



Official Language Designation

Constitution-Building Primer 20





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International IDEA Constitution-Building Primer 20

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1. Introduction

Modern constitutions typically contain a variety of provisions on language. They may designate one or more official languages, each with a different kind of legal status. Constitutions may also create language rights, usually held by minority-language speakers, granting groups and individuals the right to communicate with, and receive services from, the government in their native tongue. Constitutions may determine the language of legislative and judicial proceedings. In systems of multi-level governance, constitutions may vest the authority to designate official language(s) for each order of government.

This Primer addresses the role of language in constitutional design, and the key considerations, implications and potential challenges that arise in multilingual states. It discusses the range of claims around language as a constitutional issue, and the potential consequences of successfully addressing these claims—or failing to do so. It also addresses some of the key questions in relation to language that are likely to arise in constitution-building processes: In what language(s) will the civil service provide public services? What language(s) will public schools use for teaching? What are the language(s) of legislative debates and legislation? In what language(s) should judicial proceedings be conducted and judgments rendered? How should language or linguistic rights be framed to ensure equal treatment, and to effectively protect and accommodate individuals, minority groups and indigenous peoples?

Defining ‘official’ and ‘national’ languages

For the purposes of this Primer, an ‘official’ language is defined as the language (or languages) used by the government to conduct official, day-to-day business. By contrast, in this Primer, a ‘national’ language is defined as the language shared in common among the people(s) of the state, and does not imply anything

regarding its legal status. While some constitutions use the term ‘national language’ to refer to an official language, the terms do not always overlap. For the purposes of this Primer, we focus on substance, not formal labels—and so will refer exclusively to official languages.

It is possible that a language may be a national language and have official status, but official and national languages may also differ. In linguistically diverse states, a number of national languages may be spoken by certain groups or peoples within the state, whether that is territorially concentrated or dispersed. A multilingual state may designate more than one official language. Moreover, official language status can vary across territories within a state—in both unitary states and federal states. The legal status of official languages may also differ (more on this in Section 4) depending on the institution, function and jurisdiction.

Advantages and risks

A state can only function through the use of a language or set of languages in which to conduct the day-to-day business of government and deliver services. Constitutionalizing one or more official languages can also help to define the character of the state and the cultural identity of the people within it, and may contribute to building a common sense of community among diverse peoples.

However, constitutionalizing an official language or languages may place a particular group of people in a position of power within the state, and may exclude those whose languages are not recognized or whose rights to use the language of their choosing—for example, when receiving services, engaging with the justice system, or conducting private business—are not sufficiently protected. Moreover, the choice of an official language or languages has deep symbolic implications for the state’s cultural identity. This can give rise to unrest or even violent conflict. These issues may lead to arguments against constitutionalizing official languages, or to arguments in favour of disaggregating the question of official language choice across space (geography) and function and combining it with language rights for minorities.

Where is language a constitutional issue?

Language is a constitutional issue in any country with heterogenous linguistic demographics, in particular where language cleavages map onto political divides and pre-existing conflicts.

2. What is the issue?

A state *must* operate in a language or set of languages for its day-to-day business. Constitutional designers, therefore, must consider how—or if—the language or languages of the state should be constitutionalized for official use. This consideration is distinct from, but related to, the issue of how to recognize, protect and accommodate speakers of minority languages. A handful of constitutions do not designate an official language—this tends to be particularly true of states with older constitutions (e.g. Australia, the United States), where the language spoken by the constitution-makers was assumed to be *de facto* the official language. However, contemporary constitutions invariably address the question of official language, for reasons of transparency and clarity, and because of the implications that official language policy has for questions of economic opportunity, political power and cultural identity.

For a number of reasons addressed in the next section, states cannot operate in every conceivable language spoken by their residents. In multilingual states, native speakers of more than one language may lay claim to official status for one or more purposes or in one or more territorial areas. Such decisions are often politically controversial. For example, in Ethiopia, Amharic is currently the sole official language of the federal government, but there is a debate over whether to add another African language, and if so, which one. This second official language would be used for legislative enactments, and also for public service delivery. In Cameroon, there is currently disagreement over whether the judiciary should operate exclusively in French or also in English—both languages introduced through colonization. In Nepal, a key question is whether Hindi can operate alongside Nepali as an official language in the Madhesh, the south-east region of the country bordering India.

How language is addressed in a constitution has significant consequences for peace, democracy and human rights. The constitutional treatment of language is a

high-stakes issue and, if mismanaged, it can lead to political unrest, violence and even civil war. The way that a constitution addresses language has implications for access to political power, economic opportunity and cultural identity. The choice to confer official status on a language can shape who is understood to be ‘the people’ of a constitutional democracy. Notably, language intersects with other constitutional issues, such as federalism/decentralization, local government, indigenous rights, freedom of expression and the media, and the right to education, and cannot be considered in isolation.

Think point 1

Unlike other matters of identity that can serve as the basis of political division—such as religion, ethnicity or gender—where the state may attempt to defuse controversy by adopting a neutral stance, the same option is not available when it comes to language (Choudhry 2009). A constitution may bar the adoption of an official religion, but a state must choose to operate through a language or set of languages. Moreover, states cannot operate in every conceivable language spoken by their residents. This is true not just for poorer countries but for wealthy countries as well. How should constitutional designers choose whether—or if—a particular language or set of languages should have official status? How should the constitution recognize, protect and accommodate speakers of minority languages?

3. Understanding language in context

Every constitution-building process is shaped by a range of historical experiences, political dynamics, and identities and cultures. It is important that constitutional designers understand this context, the ways in which language identities and language politics operate within society, and the needs and aspirations of the various linguistic communities within the state.

Why official languages? Causes and consequences and historical legacies

Adopting a single official language is seen as promoting three broad goals. First, a single official language creates a common platform for mass, democratic politics, as a corollary to universal suffrage and regular, periodic elections. Second, a single official language can help to promote social and economic mobility and contribute to dissolving social and economic hierarchies, because promoting literacy in a common language expands economic opportunities beyond one's linguistic community to the country as a whole. Third, a single official language provides a basis for direct communication between citizens and public administration, which is required for the modern state, whose activities extend over a broad range of economic and social life.

In countries with one dominant linguistic group, where that language has historical ties to national identity and where there are no significant linguistic minority communities, it might be relatively uncontroversial to designate a single official language for the state. Usually—although not always—this has been the language of the numerical majority, which also held political power. In Belgium, by contrast, the official language was originally French, reflecting and

maintaining the historical economic and political dominance of the French minority.

In many countries, however, there are well-defined linguistic minorities, including those with self-determination claims, and/or indigenous communities, for whom designating a single official language is politically divisive. For these groups, language rights, recognition and legal status are of deep importance for reasons of cultural identity, political power and economic opportunity (see below for more details).

In addition, there may be generational divides in language use. In Timor-Leste, for example, the younger generation was accustomed to speaking Bahasa Indonesia (a Malay dialect), while the elder generation spoke Portuguese. Many indigenous languages without a written script are spoken as well.

