

©Copyright 2012

Hsin-Yang Wu

Applying Official Language Plus from the Perspectives of Linguistic Human Rights and  
Multiculturalism in Taiwan

Hsin-Yang Wu

A dissertation  
submitted in partial fulfillment of the  
requirements for the degree of

Doctor of Philosophy

University of Washington

2012

Reading Committee:

Veronica Taylor, Chair

Gad Barzilai

Laada Bilaniuk

Dongsheng Zang

Program Authorized to Offer Degree:

School of Law

University of Washington

**Abstract**

Applying Official Language Plus from the Perspectives of Linguistic Human Rights and  
Multiculturalism in Taiwan

Hsin-Yang Wu

Chair of the Supervisory Committee:  
Affiliate Professor of Law Veronica Taylor  
UW School of Law

Taiwan began its political reform of languages in the 1990s. At this time, “Mandarin Plus” (Official Language Plus) became the core of Taiwanese language policy to deal with the aftermath of forced national linguistic assimilation under Chiang’s administration (1945-1988). Mandarin Plus, defined as teaching vernacular languages other than Mandarin, was legalized by a series of administrative ordinances based on the authority of the Ministry of Education. The plan includes compulsory vernacular language education, Taiwan Mother Tongue day, regional bilingual education, language integration courses, language teacher certification, and teacher training courses. However, political muscle rather than a solid legal foundation was used to deal with the aftermath of Mandarin Only. Whether Mandarin Plus can achieve either the multiculturalism envisioned by the constitutional amendments or the full potential of linguistic human rights remains in doubt.

Therefore, further analysis is needed on whether Taiwan can comply with its constitutional aspiration and achieve linguistic human rights. This dissertation poses, examines and answers several questions from the perspective of linguistic human rights and applies the

framework of language planning and international law to the Taiwanese situation. The questions considered include: What legal history and current issues affect language planning and policy in Taiwan? What is the applicable approach of 'normative standards' on language law? What is the source of law for the concept of linguistic human rights? What specific linguistic human rights can be identified? What conflicts exist between the current Mandarin Plus centric system and normative standards of linguistic human rights?

This dissertation does not intend to negate the indispensability of the de facto official language in Taiwan. Rather, using international human rights law as a framing device for linguistic human rights, it pursues a balanced perspective between the official language and other languages while proposing legal modifications needed to contribute to Taiwan's special language circumstances. Analysing Mandarin Plus centric language planning in Taiwan using the concepts of linguistic human rights contributes to our understanding of a related model -- the U.S. English Plus system -- and extends our understanding of the linguistic human rights domain.

Keywords: Taiwan, language law, language rights, linguistic human rights, language planning, multiculturalism, constitutionalism, Mandarin Plus

## TABLE OF CONTENTS

*Applying Official Language Plus from the Perspectives of Linguistic Human Rights and  
Multiculturalism in Taiwan*

	Page
Table of Contents .....	i
List of Tables .....	v
Chapter 1: Introduction .....	1
1.1 Background and Basic Facts .....	1
1.2 Research Questions .....	13
1.3 Methodology .....	15
1.4 Thesis Organization .....	20
1.5 Definitions .....	21
1.6 Significance .....	22
Chapter 2: The Legal History of Language Planning and Policy in Taiwan .....	25
2.1 Composition of Taiwan's Language Population .....	25
2.1.1 The Four Ethnic Groups .....	28
2.1.2 People Not Included in the Four Ethnic Groups .....	37
2.1.3 Inconsistency with Real Language Groups .....	39
2.1.4 A Multilingual Society without Accurate Linguistic Statistics .....	41
2.2 Language Policy before the Modern States .....	43
2.3 The Japanese Colonial Period (1895-1945) .....	48
2.3.1 The Triple-track Period .....	49
2.3.2 Inland Extension Period .....	54

2.3.3 Imperial Subject Period .....	56
2.4 The Chinese Nationalist Party Administration Period (1945-2000) .....	58
2.5 The Democratic Progressive Party Administration Period (2000 - 2008) .....	69
Chapter 3: The Normative Standard of Language Law .....	77
3.1 The Relationship between Language and Law .....	77
3.1.1 Language Constitutes the Nature of Law .....	77
3.1.2 The Language of Law.....	78
3.1.3 Language in Law .....	79
3.1.4 Language Mediating Law.....	81
3.2 The Content of Language Law.....	83
3.2.1 Language Law regarding Language Planning.....	84
3.2.2 Language Law and Language Rights .....	87
3.2.3 Source of Language Law in Taiwan.....	88
3.3 The Normative Standards of Language Law .....	89
3.3.1 Nation-Building Approach .....	90
3.3.2 Benign Neglect Approach .....	92
3.3.3 Resource-Oriented Approach .....	95
3.3.4 Diversity Maintenance Approach.....	100
3.3.5 Procedural Approach.....	100
3.3.6 Linguistic Human Rights Approach.....	105
3.3.7 Applicability of Normative Standards.....	107
3.4 Conclusion .....	109

Chapter 4: Applying International Human Rights to Taiwan .....	111
4.1 Sources of International Human Rights Law .....	111
4.1.1 Charter of the United Nations .....	111
4.1.2 The International Bill of Human Rights .....	113
4.1.3 Other Sources of International Human Rights .....	118
4.2 The Evolving Generations of Human Rights .....	119
4.3 Adoption of International Human Rights .....	125
4.4 Conclusion .....	140
 Chapter 5: The Content of the Linguistic Human Rights .....	 143
5.1 Linguistic Factors in the International Human Rights Context .....	143
5.1.1 Language as a Standardizer .....	145
5.1.2 Language as a Classification Indicator .....	148
5.1.3 Language as an Urgent Necessity .....	149
5.1.4 Language as a Subsidiary Instrument .....	150
5.1.5 Language as an Intrinsic Value .....	151
5.2 Applying Linguistic Factors to Human Rights .....	153
5.3 The Content of Linguistic Human Rights .....	161
5.3.1 Standardizer and Classification Indicators (Factors I and II) .....	161
5.3.2 Communication Functions (Factors III and IV) .....	167
5.3.3. Language as an Intrinsic Value (Factor V) .....	173
5.3.4. Educational Linguistic Human Rights (All Factors) .....	179
5.4. Conclusion .....	184

Chapter 6: Multilingual Society and its Discontents -- Mandarin Plus in the Context of Linguistic Human Rights and the Constitutional Multicultural Declaration .....	187
6.1 Background Summary .....	187
6.2 Language in Taiwan's Legal System .....	190
6.2.1 Language and Constitutional Law.....	190
6.2.2 Language Planning Authority .....	193
6.3 Examining the Current System.....	202
6.3.1 Corpus Planning Changes .....	202
6.3.2 Acquisition Planning Reform.....	204
6.3.3 Language Status Planning Changes .....	208
6.3.3.1 Language Origin .....	209
6.3.3.2 Stage of Development.....	211
6.3.3.3 Juridical Status .....	213
6.3.3.4 Vitality.....	216
6.4 The Direction of Further Changes .....	217
6.5 Conclusion .....	226
 Chapter 7: Conclusion.....	 229
 Appendix 1 Languages in Taiwan.....	 239
Appendix 2 A Short History of Language Legislation (1945-2008) .....	249
Appendix 3 Main International Treaties and Documents Regarding Language Issues .....	254
Bibliography .....	255

## List of Tables

Table 1-1: Research Areas and Relevant Topics.....	15
Table 1-2: Research Content and Contributors.....	16
Table 1-3: Interview Questions.....	18
Table 1-4: List of Interviewees .....	19
Table 2-1: Census Questions Related to Taiwan’s Ethnic Populations.....	26
Table 2-2: Percentage of Taiwan’s Four Ethnic Groups in 2004 .....	28
Table 2-3: Classification of Taiwanese Peoples in the Japanese Ruling Period .....	30
Table 2-4: Comparison of Classifications before/after 1945 .....	36
Table 2-5: People Not Included in the Four Ethnic Groups of Taiwan.....	37
Table 2-6: Major Language Legislation after the 1997 Multicultural Declaration.....	71
Table 3-1: The Content of Language Planning .....	85
Table 3-2: Law regarding Language Planning.....	86
Table 4-1: 1966 International Covenant on Civil and Political Rights.....	116
Table 4-2: 1966 International Covenant on Economic, Social and Cultural Rights .....	117
Table 4-3: First-Generation Human Rights: Liberty, Civil and Political Rights .....	121
Table 4-4: Second-Generation Human Rights: Social, Economic, and Cultural Rights ....	122
Table 4-5: Third-Generation Human Rights: The Rights of Solidarity .....	124
Table 4-6: International Events and their Influence on Taiwan .....	129
Table 4-7: Taiwan Government’s Efforts to Apply the ICCPR, ICESCR, and CEDAW ...	137
Table 5-1: Development Phases of International Linguistic Human Rights.....	144
Table 5-2: The Major Western Diplomatic Languages before 1945.....	146
Table 5-3: Language Adoption in the United Nations .....	147

Table 5-4: International Human Rights Exercised through Language.....	154
Table 5-5: Kymlicka and Patten’s Framework of Language Rights .....	157
Table 5-6: Groups of Linguistic Human Rights.....	159
Table 5-7: Educational Human Rights in the International Context.....	179
Table 6-1: Major Language Legislation after the 1997 Multicultural Declaration.....	189
Table 6-2: Equal Protection Indicators in the Constitutions .....	192
Table 6-3: Mandarin Promotion Organizations in Taiwan.....	197
Table 6-4: Mandarin Plus Measures .....	205
Table 6-5: Course Credits of Language Sphere per Week .....	207
Table 6-6: Language Origin and the Official Language .....	210
Table 6-7: Developmental Stage of the Languages in Taiwan.....	211
Table 6-8: Judicial Status of Language in Taiwan .....	215
Table 6-9: Numeral Strength of Languages in Taiwan .....	216
Table 6-10: Local Language Proficiency of Japanese Policemen in 1932 .....	222
Table 6-11: Language Law and Policy in Selected Countries.....	223

## CHAPTER 1: INTRODUCTION

### 1.1 BACKGROUND AND BASIC FACTS

Taiwan is a multilingual society, and recent immigrants have enhanced its complex language infrastructure. Besides indigenous peoples, most Taiwanese are Holo, Hakka, and “external-province persons” from the perspective of the Han (漢) people. Generally speaking, the ancestors of Holo and Hakka emigrated in the 17<sup>th</sup> to the 19<sup>th</sup> centuries from mainland China’s *Min Yue* (閩粵, today’s *Fujian* and *Gungdong* provinces); “external-province persons” moved to Taiwan from mainland China after 1945 and have become Taiwanese residents.<sup>1</sup> According to an official research report on ethnic identification,<sup>2</sup> there were 22,689,122 Taiwanese in 2004,<sup>3</sup> all of whom belong to four ethnic groups: 73.3% identified themselves as Holo, 13.5% as Hakka, 8.0% as “external-province persons”, and 1.9% as indigenous peoples.<sup>4</sup> Furthermore, the number of spouses whose country of origin is not Taiwan reached 400,895 in 2008,<sup>5</sup> and their

---

<sup>1</sup> ‘External-province people’ (外省人; *wai sheng ren*) can also be translated as ‘mainlanders’. This term usually includes all their descendants born in Taiwan.

<sup>2</sup> 客家事務委員會，全國客家人口基礎資料調查研究 COUNCIL OF HAKKA AFFAIRS, QUANGUO KEJIA RENKOU JICHU ZILIAO DIAOCHA YANJIU [A Research Study of the Basic Information of the National Hakka Population] 3-2 (2004) (Taiwan).

<sup>3</sup> 內政部戶政司，戶籍人口歷年統計表表一 Department of Household Registration, Ministry of Interior, *Huji Renkou Linian Tongjibiao Biaoyi* [Yearly Population Statistics Report, Table One] (Taiwan), available at <http://www.ris.gov.tw/gateway/stpeqr01.cgi> (last visited Feb. 5, 2008).

<sup>4</sup> 客家事務委員會，九十三年度臺灣客家民眾客語使用狀況調查研究 COUNCIL OF HAKKA AFFAIRS, JIUSHISAN NIANDU TAIWAN KEJIA MINZHONG KEYU SHIYONG ZHUANGKUANG DIAOCHA YANJIU [A Research Study of the Usage Circumstances of the Hakka Language used by the Taiwanese Hakka People in the 93<sup>rd</sup> year (of the ROC)] 24 (2004) (Taiwan).

