

41 Challenges in the Acknowledgement and Implementation of Linguistic Human Rights in Nepal

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41.1 Situating Linguistic Human Rights in Nepal's Constitutional Context

In a post-conflict era combined with a national reconstruction project following the earthquakes that rocked the country in 2015, the Federal Democratic Republic of Nepal is grappling with the political complexity of forging progressive language policy. Nepal is an extremely linguistically diverse country. Most of the languages spoken in Nepal are Indigenous, marginalised and seriously endangered. Data from the 2011 census indicate that 96% of the entire population speak 4% of the languages, while 4% of Nepal's citizens speak 96% of the country's languages, which belong to four different language families (Yadava 2014, p. 63), in addition to language isolates and sign languages (Central Bureau of Statistics 2012). This high degree of divergence in speaker numbers is revealing and troubling, and necessitates a careful analysis of the legal, administrative and constitutional framework in which Nepal's citizens are activating their linguistic human rights.

Constitutions are powerful and aspirational framing documents, 'constituting' the polity in which people live. Under the subheading 'Languages of the nation', Article 6 of the 2015 Constitution of Nepal recognises all languages autochthonous to the nation as 'mother tongues':

All languages spoken as the mother tongues in Nepal are the languages of the nation.

Article 7, entitled 'Official language', then immediately elevates Nepali (The Constitution of Nepal 2015):

(1) *The Nepali language in the Devnagari script shall be the official language of Nepal.*

We may ask what this really means. Is the framing of these two foundational Articles of Nepal's constitution an example of intellectual agility on the part of the drafters of the document or is it rather an indication of muddled thinking, setting Nepal's citizens up for a prolonged period of legal wrangling about linguistic human rights (see Turin 2019)? One inference is beyond doubt: Nepali (reported as being spoken by 45% of the population as a mother tongue in the 2011 census) remains firmly entrenched as the first among equals, paradoxically the same as – and yet substantively different to – the more than 120 other languages spoken within Nepal's borders.

In our analysis, the 2015 Constitution of Nepal was drafted with good intentions. The representatives tasked with this work were guided by a commitment to the value of linguistic human rights (cf. Skutnabb-Kangas and Phillipson 1989, 1994). The pressing issue is not the original framing but its implementation, in particular the lack of commitment shown by successive governments in fulfilling the promises articulated in the Constitution. We would do well to recall Nepal's 1990 Constitution, which one of our co-authors has characterised as focussing on maintenance-oriented *permission* and maintenance-orientated *promotion* with regard to language (Awasthi 2004, p. 126). Compared to the 1990 Constitution, the 2015 Constitution is more permissive and promotion-oriented, even if application remains an intractable issue.

Offering a glimpse of the linguistic federalism and decentralisation that marks Nepal's current political moment, Article 7 of the 2015 Constitution goes on to note that:

(2) *A State may, by State law, determine one or more than one languages of the nation spoken by a majority of people within the State as its official language(s), in addition to the Nepali language.*

The same article speaks to the emergence of the Language Commission, whose terms of engagement are more fully scoped out in Article 287 of the Constitution:

(3) *Other matters relating to language shall be as decided by the Government of Nepal, on recommendation of the Language Commission.*

There are numerous references to language rights and linguistic equality throughout the 2015 Constitution. Article 18 includes a provision on the right to equality – with an explicit reference to language – while Article 32 entitled 'Right to language and culture' is worth citing in full:

1. *Every person and community shall have the right to use their languages.*
2. *Every person and community shall have the right to participate in the cultural life of their communities.*
3. *Every Nepalese community residing in Nepal shall have the right to preserve and promote its language, script, culture, cultural civilization and heritage.*

Entitled 'Policies of the state', Article 51 speaks to the need to 'protect and develop languages, scripts, culture . . .' (Article 51.6) and somewhat ambiguously commits the state to 'pursue a multi-language policy' (Article 51.7). In addition, the 2015 Constitution incorporates certain provisions for educational language planning, and positions multi-lingual education as a fundamental right:

Every Nepalese community residing in Nepal shall have the right to get education in its mother tongue and, for that purpose, to open and operate schools and educational institutes, in accordance with law. (Article 31.5)

The 2015 Constitution also includes a provision for the use of sign language and braille for citizens with impaired hearing or sight (Article 31.4). In short, there are a number of positive provisions for citizens looking to access language rights in all aspects of their lives. However, there are also inconsistencies between the spirit of Article 31.5 and a recently introduced Act Relating to Compulsory and Free Education (2018). Clause 26.1 of this relatively new Act reads:

The medium of instruction to be provided by the schools shall be the Nepali language, English language or both the languages or mother tongue of the Nepali community concerned.