How language is addressed in a constitution can have significant consequences for peace. If language is a conflict driver, designers of peacebuilding and constitution-building processes must put language issues on their agendas, and fail to do so at their peril. This is particularly true in states with territorially concentrated linguistic minorities, where the adoption of a single official language could potentially lead to political exclusion, violence and even civil war. For example, Sri Lanka adopted Sinhala as the sole official language after independence. This fuelled discrimination against, and the disenfranchisement of, Tamil speakers, who escalated their demands over time—originally calling for dual official language status in central institutions, then federalism with a Tamil-majority subnational unit, and finally secession. This ultimately led to a bloody, decades-long civil war. By comparison, in Indonesia, where over 700 languages are spoken as native languages among various ethnic groups, President Sukarno designated Bahasa Indonesia as the official language at independence, even though it was spoken by less than 5 per cent of the population (Indonesia's Constitution of 1945, article 36). Malay was seen as ethnically neutral, and choosing it as the official language was a key step in building an inclusive national identity.¹

In states that emerged out of colonial empires, the language used by colonial powers may be the lingua franca held in common across various linguistic communities, at least by the political and economic elites in those communities. This historical experience may create a paradox around the choice of official language(s). On the one hand, moving away from the language imposed by colonial powers or a dominant group represents a break from the past and a (re)assertion of national identity or cultural pluralism. On the other hand, operating in a common language already familiar to government institutions and processes may support logistical and financial efficiency, and the colonial language may be seen as a neutral choice among several competing national languages.

Language status and rights: claims of different linguistic minorities

It is helpful to distinguish between three different kinds of linguistic minorities that may put language on the constitutional agenda: (a) linguistic minorities that make self-determination claims; (b) linguistic minorities that do not make self-determination claims; and (c) indigenous peoples (Kymlicka 2007). While their claims overlap, these distinctions are helpful in understanding the content of these claims and the constitutional design options available to address them. The constitution is one arena where these competing claims surrounding official language status can be addressed (Kymlicka and Patten 2003).

Linguistic minorities that make self-determination claims

In many multilingual states (e.g. Belgium, Cameroon, Canada, Ethiopia, Sri Lanka and Turkey), claims for self-determination, autonomy or self-rule are made by linguistic minorities that speak a different language from the majority.² These groups are usually concentrated in a distinct territory, and historically may have been self-governing, with their own institutions and laws, before they were incorporated into the larger state through consent or conquest.

These political movements more often arise in states with a single official language that is predominantly spoken by the majority. This is because official language policies have the effect of distributing political power, economic opportunity and cultural respect towards speakers of that official language, and away from speakers of minority languages without official status. In response, territorially concentrated linguistic minorities may seek to create subnational public institutions in which their languages have official status, through federalism, devolution and/or special autonomy (e.g. Canada), perhaps alongside the official language of the state (e.g. Ethiopia and Spain). They may also demand that their languages have official status within central institutions, both for functional reasons, such as communicating with public servants (as in North Macedonia), and for symbolic ones—for example, to recognize the multilingual character of the state (as has been particularly important in South Africa).

These claims are often described as *group rights*, because they are exercised by linguistic communities collectively (e.g. through federal subunits) (Choudhry 2012). Speakers of the majority language may oppose such claims, arguing that they threaten democracy, public administration and economic mobility, and also that they undermine a common citizenship, threaten national integrity and/or are discriminatory (e.g. as suggested in Turkey). Moreover, new federal arrangements may create new internal linguistic minorities—sometimes called ‘minorities within minorities’—which may make similar claims for group language rights

against federal subunits. This has been a major issue in Canada for English-speaking minorities in Quebec and French-speaking minorities in the nine English-majority provinces.

Box 3.1. The evolution of linguistic federalism in India

In India, the Constituent Assembly (1946–1948) rejected a proposal to draw provincial boundaries along linguistic lines. While the Congress Party had been committed to linguistic provinces prior to independence, in the wake of Partition, the approach was rejected because of a fear that linguistic federalism could lead to further secession. Moreover, this stance went hand in hand with the constitutional entrenchment of Hindi as the official language of the Union. Together, these two positions were rooted in the idea of a pan-Indian conception of citizenship, which would transcend linguistic and regional divides, and promote political participation, economic opportunity and a shared national identity.

However, the rejection of linguistic provinces unravelled before independence, especially in the non-Hindi-speaking parts of the country. In 1953, Andhra State (later Andhra Pradesh) was created from the Telegu-speaking parts of Madras State, which had a Tamil majority. This impelled the creation of the States Reorganisation Commission, which concluded that language should be a factor in drawing state boundaries. Based on the Commission's recommendations, Parliament created Assam, Bihar, Bombay State, Jammu and Kashmir, Kerala, Madhya Pradesh, Madras (later Tamil Nadu), Mysore State (later Karnataka), Orissa (later Odisha) and Punjab in 1956. The multilingual Bombay State was further divided into Gujarat and Maharashtra in 1960, and Punjab into Punjab and Haryana in 1966. This was perhaps the most extensive reconfiguration of internal political boundaries through peaceful means in the 20th century (Choudhry 2016).

Linguistic minorities that do not make self-determination claims

Language is also a constitutional issue in societies where it is not bundled with self-determination claims. Through immigration, many countries have large numbers of long-term residents who speak minority languages (e.g. Australia, Germany and the United Arab Emirates). Moreover, many other countries are linguistically heterogeneous—especially in Africa (e.g. Nigeria) and Asia (e.g. Myanmar)—because colonization and independence brought together diverse linguistic communities that are territorially intermingled within a single state.

Speakers of minority languages communicate in their languages at home, and in community and religious institutions. But they may also wish to use their languages in the economy—for example, in the workplace, in serving customers, and in advertising. In addition, they may want their language to be used in public

and private schools that offer a bilingual education in the minority language and the official language of the state, and which award diplomas upon graduation that are formally recognized by the government. They may wish to run print and broadcast media in their own language, for members of their community. In terms of public administration, minority-language communities may wish to receive public services in their own language. Finally, in dealing with the criminal justice system, speakers of minority languages may assert a right to translation for the accused, defendants and witnesses. Their goal is not to create separate or parallel executive or judicial institutions, but to define the terms upon which they interact with shared institutions and ensure that they are treated equally and that their rights are protected.

Many of the above claims are framed in terms of *individual rights*. They sometimes overlap with basic human rights—such as freedom of expression, freedom of association, due process, and the right to equal treatment and non-discrimination—which can be interpreted as encompassing claims by linguistic minorities. These human-rights-based claims can also be made by linguistic minorities making self-determination claims. Constitutions can expressly entrench such rights, especially in relation to the criminal legal process (see Section 4).

Indigenous peoples

Finally, language is a constitutional issue for many indigenous peoples. Under International Labour Organization (ILO) Indigenous and Tribal Peoples Convention (No. 169), peoples are defined as indigenous:

... on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

(ILO 1989: article 1(1b))

The most authoritative statement on the rights of indigenous peoples under international law is the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP; UN 2007), which reflects many of the claims of indigenous peoples. Some of the provisions refer specifically to language: the right to revitalize, use, develop and transmit to future generations their language (UN 2007: article 13(1)); a state's obligation to take effective measures for indigenous individuals to have access when possible to an education provided in their own language (UN 2007: article 14(3)); and the right to establish media in their own language (UN 2007: article 16(1)).

UNDRIP also protects other rights to protect practices or powers that would be exercised or engaged in through indigenous languages. Examples include: the right to autonomy or self-government in matters relating to their internal or local affairs (UN 2007: article 4); the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions (UN 2007: article 5); the right to practise and revitalize their cultural traditions (UN 2007: article 11); and the right to practise their spiritual and religious traditions and customs (UN 2007: article 12). These rights include ones asserted both by those linguistic minorities making self-determination claims (although these are less extensive in scope) and by those linguistic minorities that do not.