<sup>5</sup> 出入國及移民署，各縣市外籍配偶人數按國籍分與大陸(含港澳)配偶人數 National Immigration Agency, *Gexianshi Waiji Peiou Renshu An Guojifen Yu Dalu (Han Gangao ) Peiou Renshu* [The Number of Foreign and Mainland (Including Hongkong and Macau) Spouses in Each County and City Formulated by Nationality] (Jan. 31, 2008), at <http://www.immigration.gov.tw/DO/DownloadController.Attach.asp?xpath=public/Attachment/073085924.doc> (last visited May 29, 2012).

children born after 2000 account for 10% of all newborn Taiwanese.<sup>6</sup>

A multiethnic society leads to a multilingual society. According to the Summer Institute of Language's 2005 report, there are 22 living languages and 4 extinct languages in Taiwan;<sup>7</sup> this report does not include those languages brought into Taiwan by new immigrants in the last decade, such as Thai, Vietnamese, Indonesian, and Philippine local languages.<sup>8</sup> Indigenous Taiwanese are officially recognized as 14 nations speaking 14 languages and 43 dialects,<sup>9</sup> which account for 10 of the 11 branches of the Austronesian language family.<sup>10</sup> The Han people speak Mandarin, Holo, and Hakka languages that belong to the Sino-Tibetan language family. Most new immigrants from Southeast Asia speak Indonesian or Vietnamese.<sup>11</sup>

Although Taiwan is a multilingual society, only *official* languages were supported by ruling governments. Taiwan experienced two exclusive language policy periods: the Japanese colonial period (1895-1945) and Chiang's administration (1945-1988). From 1895 to 1988, language was not regarded as merely a communication instrument by political leaders. Rather,

---

<sup>6</sup> 陳志柔、陳柏甫，大陸及外籍配偶，載於臺灣社會變遷全記錄 Chen Chih-Jou & Chen Po-Fu, *Daluji Ji Waiji Peiou* [Spouses from Mainland China and Foreign Countries], in TAIWAN SHEHUI BIANQIAN QUANZILU [Reports on the Social Changes of Taiwanese Society] (Institute of Sociology, Academia Sinica Website) (Taiwan), available at <http://www.ios.sinica.edu.tw/TSCpedia/index.php> (last visited May 19, 2008).

<sup>7</sup> *Languages of Taiwan*, in ETHNOLOGUE: LANGUAGES OF THE WORLD (Raymond G. Gordon, Jr. ed., Summer Inst. of Linguistics Int'l, 15<sup>th</sup> ed. 2005), [http://www.ethnologue.com/show\\_country.asp?name=TW](http://www.ethnologue.com/show_country.asp?name=TW) (last visited Feb. 16, 2009). The Taiwanese indigenous peoples have 26 languages, which include 22 living languages (Amis, Nataoran, Atayal, Babuza, Bunun, Hakka, Mandarin, Holo, Japanese, Kananabun, Kavalan, Kulon-Pazeh, Paiwan, Puyuma, Rukai, Saaroa, Saisiyat, Taiwan Sign Language, Taroko, Thao, Tsou, and Yami) and 4 extinct languages (Basay, Ketangalan, Papora-Hoanya, and Siraya).

<sup>8</sup> 內政部統計處，內政統計通報一〇一年第五週 Department of Statistics, Ministry of Interior, *Neizheng Tongji Tongbao Yilingyinian Diwuzhou* [Interior Statistics Weekly- The Fifth Week of the 101th Year of the R.O.C.] 1 (Feb. 4, 2012) (Taiwan), at [http://www.moi.gov.tw/stat/news\\_content.aspx?sn=5939](http://www.moi.gov.tw/stat/news_content.aspx?sn=5939) (last visited May 29, 2012).

<sup>9</sup> 原住民族委員會，原住民族 14 族語 43 個方言別分布參考表 Council of the Indigenous Affairs, *Yuanzhuminzu 14 Zu Yu 43 Ge Fangyanbie Fenbu Cankaobiao* [Table on the Language Distribution the 14 Indigenous Languages and The 43 Dialects of the Indigenous Peoples] (Taiwan), available at [http://www.apc.gov.tw/chinese/docDetail/detail\\_TCA.jsp?docid=PA000000001872](http://www.apc.gov.tw/chinese/docDetail/detail_TCA.jsp?docid=PA000000001872) (last visited Jul. 25, 2008).

<sup>10</sup> *Languages of Taiwan*, *supra* note 7.

<sup>11</sup> 黃宣範，語言、社會與族群意識：臺灣語言社會學的研究 HUANG SHUAN-FAN, YUYAN SHEHUI YU ZUQUNYISHI: TAIWAN YUYANSHEHUIXUE DE YANJIU [Language, Society, and Ethnic Identity: A Study of Taiwanese Lingual Sociology] 444 (Taipei: Crane 1995); 客家事務委員會，九十三年度臺灣客家民眾客語使用狀況調查研究 COUNCIL OF HAKKA AFFAIRS, *supra* note 4, at 24.

they asserted that language acquisition could enhance an individual's identity and membership in his country. From the onset of Japanese colonial rule, when Japan implemented a modern leadership style in Taiwan, this theory of language as an identity instrument has dominated. The official language in Taiwan was called the "national language." Ironically, both Sino-Japanese War combatants shared the same characters "國語" (*guo yu* in Mandarin, and *kokugo* in Japanese) to indicate 'national language'.<sup>12</sup> Before 1945, the only official language in Taiwan was Japanese. In 1945, the national language became Mandarin as Chiang Kai-Shek's Chinese Nationalist Party (KMT) started to rule Taiwan; during the rule of Chiang Kai-Shek and Chiang Ching-Kuo (1945-1988), the language policy changed to Mandarin Only (獨尊國語, *du zun guo yu*). The official language in today's Taiwan remains "Guo-yu", which has evolved from Mandarin. From a de jure perspective, Taiwan has never proclaimed a national language or an official language. Nevertheless, the KMT government de facto regarded Mandarin as the national language, and the National Language Movement consequently became a "Mandarin Promotion Movement."

Language does not traditionally fall within the field of human rights in Taiwan. For example, Articles 5 and 7 of the Constitution of the Republic of China enumerate *racial groups, sex, religion, race, class, and party affiliation* as the indicators of equality, but *language* is not included.<sup>13</sup> According to the leading theories of Chinese nationalism introduced by the Chinese Nationalist Party (KMT, *Kuo-Ming-Tang*), who lost the Chinese Civil War and fled to Taiwan in 1949, Chinese nationality, the Chinese ethnicity, and the Chinese ethnic-nation were a trinity.<sup>14</sup>

---

<sup>12</sup> Before the end of WWII, the Japanese kanji system was not simplified. For Taiwanese people, kanji characters were much more identical to traditional Chinese characters.

<sup>13</sup> 中華民國憲法(1947) ZHONGHUA MINGUO XIANFA [Constitution of the Republic of China] (1947) (Taiwan). The 1947 R.O.C. Constitution inherited the concepts of human rights from the French Revolution and the Germany's Weimar Constituion. So, language rights or linguistic human rights were not explicitly mentioned from the beginning when it was drafted. For detailed information, please see Chapter 6.2.

<sup>14</sup> 芮逸夫, 中華國族解, 載於中國民族及其文化論稿(上) Ruyi Yih-fu, *Zhonghua Guozu Jie* [Analysis of the Chinese Nation], in ZHONGGUO MINZHU JIQI WENHUA LUNGAO (SHANG) [Analysis of Chinese Ethnic Nation and its Culture (First Half)] 4 (Taipei, Yiwen yinshuguan, 1972) (Taiwan).

Language was regarded as an important instrument to achieve homogeneity, and all Chinese nationals had to speak Mandarin Chinese. In this sense, the National Language Movement (國語運動, *Guo yu yun dong*) based on Mandarin Only has been supported by the government for decades.<sup>15</sup> Mandarin was taught in school and tested in every important examination. It became an important political goal to increase use of this language. In addition, because the percentage of children going to school exceeded 93% after 1956, and has been higher than 99% since 1976,<sup>16</sup> the national language population has been increasing. Mandarin thus became the only language used between parents and their children in most families. The use of other languages was banned in public schools. Those who entered the post-war compulsory education system gradually lost their non-national language proficiency because of the inconveniences of using a non-official language outside the family. For example, in 2004, 81.7% of Hakka people over 13 could understand the Hakka language, but only 63.2% could speak it.<sup>17</sup> Holo suffered the same problems, and indigenous languages faced more severe ones.

After Chiang Ching-Kuo's death in 1988, Taiwan started large-scale political reforms. The 1992 Additional Articles of the Constitution of the ROC, Article 18, proclaimed that

“The State shall accord to **the aborigines** in the free area legal protection of their status and the right to political participation. It shall also provide assistance and encouragement for their **education, cultural preservation,** social welfare and business

---

<sup>15</sup> For detailed information about language legislation history from 1945 to 1988, please see Appendix 2.

<sup>16</sup> See Government Information Office, Republic of China (Taiwan), *Taiwan's Educational Development and Present Situation*, <http://www.gio.gov.tw/info/taiwan-story/education/eframe/frame3.htm> (last visited Apr. 15, 2006).

<sup>17</sup> 客家事務委員會, 九十三年度臺灣客家民眾客語使用狀況調查研究 COUNCIL OF HAKKA AFFAIRS, *supra* note 4, at 24.

undertakings.”<sup>18</sup>

In 1993, the 20% time limit on the broadcast of other languages on radio and television was abolished.<sup>19</sup> In 1997, the Additional Articles of the Constitution of the ROC, Article 10, stated that

“The State affirms **cultural pluralism** and shall actively preserve and foster the development of **aboriginal languages and cultures**.”<sup>20</sup>

This amendment provides a basis for reforming the legal system of language affairs because it is a breaking point of multicultural concern to enter the R.O.C. Constitution.

In recent years, Taiwan has experienced a trial-and-error period of language policy and language planning. After the victory of the Democratic Progressive Party (DPP) in the 2000 presidential election, the Taiwanese government actively proceeded with legislation related to language issues. The proposed drafts drew from work in other multilingual countries, including Canada and the United States. However, the most recent drafts were deferred, and the drafts provided on relevant official websites were deleted, for several reasons, including concerns about communication inefficiencies, secessionism, and desinicization. In addition, the Hakka and indigenous peoples did not wholeheartedly support the drafts out of concern that the status of

---

<sup>18</sup> 中華民國憲法第二次增修條文第 18 條(1992) ZHONGHUA MINGUO XIANFA DIERCI ZENGXIU TIAOWEN [The Second Revision of the Additional Articles of Constitution of the Republic of China] art. 18 (1992) (Taiwan). English translation (Secretariat of the National Assembly trans. Jun. 1992) is available at the Official Website of the Legislative Yuan <http://lis3.ly.gov.tw/nacgi/ttsweb?@0:0:1:dbini/nabook11db@@0.8022848832746419> (last visited Mar. 01, 2009).

<sup>19</sup> 總統(82)華總(一)義字第 3757 號令 President Order (82) Huazong (1) Yi Zi No.3757 (Aug. 2,1993) (Taiwan).

<sup>20</sup> 中華民國第四次憲法增修條文第 10 條(1997) ZHONGHUA MINGUO XIANFA DISICI ZENGXIU TIAOWEN [The Fourth Revision of the Additional Articles of Constitution of the Republic of China] art. 10 (1997) (Taiwan). English translation (Secretariat of the National Assembly trans. Oct. 1997) is available at the Official Website of the Legislative Yuan <http://lis3.ly.gov.tw/nacgi/ttsweb?@0:0:1:dbini/nabook11db@@0.8022848832746419> (last visited Mar. 01, 2009).

Holo people would be promoted and further handicap the “existing space” of other languages.<sup>21</sup>

Of these legislative measures, only vernacular language education, based on “Mandarin Plus” (MP), has been continued. The concept of Mandarin Plus derived from the idea of *English Plus (Official Language Plus)* in the United States.<sup>22</sup> According to the 1987 Statement of Purpose released by the English Plus Information Clearinghouse (EPIC), English Plus holds that while English remains the primary language of the United States, the national interest can be best served when all members of American society have full access to effective opportunities to acquire strong English language proficiency plus mastery of a second or multiple languages.<sup>23</sup> In the United States, several states and cities have adopted resolutions based on the principles of English Plus, including New Mexico, Rhode Island, Oregon, and Washington, and the cities of Atlanta, Cleveland, Dallas, San Antonio, Tucson, and Washington D.C.<sup>24</sup>

In Washington State, for example, a total of 203 different languages were represented in its Transitional Bilingual Instruction Program (TBIP) in the 2009-10 school year.<sup>25</sup> Most

---

<sup>21</sup> See 施正鋒, 語言與多元文化政策 Shih Cheng-Feng, *Yuyan Yu Duoyuanwenhua Zhengce* [Language and Multiculturalism Policy], [www.ihakka.net/hakka2003/Big5/word/09.doc](http://www.ihakka.net/hakka2003/Big5/word/09.doc) (last visited Feb 25, 2009).