While the Act recognises the mother tongue as a medium of instruction, it collapses Nepali and English with mother tongues, marking an important shift away from the constitutional provision of fundamental linguistic human rights (LHRs) as human rights towards a neoliberal model dominated by market forces. The transactional power of English and the regional influence of Nepali will never allow mother tongues to flourish as the medium of instruction in Nepal (see Awasthi 2004, p. 271). While the 2015 Constitution does not recognise English as an alternative language of instruction, the Act may have introduced it to serve the interest of Nepal's Anglophile elites (ibid).

As global observers have documented, the disconnect between rights as outlined on paper and those fulfilled in practice is vast. It is one thing to sign off on a declaration or constitution that enshrines rights, it is another thing altogether to fulfil them. Perhaps this gap is due to a lack of will, or more optimistically, a bottleneck between the will and the way, or even some combination of the two. Regardless, true fulfilment of LHRs requires sustained investment of resources, and a willingness to address the needs of historically marginalised speech communities (Skutnabb-Kangas and Phillipson 1994). With so many of the provisions enshrined in the 2015 Constitution relating to LHRs still unimplemented, we inevitably conclude that systemic prejudice, indifference and ignorance towards ethnic and linguistic minorities remain entrenched in Nepal's structures of authority.

41.2 Challenges in the Implementation of Linguistic Human Rights in Nepal

While linguistic minorities in Nepal have no shortage of provisions enshrining their rights, then, such groups have little confidence in the national legal system to defend these rights. We now turn to a number of specific cases relating to LHRs in Nepal,

starting with a rare example of a national-level legal battle, albeit from before the current Constitution was promulgated.

The case in question relates to a decision made by various local administrative bodies between August and November 1997 – the Kathmandu municipality, Dhanusha District Development Committee and the Rajbiraj and Janakpur municipalities – to use the traditional languages of these localities (Nepal Bhasa and Maithili, respectively) as official media of communication in addition to Nepali (Turin 2007, p. 18). This right had been enshrined in the Local Self-Governance Act (Government of Nepal 1999), which deputed to local bodies the right to use, preserve and promote local languages. However, the decision by these local bodies to use regional languages was legally challenged and cases were filed in the Supreme Court, after which an interim order was issued on March 17, 1998, prohibiting the use of local and regional languages in administration. The order led to wide discontent and public resentment among minority communities, and a number of action committees were promptly formed to address the ruling.

On June 1, 1999, the Supreme Court of Nepal announced its final verdict and issued a certiorari (a writ or order by which a higher court reviews a decision of a lower court) declaring that the decisions of these local bodies to use local languages were unconstitutional. The court's verdict raised serious questions about the sincerity of the government's commitment to the use of minority languages in administration and led to further frustration among minority language communities. Public demonstrations and meetings were called, and the Nepal Federation of Indigenous Nationalities organised a national conference on linguistic rights in March 2000, with support from the International Work Group on Indigenous Affairs. At this point, the local administrative bodies could have proceeded to file the case through the UN's individual complaints system. However, the barriers to achieving success through this means are challenging and campaigners were exhausted.

Turning to the current political moment, locating reliable information about the COVID-19 pandemic in one's mother tongue is a challenge for marginalised communities, both in Nepal and beyond (Craig et al. 2021). Baral (2020) documents the case of the Danuwar, an Indigenous community in Nepal where many elders do not understand the Nepali language. As Dilkumari Adhikari – a Danuwar-community member who married out of her community and thus carries her husband's high-caste last name – explained: 'My husband translated information on the radio when he used to stay home during the lockdown, . . . but since the lockdown was eased, he goes out for work, and I don't understand what's being said on the radio'. Her husband, Gujuwa Adhikari, continues: 'I have learnt everything about the Covid-19 from the radio. I wish the radio broadcast programmes in our language so that my wife could understand and teach our children to stay safe'. Whether or not this constitutes an infringement of one or more Articles of Nepal's Constitution, it is clear that the state has abdicated responsibility for effectively communicating important public safety information in languages that its citizens can understand (cf. Danos and Turin 2021 on the utility of radio for communicating in minority languages). In addition, Article 27 of the Constitution guarantees the 'Right to information':

Every citizen shall have the right to demand and receive information on any matter of his or her interest or of public interest.

