruction.

3.7.2 Implementation of the Language Policy

All along, the national language has been part of the education policy which was conceived, designed and put into practice after Independence in 1957 through the strategies outlined in the Razak Report (1956), the blue print for the country's Education Policy (Asmah 1976).

Under the British system of education prior to 1957, there were four school systems at primary level. The three main ethnic groups in the country – Chinese, Indian and Malay – were taught in their own language and there was an additional school system using English as the medium of instruction. Except for the English-medium schools, which were typically located in the urban areas and catered mainly for non-Malay children and those of the Malay elite, each system had free rein as to their orientation and curriculum, as the British had a policy of leaving each to their own devices.

Pupils in Malay and Indian schools were instructed just sufficiently to enable them to read and write in their own language; the Chinese learned their language to foster stronger ties with Chinese culture and politics in mainland China; and the English-educated aimed to obtain the Cambridge Overseas School Certificate for its great economic value and the opportunity for higher education provided only in English.

Neither Indian nor Malay pupils in these vernacular schools had the opportunity to continue their studies through secondary and tertiary level in their own language. Only the Chinese and English-educated were able to do this: the Chinese in Taiwan or at Nanyang University in Singapore and the English at the University of Malaya in Singapore which had evolved from The Straits Settlement and Federated Malay States Government Medical School, established in 1905.

The system, well articulated though it was, can be seen to be both inadequate and inappropriate, since it was based on fixed assumptions on the part

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Table 3.3
**Timeline for the Implementation of the National Language Policy
in the Educational Sector**

1957	Malay a compulsory subject at all levels in all assisted primary and secondary schools
1958	First Malay-medium secondary classes established[1]
1965	First Malay-medium students admitted to University of Malaya, Kuala Lumpur
1969	University of Science Malaysia, Penang, founded
1970	Malay as medium of instruction in all subjects in Standard 1 in all National–Type English Primary Schools
1973	Malay as medium of instruction in all Arts subjects in Form 1
1976	Malay as medium of instruction in all science and technical subjects
1982	Malay as medium of instruction in all state schools[2]
1983	Malay as medium of instruction in all first year university courses[3]

1. Finally developed into National Secondary Schools (Sekolah Menengah Kebangsaan).

2. National–Type English Secondary Schools converted into National Secondary Schools

3. In time to receive undergraduates from schools which by then had all been taught in Malay since 1973. Two other universities were established to prepare for the impending changes at this time: the National University of Malaysia (Universiti Kebangsaan Malaysia) 1970 and the University of Agriculture (Universiti Pertanian now Universiti Putra Malaysia) 1972. Both began implementing the national language policy as soon as they started operations.

Education in the vernacular languages - Chinese (Mandarin) and Indian (Tamil) - is still provided by the government but at primary level only. There are no Tamil-medium secondary schools, and secondary education in Chinese is only available through private schools, which receive no public funding but are required to teach the national syllabus and are exclusively Mandarin-medium. The Chinese community, having lobbied for decades for a Chinese-medium university, were finally given permission to set one up in 2001.

What has been discussed so far is status planning – the selection of Malay as the national official language - and the implementation of that policy through the educational system. A necessary precondition for the successful spreading of Malay throughout the whole of Malaysian society was the production of books and other reading material which would lead to the modernisation of the community. This, in turn, demanded corpus planning in the form of the selection of a norm – a standard form – for the language: its grammatical structure, its spelling and writing systems and agreement on principles of terminology creation (see Asmah 1979 for a detailed description of corpus planning in Malaysia).

Much of the early corpus planning policy and activity in Malaysia concerned standardising the language vis-à-vis Indonesian which, in spite of substantial variation in both vocabulary and grammar (especially in the use of affixes) and, particularly, in pronunciation between the two varieties, have enough in common to be considered the same language. Dutch and British colonial attitudes to indigenous languages had resulted in 'a tendency to emphasise the differences of both languages' rather than the similarities (Alisjahbana 1974: 410). After Independence both countries took steps aimed at reversing this perception which included, in 1959, the signing of a Cultural Agreement on the implementation of a common spelling system known as 'Malindo'. The system was never actually realised due to a number of factors especially the political controversy from 1963 to 1965 with Indonesia over the incorporation of Sabah and Sarawak to form the new state of Malaysia (Asmah 1992:238).