<sup>22</sup> See Mandy Scott & Hak-khiam Tiun, *Mandarin-Only to Mandarin-Plus*, 6 LANGUAGE POL’Y 53 (Spring 2007).

<sup>23</sup> English Plus Information Clearinghouse (EPIC), *The English Plus Alternative* (1987), in LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY 151-3 (James Crawford ed. 1992). According to the EPIC’s article, the founding endorsers of EPIC were: the American Civil Liberties Union, American Jewish Committee, American Jewish Congress, Caribbean Education and Legal Defense Fund, Center for Applied Linguistics, Chinese for Affirmative Action, Coloradans for Language Freedom, Committee for a Multilingual New York, Conference on College Composition and Communication, Christian Church (Disciples of Christ), El Concilio de El Paso, Haitian American Anti-Defamation League, Haitian Refugee Center, Image de Denver, IRATE (Coalition of Massachusetts Trade Unions), Mexican American Legal Defense and Educational Fund, Michigan English Plus Coalition, META (Multicultural Education, Training, and Advocacy) Inc., National Association for Bilingual Education, National Coalition of Advocates for Students, National Council of La Raza, National Puerto Rican Coalition, New York Association for New Americans, Organization of Chinese Americans, Spanish-Speaking/Surnamed Political Association, Stop English Only Committee of Hostos Community College, Teachers of English to Speakers of Other Languages.

<sup>24</sup> Mary Carol Combs, *English Plus: Responding to English Only*, in LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY 216 (James Crawford ed., 1992); James Crawford, *Issues in U.S. Language Policy- English Plus*, <http://ourworld.compuserve.com/homepages/JWCRAWFORD/engplus.htm> (1997) (last visited May 20, 2008).

<sup>25</sup> RANDY I. BORN ET AL., EDUCATING ENGLISH LANGUAGE LEARNERS IN WASHINGTON STATE, 2009-10 19 (Jan. 2011).

students in the TBIP spoke Spanish, Russian, Vietnamese, Somali, Ukrainian, Chinese, Korean and Tagalog, in descending order.<sup>26</sup> Based on an analysis conducted by the Office of the Superintendent of Public Instruction in 2000, developing proficiency in one language promotes the development of proficiency in a second language as well as a student's overall academic performance.<sup>27</sup> Therefore, the report maintains that more academic instruction needs to be given in the student's primary language rather than simply relying on English language instruction.<sup>28</sup> Under this program, 3,445 students attended Dual Language Programs, and 2,460 students attended Developmental Bilingual education in their first language(s) and English in the 2009-10 school year.<sup>29</sup>

On the other side of the Pacific Ocean, since the 2001 implementation of a Nine-Year Integrated Curriculum for Primary and Junior High Schools (國民中小學九年一貫課程) by the Ministry of Education (MOE), all primary school children in Taiwan have been required to study at least one local language at school.<sup>30</sup> Under this Curriculum, *Mandarin plus* local languages and English comprise the 'language subject area.'<sup>31</sup> Vernacular language classes are known officially as 'local (or vernacular) language education' (鄉土語言教育, *xiangtu yuyan jiaoyu*) and are generally referred to as 'mother tongue education' (母語教育, *muyu jiaoyu*) in public discussion.<sup>32</sup>

Mandarin Plus became the core concept of language policy and language legislation. However, an unresolved and understudied question is: Does MP resolve the previous language

---

<sup>26</sup> *Id.* at 19.

<sup>27</sup> *Id.* at 13.

<sup>28</sup> *Id.* at 13.

<sup>29</sup> *Id.* at 12.

<sup>30</sup> Scott & Tiun, *supra* note 22, at 60.

<sup>31</sup> *Id.* at 60 (citing Robert Kaplan & Richard Baldauf, Jr, LANGUAGE AND LANGUAGE-IN-EDUCATION PLANNING IN THE PACIFIC BASIN 59 (Boston: Kluwer academic publishers 2003)).

<sup>32</sup> *Id.* at 60 (citing 張健成, 批判的教育社會學研究 Zhang Jiancheng, PIPANG DE JIAOYU SHEHUIXUE YANJIU [Towards a Critical Sociology of Education] 110 (Taipei: Pro-ed publishing 2002)).

problems that resulted from favoring one language and culture relative to others? This study hypothesizes that this is doubtful for two key reasons. First, MP is a series of administrative ordinances declared and enforced by the Ministry of Education. The source of law for these ordinances is the Organic Law of the Ministry of Education (教育部組織法, *Jiaoyubu zuzhifa*) and the Organic Act of the National Languages Committee of the Ministry of Education (教育部國語推行委員會組織條例, *Jiaoyubu guoyu tuixing weiyuanhui zuzhitiaoli*). The Ministry of Education thus has the authority to add or cancel vernacular language courses *without* statutory limitation. To add vernacular language courses, the Ministry can use as a basis the 1997 Additional Article 10 of the Constitution of the ROC, which proclaimed that

“The State affirms cultural pluralism and shall actively preserve and foster the development of aboriginal languages and cultures.”<sup>33</sup>

In fact, if the Ministry of Education wants to cancel all vernacular language courses, citizens cannot request that such courses be reinstated due to the practice and tradition of education administration: the Ministry of Education decides.

Second, Mandarin Plus covers only vernacular language acquisition. A complete language planning project ideally includes status planning, corpus planning, and acquisition planning.<sup>34</sup> MP does not address the languages of new immigrants from Southeast Asia<sup>35</sup> or

---

<sup>33</sup> 中華民國第四次憲法增修條文第 10 條(1997) ZHONGHUA MINGUO XIANFA DISICI ZENGXIU TIAOWEN [The Fourth Revision of the Additional Articles of Constitution of the Republic of China] art. 10 (1997) (Taiwan).

<sup>34</sup> See ROBERT L. COOPER, LANGUAGE PLANNING AND SOCIAL CHANGE 99-163 (Cambridge Univ. Press 1989).

<sup>35</sup> The recent immigrants have changed the make-up of the language population. There were 400,895 foreign spouses in 2008; around one-third of them were from Southeast Asia. The population of some foreign language groups is not negligible. For instance, the population of Vietnamese spouses, which reached 77,980 in 2007, was larger than that of most indigenous peoples. See 出入國及移民署, 各縣市外籍配偶人數按國籍分與大陸(含港澳)配偶人數 National Immigration Agency, *supra* note 5. New immigrants represent new language groups, but they are usually ignored when the government considers and carries out language policy. So far, the new languages are not included in any legislative drafts related to language issues.

other foreign languages despite their statistically significant place in Taiwanese society.<sup>36</sup> In addition, the original concept for MP, English Plus, has been adopted by just four states in the United States.<sup>37</sup> These limitations cast doubt on MP's completeness and effectiveness. Indeed, a primary finding of this research is that MP, like a placebo, provides a vulnerable structure for vernacular language classes but seems unable to change the fact that vernacular languages are gradually disappearing.

The effect of the Mandarin Plus centric system is specious. For example, even though Taiwan's legal system addresses language issues, there is the possibility of unconstitutionality: **since the current system leaves the authority to the Ministry of Education without further detailed rules and the general public has no power regarding language issues.** This situation gives rise to a new question: **what is the standard to be used to evaluate and modify the status quo?**

---

<sup>36</sup> International trade is the economic lifeblood of Taiwan; therefore English and Japanese are also considered to be important languages to acquire. English, taught in school and tested in some important examinations, is regarded as a worldwide universal communication instrument. And English proficiency is thought of as an important instrument for developing international trade in Taiwan. Besides being a required subject in senior and junior high schools, English is also compulsory in primary schools. Scott & Tiun, *supra* note 22, at 64.

Mother tongues have to compete not only with Mandarin but also with English. Many schools also try to create some kind of English language environment outside of class time by broadcasting English songs or dialogues and having bilingual signs in English and Mandarin around the school. Scott & Tiun, *supra* note 22, at 64. The need for English, which inspires parental pressure and expectation, also drives the Taiwanese government to consider adopting English as a second official language. Editorial, *Taiwan parents want English as official 2nd language*, CHINA POST, Jan. 12, 2006 (Taiwan), available at

<http://www.chinapost.com.tw/taiwan/2006/01/12/75184/Taiwan-parents.htm> (last visited May 19, 2008).

How to improve people's English proficiency generally and not disadvantage local languages became a popular issue. Japanese is also an important language. Taiwan was the first colony of Japan from 1895 to 1945. The Japanese colonial government had pursued its National Language Movement in Taiwan for decades. According to a Japanese official statistic report, 80% of the Taiwanese people could speak Japanese in 1944. See 周婉窈, 臺灣人第一次的「國語」經驗, 載於海行兮的年代, Chou Wan-Yao, *Taiwanren diyici de "guoyu" jingyan* [The First Experience of the Taiwanese People with the "National Language"], in HAIXINGXI DE NIANDAI [The Age of Umiyukaba] 89 (Yun Chen 2003) (Taiwan). Japanese was thus a local language, and many people still can use it. Based on the historical and geographical connections between Taiwan and Japan, Taiwan-Japan trade also accounts for a large portion of the total international trade of Taiwan. Japanese therefore plays an important role. Unlike English, Japanese was officially banned in several places in Taiwan prior to the 1980s, but interest in this language has been growing recently. How to deal with interest in Japanese is gradually drawing increasing attention.

<sup>37</sup> In the United States, Rhode Island, Oregon, New Mexico, and Washington have adopted English Plus plans. Crawford, *supra* note 24.

In order to find out an applicable standard, the first step is to refer to relevant academic or theoretical works. As we know, Taiwan has linguistic diversity, and where there is linguistic diversity, there are language issues and problems. Scholars from different disciplines can therefore provide deliberate responses to these problems that are systematic, future-oriented, and based on a theoretical framework.<sup>38</sup> This process is called ‘*language planning*’ (LP), which refers to deliberate efforts to influence the behavior of others with respect to the acquisition, structure, or functional allocation of language.<sup>39</sup> The domains of LP include public administration, education, and communication media; others are religion, work, the armed forces, and libraries.<sup>40</sup>

At a governmental level, language planning refers to *language policy*. When governmental actions pertaining to the selection, codification, implementation, and elaboration of language interfere with people’s interests, the issues of general legal principles and human rights may be involved.<sup>41</sup> Although the framework of language planning and language policy has been developing for decades and scholars have provided their ideas from various disciplines, analysis about the relationship between language planning and law is less developed.<sup>42</sup> The core concepts of legal studies – such as source of law, rule of law, legal effects, standing, and prima facie – have generally been omitted from discussions regarding Taiwanese language planning. Therefore, for the purpose of establishing the background knowledge for further discussions

---

<sup>38</sup> See Michael Clyne, R. B. Baldauf, Jr. & D. E. Ingram, *Language Planning*, in INTERNATIONAL ENCYCLOPEDIA OF LINGUISTICS (William J. Frawley ed., Oxford Univ. Press 1992, 2003), available at <http://www.oxford-linguistics.com/entry?entry=t202.e0581.s0001> (last visited Jan. 2, 2009).

<sup>39</sup> COOPER, *supra* note 34, at 45.

<sup>40</sup> See Clyne et al, *supra* note 38.

<sup>41</sup> The terms (such as selection, codification, implementation, and elaboration) are used by Einar Haugen. See Einar Haugen, *The Implementation of Corpus Planning: Theory and Practice*, in PROGRESS IN LANGUAGE PLANNING: INTERNATIONAL PERSPECTIVES 269-289 (J. Cobarrubias and J. A. Fishman eds., Berlin: Mouton. 1983).

<sup>42</sup> Hornberger incorporates the work of Haugen (1983), Cooper (1989), Ferguson (1968), Hornberger (1994), Kloss (1968), Nahir (1984), Neustupny (1974), Rabin (1971), and Stewart (1968) and draws a handy chart of language planning. For further information, see Nancy H. Hornberger, *Frameworks and models in Language Policy and Planning*, in AN INTRODUCTION TO LANGUAGE POLICY 29-30 (Thomas Ricento ed., Blackwell Publishing 2006).

regarding possible assertions in court, this dissertation reviews **what the rationales are and how are the claims derived from the theories of language planning?**

Modern constitutional law and the concept of international human rights provide scholars with a ‘normative standard’ to evaluate the current legal system with respect to language. The Universal Declaration of Human Rights of 1948, which the Republic of China also signed,<sup>43</sup> is an example.<sup>44</sup> The topic of human rights includes race, color, gender, religion, property, and so on. Article 2 of the 1948 Declaration says that

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, **language**, religion, political or other opinion, national or social origin, property, birth or other status.”

The International Covenant on Civil and Political Rights (ICCPR), Article 2(1), says that

“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, **language**, religion, political or other opinion, national or social origin, property, birth or other status.”