In 2019, Prithvi Man Shrestha documented how language barriers perpetuate the dominance of members of the Nepali-speaking community in Nepal's civil service and serve to exclude historically marginalised and under-represented communities. Interviewed for the investigation, the then Chief Secretary explained that civil service entrance exams can only be taken in Nepali, a non-inclusive linguistic decision which inevitably favours applicants from dominant language communities whose mother tongue will likely be Nepali (Shrestha 2019). 'So, despite being academically sound, candidates from other communities might score lower in the exam', he noted. This uneven playing field again underscores the hegemonic status of the Nepali language over all other languages spoken in Nepal, notwithstanding their Constitutional status.

In 2017, the Election Commission of Nepal was reported as distributing voter education materials in a number of Nepal's national languages. While the intent is commendable, reports highlighted how communities were dissatisfied at poor lexical choices and weak translations, making the effort appear more symbolic than practically useful (RSS 2017).

In May 2020, the Ministry of Education Curriculum Development Centre found itself under scrutiny when it was tasked with implementing a government decision to include Sanskrit as an optional subject in schools (Ghimire 2020a). According to the 2011 census, while Sanskrit is a language with only 1669 speakers (Government of Nepal 2014), it has great cultural and religious significance for Nepal's Hindu community (Shneiderman and Turin 2004). The decision echoed an earlier era in Nepali cultural politics when Sanskrit was a compulsory subject for all students between Grades 6 and 8. During Nepal's decade-long insurgency, Maoist revolutionaries attacked teachers who taught the subject and forced the elimination of Sanskrit as a mandatory subject (Turin 2007, p. 26). Education campaigners who advocate for wider access to mother tongue instruction – as a medium and as a subject – are opposed to the re-introduction of Sanskrit as an optional subject in schools. Indigenous linguist and language activist, Amrit Yonjan Tamang, notes: 'We are surprised that the government that gives so many excuses for not implementing constitutional provisions of education in mother tongue, has decided to introduce Sanskrit all of sudden' (Ghimire 2020a). As of writing, the Government of Nepal has only developed and distributed mother tongue curricula in 24 of Nepal's over 120 languages, meaning that the constitutional promise of education in and through the mother tongue remains a dream for more than three quarters of the nation's ethnic and linguistic communities.

41.3 Successes in the Implementation of Linguistic Human Rights in Nepal

On a more positive note, there are many encouraging examples of language activism and innovation across Nepal, and the issue of LHRs is generating interest among politicians. We wish to highlight the lasting influence of the National Language Policy Recommendation Commission Report (1994; see Yadava and Grove 2008). Not only did this formative report have a positive impact on the recognition and promotion of the many languages spoken in Nepal, but its authors also advocated for the use of these languages in mother tongue-based multilingual primary education settings and in the media (then limited to Radio Nepal and the Gorkhapatra), promoted the founding of

what would become the Central Department of Linguistics at Tribhuvan University, Kirtipur, Kathmandu, and the establishment of a Department of Mother Tongues at the (Royal) Nepal Academy, and advocated for the Language Commission.

In 2018, the then Minister for Education proposed the establishment of one mother tongue residential school (cf. Pine and Turin 2017) in each of Nepal's provinces, although the Minister was thin on details about where these would be located and which languages would be represented (RSS 2018). In March 2018, Binod Ghimire reported that records in Nepal's Parliament-Secretariat showed that a total of 42 lawmakers from both Houses were preparing to take their oaths of office in mother tongues other than Nepali, including 'Maithali, Hindi, Bhojpuri, Tharu, Magar Kham, Awadhi, Bajjika, Tamang and Urdu' (Ghimire 2018). Using mother tongues in such high-profile political contexts was unimaginable a decade or so ago.

Nepal's linguistic communities are not waiting for the federal government, and are instead forging their own pathways towards the implementation of their language rights. In June 2017, invoking the preliminaries of the Constitution (see Article 7, 2 above), Kathmandu Metropolitan City (KMC) established a help desk to provide services to residents in Nepal Bhasa, also known as the Newar language, in addition to Nepali. Together with the other urban centres that form the extended valley basin, Kathmandu is the traditional homeland of the Newar community whose vibrant language is spoken by community members of all ages (Turin 2006, p. 66).