Nonetheless by 1972 enough common ground existed for the signing of a Spelling Agreement, announced and affirmed by the leaders of both countries. Later developments have focused on the creation of a common terminology with special emphasis on science and technology.

Planning requires not only the setting of goals but the selection or creation of agencies charged with implementing the policy. In Malaysia, the key language planning agency, the Dewan Bahasa dan Pustaka (DBP), was established in 1956 and entrusted with the authority to:

- develop and enrich the national language;
- promote literary talents, especially in the national language;
- print or publish or assist in ventures of printing or publishing books, journals and other literary materials written in the national language as well as other languages;
- standardise the spelling system and pronunciation, and to create appropriate scientific terms in the national language; and
- to compile and publish dictionaries in the national language

The Agency has since been a crucial component in the Malaysian education system and has close contact with schools, universities and other institutions of the government, including, importantly for this research, the Justice Department for which it has produced agreed technical terminologies and glossaries of legal terms.

3.7.3 Evaluation of Language Policy Implementation

The combination of a mixed, endo- and exo- glossic policy (Kloss op cit) in Malaysia is reflected in the Constitution and the intention that this should be a temporary solution signalled clearly in the ten-year period during which English would retain its supporting role. However, notwithstanding the success of the national language policy, proficiency in English is still considered to be essential if Malaysia is to become a fully developed country by the year 2020 (Mahathir 1989). The very success of Malay seems to have brought with it a realisation that Malaysian university graduates were deficient linguistically in English (Mead 1988:30) and presumably functioning at a less than satisfactory standard especially in academic, professional, business and diplomatic areas.

Concerned individuals and academics alike have raised the issue of deteriorating English standards over the years. It was serious enough to merit an editorial in the nation's main English language newspaper (the *New Straits Times*) in 1980:

> Although the importance of English as a second language is acknowledged, the context in which it is taught leaves it with very few underpinnings. The lack of social reinforcement and the lack of imaginative teaching methods and materials confine English mainly within the chalky walls of the classroom. The paucity of creative usage is further compounded by the fact that the language is not a compulsory exam subject
>
> New Straits Times, 28 October 1980

and a reminder from the Chancellor of a local university :

'The English language should never be neglected in our efforts to give primacy to Bahasa Malaysia', University of Science Malaysia's Chancellor, the Raja of Perlis, said today.

New Straits Times, 28 June 1981

In 2000, there was, once again, growing public debate on the falling standards of English and on the relationship between English and the national language, English and global communication, local patriotism and internationalism (Bernama 2000; Zubaidah 2001).

The solution conceived in the mind of the elite, was to create policies and legislation on what is now known as the New Economic Policy of 1971 (essentially, positive discrimination in favour of the Malays which was intended to redress the economic imbalance) and the amended Language Act 1971 (which further enhanced the position of Malay as the national language)

It is generally the case in developing nations, and particularly in developing nations as heterogeneous as Malaysia, that the government formulates an official expression of the culture and exploits it in nation building.

(Mead op cit: 14)

However, this may not be as easy in reality as it appears on paper. Nationalism, it has been suggested, exploits an idealised past when members of the community shared the same culture and language to realise the ideal future of political and cultural unity (Fishman 1972).

Malaysia, in contrast, has no 'common culture' shared by the three major communities. Each community has its own past, language(s), religion(s), and

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artistic heritage. Moves to impose an officially defined common culture may, therefore, encounter opposition from the non-Malay and Malay parties in the country.

The governing elite in Malaysia have a clear language policy with regard to national language; it is to function as the linguistic means of communication between Malaysians of all linguistic, religious and cultural backgrounds; it is to facilitate social control through the imposition of rules and regulations; it is to formulate and spread norms and values, and it is to provide the vehicle for giving the citizens a feeling of 'oneness'; to achieve 'national unity'.

In short, the Malay language is seen as fulfilling the needs of both nationalism and nationism and, as a result, the other languages of the country can be expected, progressively, to be less significant.

Language planning is employed by the elite to achieve what they consider to be national goals (which, though they may differ slightly over the years, are relatively fixed), and is a political tool, the effectiveness of which lies in the manner of the implementation and resources made available in the course of implementation, especially human resources.