---

<sup>43</sup> The Declaration of Human Rights was drafted during the Chinese Civil War between the Nationalists and the Communists. Chang Peng-Chun (張彭春) was appointed as a representative by the Republic of China, controlled by the Nationalists. See Chang Peng-Chun’s Biography, at <http://cenmtl.columbia.edu/projects/mmt/udhr/biographies/217.html> (last visited Feb. 20, 2009). The Republic of China was eventually from mainland China to become the government of Taiwan.

<sup>44</sup> The Republic of China (ROC) ruled mainland China from 1912 to 1949, and it simultaneously ruled Taiwan and mainland China from 1945 to 1949. After 1949, ROC controlled only Taiwan Island, Pengfu (Pescadores), Kinmen and Matsu. The official name of Taiwan remains ROC.

The International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 2(2) emphasizes that

“The State Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, **language**, religion, political or other opinion, national or social origin, property, birth or other status.”

Although *language* is an indicator of basic human rights under international law, it is less well developed than race, color, sex, and religion.<sup>45</sup> International law raises a further question: **What is the content of human rights when language is at issue?** On one hand, language is critical to every human being’s sense of self and is an extremely important conductor of culture. As a communication tool, language can link people’s minds, and it is also an identity builder: speaking a language shows membership in a certain ethnic group. Language, identity, and culture are strongly connected. Furthermore, people usually do not choose their first languages. First languages are decided by parents and birth location, matters of destiny rather than choice. On the other hand, governments make certain languages privileged and others unfavorable. If language has such intimate interactions with human, identity and culture, discrimination against languages will create discrimination against the people, identities, and cultures that speak them.

Based on policy practice to date across a range of multilingual states, we know that it is nearly impossible for a government to make *all* languages official to the same extent. In addition, we also know it is impossible to remain language neutral: a government needs at least one

---

<sup>45</sup> For example, in Weissbrodt, Fitzpatrick, and Newman’s “International Human Rights Law, Policy, and Process”, ‘language’ or ‘linguistic’ is not even in the subject index. DAVID WEISSBRODT ET AL., INTERNATIONAL HUMAN RIGHTS LAW, POLICY AND PROCESS (3d ed., 2001).

common language to maintain its operations, and at least one language will be privileged. It makes no difference whether the common language is de jure or de facto. One privileged language causes other languages to be disfavoured in a multilingual state, and the ideal that all languages enjoy the same status is both impractical and unrealistic. In the real world, it is necessary to find an intermediate plan to break this zero-sum situation. Unlike the concept of optimal net value of diversity,<sup>46</sup> this dissertation seeks *the bottom line* rather than the highest net value of linguistic diversity. That is, this dissertation compares various theories to find an applicable common measure that is acceptable by the theories rather than proposes or endorses a single way of measurement which pursues the most quantity of a certain or a bundle of values. **It questions the normative standards of language policy and language planning from the perspective of legal studies, including constitutionality and linguistic human rights.**

## 1.2 RESEARCH QUESTIONS

The research questions this dissertation poses help to identify current problems, re-formulate normative standards and rules for linguistic human rights, compare the content of Mandarin Plus centric policy with the normative standards suggested, and propose modifications to Taiwan's language legislation. The research questions follow:

### **(1) What are the legal history and current issues that affect language planning and policy in Taiwan?**

This question helps us understand the basic facts and background of the current linguistic legal system. Furthermore, answering this question involves discussing obvious conflicts in the current system and the scope to amend the normative standards underpinning the current law.

---

<sup>46</sup> François Grin, *Linguistic Diversity*, in LANGUAGE RIGHTS AND POLITICAL THEORY 187-88 (Will Kymlicka & Alan Patten eds., Oxford Univ. Press 2003).

**(2) What is the applicable approach of normative standards out of current language planning theories on language law?**

To answer this question, the relationship among language, language planning, and law must first be clarified, and the content of language law must be defined. Scholars mostly discuss language planning and language policy from the perspectives of linguistics, politics, sociology, and anthropology. Knowing the connection between language and law is another critical aspect of the issue.

**(3) What is the source of law for the concept of linguistic human rights?**

In the field of legal studies, ‘source of law’ represents both the origin of a concept of rule and a judgment on the validity of a rule. To ascertain the legal effects of international human rights in Taiwan, identifying the source of law for linguistic human rights is unavoidable. This question focuses on the process of how linguistic human rights, which are broadly stipulated in international law, apply to Taiwan given its special political status.

**(4) What specific linguistic human rights can be identified?**

This question is answered by isolating linguistic elements of international human rights. Moreover, it involves formulating authoritative interpretations of linguistic human rights issues. Answering this question requires a review of relevant theories and international law and their application in Taiwan.

**(5) What conflicts exist between the current Mandarin Plus centric system and the normative standards of linguistic human rights?**

This question examines current issues from the perspective of linguistic human rights. It focuses on summarizing previous findings about unsolved problems under Mandarin Plus and identifying possible modifications to Mandarin Plus language planning and policy.

### 1.3 METHODOLOGY

This dissertation relies chiefly on qualitative research approaches. To better understand the current legal system of language planning and policy, we first review relevant literature. We then explore in-depth the relationship between language and human rights using textual analysis of linguistic human rights literature. Next, we apply the findings to the current Taiwanese society to suggest a direction for change or reform; this research method involves collecting and interpreting data from interviews with key persons. The interviews deepen our understanding of current practical problems, leading language attitudes, and the possibility of a reform agenda.

#### 1.3.1 RESEARCH DATA

The research of this dissertation is based on the analysis of literature that covers the following topics in Table 1-1:

*Table 1-1: Research Areas and Relevant Topics*

<b>Research Area</b>	<b>Relevant Topics</b>
1. Legal History of Language	Language History in Taiwan
	Legal History in Taiwan
2. Current System, Issues and Causes	Analysis of Current Legal System
	The Practice of Mandarin Plus
	Composition of Language Population
	Current Issues
3. Introduction to Theories	Orientations of Language
	Language Planning
	International Law
	Linguistic Human Rights
4. Conflicts between Theories and the Current System	Linguistic Human Rights
	Estimated Effect of Mandarin Plus
	US Experience

(Table 1-1 continued)

5. Further Modifications for Legislation Reform	Orientations of Language
	Language Planning
	International Law
	Linguistic Human Rights
	Estimated Effect of Further Modifications

### 1.3.2 LITERATURE REVIEW

The field of linguistic human rights is relatively new with respect to normative requirements and standards. The main discussions among relevant scholars follow:

*Table 1-2: Research Content and Contributors*

Content	Contributors
(Beyond) Benign neglect	Will Kymlicka (1995), Joseph Carens (2000), Alan Patten (2001), and Rainer Bauböck <sup>47</sup>
General concepts of normative linguistic rights	Fernand De Varennes (1996, 2001), Tove Skutnabb-Kangas & Robert Phillipson (1994), Denise Réaume (2000), Ruth Rubio-Marín (2003), and Stephan May (2003) <sup>48</sup>
Avoiding linguistic genocide	Tove Skutnabb-Kangas (2000) <sup>49</sup>

<sup>47</sup> WILL KYMLICKA, *MULTICULTURAL CITIZENSHIP* 111 (Oxford Univ. Press 1995); JOSEPH CARENS, *CULTURE, CITIZENSHIP AND COMMUNITY: A CONTEXTUAL EXPLORATION OF JUSTICE AS EVENHANDEDNESS* 77-8 (Oxford Univ. Press 2000); Alan Patten, *Political Theory and Language Policy*, 29:5 *POLITICAL THEORY* 693 (Oct. 2001); Rainer Bauböck, *Cultural Citizenship, Minority Rights and Self-Government*, in *CITIZENSHIP IN DIVERSE SOCIETIES* (Will Kymlicka & Wayne Norman eds., Oxford Univ. Press, 2000).

<sup>48</sup> FERNAND DE VARENNES, *LANGUAGE, MINORITIES AND HUMAN RIGHTS* (Hague: Kluwer Law Internat'l, 1996); Fernand De Varennes, *Language Rights as an Integral Part of Human Rights*, 3:1 *INTERNATI'L J. ON MULTICULTURAL SOCIETIES* 15-25 (2001); Tove Skutnabb-Kangas & Robert Phillipson, *LINGUSITIC HUMAN RIGHTS: OVERCOMING LINGUISTIC DISCRIMINATION* (Berlin & New York: Mouton de Gruyter, 1994); Denise Réaume, *Official-Language Rights: Intrinsic Value and the Protection of Difference*, in *CITIZENSHIP IN DIVERSE SOCIETIES* (Will Kymlicka & Wayne Norman eds., Oxford Univ. Press, 2000); Ruth Rubio-Marín, *Language Rights: Exploring the Competing Rationales*, in *LANGUAGE RIGHTS AND POLITICAL THEORY*, *supra* note 46, at 52-79; Stephan May, *Misconceiving Minority Language Rights: Implications for Liberal Political Theory*, in *LANGUAGE RIGHTS AND POLITICAL THEORY*, *supra* note 46, at 123-52.

<sup>49</sup> Tove Skutnabb-Kangas, *LINGUISTIC GENOCIDE IN EDUCATION OR WORLD DIVERSITY AND HUMAN RIGHTS* (Lawrence Erlbaum Publishers 2000).

(Table 1-2 continued)

Democratic fairness	David Laitin & Rob Reich (2003) <sup>50</sup>
Anti-discrimination	Michael Blake (2003) <sup>51</sup>
Minimalism, anti-nation-building, and revisability	Daniel Weinstock (2003) <sup>52</sup>
Just way of distributing language learning costs	Philippe Van Parijs (2003) <sup>53</sup>
Facilitating collective choice	Denise Réaume (2003) <sup>54</sup>
Counter-balancing of unjust nation-building	Jacob Levy (2003) <sup>55</sup>
Fairness of background conditions under which speakers of different languages can further their language-related identities and ambitions	Allen Patten (2003) <sup>56</sup>
The interests of children	Thomas Pogge (2003) <sup>57</sup>
A successful nation-building project	Alan Patten & Will Kymlicka (2003) <sup>58</sup>
Adequate recognition	Charles Taylor (1992) <sup>59</sup>
Procedural approach	Daniel Weinstock, Jacob Levy, Denise Réaume, and Allen Patten (2003) <sup>60</sup>

<sup>50</sup> David Laitin & Rob Reich, *A Liberal Democratic Approach*, in LANGUAGE RIGHTS AND POLITICAL THEORY, *supra* note 46, at 80-104.

<sup>51</sup> Michael Blake, *Language Death and Liberal Politics*, in LANGUAGE RIGHTS AND POLITICAL THEORY, *supra* note 46, at 210-29.

<sup>52</sup> Daniel Weinstock, *The Antinomy of Language Policy*, in LANGUAGE RIGHTS AND POLITICAL THEORY, *supra* note 46, at 250-70.

<sup>53</sup> Philippe Van Parijs, *Linguistic Justice*, in LANGUAGE RIGHTS AND POLITICAL THEORY, *supra* note 46, at 153-168.

<sup>54</sup> Denise Réaume, *Beyond Personality: the Territorial and Personal Principles of Language Policy Reconsidered*, in LANGUAGE RIGHTS AND POLITICAL THEORY, *supra* note 46, at 271-95.

<sup>55</sup> Jacob Levy, *Language Rights, Literacy, and the Modern State*, in LANGUAGE RIGHTS AND POLITICAL THEORY, *supra* note 46, at 230-49.

<sup>56</sup> Allen Patten, *What Kind of Bilingualism?*, in LANGUAGE RIGHTS AND POLITICAL THEORY, *supra* note 46, at 296-321.

<sup>57</sup> Thomas Pogge, *Accommodation Rights for Hispanics in the United States*, in LANGUAGE RIGHTS AND POLITICAL THEORY, *supra* note 46, at 105-22.

<sup>58</sup> Alan Patten & Will Kymlicka, *Context, Issues, and Approaches*, in LANGUAGE RIGHTS AND POLITICAL THEORY, *supra* note 46, at 39-40.

<sup>59</sup> Charles Taylor, *The Politics of Recognition*, in MULTICULTURALISM AND THE POLITICS OF RECOGNITION 25-73 (Amy Gutmann ed., Princeton Univ. Press 1992).

<sup>60</sup> Daniel Weinstock, *The Antinomy of Language Policy*, in LANGUAGE RIGHTS AND POLITICAL THEORY, *supra* note 46, at 250-70; Jacob Levy, *Language Rights, Literacy, and the Modern State*, in LANGUAGE RIGHTS AND POLITICAL THEORY, *supra* note 46, at 230-49; Denise Réaume, *Beyond Personality: the Territorial and Personal Principles of Language Policy Reconsidered*, in LANGUAGE RIGHTS AND POLITICAL THEORY, *supra* note 46, at 271-95; Allen Patten, *What Kind of Bilingualism?*, in LANGUAGE RIGHTS AND POLITICAL THEORY, *supra* note 46, at 296-321.