Constitutional provisions on indigenous peoples are increasingly common. They mostly take the form of *group rights*, and focus on issues such as land and self-government. However, they also address questions of language, most notably in relation to education (see Section 5). These constitutional issues, in particular, are pervasive in Latin America (e.g. Bolivia).

Think point 2

Which communities live in your country that might make constitutional language claims? Are these communities territorially concentrated or dispersed? Do claims around language relate to self-determination claims for some groups? Are they linked to indigenous status? Are there individual rights-based claims among linguistic minorities? How might the constitution recognize and address these claims?

Language and power, opportunity and identity

The choice of official language has implications for the distribution of political power, access to economic opportunity, and the preservation of cultural identity. This means that choices about the designation of an official language, as well as recognition of national languages and associated rights and duties, may be highly contested.

Political power

Official language policies distribute political power. Native speakers of that language have a competitive advantage in elections, in assuming leadership roles in political parties, and in participating in political life. Another source of political power is the state bureaucracy. Civil service recruitment in the official language favours speakers of that language; so too does the use of the official language as

the working language of public administration. Linguistic minorities may argue that official language policies can make them second-class citizens, with diminished political power. Rather than being tools for political inclusion, official language policies can become instruments of political exclusion.

Economic opportunity

Official language policies also structure access to economic opportunity. Civil service employment is valuable not just politically, but economically. Constitutional conflicts over official language policies have often been rooted in economic competition over public sector employment between members of different linguistic communities. Moreover, the official language of the public sector has network externality effects on the private sector, because of economic incentives for businesses to operate in the same language as governments. For example, in Quebec, the use of French as the internal working language of government has been the principal factor in the adoption of French as the language of the economy. Asserting a right to engage in economic activity in their own language can help linguistic minorities to mitigate any economic disadvantages they may experience from being required to conduct business in the official language.

Cultural identity

Language is a bearer of collective identity. It is the repository of a group's collective memory and is the means whereby culture is transmitted from one generation to the next. It enables shared cultural activities, such as art and literature. It may also be closely tied to religious and spiritual practices. Official language policies are often opposed on the basis that they do not recognize the importance of language to minority identity and are designed to promote cultural assimilation.

The impacts of official language policy on cultural identity, economic opportunity and political power often overlap. The failure to properly address language claims at the constitutional level can lead to political and economic marginalization, and may fuel the loss of cultural identity. Minority-language media, for example, can facilitate political participation by providing information and serving as a forum for debate, and thereby enhance democracy alongside preserving cultural identity. Similarly, the right to native language education for indigenous peoples has been a long-standing issue across Latin America (e.g. Bolivia, Brazil, Colombia, Venezuela) as well as for the Sámi in Scandinavia (Finland, Norway, Sweden). Education in indigenous languages promotes cultural survival, and enables literacy in the national/official languages and thereby expands economic opportunities. The use of minority languages in the private sphere in commerce has been important in multicultural societies with

high rates of immigration—for example, Canada—in order to promote both cultural identity and the success of minority-owned enterprises.

Think point 3

What kinds of language claims are made by communities that live in your country? Are these claims rooted in the impact of official language policies on political power, economic opportunity, cultural identity, or a combination? Do different kinds of linguistic minorities raise distinct concerns? What specific policies and rights do linguistic minorities seek, to address these issues? How should the constitution balance official language policy needs with the concerns of linguistic minorities related to political power, economic opportunity and cultural identity?

Endnotes

1. By contrast, in Malaysia, the designation of Malay as a single official language had the opposite effect, since it was spoken by the majority, but was not the native language of those speaking English, Chinese and Hindi.
2. Self-determination claims are often mistakenly conflated with secession (see Cats-Baril 2018).

4. Design alternatives

Designating an official language or languages

Some states do not legally designate any language or languages as ‘official’. Rather, the de facto government language is a product of history and practice but is not stipulated in the constitutional text. The most prominent example is the United States: the federal government operates exclusively in English, but English is not formally the official language. However, as explained above, contemporary constitutions invariably address the question of official language. The choice is constitutionally entrenched in 156 countries, while in others, there is legislation regarding official language status. Only a handful of countries do not designate an official language at all.

Functional and spatial disaggregation

An important principle for the constitutional treatment of language in public institutions is disaggregation. It is often assumed that once a language receives official status, it should be used across all areas of government activity. However, giving a language official status does not mean that the language must be used in the same way in all areas and at all levels of government. Rather, the choice of official language can be disaggregated by function and by space into a number of distinct institutional decisions in which the scope for linguistic choice and the consequences of that choice may be different.

Functionally, official language policies can be made separately for the executive, the legislature and the judiciary. For the executive, a further distinction can be drawn between the internal language of the government and the external language of public services. In the realm of public services, education is often treated distinctly, with further distinctions made between elementary and secondary

education, on the one hand, and post-secondary education, on the other hand. With respect to the legislature and judiciary, a distinction can be drawn between the deliberative dimensions of legislative and judicial proceedings (legislative debates and court hearings), and the products of those deliberations (legislation and judgments). Examples of these functional distinctions are provided below.

Spatially, these institutional choices are available to governments in both unitary and federal states. Having multiple official languages is often closely associated with multi-level governance, but does not necessarily mean that a country must have federalism/decentralization. For example, a unitary state may opt to provide public services in different languages throughout the country, tailored to the linguistic composition of local populations. Also, in a federal state, the central government may operate in different languages in different regions.

In principle, the same functional questions can be posed at each level of government, which can arrive at different decisions if the constitutional framework allows.

Financial and logistical practicality

How official language policy should be framed in any particular country will be a highly contextualized decision depending on a number of factors, including the number of candidate official languages, how developed the written vocabularies of those languages are, financial and logistical constraints, and the ready availability of translation.

While it may be normatively desirable for the government to officially operate in as many languages as are spoken by the people living within the state, financial and logistical considerations make this impossible. This is true not just for poorer countries but also for rich countries. The financial and logistical issues become readily apparent when we pose specific questions about, for example, the languages to be used by public institutions. Suppose the bureaucracy is multilingual and can provide public services in multiple languages. If it were feasible to provide in-person or phone services in multiple languages, would it also be feasible to prepare written materials in the same number of languages? Would it be practical for all of these languages to be used as the internal working language of government, in which civil servants communicate with each other? In answering these and other questions about where and how language will be used, the potential cost and the logistical feasibility are major issues to be taken into account.

Symbolic recognition or establishing concrete usage rules

The constitutional designation of a language as official does not necessarily have concrete legal effects. In India, for example, the listing of a language as official in the Eighth Schedule of the Constitution (1949) has no legal effect on its status for use by the executive, judiciary or legislature, at either the national (Union) or

subnational (state) level. Rather, its status is purely symbolic. Nonetheless, there are constitutional politics around the Eighth Schedule. It includes the most commonly used Sanskrit-based languages in India, but excludes two widely spoken languages—Urdu and English. The omission of Urdu from the Eighth Schedule is a legacy of the politics of Partition and the systemic discrimination against India’s Muslim minority. The decision to exclude English from the Eighth Schedule reflects the anti-colonial origins of India’s Constitution. Even though English is not designated as an official language in the Eighth Schedule, the Constitution nevertheless makes it a working language of the legislatures, courts and public administration (articles 120, 210, 343, 344 and 348).

