



The 2019 Draft for a Syrian Constitution

Analysis of linguistic aspects

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Europäisches Zentrum für Kurdische Studien
European Center for Kurdish Studies



Project: Power Sharing for a United Syria

Emser Straße 26

Berlin 12051

Germany

mail@kurdologie.de

+49 30 67 96 85 27

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Introduction

The majority of Syrians speak Arabic, but Arabic is not the mother tongue of all Syrians. Besides Arabic, the second most common language in Syria is Kurdish. In addition, there are Syrians who speak, for example, Turkmen, Assyrian, Neo-Aramaic, Armenian or Greek and also identify themselves with their specific cultural-linguistic heritage. Despite the fact that Syria consists of a linguistic mosaic, the last Syrian Constitutions have imposed a quasi-monolingual policy in favour of the Arabic language. In practice, this meant that classes in schools and universities have been held exclusively in Arabic, authorities communicated in Arabic, and non-Arabic names of people and places had to be changed. It is important to note that language is not only a means of communication. For linguistic communities it is also an important part of their culture and identity. Hence, discrimination on the basis of language also means cultural and ethnic discrimination. For non-native Arabic speakers in Syria, restrictions on their language rights has signified major violations of their rights to self-determination. How can these violations be prevented and the linguistic wealth of Syria be anchored in a future Syrian constitution? How can the right to self-determination of the linguistic groups of Syria be realized? This paper sets out to critically analyse the Syrian draft constitution of 2019 regarding language rights. The structure is as follows: First, before the recognized languages of the draft constitution of 2019 are discussed, a look will be taken on examples of other multilingual states. Second, the treatment of individual and collective language rights in the draft constitution is reviewed. Third, the issue of language and education is outlined. Lastly, it is discussed how the internal borders of Syria could be redrawn while considering the Syrian minorities' rights for self-determination.

1 Official Recognition of Languages

Simply defined, an official language of a state is the language used for the official purposes of the state, such as parliamentary proceedings, the judiciary or communications between the central government and the government of a region. Looking closer at constitutions of different countries, one can see that the recognition of official languages has a lot of further implications and consequences, wherefore multilingual countries have found various solutions for granting rights to their linguistic minorities.

Similar to Syria, Ethiopia is rich in its linguistic diversity. This diversity is also reflected in the Ethiopian Constitution. Article 5 (1) of the constitution stipulates that all Ethiopian languages shall enjoy equal state recognition. Hence, there is no official language as such. Article 5 (2) states that the working language of the federal government is Amharic. The term working language (also procedural language) refers to a language that is given a unique legal status in a supranational company, state or other body or organization as its primary means of communication. In addition to Amharic as federal working language, each member state of the federation may determine its own working language. In this way, the Ethiopian constitution did not favour one or a few languages above the others .

Another interesting example regarding the constitutional recognition of multilingualism is India. A census of 1961 reported that there are 1.652 languages are spoken in India. According to another survey conducted in 2001, 60 of these languages were spoken by more than 10.000 citizens. These numbers indicate the difficulty for the Republic of India to select its official language(s). Article 343 (1) of the Indian Constitution provides that the official language of the Republic is Hindi. However, even though Hindi is mentioned as the official language of India, article 343 (2) states that "for a period of

fifteen years from the commencement of this Constitution, the English language shall continue to be used for all the official purposes of the Union". Concerning the regional languages, article 345 of the constitution provides that each state in India can decide for its own official language(s). Currently, the Indian states have recognized 23 official languages, including Hindi and English. Article 345 of the Indian Constitution gives the states a lot of linguistic autonomy and enables them to use the most appropriate language instead of being forced to use Hindi. Yet, the Indian Constitution also ensures that for the communication between states as well as between a state and the federal state, an official language of communication must be agreed upon. In addition, article 347 makes the recognition of further official languages of states possible. If a substantial proportion of the population of a state desires the recognition of their language as official state language, the president has the power to recognize it.

How does the Syrian draft constitution of 2019 deal with the topic of officially recognizing languages? Article 13 (1) of the Syrian draft constitution of 2019 postulates that the official languages of Syria at the federal level are Arabic, Kurdish, Turkmen and Assyrian. Thus, all four languages would be recognized with equal value. Pursuant to article 13 (2) of the 2019 draft, the working language of Syria is Arabic. This means that Arabic does still have a special status as the language of the federal institutions. Important decrees and decisions shall be translated from Arabic into these three languages. In addition, article 13 (3) provides that in order to take into account "the needs of other linguistic groups", the regions are able to add any other language alongside Arabic as an official or working language. Moreover, the diversity of linguistic groups has to be proportionally represented in both the election of the Constitutional Court (which oversees the rights of all ethnic groups, articles 90 and 91 of the 2019 draft constitution) and in the commission for transition and reconciliation (Appendix, article 10). The above-mentioned articles make clear that the draft constitution of 2019 aims to honour the linguistic diversity of the country and requests respect and promotion of the Syrian diversity (Preamble and article 3 (4)). Yet, a future Syrian constitution could take even more account of the country's linguistic diversity. Instead of choosing only four languages as official languages and imposing Arabic on all regions, the constitution could, similar to India and Ethiopia, recognize all languages spoken in the country. This is particularly relevant since Syrians speak more languages than the four languages recognized in the 2019 draft constitution: Arabic, Kurdish, Turkmen and Assyrian.