### 1.3.3 DATA COLLECTION

Census and statistical reports about the composition of the Taiwanese population and its language sub-populations, relevant news reports, attitudinal data of the Taiwanese people, etc., are collected from online digital databases or libraries, government and relevant research publications. Data about Taiwanese legislation and cases are collected from the official websites of the Judicial Yuan, the Legislative Yuan, and the Ministry of Justice.<sup>61</sup> Legislation and legal materials pertaining to the United States can be found in the Lexis-Nexis and Westlaw websites and the UW law library.<sup>62</sup> This dissertation uses Mandarin and English materials. Mandarin materials are collected mainly in the Chinese-speaking world; English materials are collected mainly in North America. Holo (Taiwanese) materials, whose grammar and characters are nearly identical to Mandarin materials, are used when discussing the perspectives of Holo speakers.

### 1.3.4 INTERVIEWS

Several interviews with the key persons were conducted to analyze the legislative background. Interview questions focus on attitudes about languages and possible resolutions. Questions posed include:

*Table 1-3: Interview Questions*

<b>Questions</b>	<b>Related Topics</b>
1. To what ethnic group do you belong?	Background analysis
2. Besides Mandarin, what language(s) do you speak most often?	Background analysis
3. What language problems exist in Taiwan?	Current problems
4. What languages do you identify as native languages?	Language attitude
5. What languages should be preserved in Taiwan?	Language attitude

<sup>61</sup> Please see the Bibliography for further detailed information.

<sup>62</sup> Please see the Bibliography for further detailed information.

(Table 1-3 continued)

6. Do you want your children to learn your mother tongue? Why?	Language attitude
7. What is your ideal language environment in Taiwan?	Language attitude
8. What is your opinion of Mandarin Plus?	Legislation background
9. Is there any other resolution than MP? Are you for or against it? Why?	Legislation background
10. What is your opinion about linguistic human rights?	Legislation background

The interviewees include legislators, language policy officers (especially in the National Languages Committee, Ministry of Education), leading professors in relevant fields, and opinion leaders of local linguistic activist groups. These interviews help to identify the background of current problems and possible resolutions. The interview process and content of interview questions were submitted to the Human Subjects Division of the University of Washington for their approval. Application #36864 was approved under 45 CFR 46.101(b)(2)&(4) from September 10, 2009 to September 9, 2014. The 11 interviewees are as follows:

*Table 1-4: List of Interviewees*

<b>Number</b>	<b>Interviewee</b>	<b>Annotation</b>	<b>Date of Interview</b>
1	101409G	Previous government officer	Oct. 14, 2009
2	032510G	Previous government officer	Mar. 25, 2010
3	040610L	Congressman	Apr. 06, 2010
4	041910L	Congress Assistant	Apr. 19, 2010
5	101909S	Scholar	Oct. 19, 2009
6	110909S	Scholar	Nov. 09, 2009
7	111109S	Scholar	Nov. 11, 2009
8	032310S	Scholar	Mar. 23, 2010
9	032310T1	Local linguistic activist	Mar. 23, 2010
10	032310T2	Local linguistic activist	Mar. 23, 2010
11	032010T	Local language teacher	Mar. 20, 2010

## 1.4 THESIS ORGANIZATION

This dissertation has the following seven chapters.

**Chapter 1** describes the motivation for this dissertation and provides necessary background information. This includes identifying: research questions, reviewed literature, the purpose and significance of this work, research methodology, thesis organization, and definitions of complex terms.

**Chapter 2** reviews the legal history of language planning and policy of Taiwan and the current issues. It covers the pre-modern-state period, the period of Japanese rule, Chinese Nationalist Party rule, and the Mandarin Plus era. In addition, it also examines the obvious conflicts in Taiwan's current system and explains why we need to introduce another normative standard.

**Chapter 3** analyzes the relationship among language, language planning, and law, and it defines language law. It then introduces and formulates background knowledge about language planning to examine the applicable approach of normative standards of language law.

**Chapter 4** examines the international human rights system. It introduces how the International Bill of Human Rights is applied to Taiwan given its particular political status.

**Chapter 5** identifies the linguistic factors in the international human rights, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights. It then describes authoritative interpretations of linguistic human rights made by the Human Rights Committee and the Committee on Economic, Social and Cultural Rights. It formulates the findings to clarify

the content areas of linguistic human rights.

**Chapter 6** examines the effect of Mandarin Plus by analyzing it in the context of the ROC Constitution, especially its multiculturalism declaration. It applies the concept of linguistic human rights to the Mandarin Plus centric system to determine the limitations of the current system regarding language affairs. It further proposes necessary legal modifications to future legislative work related to language issues based on summarizing previous findings and exploring major language planning efforts (e.g., bilingual education, official declaration, language stipends, and extra-credit points based on vernacular language proficiency in different exams).

**Chapter 7** summarizes and concludes this dissertation.

## 1.5 DEFINITIONS

External-province people	refers to <i>wai sheng ren</i> (外省人). ‘External-province people’ can be translated as ‘mainlanders’. They are Chinese people who moved to Taiwan from mainland China after 1945 and have become Taiwanese residents. This term also includes all their descendants born in Taiwan.
Hakka	refers to Hakka people or the Hakka language, depending on the context. The Hakka language refers to Hakka Chinese (ISO 639-3: hak).
Holo	refers to Min-nan people or the Min-nan language (ISO 639-3: nan), depending on the context. The Holo

language is also called ‘Taiwanese’, ‘Min Nan’, ‘Minnan’, ‘Hoklo’. This dissertation follows the usage of the draft of the Language Equality Law (2003).

Mandarin is Mandarin Chinese (ISO 639-3: cmn). Mandarin is also called ‘Kuoyu’, ‘Putonghua’, or ‘Guoyu’. Mandarin is the de facto official language of Taiwan.

Original-province people refers to *ben sheng ren* (本省人). ‘Original-province people’ literally means people of Taiwan Province. This term does not have an exact definition, but it usually excludes indigenous and external-province peoples.

## 1.6 SIGNIFICANCE

The status quo of the language planning system in Taiwan is not the only reason, but is causing non-official languages – and the cultures with which they are so intimately linked – to gradually vanish. On one hand, we could show indifference toward disfavored languages based on linguistic Darwinism, an extreme belief in the value of efficiency; on the other hand, those people belonging to such language groups now solely bear burdens and suffer disadvantages of language and cultural preservation. If democracy and human rights are values we seriously endorse, whether the status quo is acceptable demands immediate and intense investigation.

By answering the research questions this thesis poses, we make the following significant contributions:

- Propose necessary modifications to the current Mandarin Plus approach to Taiwan’s linguistic human rights. These modifications could delay and possibly prevent the further

erosion of language rights and cultural identities now underway in Taiwan.

- Enrich current theories of linguistic human rights. Moreover, by applying existing theories to a practical experience in a multilingual society, this dissertation helps to refine the definition and content of linguistic human rights.
- Provide feedback to the U.S. Official Language Plus effort, on which Mandarin Plus is based.
- Disseminate research idea to the global linguistic community. Taiwanese society resembles an experimental laboratory of multilingualism. Hence, our work has broad applicability for protecting linguistic human rights in other multilingual societies.



## CHAPTER 2: THE LEGAL HISTORY OF LANGUAGE PLANNING AND POLICY IN TAIWAN

This chapter describes the complex and varied legislative and policy history of language acquisition in Taiwan. This overview sets out the context, in which contemporary language policy in Taiwan emerged. Section 2.1 discusses the composition of the language population. Section 2.2 describes the situation that existed from Taiwan's settlement by indigenous tribes through its colonization in the late 1800s. The three major periods of the subsequent Japanese occupation, and their language implications, are discussed in Section 2.3. Section 2.4 describes the aftermath of WWII and the coming of the Chinese Nationalist Party, while Section 2.5 concludes the chapter by reviewing the aftermath of the Democratic Progressive Party's presidential victory in 2000 and its effect on Taiwan's language laws and policy. Understanding this historical evolution is important because linguistic environment is not created within a short period and the historical interactions between a multilingual society and its languages are an avoidable element taken into consideration while developing the relevant legal system.

### 2.1 COMPOSITION OF TAIWAN'S LANGUAGE POPULATION

Taiwan is an immigrant society. Except for its indigenous peoples, most Taiwanese are offspring of emigrants from *Min Yue* (閩粵, today's *Fujian* and *Gungdong* provinces) of mainland China. According to an official research report on ethnic identification,<sup>63</sup> there were 22,689,122 Taiwanese in 2004,<sup>64</sup> all of whom belong to four ethnic groups.

---

<sup>63</sup> 客家事務委員會，全國客家人口基礎資料調查研究 COUNCIL OF HAKKA AFFAIRS, QUANGUO KEJIA RENKOU JICHU ZILIAO DIAOCHA YANJIU [A Research Study of the Basic Information of the National Hakka Population] 3-2 (2004) (Taiwan).

<sup>64</sup> 內政部戶政司，戶籍人口歷年統計表表一 Department of Household Registration, Ministry of Interior, *Huji*

A multi-ethnic society means a multilingual society. A direct way to know the language population is to take a census of it. However, Taiwan lacks such data since the beginning of the first KMT administration (1945-2000). According to a statistical report,<sup>65</sup> items covered by population censuses differed each time censuses were administered in the past century. Those census questions related to ethnic groups follow:

*Table 2-1: Census Questions Related to Taiwan's Ethnic Populations*

Census Items\ Year	Japanese Period							ROC Period						
	'05	'15	'20	'25	'30	'35	'40	'56	'66	'70	'75	'80	'90	2000
Race	V	V	V	V	V	V	V							
Original Domicile	V	V	V	V	V	V	V	V	V	V	V	V	V	
Ancestry Domicile								V	V	V	V			
Place of Birth	V	V	V		V		V	V	V					
Usual Language	V	V												
Language other than Usual Language	V	V												
Japanese Proficiency	V	V	V		V		V							
Japanese Proficiency (Chinese Only)			V											
Taiwanese Languages Proficiency (Japanese Only)			V											
Indigenous Peoples														V

If a colonial government tends to adopt an assimilation policy, it also favors a monolingual policy. The Japanese colonial government provided a remarkable example, and the monolingual policy was followed by the KMT administration even though the two governments adopted different national languages. This table shows that the KMT administration did not include

*Renkou Linian Tongjibiao Biaoyi* [Yearly Population Statistics Report, Table One] (Taiwan), available at <http://www.ris.gov.tw/gateway/stpeqr01.cgi> (last visited Feb. 5, 2008).

<sup>65</sup> 主計處, 歷次普查項目比較 Directorate General of Budget, Accounting and Statistics, Executive Yuan, *Lici Pucha Xiangmu Bijiao* [A Comparison of the Items of Every Census] (Taiwan), available at <http://www.stat.gov.tw/ct.asp?xItem=556&ctNode=547> (last visited Feb. 5, 2008).

language as a census question. In fact, the Japanese colonial government also stopped taking a census of languages other than Japanese after 1920.<sup>66</sup> The census questions of the latter half of the Japanese ruling period and the KMT ruling period represent their assimilation policies. Although other languages, which represent heterogeneity, still existed, they were not deemed significant enough to question. Table 2-1 shows that, except for indigenous peoples (whose ethnic group status was a census item in the 2000 census), the other three primary ethnic groups were not included in post- WWII censuses.<sup>67</sup>

Therefore, the composition of Taiwan's language population can only be estimated from the relevant information. Some contemporary sources are more directly related to the language population, such as the 2004 "Research Study of the Basic Information of the National Hakka Population"<sup>68</sup> and the 2004 "Taiwan's Election and Democratization Study, 2002-2004(III): The Presidential Election".<sup>69</sup> The former includes the Hakka language population, and the latter contains the family languages of the people living in 63 administrative districts out of the total 358 districts. Neither of these is a geographically complete census. Besides the abovementioned data, some sources are not directly related, such as national demographic data, but still have value.

---

<sup>66</sup> By contrast, the English colonial government also took a census of the population in India in the same year, but usual language was still a census item. 王麒銘, 臺灣日治時期國勢調查的學術意涵, 載於臺灣教育史研究會通訊 Wang Qiming, *Taiwan Rizhishiqi Guoshidiaocha De Xueshuyihan* [The academic significance of the population censuses in the Japanese ruling period], 34 TAIWAN JIAOYUSHI YANJIUHUI TONGXUN [NEWSLETTER OF THE ASSOCIATION ON RESEARCH OF THE HISTORY OF EDUCATION IN TAIWAN] 8 (Taipei: the Association on Research of the History of Education in Taiwan, Sept., 2002) (Taiwan) (citing 高野岩三郎, 臨時戶口調査ニ對スル所感, 載於臺灣統計協會雜誌 Takano Iwasaburou, *rinji toguchi cyousa ni taisuru syokan* [Comments on the temporary population census], 22 TAIWAN TOUKEI KYOKAI ZASSI [Magazine of the Taiwan Statistics Association] 1-10 (Taipei: Taiwan Statistics Association, Mar. 1937)).