However, the strengthening and development of the national language in order for it to acquire greater value ought to be an on-going process. The groups who are primarily and explicitly entrusted with the practical task of implementation (the language agencies, the teachers) should be continually

involved and enlightened as to the extent and depth of their responsibility. Equally there are those who have implicit, secondary obligations (the media, students and various departments in the public and private sectors) who should be encouraged, informed and supplied with the necessary materials to enable them to use the language in their various fields of specialisation and, in so doing, further develop the language for the people who are the targets of the policy: the general mass of the population.

3. 8 Language Policy and Planning in the Legal System

Imposed language policies which have not succeeded even over a period of centuries are well attested (for example the attempted imposition of English in Wales; Léwis 1998), so the shift to Malay in less than 50 years can be said to be a considerable success and an indication, not only of a well-articulated policy with attainable goals, but a population prepared to accept the policy.

3.8.1 Policy implementation in the Legal System

Although Article 152 of the Federal Constitution makes it clear (in clause 1) that Malay is to be the sole national official language of the country, a number of functions are listed (in clauses 2 and 3: see 3.7.2) in which it is stated that English 'may' be used 'for ten years following Independence' (in Parliament, all State Legislative Assemblies and 'for all other official purposes'). Among the 'other official purposes' for which English shall be used (note the change in the

official wording of the Article from the concessionary *may* to the obligatory *shall*)

are all court proceedings. This is spelled out in clauses 4 and 5:

> (4) Notwithstanding the provisions of Clause (1), for a period of ten years after Merdeka Day, and thereafter until Parliament otherwise provides, all proceedings in the Federal Court, the Court of Appeal or a High Court shall be in the English language:
> Provided that, if the Court and counsel on both sides agree, evidence spoken by the witness need not be translated into or recorded in English.
>
> (5) Notwithstanding the provisions of Clause (1), until Parliament otherwise provides, all proceedings in the Federal Court, other than the taking of evidence, shall be in the English language.

> Federal Constitution Article 152

In the next ten years (1957-67), English continued to be widely used in all courts and so the legal community enjoyed immunity from having to use the national language. This came to an end when Clauses 4 and 5 were dropped in the 1967 revision of the Language Act and a new Clause 8, which specifically refers to the language use in court, came into force (see 3.9 for the text).

Many people (Mead op cit; Faiza 1994) see this as again giving greater leeway for the legal community to use English since, although it reasserts that Malay is the language to be used in proceedings, it concedes that English can also be used – partly or wholly – provided that it serves the interests of justice.

In 1980, the acting Lord President at the time - Raja Azlan Shah - instructed the Chief Registrar of the Federal Court (previously the Supreme Court) to issue a firm directive to all judges, magistrates and administrators in all courts in

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Peninsular Malaysia on the requirement to use Malay (Appendix G). In East Malaysia (Sabah and Sarawak), the directive served as information only, as they were not obliged to use Malay under a separate Act of 1967.

The directive was issued in October 1981 detailing the areas of court work in which the language should be used.

In administrative matters, all letters were to be in Malay. The letters received in languages other than Malay would be entertained but replies must be in the national language.

In judicial matters, letters and documents provided for any of the laws or procedures had to be in Malay. Nevertheless, if these were not available in Malay, the English ones would be used. Proceedings, especially in the lower courts, must be in Malay for the following:

- Charge
- Mention
- Examination, Cross Examination, and re-examination
- Submissions
- Grounds of Judgements
- Reference, and
- Records of appeal

However, for the High Court and the Federal Court, a date was to be determined later and announced (Federal Court 1981).

A point that needs to be highlighted here is that, despite the amendment to the Language Act in 1967, a directive had to be issued 14 years later which again insisted on the use of the national language in court. Even after this directive, as will be shown, progress continued to be very slow and little was done in the legal system as far as the national language was concerned and the use of English continued much as before.

Nine years later, in 1990, the Language Act was again amended and enforced in all courts in Peninsular Malaysia (East Malaysia was again excluded). Section 8 pertaining to the language in courts was revised, yet again, to insist on the use of Malay in all proceedings in court but, as before, if requested by the court or any party to the proceedings or if it is judged to be 'in the interests of justice', proceedings 'shall be partly in the national language and partly in the English language'.

3.8.2 Implementation of National Language Policy in the Legal System

Although Malay is now firmly established as the official language in public administration and as the main medium of instruction in schools and institutions of higher learning, when it comes to the legal sector, and especially the courts, the picture is very different since the legal profession has been, until recently, largely untouched by the implementation of the language policy since Independence.

