

A Bird's Eye View of 'Language and Law'

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Abstract

The importance of language to mankind is such that not only all national constitutions have one or more provisions on language but so do all regional and international organizations in their conventions, treaties or similar instruments. The paper explores this fact, using empirical evidence. The relationship between language and law is not only in terms of which language is the official language, or which languages are official languages, but also in terms of how legal texts and lawyers use languages and also what are the linguistic characteristics of legal texts and statements, the study of which is referred to in the paper as 'legal linguistics'. The paper points out that "legal language is not only used in written legal texts but also in statements made by lawyers as well as in conventions, treaties and similar instruments of regional and international organizations". The last topic of the paper is linguistic rights. Linguistic rights are human rights but linguistic rights, like any human right, are only binding if they are enshrined in a national constitution or in a convention, treaty or similar instrument of a regional or international organization.

Keywords: Human right, natural right, legal right, legal language, legal linguistics, national constitution, official language, regional organization, international organization, United Nations.

1. Introduction

There is and, indeed, can be no community without language and this is true not only of human communities but also animal communities, the reason being that for any community to survive, its members must interact and language is an essential and the most important tool of community interaction. It follows that there are expectations and laws or/and regulations regarding the choice and use of language in a community, a nation and even regional and international bodies.

Not only are language and law essential to mankind, as there is no human community without language and all nations have explicit or tacit legislations or legal provisions, but language and law have important and necessary connections. Such connections have motivated the establishment of associations of 'language and law', such as (a) the *International Language and Law Association (ILLA)*, which publishes the *Journal Language & Law (JLL)*, and (b) the *International Association of Forensic Linguistics (IAFL)*, which publishes *The International Journal of Speech, Language and the Law (IJSLL)*.

There are two main ways in which language and law are connected, which will be successively explored in this paper, namely:

- Legal provisions and regulations concerning language; and
- The use of language in law.

The discussion of these two topics will be followed by an examination of linguistic rights before the conclusion.

2. National and Organizational Linguistic Provisions

2.1 Determination of official languages

There are two main entities that regulate the choice and use of languages, namely (a) countries and (b) international and regional organizations. At country level, all constitutions have provisions regarding language and all international and regional organizations have similar linguistic provisions in their conventions or treaties. In this paper the terms *national linguistic provisions* and *organizational linguistic provisions* refer, respectively, to (a) linguistic provisions in national constitutions and (b) linguistic provisions in conventions and treaties of international and regional organizations. In both cases, the main issue is the choice of an official language or of official languages.

The general picture of the choice of official languages is as follows:

- (a) If a country is monolingual, the sole language is, in general, declared the official language;
- (b) if a country is multilingual, one indigenous language is chosen or a few indigenous languages are chosen; however, many former colonies and other former dependent

- territories have adopted as official language the official language or one of the official languages of their former master, which is the case of most African countries; and
- (c) In international and regional organizations whose member countries do not have the same national official languages, not all national official languages are picked as organizational official languages.

Table 1 and Table 2 below provide examples of national official languages at organizational official languages, respectively.

Table 1 Some national official languages

REF. #	COUNTRY	OFFICIAL LANGUAGE(S)
Some European countries		
1	Albania	Albanian
2	Austria	German
3	Belgium	Dutch, French, German
4	Bulgaria	Bulgarian
5	Croatia	Croatian
6	Estonia	Estonian
7	France	French
8	Great Britain	English
9	Greece	Greek
10	Italy	Italian
11	Germany	German
12	Poland	Polish
13	Romania	Romanian
14	Russia	Russian
15	Switzerland	German, French, Italian, Romansh
16	Turkey	Turkish
Some African countries		
17	Algeria	Arabic, Berber
18	Angola	Portuguese
19	Benin	French
20	Botswana	English, Tswana
21	Burkina Faso	French
22	Burundi	Kirundi, French
23	Cameroon	French, English
24	Cape Verde	Portuguese
25	Central African Republic	French
26	Congo (Democratic Republic of Congo)	French