<sup>67</sup> Indigenous peoples still needed to make household registration before 2000, table 3-4 doesn't mean that the thought of indigenous peoples appeared in 2000.

<sup>68</sup> 客家事務委員會, 全國客家人口基礎資料調查研究 COUNCIL OF HAKKA AFFAIRS, *supra* note 63.

<sup>69</sup> HUANG XIUTUAN, TAIWAN'S ELECTION AND DEMOCRATIZATION STUDY, 2002-2004(III): THE PRESIDENTIAL ELECTION (2004) (Taiwan).

### 2.1.1 THE FOUR ETHNIC GROUPS

In, Taiwan, the existence of four ethnic groups became the mainstream concept behind language legislation. In the 2004 census, 73.3% of Taiwanese people identified themselves as Holo, whose ancestors mainly emigrated from the Fujian Province of mainland China several hundred years ago.<sup>70</sup> 13.5% self-identified as Hakka, whose ancestors mainly emigrated from the Guangdong Province hundreds of years ago.<sup>71</sup> About 8.0% were “external-province persons”, who emigrated from mainland China with Chiang Kai-shek’s administration in or around 1949.<sup>72</sup> Only 1.9% of the people identified themselves as indigenous peoples.<sup>73</sup>

*Table 2-2: Percentage of Taiwan’s Four Ethnic Groups in 2004*

<b>Group</b>	<b>Holo</b>	<b>Hakka</b>	<b>External-Province</b>	<b>Indigenous</b>
<b>Percentage (%)</b>	73.3	13.5	8.0	1.9

According to the 2003 Draft of the Language Equality Act, Article 2, Section 3, Taiwan’s national languages include indigenous languages, the Hakka language, the Holo language (Taiwanese), and Mandarin.<sup>74</sup> In 2007, a new draft was proposed by the Council for Cultural Affairs, and it replaced the 2003 draft. The 2007 Draft of the National Language Development Act, Article 3, indicates that “national languages” refer to natural languages and sign languages of Taiwan’s domestic ethnic groups or districts;<sup>75</sup> the 2007 draft did not directly mention “four” ethnic groups, but it used the term “ethnic groups” instead of “language groups.” This draft did

<sup>70</sup> 客家事務委員會，全國客家人口基礎資料調查研究 COUNCIL OF HAKKA AFFAIRS, *supra* note 63, at 3-2.

<sup>71</sup> *Id.* at 3-2.

<sup>72</sup> *Id.* at 3-2.

<sup>73</sup> *Id.* at 3-2.

<sup>74</sup> 國語推行委員會，語言平等法草案 National Languages Committee, Yuyan Pingdengfa Caoan [Draft of the Language Equality Law] art. 2. (Feb. 10, 2003) (Taiwan).

<sup>75</sup> 行政院，國家語言發展法草案 Executive Yuan, Guojia Yuyan Fazhanfa Caoan [Draft of the National Language Development Law] (Feb. 1, 2008) (Taiwan).

not emphasize the number of ethnic groups, but it still regulated language affairs on the basis of this concept. Even when the concept of “four ethnic groups” became mainstream, language legislation was still based on the 2003 principle/terminology.

Although recent legislative drafts use the ‘four ethnic group’ classification, this term does not have a long history. This terminology in fact confuses several different classification categories. The traditional population classification is a hierarchical model. Since the Japanese colonial government started to take a census of the population in 1905, 14 general censuses have been taken up to 2007.<sup>76</sup> In the 1905 population census, the Japanese government classified the Taiwanese as inlanders, islanders, and aliens. “Inlanders” referred to the people from the Japanese homeland, and “islanders” referred to Taiwanese. Since 1905, islanders were divided into the Han (漢) and Ban (蕃) peoples.<sup>77</sup> The Han were mainly classified as Fukken (福建) or Kanton (廣東), and the Ban as Seiban (生蕃) and Jukuban (熟蕃).<sup>78</sup> Fukken indicated Han people who migrated from the Fujian Province of China, and Kanton meant Han who migrated from the Guangdong Province. Ban literally meant ‘barbarian’. Seiban literally meant ‘rare barbarian’ and referred to indigenous peoples who were less sinicized at that time; Jukuban literally meant ‘matured barbarian’ and referred to the more-sinicized indigenous peoples. Jukuban was later called Heihozoku (平埔族), which literally meant ‘indigenous peoples who lived in the flats’, and Seiban became Takasagozoku (高砂族), which meant ‘indigenous peoples’ of Taiwan. See Table 2-3.

---

<sup>76</sup> 主計處，歷次普查項目比較 Directorate General of Budget, Accounting and Statistics, Executive Yuan, *supra* note 65.

<sup>77</sup> *Ban/fan* (蕃/番) is a negative word nowadays. I use it only for necessary discussion in this dissertation.

<sup>78</sup> 王甫昌，由中國省籍到臺灣族群：戶口普查籍別類屬轉變之分析 Wang Fu-chang, *Yiu Zhongguoshengji Dao Taiwan Zuqun: Hukoupucha Jibie Leshu Zhuanbian Zhi Fenxi* [From Chinese Original Domicile to Taiwanese Ethnicity: An Analysis of Census Category Transformation in Taiwan], 9 TAIWANESE SOCIOLOGY 73-4 (Inst. of Sociology, Academia Sinica & Department of Sociology, Nat'l Taiwan Univ., Jun. 2005) (Taiwan).

*Table 2-3: Classification of Taiwanese Peoples in the Japanese Ruling Period*<sup>79</sup>

Race	Han		Indigenous Peoples	
	Fukken	Kanton	Jukuban	Seiban
1905	Fukken	Kanton	Jukuban	Seiban
1915	Fukken	Kanton	Jukuban	Seiban
1920	Fukken	Kanton	N/A	N/A
1925	Fukken	Kanton	Jukuban	Seiban
1930	Fukken	Kanton	Jukuban	Seiban
1935	Fukken	Kanton	Heihozoku	Takasagozoku

Because of the Pacific War, the 1940 population census was not completely formulated. After WWII, the Chinese Nationalist Party's (KMT's) administration experienced an unstable period. The Republic of China (ROC) carried out a military occupation of Taiwan and held an unsuccessful census due to the shortage of time, money, and human resources in 1946.<sup>80</sup> The KMT was defeated by the Chinese Communist Party and retreated to Taiwan with 2 million people in 1949. The first population census under the KMT administration was held in 1956.

The 1956 population census had an important change that created the primary model of four ethnic groups. This census also mixed different census models. First, the census was conducted on a provincial basis, which was adopted by the KMT administration in mainland China and then brought to Taiwan.<sup>81</sup> Given this history, the census naturally distinguished between “external-province persons” (外省人, *wai sheng ren*) and “original-province persons” (本省人, *ben sheng ren*). Because Taiwan was considered a province under the ROC political system, the meaning of Taiwan Strait was also changed. From a state boundary, Taiwan Strait became a

<sup>79</sup> There were some Han people other than Fukken or Kanton at that time, but the number was very small.

<sup>80</sup> 吳勇正, 戰後臺灣戶政變革之研究- 從接收復員到清鄉戒嚴(1945-1949) Wu Yongzheng, Zhanho Taiwan Huzheng Biange Zhi Yanjiu [A Study of Taiwan Household Registration Affairs: From “Recovery and Rehabilitation” to “Society Cleansing and Martial Law” (1945-1949)] 46-50 (2006) (unpublished master Thesis, the History Institute, Nat'l Chengkong Univ.) (on file with Chengkong Univ.).

<sup>81</sup> 王甫昌, 由中國省籍到臺灣族群: 戶口普查籍別類屬轉變之分析 Wang, *supra* note 78, at 75.

provincial boundary. The Chinese people became ‘external-province people’, and the ‘islanders’ became “original-province peoples’, after KMT’s military occupation.

In addition, the classification rules of this census shaped the other three ethnic groups. The census report indicates that

“[i]n order to trace the long-term migration, this census asked the ‘ancestry domiciles’ (祖籍, *zuzi*) of the people of the Taiwan Province, and it also asked the tribes of the ‘mountainous compatriots’ (山地同胞, *shan-di tongbao*)”.<sup>82</sup>

As for the external-province people, the census asked in which year they came to Taiwan to understand short-term migration.<sup>83</sup> ‘Mountainous compatriots’ were called *takasagozoku* (高砂族) during Japanese rule. Most Han people’s ancestors migrated from mainland China hundreds years ago and had no kinship connections to mainland Chinese for several generations. Nevertheless, to emphasize that original-province people were part of the Chinese headcount and enhance the relationship between mainland China and the Taiwan Province, the census rule stipulated that

“Most original-province people who migrated from mainland China came from Fujian or Guangtong, so it [author: the ancestry domicile] can be filled in according to their families’ usual

---

<sup>82</sup> 臺灣省戶口普查處, 中華民國戶口普查報告書:第一卷臺閩地區戶口普查記述及統計提要 HOUSEHOLD CENSUS OFFICE OF THE GOVERNMENT OF TAIWAN PROVINCE, ZHONGHUAMINGUO HUKOU PUCHA BAOGAOSHU: DIYIJUAN TAIMINDIQU HUKOU PUCHA JISHU JI TONGJI TIYAO [Report on the Census of Population of the Republic of China, Volume 1: Household of Taiwan and Fujien District] 169 (Household Census Office of the Government of Taiwan Province, 1959) (Taiwan).

<sup>83</sup> *Id.* at 169.

languages. If a person's usual language is Min-nan language [author: Holo language], his ancestry domicile is Fujian; if his usual language is Hakka, his ancestry domicile is Guangdong.”<sup>84</sup>

The registration of ancestry domicile was an important method to remind the Taiwanese Han people of their ancestors' birthplace and to enhance the notion of homeland.<sup>85</sup> The government made efforts to classify the original-province people's ancestry domiciles for symbolic purposes, but an original-province person's ancestry domicile did not have any legal effect in his daily life. However, this classification confirmed that, from the perspective of the government at that time, the difference between Hakka and Holo peoples was language, and it also showed that the government was aware of linguistic diversity in Taiwan.

The Heihozoku peoples were not a census item. Heihozoku was a matrilineal society, and Han was a patriarchal society. When a heihazoku woman married a Han man, their offspring therefore became Han people. So, the percentage of Heihozoku people thus decreased through intermarriage with Han.<sup>86</sup> In 1943, there were 62,119 Heihozoku in Taiwan,<sup>87</sup> but all Heihozoku were classified as Han or mountainous compatriots in the 1956 census. Even though they obviously could not find their original domicile in mainland China, they were classified according to their usual languages. Furthermore, if a Heihozoku person could speak Hakka at that time, he might be “bestowed” with an original domicile of Guangdong by the census officer.

---

<sup>84</sup> Even though Hakka language is not identical to Cantonese, and many Hakka people speak Holo, the official census still applied this rule. 臺灣省戶口普查處, 中華民國戶口普查報告書:第一卷臺閩地區戶口普查記述及統計提要 HOUSEHOLD CENSUS OFFICE OF THE GOVERNMENT OF TAIWAN PROVINCE, *supra* note 82, at 31.

<sup>85</sup> See 劉南溟, 為什麼要舉辦戶口普查, 載於中國內政 Liu Nan-ming, *Weisheme Yao Juban Hukoupucha* [Why is the census of population held], 12:3 ZHONGGUO NEIZHENG [CHINESE INTERIOR AFFAIRS] 4 (1956) (Taiwan).

<sup>86</sup> Of course, intermarriage is not the only reason.

<sup>87</sup> 臺灣行政長官公署, 臺灣省五十一年來統計提要 TAIWAN PROVINCIAL ADMINISTRATIVE EXECUTIVE OFFICE, TAIWANSHENG WUSHIYINIANLAI TONGJI TIYAO [STATISTIC REPORT OF TAIWAN PROVINCE OF THE FIFTY-ONE YEARS] (1946) (TAIWAN).