There have been many critical voices pointing to the delay in the implementation of national language policy in courts. Cases are highlighted where

all parties were Malays - the judge, prosecutor, defence counsel, witness and accused - and yet the language used was English. (Asmah 1992). The critics see this reluctance to use the national language as indicative of the conservative attitude of the judiciary and the lawyers' association (Appendix N, Nik S.K. & Faiza T.C. 1994).

It may well be the case that the legal profession is essentially conservative and that, in this respect, the Malaysian profession is no different from that in the rest of the world but what tends not to be mentioned is that there are genuine practical difficulties in implementing a language policy in a multilingual society in such a specialised field as law.

Three major areas of difficulty stand out: (a) English Common Law and its relationship to the Law in Malaysia, (b) the inadequacy of legal documentation in Malay and (c) the training of lawyers and judges.

3.8.2.1 The English Common Law

Malaysian laws are deeply rooted in the English Common Law (Figure 3.2). British (more specifically, English) legal traditions were brought into the country during colonial times, not imposed *in toto*, but only when there were no local laws dealing with a particular case and, even then,

adapted to the condition and wants of the inhabitants... and... subject, in its applications to the various alien races established here, to such modifications as are necessary to prevent it from operating unjustly and oppressively on them...

<div align="right">
Judgement in a case in the Straits Settlements in 1869
Quoted in Wu op cit: 49
</div>

On the eve of Independence, the Ordinances and Enactments that had applied before Independence were incorporated into a comprehensive Civil Law Act in 1956 which became part of the legal code of the new nation. Three different cut off points were written into the Act for West Malaysia, Sabah, and Sarawak respectively, after which new developments in English law would no longer be binding on Malaysian courts. The law of Malaysia is, of course, no longer the law of England but this does not alter the fact that constant references are made (and for the foreseeable future will continue to be made) to English case law and precedents and recent cases documented in English courts. All these laws and cases are, and will continue to be, recorded in English.

In short, the process of litigation is based on a body of laws, judgements and opinions most of which are only available in English. Only the tiniest fraction of these sources is in Malay, either as an original or a translation and the task of translating the whole body of English Case Law into Malay is, clearly, totally unrealistic. In such a context English will continue to play a role in the Malaysian legal system and judicial process.

Figure 3.2
Sources of Malaysian Law
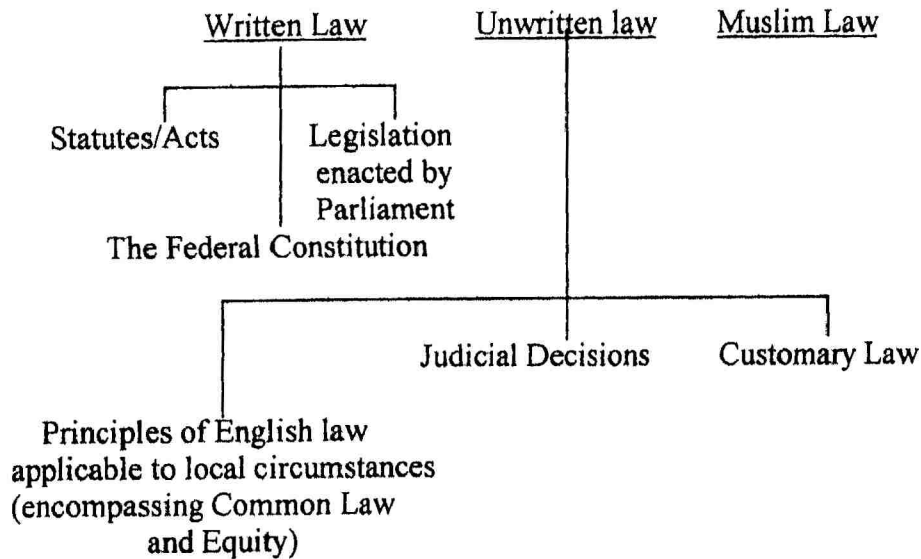
Source: Drawn from Wu (op cit.32)

3.8.2.2 Paucity of Legal Documents in Malay

In 1980, only 60 laws passed before 1967 had been translated and gazetted, and these were the most frequently cited, for example the Penal Code, the Criminal Procedure Code, the Road Traffic Ordinances (Mead op cit: 43). At the time, not even the Malay version of the Constitution had been gazetted and although by 1991 this figure had risen to a total of 89 a huge number still remains untranslated.