By contrast, the Constitution of Iraq (2005) designates both Arabic and Kurdish as official languages, and then provides that they shall be used for the publication of government decisions in the Official Gazette, in the legislature, cabinet and courts, and in other official documents. The details are left to statute, which may extend the range of uses to build upon this constitutional floor (article 4). The Iraqi approach combines both concrete use and symbolic recognition.

As explained in Box 4.1 in relation to South Africa, where there are financial and logistical barriers to concrete usage, symbolic recognition is a potential substitute, in certain political contexts.

Box 4.1. Official language policy in South Africa

Official language policy was a contentious issue during the South African constitutional transition. Under the racist apartheid regime, the two official languages were English and Afrikaans, which were the languages of the parliament, the judiciary and public administration. African languages had no official status.

The Constitution of South Africa (1996) sought to redress this racist past, and it combines functional and spatial disaggregation, symbolic recognition, and the consideration of financial and logistical barriers. Section 6(1) declares that the official languages of South Africa are ‘Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu’. However, the designation of official language does not automatically have any concrete effects. Rather, it has two functions: symbolic recognition, and setting out a list of languages which governments may use for official purposes.

Symbolically, ‘all official languages must enjoy parity of esteem and must be treated equitably’ (section 6(4)). This provision affirms the equal importance of official languages, but at the same time only requires that they be treated ‘equitably’, as opposed to equally—a much less demanding standard that likely imposes few, if any, enforceable legal duties.

Section 6(3) governs concrete effects. It authorizes the national and provincial governments to separately use official languages ‘for the purposes of government’. Those decisions can be taken by each province and the national government separately—meaning that the Constitution provides for spatial differentiation. In addition, it requires that every government ‘must use at least two official languages’, which in practical terms means English and an African language. However, it does not expressly provide that those two official languages must be used in an equal fashion for all government purposes, which implies that functional differentiation is permitted. Finally, in determining what official languages to use for government purposes, and how they should be used, governments may take into account ‘usage, practicality, expense, regional circumstances and the balance of the needs and preferences of the population as a whole or in the province concerned’—that is, financial and logistical considerations

Think point 4

In your country, in what institutional contexts do linguistic minorities seek official status for their language? Are their claims for symbolic recognition, or for use in official state functions? And, as far as the institutions are concerned, do they desire that their language be used for external communications or internal deliberations, or both? What are the financial and logistical issues involved? Can the official status of a language vary within institutions, and across levels of government?

Multi-level governance and official languages

Structure of the state

Whether a state is unitary or federal/decentralized can influence the design options available for official language designation. Under systems of multi-level governance, different levels of government may, for example, be constitutionally vested with the power to make determinations about language status in their jurisdictions. Alternatively, the constitution could establish spatial variations or related mechanisms to determine differential language status across regions.

As a consequence, constitutional claims related to language may also be linked to demands for federalism/decentralization, in part because federalization is one

tool in the constitutional toolbox that can help to realize internal self-determination claims (Bulmer 2015). Moreover, where language differences have been used in the past as a basis for marginalization, discrimination or exclusion, demands to (re)draw the federal map along linguistic lines may be significant, with the threat of secession potentially underlying such claims. For example, this was the case in: India at independence (and revisited in the 1950s and 1960s as the basis for redrawing state boundaries); Sri Lanka, particularly among the Tamil-speaking community; Pakistan, leading to the secession of East Pakistan and the establishment of Bangladesh; and Nepal, particularly among Hindi speakers in the Madhesh region bordering India (Choudhry 2009).

However, we note that unitary states can also adopt different policies territorially for language. The central government may operate in different languages in different parts of the state. The difference is that, in a unitary state, there is usually no possibility of constitutional authority for subnational levels of government to make official language policy. One exception is Estonia. In localities where the language of the majority is not Estonian, 'local governments may, to the extent and pursuant to procedure provided by law, use the language of the majority of the permanent residents of the locality as an internal working language' (Constitution of Estonia 1992, article 52).

Constitutional designation of the official language(s) of subnational units

Constitutions with multi-level governance may contain separate provisions on the official language of subnational and local governments, as a mechanism to accommodate territorially concentrated linguistic groups that may be a minority across the state as a whole but a majority subnationally or locally. The Constitution of Belgium (1831), for example, divides Belgium into four regions on the basis of language: Dutch-speaking, French-speaking and German-speaking regions, and the bilingual (Dutch/French) national capital region of Brussels (article 4).

Box 4.2. Constitutionalizing language in Belgium

A century of battles over the official status of French and Flemish has led to the transformation of Belgium's constitutional structure. With its distinct and territorially concentrated linguistic communities, the state has been reconfigured along linguistic lines in order to manage inter-community disputes and keep the state together.

Belgium has evolved from a unilingual, unitary state to a complex federation combining an overlapping and interlocking set of regional governments (two) and self-governing linguistic communities (three) with a strongly territorial approach to the official languages of public administration, political and economic life within distinct linguistic zones, and power-sharing along linguistic lines at the centre.

Recourse to violence has never been on the table in Belgium, but were it not for the constitutional measures to address language, there was a very real risk that the Flemish-majority areas would have sought to secede. Despite these complex linguistic accommodation and power-sharing mechanisms, linguistic politics are nonetheless an ongoing fact of political life; the Belgian Constitution creates a framework within which to manage conflicts over language, but has not resolved them.

Vesting authority over official language with the subnational units

A second approach is to vest authority with the subnational unit to determine its own official language, as in the Constitution of Nepal (2015), which authorizes provinces to select one or more ‘national languages’ as an official language. The Constitution avoids the contentious issue of what a ‘national’ language is by defining it as including ‘[a]ll the mother tongues spoken in Nepal’ (articles 6 and 7). Switzerland’s Constitution (1999) constrains subnational autonomy by authorizing cantons to decide on their own official languages but impliedly limits that choice by requiring cantons to ‘respect the traditional territorial distribution of languages and take account of indigenous linguistic minorities’ (article 70(2)).

Designating dual status for official languages within subnational units

A third approach is for subnational units to operate in the country-wide official language and a regional official language. For example, in the Constitution of Spain (1978), Spanish is the ‘official language of the state’ (article 3(1)), and ‘other Spanish languages’ have official status in Autonomous Communities, as determined by their Statutes of Autonomy (article 3(2)).

Vesting limited, or conditional, authority with subnational units over official language(s)

A fourth approach is taken by Croatia, a non-federal state, which states in its Constitution (1991, article 12) that local units may adopt another language alongside Croatian, but only under conditions set out in legislation.

In all of these cases, these official languages can be internal languages of public administration at the subnational level.

Link languages

One issue that may arise in systems of multi-level governance with multiple official languages is the need for a ‘link’ language to enable communication among governments. In societies with high linguistic diversity, a link language is often a legacy of colonial rule. Bolivia exemplifies one approach, whereby the national and departmental governments must have at least two official languages, of which Spanish is one, thereby serving as the link language (Constitution of Bolivia, article 5(II)). In India, there are two link languages for communication between the centre and state governments—English and Hindi.

Link languages can also be used in unitary states. In Uganda, English is the official language of the country and Swahili is the second official language ‘to be used in such circumstances as Parliament may by law prescribe’ (Constitution of Uganda 1995, article 6). In Francophone Africa, a third approach has been to designate French as the sole official language, and African languages as ‘national languages’ (Democratic Republic of the Congo Constitution 2005, article 1) or ‘langues véhiculaires’ (Republic of the Congo Constitution 2015, article 4), which do not serve any official function. In Senegal, the official language is French, while the Constitution recognizes six national languages ‘and any other national languages which shall be codified’ (article 1). Yet another approach is that a sole official language *de facto* serves as a link language in a linguistically diverse country—such as Tanzania, where Kiswahili is the link language but is not constitutionally declared as such.