As noted earlier in this chapter, ‘original domicile’ (本籍; *ben zi*) became a census question after the KMT took over Taiwan. ‘Original domicile’ means neither ‘domicile’ nor ‘place of birth’; rather, it is a special Chinese system of household registration, and its history can be traced back to the Dong Jin Dynasty (A.D. 317-420).<sup>88</sup> The Jin Dynasty (A.D. 266-316) ruled most Chinese territory but was defeated by Liu Yao (劉曜) in A.D. 316 and lost its northern territory.<sup>89</sup> Historically, the Jin Dynasty after A.D. 316 is called the Dong Jin Dynasty. The Jin Dynasty moved its capital from Luo Yang (洛陽) to Nan Jing (南京), but it kept a special household registration record for the northern people who followed the central government to the south. The northern domicile records were written on white sheets rather than on the yellow sheets of the southern people, and the northern people had priority on governmental measures and advantages on taxes because the central government was attempting to recover lost territory and return to the north.<sup>90</sup>

The Nationalists’ ROC government fled to Taiwan after being defeated by the Chinese Communist Party, and it brought the concept of original domicile with it. Original domicile was a hereditary status, and it was also part of the construction of a theory of Chinese legitimacy. After the physical battles ended and the Communists won the Chinese Civil War in 1949, the People’s Republic of China and the Republic of China started their long-term war for Chinese legitimacy. The Nationalists’ ROC government faced two main problems. First, it still asserted that the ROC government was the only legitimate government of China. Before the Nationalists’ ROC fled to Taiwan, it held a general election of congressmen in mainland China in 1947. Most

---

<sup>88</sup> Dong Jin was not the first dynasty to adopt original household system. It is only an example here.

<sup>89</sup> See 國家統計局, 三國兩晉南北朝統計史 National Bureau of Statistics of China, *Sanguo Liangjin Nanbeichao Tongjishi* [The History of Statistics in the San Guo, Liang Jin, and the Nan-Bei Period] (P.R.C.), available at [http://www.stats.gov.cn:82/50znjn/t20020617\\_22678.htm](http://www.stats.gov.cn:82/50znjn/t20020617_22678.htm) (last visited Jan. 22, 2010).

<sup>90</sup> See *Id.*

of these congressmen followed the ROC government to Taiwan 1949. Therefore, the ROC asserted that it was still the legitimate representative of the Chinese people through the democratic election: the ROC should remain the government of *vox populi*. Second, the Nationalists needed to justify their minority rule over the Taiwanese population.

Original domicile was an important classification tool, and it was related to a person's rights and ultimately to their legal status. For example, the passage quota for national examinations and seats in the National Assembly and Legislative Yuan were assigned on a provincial basis.<sup>91</sup> According to Article 85 of the Constitution of the Republic of China "*Public employees shall be selected through a system of open, competitive examination. Provincial and area quotas shall be fixed and examinations shall be held in different areas. No person shall be appointed to a public office unless he has successfully passed such an examination.*" Thus, before the 1992 constitutional amendments were passed,<sup>92</sup> public employees, except for those in the Taiwan Province Government, were selected according to their original domiciles.

In 1950, for example, 179 out of 216 (83%) positions in the central government's National Higher Ranking Employment Examination were opened to people whose original domiciles were in mainland China; however, other applicants, who comprised roughly 85% of the total population, had only 37 positions (17%).<sup>93</sup> This situation lasted until 1962, when the government started to change the formula to balance the quota between external-province people

---

<sup>91</sup> See 王甫昌，由中國省籍到臺灣族群：戶口普查籍別類屬轉變之分析 Wang, *supra* note 78, at 64.

<sup>92</sup> 中華民國憲法第二次增修條文(1992) ZHONGHUA MINGUO XIANFA DIERCI ZENGXIU TIAOWEN [The Second Additional Articles of the Constitution of the Republic of China] (May 28, 1992) (Taiwan).

<sup>93</sup> 駱明慶，高普考分省區定額錄取與特種考試的省籍篩選效果 Luo Ming-Ching, *Gaopukao Fenshengqu Dingerluqu Yu Tezhongkaoshi De Shengzi Shaixuan Xiaoguo* [The Filtering Result by the Provincial Difference of Domicile in the Fixed-quota Higher and General Ranking Examinations and the Special Examinations], 31:1 TAIWAN ECONOMIC REVIEW 90 (2003) (Taiwan).

and others.<sup>94</sup> Although original-province people comprised about 85% of the total population in Taiwan, they comprised only 17%, 14%, and 4.3%, respectively, of congressmen, head officers in the central government, and military generals in 1987.<sup>95</sup>

As one would expect, when the political importance of original domiciles disappeared, the government stopped asking about this question on the census. The ROC lost its seat in the United Nations in 1971, and the People's Republic of China was then regarded as the only legitimate government of China. The Chinese legitimacy dispute was on its way to resolution. The ROC broke off diplomatic relations with the United States in 1979 and with the Republic of Korea in 1992. The ROC was thought to be the loser in this battle for Chinese legitimacy. When it became unable to sustain the façade of being a government representing the whole of China, the ROC ministerial party, the KMT, began to face pressure for political reforms. When national elections changed to being based on the current Taiwanese population after the modifications of the ROC Constitution in 1991, original domicile became an unnecessary registration item. For external-province people, domicile even became a burden rather than a privilege when running for election because of the stigma of the earlier privileged measures.<sup>96</sup> In the face of strong protest against the fact that external-province people held great advantages in their numbers of governmental positions, the government stopped surveying external-province people's original domiciles after the 1992 Revision of the Household Registration Law.<sup>97</sup> Domicile registration was no longer part of the population census after 1992, and original domicile was not included in the 2000 census.

---

<sup>94</sup> 駱明慶, 高普考分省區定額錄取與特種考試的省籍篩選效果 Luo, *supra* note 93, at 92-3.

<sup>95</sup> See 王甫昌, 由中國省籍到臺灣族群: 戶口普查籍別類屬轉變之分析 Wang, *supra* note 78, at 106.

<sup>96</sup> The legislators of the KMT proposed the modification of the Household Registration Law on their own initiative. See 王甫昌, 由中國省籍到臺灣族群: 戶口普查籍別類屬轉變之分析 Wang, *supra* note 78, at 93-100.

<sup>97</sup> 戶籍法修正, 總統(八一)華總(一)義字第 3129 號令 Hujifa Xiuzheng [Revised Household Registration Law], Presidential Order (81) Huazong (1) Yi Zi No. 3129 (Jun. 29, 1992).

The experiences of household registration and population census-taking created the natural prototype of four ethnic groups because the 1956 classification structure was adhered to by the 1966, 1970, and the 1975 censuses.<sup>98</sup> The measures transformed the classification of ethnic groups is shown in Table 2-4:

**Table 2-4: Comparison of Classifications before/after 1945**

Time	Classification				
<b>Before 1945</b>	Fukken	Kanton	Heihozoku	Takasagozoku	Chinese (ROC)
<b>After 1945</b>	Min-nan (Holo)	Hakka	N/A	Mountainous Compatriots	External-province People

Like the *burakumin* (部落民) of Japan or the *Paraiyar* caste of India, Taiwanese ethnic statuses were announced equal by law but remained unequal in daily life. Although the government stopped registering original domicile information, the concept of four ethnic groups was implanted in people's minds. Based on the composition of the Taiwanese population, the concept of four ethnic groups also ran counter to Chinese nationalism. However, the 1993 White Paper on Ethnic and Culture Policy of the Democratic Progressive Party (DPP) declared that

“Taiwan now has at least several ethnic groups, including indigenous peoples, Min-nan people (language group), Hakka (language group), and the external-province people (ethnic group)... there should not exist the difference of priority and

<sup>98</sup> After having carried out the propaganda and the nationalism education for more than 30 years, the government did not need ancestry domicile to inspire the original-province people's nation-spirits anymore, especially when the difficulty to confirm the ancestry domiciles. The ancestry domicile of the original province people was not asked in the 1980 census. 王甫昌, 由中國省籍到臺灣族群: 戶口普查籍別類屬轉變之分析 Wang, *supra* note 78, at 90-3.

inferior, center and margin, or the mainstream and the regions between them.”<sup>99</sup>

Despite these lofty statements, after the DPP won the presidential election in 2000, it started a language policy based on these four ethnic groups.

### 2.1.2 PEOPLE NOT INCLUDED IN THE FOUR ETHNIC GROUPS

The oversimplification of four groups did not include all people living in Taiwan, especially new immigrants from Southeast Asia. According to the Ministry of Interior, there were more than 648,226 aliens with residence permits in 2011.<sup>100</sup> Furthermore, 237,807 people from mainland China and 45,474 people from Hong Kong or Macau have residence permits in 2008.<sup>101</sup>

*Table 2-5: People Not Included in the Four Ethnic Groups of Taiwan*<sup>102</sup>

District \ Status	Foreign Spouses	Residence Permit Holders
	January, 2008	2011
Mainland China	252,174	237,807 (2008)

<sup>99</sup> 王甫昌, 由中國省籍到臺灣族群: 戶口普查籍別類屬轉變之分析 Wang, *supra* note 78, at 107 (citing 民主進步黨中央黨部, 民主進步黨的族群與文化政策: 多元融合的族群關係與文化 THE CENTRAL COMMITTEE OF THE DEMOCRACY PROGRESS PARTY, MINZHU JINBUDANG DE ZUQUN YU WENHUA ZHENGCE: DUOYUANRONGHE DE ZUQUNGUANXI YU WENHUA [DPP'S ETHNIC GROUP AND CULTURE POLICY: MULTILISM AND INTEGRATION OF THE RELATIONS BETWEEN THE ETHNIC GROUPS] 76-9 (Taipei: The Central Committee of the Democracy Progress Party, 1993) (Taiwan)).

<sup>100</sup> 內政部統計處, 內政統計通報一〇一年第五週 Department of Statistics, Ministry of Interior, *Neizheng Tongji Tongbao Yilingyinian Diwuzhou* [Interior Statistics Weekly- The Fifth Week of the 101th Year of the R.O.C.] 1 (Feb. 4, 2012) (Taiwan), at [http://www.moi.gov.tw/stat/news\\_content.aspx?sn=5939](http://www.moi.gov.tw/stat/news_content.aspx?sn=5939) (last visited May 29, 2012).

<sup>101</sup> 出入國及移民署, 大陸地區、港澳居民、無戶籍國民〈來臺人數〉統計表 National Immigration Agency, *Daludiqu, Gangao Jumin, Wuhuji Guomin (Lитай Renshu) Tongjibiao* [Statistics of the Residents from Mainland China, Hong Kong, or Macau and those Nationals Without Household Registration (Number of the People Arrived in Taiwan)] (Jan. 31, 2008), at <http://www.immigration.gov.tw/DO/DownloadController.Attach.asp?xpath=public/Attachment/073082151.doc> (last visited May 29, 2012).

<sup>102</sup> People from mainland China, Hong Kong and Macau are not de jure aliens according to the R.O.C. legal system. So, their statistic results are not included in the official database of the aliens.

(Table 2-5 continued)

HK and Macau	11,244	45,474 (2008)
Indonesia	26,082	189,662
Vietnam	78,950	138,378
Thailand	8,885	80,595
Philippine	6,124	86,862
Japan	2,659	38,111
Others	9,445	114,618
<b>Total</b>	<b>400,895</b>	<b>648,226</b>

De jure, the ROC still view people from mainland China, Hong Kong, or Macau as nominal nationals, so they do not need naturalization. However, people from mainland China can immigrate to Taiwan only on a family basis, that is, through marriage or kinship. Table 2-5 shows that the number of naturalized aliens reached 5 figures, and foreign spouses of Taiwanese reached 400,895 in 2008.<sup>103</sup> When compared to the indigenous population (482,798 in October, 2007),<sup>104</sup> the population outside the four ethnic groups is significant. In this sense, the concept of four ethnic groups is outdated and no longer reflects current conditions. After the government stopped taking original domicile registration in 1992, the composition of the Taiwanese population changed dramatically. However, in 1993, the DPP issued its White Paper on Ethnic and Culture Policy, which reflected the four ethnic group conception of the population. When the DPP became the ruling party, it was hard for new drafts of language legislation to get the support of new immigrants.

<sup>103</sup> 出入國及移民署，各縣市外籍配偶人數按國籍分與大陸(含港澳)配偶人數 National Immigration Agency, *Gexianshi Waiji Peiou Renshu An Guojifen Yu Dalu (Han Gangao ) Peiou Renshu* [The Number of Foreign and Mainland (Including Hongkong and Macau) Spouses in Each County and City Formulated by Nationality] (Jan. 31, 2008), at <http://www.immigration.gov.tw/DO/DownloadController.Attach.aspx?path=public/Attachment/073085924.doc> (last visited May 29, 2012).

<sup>104</sup> 內政部戶政司，現住原住民人口數 Dept. of Household Registration Affairs, MOI., *Xianzhu Yuanzhumin Renkoushu* [The Current Indigenous Residents] (Taiwan), available at <http://www.dgbas.gov.tw/ct.asp?xItem=15408&CtNode=4594> (last visited Feb. 26, 2008).