Given this, it is difficult to see how a trial can proceed solely in Malay. In order for a case to be tried, all the relevant texts must be available in the same language used in the proceedings. In Malaysia, many reference documents for civil cases are still in English. There are few books, journals or reports on legal matters

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The translated text, when available, must not only be accurate but also clear and helpful. According to the findings of a major survey carried out 1989-91 (Ahmad and Mohd. Yusof 1992)[14], many documents are still unavailable in Malay and even those which have been translated are not easy to understand. The survey also reveals that, even though the translated laws after 1967 are authoritative, only 50.0% of judges and magistrates and only 22.0% of prosecutors and lawyers use them, because they find it difficult to understand the Malay version and 77.0% of the respondents said that the translations are of no use since they are inaccurate (Nik S.K.& Faiza T.C. op cit). The lack of legal terminology and of a body of law in Malay and the quality of translation of the laws into Malay is one of the greatest obstacles to the implementation of the National Language in court.

3.8.2.3   Training of Lawyers and Judges

The majority of lawyers and judges were trained in the United Kingdom and are more familiar with the legal register in English, read more of English, speak English better than Malay, write judgements and decisions better in English, understand English better than Malay, in other words, operate better in English than Malay. What was alluded to as the 'attitude' of the legal circle was more likely to be professional dedication and loyalty to their legal tradition.

The Bar comprises an overwhelming number of non-Malays, many of whom have been educated abroad. In 1981, 1,110 of 1,296 (86%) were non-Malays. By 1995, the proportion was 71% but the fact remains that almost 40 years after Independence, still only 29.0% were Malays.

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The earliest local legal education started in 1972, with English as the medium of instruction until 1983 after which it became largely bilingual. The survey reported that although almost 60.0% lectures were given in Malay, 80.0% of tutorials were in English and the problems cited by students and lecturers in using Malay were vocabulary, style and structures, in addition to the lack of references – both local examples and academic references - in Malay (op cit p. 168)

The report concluded that although Section 8 of the amended National Language Act requires the Malay language to be used in court, little has been done to address (a) the inability of a section of the Bench and the Bar to use the language, (b) the unavailability of written laws and legal literature in Malay and (c) that this is unlikely to facilitate the smooth implementation of the policy.

Given that the clause stating that the National Language was to be the language of trial and record in Malaysian courts and the obligation to implement the decision in the courts has been in existence since 1957 (admittedly postponed until 1967), it is very surprising that so little has been done to ensure that the members of the legal profession are competent in the language. The following table shows in summary, how slow the pace has been.

Table 3.4
Language Policy: a series of 'firsts'

1957	The Language Act	The Constitution
1965	Committee on legal terminology	DBP
1970	Legal terminology list published	DBP
1972	Legal education started [1]	University of Malaya
1973	Legal education started [1]	National University of Malaysia
1984	Bureau of Translation	Federal Court
1988	Committee for implementation of language policy in courts	Chief Judge
1989	Kanun – first Malay law journal – published	DBP
1989	First language survey [2]	DBP and Judiciary
1990	First language seminar [3]	The Judiciary
1990	Weekly language course for judges [4]	Federal Court
1990	Individual language tuition [5]	Individuals
1991	First seminar on national language and law	Linguistics Society of Malaysia and DBP
1992	Survey Report published	DBP
1994	Proceedings of 1991 seminar published	DBP

1. Medium of instruction initially entirely English (due to the lack of references in Malay) but shifting to bilingual in the 1990s.
2. Only focused on the Federal Territory of Kuala Lumpur,
3. The first language seminar organised by the judiciary was held in 1990 to discuss their problems related to the implementation of Malay in courts.
4. Language classes for judges (once a week) for judges only started in 1990 (Nik and Faiza op cit)
5. Other classes, offered privately by a Malay interpreter, started in the same year.

3.9 National Language Policy and the Courts

The official language of trial and record in the Malaysian court is the national language (Malay: Bahasa Melayu). The use of English is only permitted when it can be demonstrated that this will serve the interests of justice and with the consent of all parties (Section 8 of the Language Act (revised) 1990). However, the

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Malaysian court is still necessarily a multilingual one, with all three major languages of the country being spoken.