Box 4.3. Negotiating official language policy in India

In India, the official language of the Union government was the single most divisive issue in the Constituent Assembly (1946–1948) (Choudhry 2016). English had been the official language of British colonial administration and, at independence, was spoken by less than 1 per cent of the population. Hindi, in comparison, was spoken by approximately 40 per cent of the population, but very few speakers of the other languages spoke Hindi.

The main question was whether to replace English with an indigenous language as the Union government's official language. One camp advocated for Hindi to be the sole language of the Union government and legal system, and another argued for both English and Hindi. The result was a compromise: Hindi was declared the official language of the Union, but with a delay of 15 years which could be extended indefinitely through ordinary legislation. A government commission mandated to develop a plan for the transition from English to Hindi rejected extending the transition any further.

Disagreement was intense and in some cases led to violence during anti-Hindi protests. Opposition arose especially with respect to implications for the entrance exam for the India Administrative Service (IAS), which staffed the most senior ranks of the central and state bureaucracies and therefore was strongly linked to access to political power and economic opportunity. Non-Hindi speakers argued that adopting Hindi would be neo-colonial in non-Hindi-speaking states. The resulting compromise preserved the status of English indefinitely through granting a statutory veto on the continued use of English to each non-Hindi-speaking state. Part of the compromise is that Hindi and English both serve as link languages.

Think point 5

Does your country have a system of multi-level governance? Are linguistic minorities territorially concentrated, and do they constitute the majority in any subnational units? Should the constitution designate the official language(s) of subnational units, vest authority over official language with the subnational units, designate dual status for official languages within subnational units, or vest limited, or conditional, authority with subnational units over official language(s)? Should a link language be considered?

Language and public services provision

Constitutions can provide for the right of speakers of minority languages to receive public services in their native language. These language rights can be guaranteed against any level of government.

National level

One approach is for national governments to offer a two-track right for minority-language speakers of languages with official status: an unqualified right to communicate and receive services from main offices, and a qualified right to do so with local offices. For example, under the Constitution of Canada (1982), the

official languages of the federal government are English and French, and members of the public have the right to communicate with and receive services from any head or central office of a federal institution in English or French. In addition, they have the same rights with respect to local offices if there ‘is a sufficient demand for communications with and services from that office in such language’ (articles 16 and 20). This is of practical utility to linguistic minorities in regions where the federal government operates in the dominant language (English or French). ‘Sufficient demand’ is left to constitutional interpretation.

North Macedonia, a unitary state, confers a similar set of rights on speakers of official languages but uses hard percentages to define the scope of the right. It defines official languages as Macedonian and any other language spoken by at least 20 per cent of the population (which, in practical terms, is Albanian). Albanian speakers living in a local unit of self-government, in which they constitute at least 20 per cent of the population, therefore have the right to use Albanian to communicate with the regional office of the national government. In addition, any Albanian speaker has the right to communicate in Albanian with the central offices of the national government (Constitution of North Macedonia 1991, Amendment V).

Subnational level

As discussed above, one of the rationales for multi-level governance in multilingual states is to turn territorially concentrated linguistic minorities into majorities in subnational units. Belgium, Canada, Ethiopia, India and Spain are examples. If subnational units have the power to set an official language that may differ from the central government’s official language (see above), then that additionally implies the power to provide public services in this language. Although not framed in formal terms as a language right, allocations of jurisdiction over language in practice operate as a form of group right for linguistic minorities, and are an important issue to consider in determining the scope of self-rule under federalism, devolution and special autonomy arrangements.

However, drawing the boundaries of subnational governments on the basis of language may create the new problem of internal linguistic minorities. Some constitutions address this issue directly, by conferring language rights on such groups against subnational governments. In Spain, this problem is addressed by making Spanish and the regional language both official languages in Autonomous Communities, and making fluency in both languages a condition for civil service employment. As a consequence, internal linguistic minorities in Spain—who would be Spanish speakers in some Autonomous Communities—could receive public services in their native language.

There are comparable arrangements in unitary states. In Kosovo, this right is applicable when a linguistic minority ‘represents a sufficient share of the

population in accordance with the law', which appears to allow for statutory discretion (Constitution of Kosovo 2008, article 59).

Public education

Debates over the language of public education have been particularly fraught in many states. Constitutionally, the focus is primarily on primary and secondary education. Linguistic minorities tend to argue for the right to minority-language education, largely in terms of cultural survival. In systems of multi-level governance, primary and secondary education are principally subnational matters, which by implication means the subunit has the power to set the curriculum, including the language of instruction. Examples include Belgium, Canada, India and Spain. In these countries, territorially concentrated linguistic minorities that are a majority in the subnational unit have a group right to minority-language education. Higher education may be treated differently—as in Spain, where universities fall under central jurisdiction.

However, as for public services generally, there is the problem of internal linguistic minorities, or 'minorities within minorities'. Constitutions can create minority-language education rights for these groups and peoples.

Box 4.4. Public education for 'internal linguistic minorities'

Three models for public education for 'internal linguistic minorities' are illustrated by Canada, India and Slovenia. These states take different approaches to framing the constitutional right to education and the nature of the state's obligations relative to that right. For all human rights, a negative right prevents the state from acting in a way that would prevent individuals from acting. For example, the negative right to education encompasses the right of linguistic minorities to set up their own private language schools. A positive right, by contrast, imposes duties on the state to act, for example, by establishing and providing funding to minority-language schools.

India entrenches a hybrid negative and positive right to education in its Constitution (1949, article 30). It consists of the right of religious and linguistic minorities to establish and administer educational institutions (i.e. a negative right), and a prohibition on the state, when granting aid to educational institutions, from discriminating against minority institutions (i.e. a positive right). This right is in principle open to any linguistic minority. Constitutional disputes over minority-language rights in India have focused on its negative right dimensions. In particular, to what extent the constitution permits a state to mandate instruction in its official language.

Canada, by contrast, entrenches a positive right to minority-language education in its Constitution (1982), but only for English and French speakers in provinces where they are a minority, ‘where numbers warrant’ (article 23). The Canadian courts have laid down a test to determine when this numbers threshold has been met.

Slovenia’s Constitution (1991) guarantees the country’s Italian and Hungarian communities the right to education in their own languages ‘in accordance with laws’ (article 64). This approach leaves the scope of this right to statutory definition. Slovakia takes a similar approach with regard to ‘national minorities’ (Constitution of Slovakia 1992, article 34).

The judiciary

If members of linguistic minorities do not speak the language of judicial proceedings, this raises concerns regarding access to justice, due process and the rule of law. This is especially true in the case of criminal proceedings, which can lead to the deprivation of liberty through imprisonment. Constitutions have addressed this issue in two ways: (a) through approaches to language as part of due process; and (b) in provisions on the language of legal proceedings and judgments. Constitutions may combine both approaches.

Due process rights

Constitutions provide a variety of due process rights in relation to criminal and, less commonly, civil proceedings. On their face, these rights apply to speakers of any language. This means that this right is of practical use for members of *all* linguistic groups—those that make self-determination claims, those that do not, and indigenous peoples.