2 Individual and Collective Language Rights

Apart from the recognition of official and working language(s), the draft constitution of 2019 includes some fundamental rights for linguistic minorities. These rights are either related to the rights of individuals or to the rights of linguistic communities. Individual linguistic rights refer to the obligation of the state as well as private actors to respect the fundamental right of people to non-discrimination on the basis of language (article 28, draft constitution). State actors on all levels are required to respect and guarantee human dignity and are prohibited from discriminatory practices. This expansive protection of human and fundamental rights is even extended to the private sector which creates a strong safeguard against discriminatory behavior in a future Syria (article 28). Furthermore, article 49 of the draft constitution includes the individual's right to speak and be addressed in a language which they understand, irrespective of the status of this language within Syria when facing trial and before court (article 49 (3) of the 2019 draft). If necessary, defendants have the right to request an interpreter. These affirmations correspond to international human rights standards and reflect articles 5 and 6 of the European Convention for Human Rights .

The Swiss Constitution proposes an alternative regarding the communication between state institution and individual citizen. Article 70 (1) states that the official languages of Switzerland are German, French and Italian. However, article 4 says that the national languages are German, French, Italian and Romansh. Romansh is regarded as an official language but only with respect to the communications between the federal level and individuals speaking Romansh. At the federal level, Switzerland uses the personality principle, allowing citizens to speak in any of the four national languages to federal authorities. At the cantonal level, Switzerland follows the territoriality principle, giving cantons the ability to choose official languages within their own borders .

In addition to the concession of individual language rights, the 2019 draft constitution recurrently ensures that linguistic rights are not only granted for individuals but also for groups. Firstly, article 3 (4) aims at the protection and promotion of Syrian diversity that sees all groups as part of the Syrian identity: "Syria shall respect, protect and promote the diversity of its population. All ethnic, religious, denominational and linguistic groups shall form part of the identity of Syria and shall be recognised as elements of Syrian society. All groups, regardless of their size, shall be entitled to equal respect and equal protection of their rights, to the preservation and promotion of their cultural identity, and to equal participation in the state." Secondly, it is emphasized that the protection of linguistic groups should be granted not only on the federal but also on the regional level. Article 13 (3) says that regions have to "take account of linguistic diversity and of all linguistic groups in the region" and that everyone has the right to speak his/her language and to use proper names and traditional place names. Thirdly, article 30 states that linguistic groups have the right to cultural self-determination regardless of their location and especially regarding education, religion and culture .

3 Education

In a multilingual country, respecting both the official language(s) as well as the different languages spoken by the communities appears to be complicated when it comes to education. Should all students be educated in one, uniform language or should linguistic self-determination be extended to schools and universities ?

According to article 108 of the 2019 draft constitution, Arabic must be the only or one of several instruction languages in schools. A common language in the entire country might be helpful for the formation of a national identity and increase the cooperation between the different regions. Having Arabic as a unifying language nationwide could help to avoid the problems that have occurred in Iraq. Article 4 of the Constitution of Iraq allows the constituents to choose their language of instruction. This provision might have been a contributing factor for the consistent lack of unity that still exists in Iraq.

The draft constitution recognizes Kurdish, Turkmen and Assyrian as official languages with equal value to Arabic (article 13). Therefore, it could also be considered to have all four languages as possible main languages of instruction. The constitutions of Sri Lanka (article 21 (1)) and Cyprus (article 20 (1)), for instance, grant students the right to be instructed in any of the national languages. In South Africa (article 29 (2)) students have the right to public education in even more than its eleven official languages. Instead of allowing Arabic to assume a special role by introducing it as the primary instruction language, the 2019 draft could leave it up to the regions or municipalities to choose one or several of the four official federal languages as primary languages of instruction.

Even though the constitution sets Arabic as the primary language of instruction, it does not neglect the linguistic diversity of the country with regard to education. Article 50 (3) of the 2019 draft constitution says that educators are obliged to take account of the cultural diversity of their students.

In article 108, this is specified by stating that any other language can be added to Arabic as an instruction language if the number of pupils allows it. On the one hand, article 108 grants linguistic groups an encompassing right to education in their language. On the other hand, this guarantee is kept vague since exact requirements for a second language of instruction to be introduced are not clearly defined, e.g. ‘the number of students. Furthermore, the regions and municipalities are able to independently choose the parameters of reasonability of linguistic representation. A region may for example decide that 25 percent of its population is not enough to reasonably request an educational introduction in their language. In certain regions this could be problematic for linguistic minorities and lead to conflicts between linguistic groups. A certain vagueness of article 108 might be necessary in order to respect the diversity of Syria. Yet, with regard to the languages of instruction, the 2019 draft constitution appears to leave too much space for interpretation and seems to induce a legal uncertainty .