The ethnic composition of the country, according to the latest census, is Malay: 54.8%, Chinese: 25.3%, Indian: 7.4%, and other Indigenous groups: 11.3% (Table 3.2: Department of Statistics 2000). This however is not reflected in the ethnic composition of the interpreter service. Mother tongue (and ethnic membership) does not correlate one-to-one with the languages used in court. The reason for this is that since Malay is the normal language of trial and of record, *all* interpreters, have to be able to work between Malay and at least one other language (an exception is those working in East Malaysia between English and indigenous languages). Malays tend to work only between the Malay language and English, Chinese between Malay/English and Mandarin/Chinese dialects, and Indians between Malay/English and Tamil/other Indian languages.

Ten years after Independence (1967), in order to implement the provision in the constitution, Article 152 was amended with the inclusion of Clause 8 (below) which specifies language policy in the Courts.

> (8) All proceedings (other than the giving of evidence by a witness) in the Federal Court, the High Court or any Subordinate Court shall be in the national language or in the English language or partly in the national language and partly in the English language.
>
> Provided that the Court may, either of its own motion or the application of any party to any proceedings and after considering the interests of justice in those proceedings (other than the giving of evidence by a witness) shall be either wholly on the national language or wholly in the English language.
>
> Federal Constitution Article 152

Today, the national language is used widely in all courts in Malaysia, except (a) where, in the interests of justice, the use of English is necessary and (b) in East Malaysia, where English is still used, as the Constitutional requirements for language in Sabah and Sarawak are different from Peninsular Malaysia (Federal Constitution Article 161 clauses 1-5).

3.10   The National Language Policy and Linguistic Rights

The ethical issues implied and inherent in language planning (more specifically status planning) involve political ethics, since status planning (with its inevitable allocation of language function) creates or diminishes language rights associated with each language function within the social structure of a state. The state provides a certain amount of security and protection through laws and law enforcement, and normally undertakes the tasks which are impossible for individuals. However there are different kinds of government, with different attitudes towards and understanding of the linguistic rights of constituent groups.

Cobarubbias (op cit) maintains that official attitudes towards language are important because they have an effect on language function and can serve as a good indicator for the analysis of linguistic inequalities in terms of opportunities for language function allocation and language use. According to him, language attitudes towards minority languages range from attempting to kill a language, letting a language die, allowing unsupported coexistence for the language, providing partial support for specific language functions and adopting the language as an official language.

The issue of linguistic rights is a politically sensitive topic and one of the areas of intense current development and debate in the subject of language planning (Skuttnab-Kangas & Phillipson op cit., Pütz op cit, Léwis op cit). Linguistic Rights are inherent in the United Nations Charter of Human Rights of 1948 but were not formulated on an international level until the appearance of the Recife Declaration in 1987. This Declaration, which resulted from the 12th seminar of the International Association for the Development of Intercultural Communication in Recife (Brazil), recommended to the UNO to take the necessary steps to approve and implement a universal declaration of linguistic rights. Such a Declaration was drawn up by representatives of institutions and non-governmental organisations who met in Barcelona in 1996 'to promote efforts to correct linguistic imbalances with a view to ensuring respect and full development of all languages'.

It was argued that linguistic rights are a crucial part of human rights, as, for most ethnic groups, language is the most important cultural core value. If the language of an ethnic group is threatened, the cultural and linguistic survival of the group is equally threatened (Skuttnab-Kangas and Phillipson op cit). Inter-ethnic conflicts are not brought about by competition per se, but more by:

> the risk of having to give up something of oneself, one's identity
> and struggle...It is therefore more a question of survival in a
> cultural rather than a material sense...

> Stavenhagen 1990. 7

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There is an urgent need to develop linguistic rights as an area of study in a multi-disciplinary way, since language can be seen to be a means of manipulating groups of people, and used as a means of social control which can result in social injustice.

Linguistic rights have been defined on two levels; individual and collective (Skuttnab-Kangas & Phillipson op cit). At the individual level, it is the right to identify positively with one's mother tongue and have that identification respected by others, the right to learn it and have the minimum of basic education for the language and the right to use it in official contexts.

At the collective level, it refers to the right of a minority group to exist, to enjoy and develop their language, to establish and maintain schools, training and educational institutions, with control of curricula and medium of instruction in the language.