In criminal proceedings, many constitutions track protections found in international or regional human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR; OHCHR 1966) and the European Convention on Human Rights (ECHR; Council of Europe 1950). These treaties guarantee the right of accused persons to be informed promptly and in detail, in a language that they understand, of the nature and cause of the charge against them, and to have the free assistance of an interpreter if they cannot understand or speak the language used in court (ICCPR, article 14; ECHR, articles 6(3)(a) and (e)). Comparable provisions are found, for example, in the constitutions of Antigua and Barbuda (1981, article 15), The Gambia (1996, articles 19(3)(b) and (f)), Ghana (1992, articles 19(2)(d) and (h)), and Nauru (1968, articles 10(3)(b) and (d)).

A second approach has been to limit the right to an interpreter to the criminal trial only, and not to extend it to any pre-trial proceedings—which provides narrower protection than that defined in international human rights law. This is the approach in some constitutions that pre-date the relevant international human rights treaties (such as Italy (1947, article 111)), but also in more recent European constitutions (such as Slovakia (1992, article 47)), as well as three prominent Commonwealth examples—Canada (1982, article 14), New Zealand (1990, article 24(g)), and South Africa (1996, article 35(3)(k)). It is also the approach taken by the American Convention on Human Rights (ACHR; OAS 1969: article 8(2)(a)).

A third approach has been to broaden the protections provided to the accused by international human rights law to also require translation of the reasons for arrest, before charges are even laid. Examples can be found in Europe in countries with linguistic minorities, such as Armenia (1995, articles 27(2) and 67(1)), Estonia (1992, article 21) and Montenegro (2007, articles 29 and 37), and in African jurisdictions such as Côte d’Ivoire (2016, article 7), Eritrea (1997, article 17), Ethiopia (1994, articles 19 and 20), Mauritius (1968, articles 5(2), 5(4)(a), 10(2)(b) and 10(2)(f)), Nigeria (1999, articles 35(3), 35(6)(a) and 35(6)(e)), Seychelles (1993, articles 18(3), 19(2)(b) and 19(2)(f)) and Sierra Leone (1991, articles 17(2)(a) and 23(5)(a)). Kenya takes these protections a step further, requiring that persons arrested are informed in a language they can understand of their right to remain silent and the consequences of not remaining silent (2010, article 49(1)(a)).

A fourth approach is to extend the right to interpretation to include witnesses, who are non-parties to criminal proceedings but may nonetheless have important interests at stake (for example, if they are victims). Examples include Canada (1982, article 14), Fiji (2013, articles 15(6) and 15(7)), and Trinidad and Tobago (1967, article 5(2)(g)).

Legal proceedings and judgments

The right to interpretation in criminal trials, be it for the accused or witnesses, does not change the overall language of the legal proceeding, which operates in an official language. Moreover, the due process rights set out above, for the most part, do not apply to non-criminal proceedings, which account for the vast majority of legal disputes that come before the courts. In multilingual societies, where a language has official status for judicial proceedings, the entire proceeding can function in that language, including its use by counsel and judges. This is a vastly more complicated and costly undertaking, which requires that a language be an official language of the legal system. However, even there, there are other options—for example, a distinction can be drawn between the language of the proceedings and the language of judicial rulings.

Constitutions in multilingual societies have taken one of three approaches to the issue.

First, a constitution may mandate that courts operate in both official languages. In Canada, for example, the Constitution originally provided that either English or French could be used in any written legal filings in any federal court or court of Quebec (1867, article 133). This right was later expanded to encompass the right to use English or French in any aspect of the proceeding in federal courts, and the courts of the province of New Brunswick (1982, articles 19 and 19.1).

Second, in systems of multi-level governance, the constitution may grant subnational units where linguistic minorities constitute a majority the authority to set the language of their lower courts. In India, the language of the proceedings for individual state high courts is English (which is also the language of the Supreme Court). States have the power to legislate to permit the use of Hindi or a state's official language in high court proceedings, and in principle may abolish the use of English in proceedings (although none have). However, they cannot alter the constitutional requirement (1949, article 348) that judgments be issued in English, which facilitates appeals to the English-only Supreme Court.

Third, the constitution may confer on the government—whether there is multi-level governance or not—the power to set the language of the courts. In Belgium, the courts are a federal competence, which has been exercised to organize the courts on a territorial basis, with the language of judicial proceeding determined by the linguistic zone in which the court is located.

The legislature

In multilingual societies, if a language has official status for the legislature, the question is then: for which parts of the legislative process does it have official status? For example, would an official language be the language for legal texts such as bills, amendments and legislation? Could it be used by members to speak in legislative and committee proceedings? As with the judiciary, designating a minority language with official status for the legislature is a much more complex, expensive and comprehensive endeavour than providing simultaneous interpretation for legislators to deliver remarks in a minority language. Distinctions can be drawn, as with the judiciary, between the official languages of legislative deliberations and legislation.

Legislative deliberations

Some constitutions provide for the use of multiple languages in legislative deliberations. For example, in Kenya, parliamentary deliberations may take place in Kiswahili, English and Kenyan Sign Language. The inclusion of Kenyan Sign Language highlights the importance of thinking about people with disabilities in

official language policy. In Iraq, either Kurdish or Arabic may be used in the Council of Representatives (Constitution of Iraq 2005, article 4). An example of a unitary state is Singapore, where the four official languages are Malay, English, Mandarin and Tamil. All may be used in the legislature, unless legislation provides otherwise, which establishes a constitutional default (1963, articles 53 and 153A).

Alternatively, some constitutions in the multilingual states of anglophone Africa establish a default for English as the official language, but leave open the possibility of adding additional languages. For example, in Liberia, English is the official language of the legislature, but one or more other languages may be used ‘when adequate preparations shall have been made . . . as the Legislature may by resolution approve’ (Constitution of Liberia 1986, article 41).

Another approach is evinced by the draft Constitution of The Gambia (2020), which provided that the National Assembly would conduct its business in English and ‘any other language indigenous to The Gambia’—thereby granting a right to parliamentarians, without the need for a positive decision (e.g. via resolution or legislation) (article 157(1)). Moreover, translation must be provided, but only to English or Gambian Sign Language, which in practical terms must be used by all members of the National Assembly (article 157(2)).

Box 4.5. Official languages in the National Assembly of Nigeria

Nigeria is very linguistically diverse, with over 500 languages spoken. Three of the most widely used African languages are Hausa, Ibo and Yoruba, which are the native languages of the three largest ethnic groups in Nigeria that bear the same names. None of these languages are spoken by a majority of Nigerians. As a practical matter, English is the lingua franca of Nigeria, as a legacy of its status as a British colony. English is the main language used in national politics.

Nigeria’s Constitution (1999) provides that: ‘The business of the National Assembly shall be conducted in English, and in Hausa, Ibo and Yoruba when adequate arrangements have been made therefor’ (article 55). As a concrete matter, English is the official language of legislative proceedings, and Hausa, Ibo and Yoruba could become official languages, but the constitutional requirement that adequate arrangements be made delays implementation of their use in practice. This is an implicit acknowledgement of fiscal and logistical concerns. This provision also sends a symbolic message of inclusion by conferring official status on these three languages in the National Assembly.

Legislation

Some constitutions also provide for legislation in multiple official languages. One approach is for the language of deliberations to match the language of legislation. In Canada, federal legislation must be published in both English and French (1867, article 133; 1982, article 18(1)). This is also the case in Quebec (1867, article 133) and New Brunswick (1982, article 18(2)). This approach is feasible because there are only two official languages in Canada.