A possibility to ensure bilingualism and grant equal opportunities to non-Arabic speakers is to teach Arabic as an academic subject first and introduce it as language of instruction in higher classes. This would grant all linguistic groups the right to primary level education in their own language. The Constitution of India stipulates in article 350 A the necessity to provide “adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups”. The combination of primary level education in non-Arab languages and the introduction of Arabic as an academic subject, allows students of linguistic minorities to profit from their bilingualism instead of being disadvantaged from the beginning of their school career.

Finally, it might be considerable to add a fifth paragraph to the article 108 of this 2019 draft constitution, which emphasizes the equality of all students irrespective of their mother tongue. Such a paragraph could be formulated according to the model of the Belgian Constitution. There it is stated that, “all pupils or students, parents, teaching staff or institutions are equal before the law” (article 24 (4)). Such an addition, would reinforce the non-discrimination clause of article 28 of the 2019 draft and remind authorities of their obligation to treat everyone equally and counter any sort of linguistic discrimination in schools and universities.

4 Redrawing the Boundaries of the Regions

In order to ensure that linguistic groups have the ability to practice their right for self-determination, the internal division of a country is crucial. How the internal boundaries of Syria will be redrawn is therefore an important question that might shape the future of Syria’s linguistic minorities.

Article 6 of the appendix of the draft constitution postulates that the boundaries of the regions must be redrawn. Thereby, settlement areas of linguistic groups have to be taken into account and local consultations be carried out. The draft constitution does, however, not include an exact description on how this procedure could look like. Therefore, it seems to be useful to have a look on the examples of other countries.

Ethiopia, being a federal state, has determined its subnational units based on the decision of the Ethiopian population. Ethiopian minorities who distinguish themselves from the rest of the country were able to form a subnational unit. Article 46 of the Ethiopian Constitution provides that “States shall be delimited on the basis of the settlement patterns, language, identity and consent of the people concerned”. These nations have, according to article 39, the right to speak their own language and to promote their culture. This, which is probably due to Ethiopia’s history, guarantees a far reaching right to self-determination. It is a suitable way to respect the large diversity of the country. With a view on the Ethiopian example it is questionable if the wording “consultations” for redrawing the internal

boundaries of Syria is getting far enough or if it would be better to base the decision on “the consent” of the people affected. Thereby, it would not only be necessary to inform and talk to different groups, but also to get their final approval. In this way, linguistic minorities could choose their subnational unit according to their sense of belonging.

Another example for self-determination through the acceptance of membership to a certain subnational community is Cyprus. According to the Cyprian Constitution, both the Greek Cypriots and the Turkish Cypriots constitute individual communities (article 2 of Cyprian Constitution, 1 and 2). Religious groups who neither belong to the Greek nor to the Turkish community can build their own community (3). In addition, everyone is able to reject belonging to one community and switch to another (5 and 6). With respect to the country’s history, the Cyprian Constitution is a prime example for organizing the coexistence of different communities in a federal state .

Switzerland illustrates how groups and respective districts could decide to which region they want to subordinate to. In the past, the canton of Bern, for example, experienced conflicts between the German-speaking majority in the canton and its French-speaking minority, the Jurassian population. So, in 1974/75, several elections on different geographically limited areas took place where ultimately the districts with a Jurassian population could decide whether to stay with Bern or to separate and build their own canton. As a result of this election the canton of Jura was created .

In Belgium, self-determination of linguistic groups exceeds the cultural dimension. The Belgian Constitution (articles 1 to 3) states that there are communities related to languages (Flemish, French and German-speaking community) as well as regions that are based on common economic interests (Flemish, Walloon and Brussels region). The Belgian state guarantees linguistic communities their right to cultural self-determination in areas that are related to their language and culture, e.g. education, libraries, curative medicine or governmental support for families. Decisions on economic issues such as agri-culture, employment, transportation and environment are left to the regions. Even though the institutions overlap, both the communities and the regions have their own parliaments. The Belgian division of power according to cultural or economic issues constitutes another possibility for respecting and promoting the cultural and linguistic diversity of a country.

Based on the above-mentioned examples, how could the internal borders of Syria be redrawn and the minority’s rights for self-determination be ensured? One option is to primarily draw the borders of districts according to the settlement areas of linguistic groups. Later on, similar to the example of Switzerland in 1974/75, the districts might be able to decide to which region they want to belong. Another possibility would be to follow the example of Belgium and divide the state according to linguistic/cultural criteria on the one hand and economic purposes on the other hand. Either of the propositions would ensure minorities’ right for cultural self-determination.

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