In many countries there are legal safeguards for such rights which secure them in law (see 3.11). However, the *de jure* provision for a right does not automatically guarantee its *de facto* delivery. Implementation depends on the existence of adequate procedures. Court interpreting is a very clear example of such necessary provision.

Bresnahan (1991), in a study of a criminal trial involving two foreign-born defendants in a Michigan court, illustrates how non-native speakers of English, even though considered proficient, may be disadvantaged in a trial because they

may not be skilled enough to deal with prosecutors' questions during cross-examination. In this particular case, in which two Philippine nurses were accused of killing their elderly patients, their defence lawyers chose that the defendants should testify in order to convince the jury of their innocence. This turned out to be a tactical error, as the defendants, as non-native speakers, were not able to handle the 'low acceptability, high cost, non-congruent response strategies' available to the more skilled and culturally aware native. As a result the defendants failed to deal convincingly with the prosecutors' damaging implications and were found guilty.

In a study on presentation style in the courtroom, Conley, O'Barr and Lind (1978) found that, although rules of evidence control the *content* of testimony, they have no control over *how* testimony is given at trial. There was substantial evidence that the witness' testimonial style 'exerts a strong influence on the jury's perception of the substance of his testimony to the extent that it may distract the jurors from an objective assessment of the facts.' (op cit. 1399). The experiments carried out by the researchers centred around two stylistic extremes: 'powerful' and 'powerless'.

Witnesses using the *powerful* style tend to sound more convincing and are therefore regarded favourably by the listeners. In contrast, the hedging strategies, hypercorrectness, rising intonation patterns and fragmented speech of the *powerless* style makes it less convincing and produces a negative impression. The research also indicates that typical users of powerless styles were women and individuals with low social status.

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Lack of competence in language plus the inability to manipulate paralanguage to create a convincing powerful presentation style puts an individual in a weak position when (s)he is seeking justice in a court of law.

3.11 The Right to a Competent Interpreter

The whole question of linguistic human rights is much more poignant and focused in a court of justice. Article 20 of the Universal Declaration of Linguistic Rights states that:

> ...everyone has the right to be tried in a language which (s)he understands and can speak, and to obtain the service of an interpreter free of charge.

In many countries the right to speak in a language one is comfortable in is provided for. In Canada, Section 14 of the Canadian Charter of Rights and Freedom states that:

> A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

In Australia, the two sources of Australian law (the Common Law and laws enacted by Parliament) treat the right to an interpreter differently (Laster and Taylor op cit). The Common Law did not recognise a right as such, but left it to the discretion of individual judges. The procedural rights however are given greater weight as precedented in *R v Lee Kun* [1916] 1 KB 337 in which the English Court

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of Criminal Appeal came up with a series of propositions on the right to an interpreter in a criminal proceedings which became the basis of entitlement to an interpreter in a criminal trial in Australia:

- Unrepresented defendants must be provided with an interpreter, to 'communicate to the accused the case made against him and to enable him to make his answer to it' (at 342)

- Where the non-English speaker is represented by a lawyer, 'the safer and therefore the wiser course ... is that the evidence should be interpreted to him except when he or counsel on his behalf expresses a wish to dispense with the translation'. (at 343) The judge still has the discretion and should not allow this unless he believes that the accused 'substantially understands the evidence to be given and the case against him at the trial'. (at 343)

- In both represented and unrepresented cases, any substantial departure from the depositions or any additional evidence must be translated. (344)

- The proceedings will not necessarily be invalid if these requirements are not met, unless this would amount to a substantial miscarriage of justice. (at 340 and 344)

Laster and Taylor op cit. 79

As regards legislation in Australia, Section 40 of the Magistrates Court Act 1989 (Vic) provides:

If a defendant is charged with an offence punishable by imprisonment; and The Court is satisfied the defendant does not have a knowledge of the English language that is, sufficient to enable the defendant to understand, or participate in, the proceedings – the court must not hear and determine the proceedings without a competent interpreter interpreting it.

Laster and Taylor op cit. 81

In Britain, the right to an interpreter is also traditionally a discretionary matter for the trial judge that is, it is not a right on the part of the non-English speaking person.

In Malaysia, as stated in Chapter 1, the Criminal Procedure Code gives individuals who are not competent in the language of the court the right to the services of an interpreter who is, in fact, part of the court system. Recent practice however, sees more and more civil cases involving the use of freelance interpreters hired by individual lawyers for their clients.