The Canadian approach would be difficult to apply in a case like India, where there are over a dozen official languages in use in the states, in addition to English and Hindi. India, accordingly, mandates that the authoritative language of all legislation be English, unless parliament legislates otherwise (1949, article 348(1)). This means that, in the event of any conflict between English and non-English versions of a statute, it is the English translation that governs. In practice, this has served to reinforce the central role of English in the legal system. In addition, while individual state legislatures may provide for languages other than English for legislation, the only authoritative version is the official English translation (1949, article 348(2))—which, again, has in practice reinforced the centrality of English.

5. Additional design considerations

Rights of indigenous peoples and corresponding state duties

A number of constitutions grant specific rights to the speakers of indigenous languages, particularly in relation to education. These rights vary in their formulation. For example, Colombia requires bilingual education (1991, article 10), while Brazil grants indigenous peoples the right to offer native language instruction alongside state-provided Portuguese education (1988, article 21), and Venezuela guarantees indigenous peoples the right to their own education system (1999, article 121). Bolivia, in comparison, takes a different approach by entrenching a constitutional commitment to multilingual education, including at the higher education level (2009, articles 78(ii), 80(ii), 91(ii) and 95(ii)).

Interaction with non-discrimination provisions

Constitutional provisions that prohibit discrimination on the basis of language are pervasive. Language is often enumerated in a non-discrimination clause along with other prohibited grounds of discrimination, such as race, sex, religion, ethnicity and sexual orientation. The key question is how to reconcile a constitutional prohibition on discrimination on the basis of language with the designation of a limited number of languages as having official status, and the drawing of further distinctions between them. This is a task for constitutional interpretation. Constitutional courts could view the constitutional entrenchment of any official languages as an exception to, or exemption from, the non-discrimination clause.

Private language use

As well as the official status, if any, of minority languages in addition to a lingua franca or majority language, another issue is the constitutionalization of the right of minorities to use their languages outside public institutions. These private communications encompass a broad variety of settings. At one end of the spectrum, they concern communication in the home and the family. In the middle is associational life, through community organizations, cultural activities and religious institutions. At the other end of the spectrum is commerce, including the language of signage, customer service and the workplace. As with due process rights, these rights are of practical importance to all three categories of linguistic groups (those that make self-determination claims, those that do not, and indigenous groups).

In principle, universal human rights—such as the right to freedom of assembly and association, freedom of expression, and freedom of religion—encompass the choice of language in communications across these spheres of activity. These rights are also often found in all bills of rights. However, many constitutions also have language-specific provisions which protect the right to private language use.

Blanket right to use language

Some constitutions grant a blanket right to individuals to use their language, which expressly or by implication is restricted to private use outside of public institutions. Such blanket right provisions are prolific, and may be found, for example, in The Gambia (1996, article 32), Georgia (1995, article 11), India (1950, article 29), Malawi (1994, article 26), Malaysia (1957, article 152), Myanmar (2008, article 354), New Zealand (1990, article 20), Niger (2010, article 5), Pakistan (1973, article 28), Poland (1997, article 35), Romania (1991, article 32) and Sudan (2019, article 66). In Latin America, the right to private language use is restricted to indigenous peoples, either expressly or impliedly as part of a government duty to respect those languages, as in Bolivia (2009, article 30(II)(9)), Brazil (1988, article 210(2)), Colombia (1991, article 10), Costa Rica (1949, article 76), Ecuador (2008, article 2), El Salvador (1983, article 62), Mexico (1917, article 2(A)(IV)), Nicaragua (1987, article 90) and Paraguay (1992, article 140).

These rights are often part of a broader provision entrenching the right to engage in cultural practices and customs.

Right to language in private education

Distinct from the question of publicly operated and/or funded minority-language schools is the right of linguistic minorities to establish and operate private schools that provide instruction in their language. A constitution can expressly entrench

this right. For example, Ukraine's Constitution (1994) guarantees national minorities the right to receive instruction in and study their native languages in communal educational institutions and through national cultural societies (article 53). In Bulgaria, the right of minority-language speakers to study their own language is qualified by making it subject to the compulsory study of Bulgarian (Constitution of Bulgaria 1991, article 36). Notably, Turkey's Constitution (1982) bans instruction in any other language as a native language at any institution of education, both public or private, although foreign languages may be taught as second languages (article 42).

Private sector language laws

States may choose to regulate private language use in order to promote a common cultural identity. Those laws may be constitutionally challenged on the basis of a blanket right to private language use or one of the liberal freedoms. For example, in Canada, the French-majority-speaking province of Quebec adopted legislation that required French-only public signs, posters and commercial advertising. The courts held that the law infringed the right to freedom of expression and, although it pursued the legitimate aim of promoting the use of French, was disproportionate. Quebec enacted revised legislation which required that French be predominant.

6. The (limited) role of international law

International law provides part of the legal environment within which these constitutional choices are made and also exerts a normative influence. Constitutional designers may be bound by the content of these instruments when designing language provisions.

International and regional human rights treaties—such as the ECHR (Council of Europe 1950), the ICCPR (OHCHR 1966), the ACHR (OAS 1969) and the African Charter on Human and Peoples’ Rights (ACHPR; OAU 1981)—entrench universal human rights, such as the rights to freedom of assembly and association, freedom of expression and freedom of religion. These rights protect the right to private language use. In addition, the ECHR, the ICCPR and the ACHR guarantee the right to translation for individuals in the criminal justice system who are charged and put on trial (see Section 4). All of these instruments prohibit discrimination on the basis of language. In an important decision, the United Nations Human Rights Committee (1996) held that the refusal of a state to permit bureaucrats to speak in a minority language to provide services to the members of that linguistic community amounted to discrimination on the basis of language (*Diergaardt v. Namibia*). However, as the dissenting opinions highlighted, this was a narrow claim that did not fetter the state from designating official or national languages.

Many of the issues of official language policy identified above—for example, the language of the judiciary and the legislature, and the internal working language of government—are largely beyond the reach of human rights treaties.

7. Decision-making questions

1. Should your constitution designate one or more official languages? What are the benefits of doing so? What are the disadvantages of not doing so?
2. What is the history of official language policy in your country? Has it been a constitutional issue in the past? Does your country have a history of colonialism, and if so, how has that shaped contemporary debates about official language policy?
3. What kinds of linguistic minorities are there in your country? Do they make self-determination claims? Are they territorially concentrated or dispersed? Are they indigenous peoples? What kinds of claims to official language policy do they make—and are they distinct or do they overlap?
4. In your country, is official language policy bound up with the distribution of political power? Does official language policy structure access to economic opportunity? How does cultural identity factor into debates over language? Do the claims of linguistic minorities address cultural, economic or political disadvantage—either separately or in combination?
5. What is the legal status of UNDRIP in your country? Are any of the provisions of UNDRIP on language or issues related to language applicable?
6. In your country, can claims for official language policy be disaggregated by function—for example, across the different branches of government (executive, legislative and judiciary) and different dimensions of the operation of those institutions (external communications, internal deliberations, written decisions)?