27	Congo (Republic of Congo)	French
28	Egypt	Arabic
29	Ghana	Arabic
30	Morocco	Arabic, Berber
31	Mozambique	Portuguese
32	Nigeria	English
33	Rwanda	English, Kinyarwanda
34	South Africa	Afrikaans, English, Ndebele, Northern Sotho, Swazi, Tsonga, Tswana, Venda, Xhosa, Zulu
35	Zambia	English
36	Zimbabwe	English
American continent		
37	Anguilla	English
48	Antigua and Barbuda	English
39	Antigua and Barbuda	English
40	Bahamas	English
41	Barbados	English
42	Belize	English
43	Bolivia	Spanish
44	Canada	English, French
45	French Guiana	French
46	United State of America	English
47	Argentina	Spanish
48	Brazil	Portuguse
49	Cuba	Spanish
50	Ecuador	Spanish
51	Grenada	English
52	Guyana	English
53	Mexico	Spanish
54	Peru	Spanish

Table 2 Official languages of some international and regional organizations

REF. #	ORGANIZATION	OFFICIAL LANGUAGES
1	United Nations	Chinese, English, French, Russian and Spanish.
2	European Union	Official languages of all member states
3	African Union: English, French, Spanish Portuguese, Arabic and Swahili	French, Spanish Portuguese, Arabic, Swahili
4	Commonwealth of Nations	English

5	Francophonie ('Organization of French-Speaking Countries')	French
6	Common Market for Eastern and Southern Africa (COMERSA)	English, French, Portuguese, Arabic
7	Southern Africa Development Community (SADC)	English, French, Portuguese
8	North Atlantic Treaty Organization (NATO/OTAN)	English, French
9	Organization of Petroleum Exporting Countries (OPEC)	English
10	International Labour Organization (ILO): English, French	English, French, Spanish
11	Organization for Economic Co-operation and Development (OECD/OCDE)	English, French

Tables 1 and 2 clearly show the weight of political history as a determining factor in choosing an official language: :

- The fact that the names of most European languages are derived from the names of nations suggests that the countries were built by a community speaking one language; and
- That many countries have Arabic, English, French, Portuguese or Spanish as official languages is due the history of conquests, colonization and immigration.

2.2 Example of constitutional linguistic provisions

National constitutions do not only determine official languages but also deal with other linguistic issues, as shown by the linguistic provisions of the current Constitution of Zambia, that is, the Constitution of Zambia as amended by the Zambian Parliament on 1st January 2016. The Constitution of Zambia contains linguistic provisions dealt with in the context of the following topics:

- Freedom of expression;
- Rights of suspects;
- Rights of accused persons and detainees;
- Political parties;
- Language policy; and
- Interpretation of the Constitution.

2.2.1 Freedom of expression

According to the Constitution of Zambia (henceforth 'the Constitution'), Article 34, a person's freedom of expression includes (a) freedom to hold an opinion, (b) freedom to receive or impart information or ideas, (c) freedom of artistic creativity, (d) academic freedom, and (e) freedom of scientific and technological research, as prescribed.

It is noteworthy that language is only involved if and only if expression is done using language

2.2.2 Freedom of speech

Article 46 of the Constitution provides that a person who is suspected of committing an offence is entitled to (a) remain silent and (b) be informed in a language which that person understands of the (i) right to remain silent and (ii) consequences of remaining silent.

2.2.3 Rights of accused persons and detainees

Article 48 the Constitution provides that, unless the Constitution provides otherwise, “an accused person or a detainee has the right (a) to remain silent, (b) to be informed in a language which that person understands of the (i) right to remain silent and (ii) consequences of remaining silent, (c) to be informed, as soon as reasonably practicable, of the reasons for the arrest or detention (i) in a language which that person understands, (ii) in the case of a visually impaired person, in Braille or tactile diagrams, (iii) in the case of a deaf person, in sign language, or (iv) in another appropriate means of communication.”

2.2.4 Political parties

Articles 48 and 100 of the Constitution deal with political parties. Article 60 paragraph (3)(a) provides that “A political party shall not be founded on a religious, linguistic, racial, ethnic, tribal, gender, sectoral or provincial basis or engage in propaganda based on any of these factors. Article 100 provides conditions for a person to qualify to be nominated as candidate for election as President. A linguistic condition is that the person must be “**fluent in the official language**”, that is, English.

2.2.5 Language policy

Zambia’s language policy is determined by Article 258 of the Constitution which reads in full as follows:

- (1) The official language of Zambia is English.
- (2) A language, other than English, may be used as a medium of instruction in educational institutions or for legislative, administrative or judicial purposes, as prescribed.
- (3) The State shall respect, promote and protect the diversity of the languages of the people of Zambia.