Citizens of Kathmandu looking to access services can now submit requests in Nepal Bhasa or Nepali, and city officials must respond in whichever language the request was submitted. Other jurisdictions, such as Lalitpur Metropolitan City, are reported to be developing similar programs, offering translation and interpretation services as needed. Officials in the KMC noted that this rollout has had many positive aspects, including making 'it easier for service seekers, especially those who find communicating in Nepal Bhasa easier than in Nepali' (Ojha 2017) as well as supporting language preservation and revitalisation.

KMC has also made it mandatory for all schools within its jurisdiction to teach students Nepal Bhasa, from Grades 1 to 8 – a controversial decision since the students in Kathmandu's schools come from a wide range of home language backgrounds. To do so, KMC invoked Schedule 8 of the Constitution that authorises local governments to manage basic and secondary education in their jurisdiction, although this provision was arguably focused on the medium of instruction and not on the provisioning of compulsory content. In addition, it has been argued that KMC's decision does not comply with Article 31 of the 2015 Constitution relating to medium of instruction in schools.

Although bold, the introduction of Nepal Bhasa as a compulsory subject has received pushback from educators and linguists who note that students enrolled in the KMC catchment area come from a wide range of linguistic and cultural backgrounds, and not only the Newar community. Amrit Yonjan argues 'imposing Nepal Bhasa on the students who have Tamang or Gurung as mother tongue, for instance, would be an injustice for them' (Ghimire 2020b). The decision remains contentious, with some suggesting that such language classes should be voluntary, not mandatory.

The enactment of LHRs is not restricted to Nepal's urban areas. Two years earlier, the Ward committee (Nepal's smallest unit of local government) of Mangsebung Rural Municipality-5, in Nepal's eastern district of Ilam, declared Limbu to be the Ward's official language (Bhattarai 2018). With this, the Ward administration exercised its

delegated authority as enshrined in the Constitution to select any national language as the official language of the administrative unit, even though the respective State has not yet decided on the status of its official language as per Article 7.2. With the Limbu community making up 75% of the Ward's total population, the decision to choose the Limbu language offers a powerful affirmation of the linguistic rights of a regionally important but historically marginalised language. Public signposting in Mangsebung will be in both Limbu (Kirat-Sirijonga script) and Nepali (Devanagari), and the community has committed to appointing interpreters if needed.

There are other encouraging examples of local languages being introduced across the country. In Hupsekot Rural Municipality, Nawalparasi, Laxmi Basnet (2020) reports that a 'language curriculum is being developed for 60% of the district's population for whom Magar is the mother tongue'.

Effective language policy requires good data, and Nepal's Central Bureau of Statistics (CBS) is working with Nepal's Language Commission to ensure that the 2021 national census carries additional questions on language use. Bharat Tripathi of Nepal's Language Commission noted that the last decennial census contained only two questions about language: mother tongue and second language. 'This time we want to change that to: mother tongue, second language and ancestral language' stated Tripathi (Bhattarai 2019). This welcome addition to the CBS decennial census will collect accurate data on speakers of mother tongues in Nepal and better meet the needs of speech communities with the goal of improving the status, corpus and acquisition planning of languages spoken across the country.

41.4 Conclusion

On the global stage, Nepal has ratified 21 Human Rights Instruments as well as International Labour Organisation Convention Number 169 and the Convention for the Safeguarding of Intangible Cultural Heritage (Government of Nepal 2018). Nepal has also received international recognition for including a new 7th goal on ensuring the rights of Indigenous peoples and linguistic minorities to basic and primary education in the mother tongue in its Education for All National Plan of Action (2001–2015).

Yet, as Authers et al. (2014) note, '[h]uman rights are articles of faith that offer to the committed a just and harmonious world, yet never quite deliver their promises on LHRs, making them particularly susceptible to ritual iterations'. While much of the necessary legal scaffolding is now in place, implementation and delivery continue to be a challenge for Nepal. Policy pronouncements and legislative provisions remain insufficiently explicit and poorly articulated. In order to fulfil the promise of LHRs, Nepal will need to develop unambiguous policies and well-resourced programmes to deliver basic education in the mother tongue. Without political and civil society action committing to the delivery of LHRs in Nepal, the gulf between rhetoric and reality will only widen.

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