7. What are the practical issues—both logistical and financial—in adopting multiple official languages? Does the force of these issues vary by context? For example, it is easier to provide public services in multiple official languages than it is to enact legislation or conduct judicial proceedings in this way.
8. Is there a value to the symbolic recognition of national languages as official, without necessarily according concrete effects to that designation? What would be the criteria for designating a national language as official? Is it possible to combine symbolic recognition with concrete effects that are either limited or whose implementation could be deferred?
9. Are claims to official language status linked to multi-level governance in your country—either to creating multi-level governance, or to reconfiguring it along linguistic lines? What options should be considered for the authority of subnational units and official language policy? Should a link language be adopted, and if so, what would it be?
10. What kinds of public services could be made available in more than one official language in your country? Does the demand for public services in multiple languages vary territorially across the country?
11. Do linguistic minorities demand the right to minority-language education, and at what levels—elementary, secondary and/or post-secondary? Would this be public or private education? Would education be bilingual, i.e. in a minority language and the state-wide official language?

8. Examples

Table 8.1. Examples of provisions on multi-level governance and official languages

| Approach | Country | Provisions |
|--|----------------------------|---|
| Constitutional designation of language of subnational unit | Belgium (1831, article 4) | 'Belgium comprises four linguistic regions: the Dutch-speaking region, the French-speaking region, the bilingual region of Brussels-Capital and the German-speaking region.' |
| Vesting authority with the subnational units | Nepal (2015, article 7) | '1. The Nepali language written in Devanagiri script shall be the language of official business in Nepal.' '2. In addition to Nepali language, a province shall select one or more national language that is spoken by majority of people in that province as the language of official business, as provided for by the provincial law.' |
| Designating dual status | Spain (1978, article 3) | '1. Castilian is the official Spanish language of the State. All Spaniards have the duty to know it and the right to use it.' '2. The other Spanish languages shall also be official in the respective Self-governing Communities in accordance with their Statutes.' |
| Vesting limited, or conditional, authority with the subnational unit | Croatia (1991, article 12) | 'The Croatian language and the Latin script shall be in official use in the Republic of Croatia. In individual local units, another language and the Cyrillic or some other script may be introduced into official use along with the Croatian language and the Latin script under conditions specified by law.' |
| Link languages | Senegal (2001, article 1) | 'The official language of the Republic of Senegal is French. The national languages are the Diola, the Malinké, the Pular, the Sérère, the Soninké and the Wolof and any other national languages which shall be codified.' |

Table 8.2. Examples of provisions on languages and public service provision

| Approach | Country | Provisions |
|---|-------------------------------------|--|
| Two-track right for minority-language speakers of official languages to interact with national government | North Macedonia (2011, Amendment V) | 'Any person living in a unit of local self-government in which at least 20 percent of the population speaks an official language other than Macedonian may use that official language to communicate with the regional office of the central government with responsibility for that municipality; such an office shall reply in that language in addition to Macedonian. Any person may use any official language to communicate with a main office of the central government, which shall reply in that language in addition to Macedonian.' |
| Minority-language speakers have the right to interact with municipal authorities | Kosovo (2008, article 59) | 'Members of communities shall have the right, individually or in community, to . . . 6. Use their language and alphabet in their relations with the municipal authorities or local offices of central authorities in areas where they represent a sufficient share of the population in accordance with the law. The costs incurred by the use of an interpreter or a translator shall be borne by the competent authorities.' |

Table 8.3. Examples of provisions on the judiciary and judicial proceedings

| Due process language rights | | |
|---|--|---|
| Approach | Country | Provisions |
| Right of accused persons to translation of nature and cause of charge against them, and free assistance of interpreter in court | Antigua and Barbuda (1981, article 15) | 'Every person who is charged with a criminal offence . . . shall be informed orally and in writing as soon as reasonably practicable, in language that he understands, of the nature of the offence with which he is charged.' |
| Right of accused person to free assistance of interpreter in court | Italy (1947, article 111) | 'The defendant is entitled to the assistance of an interpreter in the case that he or she does not speak or understand the language in which the court proceedings are conducted.' |
| Right of accused persons to translation of nature and cause of charge against them, and free assistance of interpreter in court + Right of accused to translation of reasons for arrest | Côte d'Ivoire (2016, article 7) | 'Any person arrested or detained . . . must be informed immediately of the reasons for their arrest or detention and of their rights, in the language understandable to them.' |
| Right of accused persons to translation of nature and cause of charge against them, and free assistance of interpreter in court + Right of witnesses to translation | Fiji (2013, article 13) | '6. Every person charged with an offence, every party to civil proceedings, and every witness in criminal or civil proceedings has the right to give evidence and to be questioned in a language that he or she understands. 7. Every person charged with an offence and every party to civil proceedings has the right to follow the proceedings in a language that he or she understands.' |
| Language rights in legal proceedings and judgments | | |
| Approach | Country | Provisions |
| Choice of language in legal proceedings | Canada (1982, article 19) | 'Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament.' |

Table 8.4. Examples of provisions on legislatures

| Legislative deliberations | | |
|--|--|---|
| Approach | Country | Provisions |
| Use of multiple languages in legislative deliberations | Singapore (1963, article 53) | 'Until the Legislature otherwise provides, all debates and discussions in Parliament shall be conducted in Malay, English, Mandarin or Tamil.' |
| Default of one official language, others can be added | Liberia (1986, article 41) | 'The business of the Legislature shall be concluded in the English language or, when adequate preparations shall have been made, in one more of the languages of the Republic as the Legislature may by resolution approve.' |
| Right to use English or any other indigenous language | Draft Constitution of The Gambia (2020, article 157) | '1. The business of the National Assembly shall be conducted in the English language or in any other language indigenous to The Gambia. 2. Where a member chooses to conduct a business of the National Assembly in a language indigenous to The Gambia, the translation of that language may only be made in the English language and Gambian sign language.' |

Table 8.5. Examples of private language use provisions

| Constitution | Blanket provision |
|--|--|
| Brazil (1998, article 231) | 'The social organization, customs, languages, creeds and traditions of Indians are recognized.' |
| Georgia (1995, article 11) | '[C]itizens of Georgia, regardless of their ethnic and religious affiliation or language, shall have the right to maintain and develop their culture, and use their mother tongue in private and in public, without any discrimination.' |
| India (1949, article 29) | 'Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.' |
| Myanmar (2008, article 354) | 'Every citizen shall be at liberty in the exercise of the following rights, if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquility or public order and morality: . . . to develop their language, literature, culture they cherish, religion they profess, and customs without prejudice to the relations between one national race and another or among national races and to other faiths.' |
| Nicaragua (1988, article 90) | 'The communities of the Atlantic Coast have the right to the free expression and preservation of their languages, art and culture.' |
| Niger (2010, article 5) | 'All communities composing the Nigerien Nation enjoy the freedom to use their languages[,] respecting those of others.' |
| Poland (1997, article 35) | 'The Republic of Poland shall ensure Polish citizens belonging to national or ethnic minorities the freedom to maintain and develop their own language, to maintain customs and traditions, and to develop their own culture.' |
| Sudan Constitutional Declaration (2019, article 66) | 'All ethnic and cultural groups have the right to enjoy their own private culture and develop it freely. The members of such groups have the right to exercise their beliefs, use their languages, observe their religions or customs, and raise their children in the framework of such cultures and customs.' |

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Annex

About the authors

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Modern constitutions typically contain a variety of provisions on language. They may designate one or more official languages, each with a different kind of legal status. Constitutions may also create language rights, usually held by minority-language speakers, granting groups and individuals the right to communicate with, and receive services from, the government in their native tongue. In systems of multi-level governance, constitutions may vest the authority to designate official language(s) for each order of government.

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