2.2.6 Interpretation of the Constitution

The final provision of the Constitution on language is the subject matter of Article 267 which, concerning language, provides, in paragraph 2, that “If there is a conflict between the English version of this Constitution and a different language version, the English version shall prevail.”

3. THE USE OF LANGUAGE IN LAW

Discussing the use of language in law means discussing how language is used in law. However, 'how language is used in law' may mean either (a) how language can be utilized in law to achieve an objective, (b) legal language, in terms of vocabulary and style, or (c) a combination of (a) and (b). When dealing with (a), the main topic is forensic linguistics, the study of how language can be used, for example, to identify a criminal or potential criminal. This section explores successively (a) and (b) under the headings 'forensic linguistics' and 'legal language'.

3.1 Forensic linguistics

The noun 'forensics' refers to the use of scientific methods to get evidence in courts of law, especially in criminal and civil courts. The related adjective 'forensic', means either (a) applying scientific methods to get evidence in courts of law, especially in criminal and civil courts or (b) pertaining to courts of law or a particular court of law. The noun determined by the adjective indicates the discipline used. Hence, forensic linguistics is the application of linguistics to solve problems in courts of law, especially in criminal or civil cases.

As stated in the introduction, there exists an international organization devoted to forensic linguistics called the *International Association of Forensic Linguistics* (IAFL), which publishes the *International Journal of Speech, Language and the Law* (IJSLL)

3.2 Precision in the use of words

Precision in the use of words is cardinal in law. One day, in a meeting with members of staff of the School of Law of the University of Zambia, located in Lusaka, I said that the provision, in the Constitution of Zambia, to the effect that 'The official language of Zambia shall be English' was incomplete because it did not specify 'what English' as there are several Englishes. To substantiate my claim, I gave the following fictitious case:

- Mr. X, an American, comes to Zambia and differs with Mr. Y, a Zambian, who slaps him on the ground floor of a building;
- Mr. X reports the incident to the police, using the word 'first floor' instead of 'ground floor'.

I told the meeting that since what is called 'ground floor' in British English is called 'first floor' in American English so that British English 'first floor' is 'second floor' in American English, the accused may win the case as Zambia has adopted British English. I added that it was not enough to replace the sentence 'The official language of Zambia shall be English' with the sentence 'The official language of Zambia shall be British English' and the correct sentence was 'The official language of Zambia shall be contemporary Standard British English' because, like any language, British English has several varieties and changes with time.

3.3 Legal linguistics

The term 'legal linguistics' has been used as a synonym of 'forensic linguistics'. In this paper, the term is used to refer to the study of legal words as words, like any word in linguistics, and legal texts like any text in linguistics. It follows that, in this paper, legal linguistics is the scientific study of legal language.

Legal texts are not only characterized by the contents but also by the use of certain words and their style. Characteristics of legal language include, inter alia:

- Use of legal technical terms, a fact explaining why there are dictionaries, glossaries or lexicons of law or legal terms, just like in other academic disciplines have special dictionaries, glossaries or lexicons;
- Use, in some languages, including English, of archaic words;
- Use of peculiar syntactic constructions, such as 'to cause something or someone to do or to be';
- Special writing style of the various types of legal texts, called legal drafting; and
- Use, in many, if not languages, of Latin legal maxims, due to the fact that the legal system in western world has evolved from Roman law, which used Latin.

Latin legal maxims are like proverbs: both proverbs, in any language, and Latin legal maxims are used in argumentation, although sometimes they are treated as if they were legal provisions.

It is worth noting that legal language is not only used in written legal texts but also in statements made by lawyers as well as in conventions, treaties and similar instruments of regional and international organizations.

4. Law and Linguistic Rights

There is and, indeed, can be no community without language and this is true not only of human communities but also animal communities, the reason being that for any community to survive, its members must interact and language is an essential and the most important tool of community interaction. It follows that there are expectations and often regulations or laws regarding the choice and use of language in a community, a nation and even regional and international bodies.