In the United States, the American Convention on Human Rights - adopted in 1969 and brought into force in 1978 - states, in Article 8.2.a, the right to an interpreter for a fair trial in the following way:

> ...the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court...
>
> Skuttnab-Kangas and Phillipson op cit. 85

All the above give the impression that a great deal of attention and effort is being accorded to the question of linguistic rights in the courts. On one level, this is the case but, on another, two important issues have arisen again and again and are still unresolved:

(a) Linguistic rights are provided for and spelt out in International Laws and Charters but the question of implementation at the level of the individual

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country is another matter. Laster and Taylor (op cit.) argue that although international laws stipulate the rights in an explicit, bold and decisive manner - namely the Universal Declaration of Human Rights (1948), the Civil and Political Rights Covenant (1966), and the Declaration of Linguistic Human Rights (1996) - the responsibility for providing the interpreters does not rest with them but with the domestic laws of the individual countries. This responsibility entails a whole series of obligations which an individual country may not be prepared to undertake.

(b) Even if the domestic laws of the individual country provide for the right to an interpreter or translator, thus recognising the linguistic rights of the individual, the next significant question is whether the interpreter provided has the necessary linguistic and professional competence to assist the individual needing the service.

This is an area that is being widely discussed, debated and planned for in many countries - notably the United Kingdom, the United States and Australia. However, the picture painted by Morris (1994), admittedly almost ten years ago and before the implementation of the major reforms which led to the setting up of the National Register of Public Service Interpreters, of the legal system's perception of the entitlement to interpreters in court was not very encouraging:

> Essentially I would argue, the legal system sees entitlement to LS[15] not as a right but as a problem because of the difficulties of arranging for LS provisions that is, the implementation of the right.

Morris (1994), 307

Most European countries guarantee the right to an interpreter for defendants who do not speak the language of the proceedings. Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, adopted by the Council of Europe in 1950, guarantees, among other things, (1) that the defendant be present in person when the case is heard in court, (2) that the evidence be heard by an 'impartial tribunal', and (3) that the defendant be informed of the charges 'in a language which he understands' and to 'have the free assistance of an interpreter if he cannot understand or speak the language used in the court'.

3.12 Conclusion

Language planning, although claimed by linguists as a branch of sociolinguistics, in practice is very much tied to ideology, race relations and thus to political science. The planning of the national language in Malaysia has been systematic and very much part of the development of the country in its attempt to establish an identity, but it has not taken into account, or has not considered seriously whether the national language policy:

- can be applied with the same vigour in the courts of justice, without causing some anomaly and injustice, not only to the defendants but also to the court's own interpreters;

- has neglected not only all the other languages of Malaysia but also English: the most important second language in the country;

- in the process of implementation, is causing a reduction in the quality of a crucial language service and, even, the neglect of those who provide it;

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- has caused or is causing the linguistic rights of non-Malay citizens of Malaysia and other non-Malay speaking individuals to be violated.

Dr Mahathir Mohamed, the Prime Minister of Malaysia, made the headlines, immediately after the country celebrated its 44th year of Independence (31st August 2001) by stating that the national language policy might perhaps have been pushed through in an overzealous way by ministers and educationists [and judges]. Many Chinese, Indian and English schools were closed and converted into Malay National Schools with the intention of expanding the use of the national language as quickly as possible but the effect of this has been disappointing with the performance of the Malay schools dropping steadily over the years. According to Dr Mahathir,

> This is what happens when we try to use the education system for purposes not related to education, in this case, to expand the language.

The Star, Sept 2nd 2001:1

The *Satu Bangsa, Satu Bahasa* (one-nation-one-language) philosophy which Malaysia adopted as the basis of its language policy has recently been labelled a myth (Kaplan and Bauldauf 1998). In the past, there has been an unwillingness to accept the reality of multilingualism, based on the premises that (a) monolingualism is desirable for economic growth and (b) that minority rights are a threat to the nation state (Skuttnab-Kangas and Phillipson op cit:4). These have recently been viewed as unrealistic.

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The Prime Minister's vision of a developed Malaysia was articulated two decades ago. How the next stage – evaluation - can include a process of self-reflection and self-evaluation, and translate into policy review and examination, is now a truly critical question in Malaysian socio-economic-political development.