A distinction is made between 'natural rights' and 'legal rights'. Natural rights are rights that human possess by virtue of being humans and, consequently, are based on or derived from 'natural laws'. One example of natural right, often cited, is the 'right to life'. Legal rights are rights based on customs and national laws or regulations or on supranational laws, regulations, conventions, treaties and similar instruments. However, a natural right may also become a legal right just in case, for example, it is enshrined in a legal text, for example a national constitution. The following question then arises: are linguistic rights natural rights or legal rights? Linguistic, or language, rights do exist and generally considered to be

While the concept of human right is clear, there is no definite list or categorization of human rights, a fact which led the United Nations system to come up with a list to be agreed upon by all its members. The United Nations Charter merely offers a basis for the promotion of human rights, including linguistic rights, as, in the last part of its Article 55, the United Nations Charter provides that the United Nations shall promote “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”. To implement this declaration, the General Assembly of the United Nations adopted, in 1948, the *Universal Declaration of Human Rights* (UDHR). Since then there have been several United Nations treaties concerning human rights on specific topics and binding upon all members of the United Nations.

From what has been stated above on human rights, a distinction is to be made between (a) natural rights, that is, those rights owned by an individual by being a human being, and (b) legal rights, those individual rights enshrined in laws, conventions, treaties and similar documents as well as those rights contained in customs.

The following is noteworthy:

- Some natural rights are enshrined in laws, in which case they both natural and legal; and
- Some rights are linguistic rights, or language rights.

Table 3, below, provides a set of examples of linguistic rights.

Table 3 Official languages of some international and regional organizations

REF. NO.	DATA	SOURCE
1	<p>Right to use minority language</p> <p>The European Charter for Regional or Minority Languages (ECRML) is a European treaty adopted in 1992 under the auspices of the Council of Europe to protect and promote historical regional and minority languages in Europe.</p>	The European Charter for Regional or Minority Languages (ECRML)
2	<p>Right of silence “the right of someone charged with an offence or being tried on a criminal charge not to make any statement or give any evidence”</p> <p>“The right to silence is often cited as a prime example of the fairness of the English criminal system, but has also been criticized as unduly hampering the conviction of criminals.”</p> <p>p 320</p> <p>Right of audience “The right of an ‘advocate to be heard in legal proceedings. Barristers have the right of audience in the Crown Court, High Court, Court of Appeal, and House of Lords. Solicitors have a limited right of audience in some Crown Court centres specified by the Lord Chancellor. In the country courts and magistrates’ courts both barristers and solicitors can appear. Many administrative tribunals have no rules concerning rights of audience and a party may be represented by any person he chooses.”</p> <p>p. 320</p>	<i>Concise Dictionary of Law</i> (Elizabeth A. Martin (Editor). Oxford University Press, 1983
3	<p>Freedom = “” The state of being free, the absence of restriction. P. 234</p>	<i>Barron’s Dictionary of Legal Terms</i> , Fifth edition (Stephen H. Gifis, 2008. New York: Barron; Educational Series, Inc.

	<p>Freedom of expression = “general term referring to the freedom of press, religion, and speech.”</p> <p>Freedom of press = “the right to publish and circulate one’s views, as guaranteed by the First Amendment. Closely related to FREEDOM OF SPEECH</p> <p>P. 234</p>	
4	<p>Freedom of speech (also called freedom of expression, regarded as one of the features of a democratic society. In Britain, it is possible to criticize the government and express opinions on current events. There are, however restrictions on freedom of speech, for example:</p> <ul style="list-style-type: none"> • Defamatory statements are a tort and the victim may sue for damages. • Leaking information which puts national security at risk is a criminal offence. • Reporting details of court proceedings which the court has forbidden to be published, such as the identity of a rape victim. <p>p. 105.</p>	<p>A-Z Law Handbook (Jacqueline Martin and Mary Gibbins. Philip Allan Publisher Ltd, 2012</p>

The following points sum up the discussion of linguistic rights:

- Human rights are divided into natural rights and legal rights
- Some natural rights are also legal rights just in case there are enshrined in laws, which include national constitutions;
- All national constitutions provide for linguistic rights, mainly by picking one or more language as official language or official languages; and
- Linguistic rights are human rights but, like any human right, they are binding if and only if they are enshrined in texts such as national constitutions or conventions, treaties and similar instruments of regional and international organizations.

5. Conclusion

This paper offered an overview of the multifarious nature of the relationship between law and language. Because of the importance of language in society, there are linguistic provisions in national constitutions as well as all regional and international organizations.

The paper also pointed out the specific nature of language as used in law, the study of which is referred to, in this paper, as 'legal linguistics'.