Except for indigenous peoples, every Taiwanese is an immigrant or the offspring of ancient immigrants. In other words, the real difference between the current Taiwanese people, excluding indigenes, and recent immigrants is their arrival time. It is obvious that whether a language can be considered as ‘official’ cannot be based on the timing of its presence. Otherwise, an indigenous language other than English would be the official language of mainland United States, and the official language of California would be Spanish. In this sense, an official language decision based on the outdated belief in four ethnic groups is a form of exclusionism.

### 2.1.3 INCONSISTENCY WITH REAL LANGUAGE GROUPS

The concept of four ethnic groups is also oversimplified for language legislation since it does not fit the classification of real language groups. First, external-province people are a by-product of how household registration was administered. They came from the whole of mainland China, including more than thirty administrative districts of the ROC, between 1945 and 1949. Not every external-province person is Han. Further, the term ‘external-province people’ encompasses multiple language groups from China. Although people who were educated in mainland China might be more familiar with Mandarin, this did not signify that their mother language was Mandarin.

Second, indigenous peoples officially include 13 peoples, including two pingpu tribes (平埔族, the previous Heihozoku): Kavalan and Shao.<sup>105</sup> However, the language groups of the indigenous peoples exceed this number. Indigenous languages include: Atayal, Tsou, Rukai, Bunun, Paiwan, Puyuma, Saisiyat, Amis, Yami, Shao, and Kavalan language groups.<sup>106</sup> In

---

<sup>105</sup> Whether Shao belongs to the pinpu tribes is still debated. Taichung Municipal City Huludun Cultural Center, *he wei pinpu yanjiu* [What is Pinpu Research], at <http://www.tchcc.gov.tw/pingpu/pn5.htm> (last visited Mar. 21, 2012).

<sup>106</sup> 李壬癸，臺灣原住民史語言篇 LI JEN-KUEI, TAIWAN YUANZHUMINSHI YUYANPIAN [The History of Formosan

addition, some of these groups can be further distinguished. For example, the Atayal language group has the Atayal and Sediq languages, and the Tsou language group has the Tsou, Kanakanavu, and Saalua languages.<sup>107</sup>

Third, Hakka has several dialects, including: Sixian (四縣), Hailu (海陸), Dapu (大埔), Raoping (饒平), and Zhaoan (詔安). Among the dialects, zhaoan was from the Fujian Province rather than the Guangdong Province. The language standards of the censuses used to determine “original domicile” had their own deviations. In 1928, Ogawa Naoyoshi had already argued this point. He identified some Hakka language speakers who actually migrated from the Fujian Province and some Holo language speakers who migrated from the Guangdong Province.<sup>108</sup> Although in theory the main difference between the Holo (Min-nan) and Hakka is what language they usually speak, 56.4% of the Hakka people cannot speak the Hakka language.<sup>109</sup> Thus, the identification of Hakka people cannot be achieved by counting Hakka language speakers. The term ‘Hakka’ pertains to descent more so than language proficiency.

Fourth, most Taiwanese people are bilingual or even trilingual. Because the percentage of children going to school exceeded 93% after 1956, and has been higher than 99% since 1976,<sup>110</sup> the Mandarin-speaking population has been increasing. In the early 1990s, about 82.5% of the Taiwanese people could speak Mandarin, and about 88% of the Taiwanese people could speak

---

Aborigines: Linguistic] 70-96 (Nantou: The Historical Research Commission of Taiwan Province, Aug. 1999).

<sup>107</sup> 李壬癸，臺灣原住民史語言篇 LI, *supra* note 106, at 70-4.

<sup>108</sup> 小川尚義，漢民族移住の沿革，臺灣在籍漢民族鄉貫別調查 Ogawa Naoyoshi, *Kanminzoku Ijū No Enkaku* [The Migration History of Han People], in TAIWAN ZAISEKI KANMINZOKU KYŌKANBETSU CHŌSA [Investigation on the Original Regions of the Taiwanese Han People] 3 (Taipei: Taiwan So-toku Kanbo-cho-saka, 1928) (Taiwan, Japan).

<sup>109</sup> 客家事務委員會，全國客家人口基礎資料調查研究 COUNCIL OF HAKKA AFFAIRS, *supra* note 63, at 4-1.

<sup>110</sup> See Government Information Office, Republic of China (Taiwan), *Taiwan's Educational Development and Present Situation*, available at <http://www.gio.gov.tw/info/taiwan-story/education/eframe/frame3.htm> (last visited Apr. 15, 2006).

Holo.<sup>111</sup> In the urban areas, the percentage of people who could speak Mandarin was much higher.

Fifth, the Japanese language is totally ignored in post-WWII censuses. Taiwan was Japan's first colony and was ruled by Japanese from 1895 to 1945. The Japanese government pursued its national language movement in Taiwan for half a century. According to a Japanese official statistics report, 80% of the Taiwanese people could speak Japanese in 1944.<sup>112</sup> Many Taiwanese today speak Japanese, but the Japanese language population has been ignored.<sup>113</sup>

#### 2.1.4 A MULTILINGUAL SOCIETY WITHOUT ACCURATE LINGUISTIC STATISTICS

Taiwan is indeed a multilingual society. Nevertheless, the census result of the population gives us only a rough image of the composition of the language population: Taiwanese speak Mandarin, Holo, Hakka, Indigenous languages, English, Japanese, Indonesian languages, Thai, and Vietnamese, and more. Among all Taiwanese peoples, 73.3% identified themselves as Holo, 13.5% as Hakka, 8.0% as “external-province persons”, and 1.9% as indigenous peoples.<sup>114</sup> Furthermore, the number of spouses whose country of origin was not Taiwan reached 400,895 in

---

<sup>111</sup> 黃宣範, 語言、社會與族群意識: 臺灣語言社會學的研究 HUANG XUAN-FAN, YUYAN SHEHUI YU ZUQUNYISHI: TAIWAN YUYAN SHEHUIXUE DE YANJIU [Language, Society, and Ethnic Identity: A Study of Taiwanese Lingual Sociology] 444 (Taipei: Crane 1995) (Taiwan).

<sup>112</sup> 周婉窈, 臺灣人第一次的「國語」經驗, 載於海行兮的年代 ZHOU WAN-YAO, *Taiwanren Diyici De "Guoyu" Jingyan* [The First Experience of the Taiwanese People with the "National Language"], in HAIXINGXI DE NIANDAI [The Age of Umiyukaba] 89 (Yun Chen 2003) (Taiwan).

<sup>113</sup> According to an official census of the Hakka population, 0.8% of the Hakka people adopt Japanese as their family language. 客家事務委員會, 九十九年至一百年全國客家人口基礎資料調查研究 COUNCIL OF HAKKA AFFAIRS, JIUSHIJIUNIAN ZHI YIBAINIAN QUANGUO KEJIA RENKOU JIZHU ZILIAO DIAOCHA YANJIU [A Research Study of the Basic Data of the Population of the Hakka People in the 99<sup>th</sup> to 100<sup>th</sup> years (of the ROC)] 90 (2011) (Taiwan).

<sup>114</sup> 客家事務委員會, 九十三年度臺灣客家民眾客語使用狀況調查研究 COUNCIL OF HAKKA AFFAIRS, JIUSHISAN NIANDU TAIWAN KEJIA MINZHONG KEYU SHIYONG ZHUANGKUANG DIAOCHA YANJIU [A Research Study of the Usage Circumstances of the Hakka Language used by the Taiwanese Hakka People in the 93<sup>rd</sup> year (of the ROC)] 24 (2004) (Taiwan).

2008,<sup>115</sup> and their children born after 2000 account for 10% of all newborn Taiwanese.<sup>116</sup> A multiethnic society leads to a multilingual society. According to the Summer Institute of Language's 2005 report, there are 22 living languages and 4 extinct languages in Taiwan;<sup>117</sup> this report does not include those languages brought into Taiwan by new immigrants in the last decade, such as Thai, Vietnamese, Indonesian, and Philippine local languages.<sup>118</sup> Indigenous Taiwanese officially speak 14 languages and 43 dialects,<sup>119</sup> which account for 10 of the 11 branches of the Austronesian language family.<sup>120</sup> The Han people speak Mandarin, Holo, and Hakka languages that belong to the Sino-Tibetan language family. Most new immigrants from Southeast Asia speak Indonesian languages or Vietnamese.<sup>121</sup> Contemporary multi-lingual patterns in Taiwan are consistent with its history of immigration and settlement.

<sup>115</sup> 出入國及移民署，各縣市外籍配偶人數按國籍分與大陸(含港澳)配偶人數 National Immigration Agency, *supra* note 103.

<sup>116</sup> 陳志柔、陳柏甫，大陸及外籍配偶，載於臺灣社會變遷全記錄 Chen Chih-Jou & Chen Po-Fu, *Dalu Zi Waizi Peiou* [Spouses from Mainland China and Foreign Countries], in TAIWAN SHEHUI BIANQIAN QUANZILU [Reports on the Social Changes of Taiwanese Society] (Institute of Sociology, Academia Sinica Website) (Taiwan), available at <http://www.ios.sinica.edu.tw/TSCpedia/index.php/%E5%A4%A7%E9%99%B8%E5%8F%8A%E5%A4%96%E7%B1%8D%E9%85%8D%E5%81%B6> (last visited May 19, 2008).

<sup>117</sup> See *Languages of Taiwan*, in ETHNOLOGUE: LANGUAGES OF THE WORLD (Raymond G. Gordon, Jr. ed., Summer Inst. of Linguistics Int'l, 15<sup>th</sup> ed. 2005), available at [http://www.ethnologue.com/show\\_country.asp?name=TW](http://www.ethnologue.com/show_country.asp?name=TW) (last visited Feb. 16, 2009). The Taiwanese indigenous peoples have 26 languages, which include 22 living languages (Amis, Nataoran, Atayal, Babuza, Bunun, Hakka, Mandarin, Holo, Japanese, Kanakanabu, Kavalan, Kulon-Pazeh, Paiwan, Puyuma, Rukai, Saaroa, Saisiyat, Taiwan Sign Language, Taroko, Thao, Tsou, and Yami) and 4 extinct languages (Basay, Ketangalan, Papora-Hoanya, and Siraya).

<sup>118</sup> 內政部統計處，內政統計通報一〇一年第五週 Department of Statistics, Ministry of Interior, *supra* note 100, at 1.

<sup>119</sup> The indigenous languages contain 14 languages and 43 dialects. See 原住民族委員會，原住民族 14 族語 43 個方言別分布參考表 Council of the Indigenous Affairs, *Yuanzhuminzu 14 Zu Yu 43 Ge Fangyanbie Fenbu Cankaobiao* [Table on the Language Distribution the 14 Indigenous Languages and The 43 Dialects of the Indigenous Peoples] (Taiwan), available at [http://www.apc.gov.tw/chinese/docDetail/detail\\_TCA.jsp?docid=PA000000001872](http://www.apc.gov.tw/chinese/docDetail/detail_TCA.jsp?docid=PA000000001872) (last visited Jul. 25, 2008).

<sup>120</sup> *Languages of Taiwan*, *Supra* note 117.

<sup>121</sup> 黃宣範，語言、社會與族群意識：臺灣語言社會學的研究 HUANG, *supra* note 111, at 444; 客家事務委員會，九十三年度臺灣客家民眾客語使用狀況調查研究 COUNCIL OF HAKKA AFFAIRS, *supra* note 114, at 24.

## 2.2 LANGUAGE POLICY BEFORE THE MODERN STATES

Some archaeological excavations and research reports suggest that Taiwan belonged to the Austronesian Cultural Circle in the pre-historic period and that indigenous peoples inhabited Taiwan or migrated to other Austronesian habitats.<sup>122</sup> In addition, the Han Chinese migrated in the 10<sup>th</sup> century from China to the Pescadores, about 90 islands nearly 30 miles west of Taiwan Island.<sup>123</sup> At that time, China was transitioning from the Tang Dynasty (618-907 AD) to the Song Dynasty (960-1279 AD).

Although the Han Chinese might have been aware of the existence of Taiwan Island, only a few fishermen and merchants visited it until the Mongol empire.<sup>124</sup> The Mongol empire's Yuan Dynasty (1280-1368 AD) installed a local administrative official, *xun jian si* (巡檢司), in the Pescadores in 1281.<sup>125</sup> To guard China's southeastern coast, the Ming Dynasty's first Emperor (1368-1644 AD) ordered the removal of the Han Chinese from the Pescadores to the Chinese mainland in 1384.<sup>126</sup> A Chinese writer, Chen Di (陳第), followed Ming soldiers in their 1603 AD attack on Japanese pirates based in Taiwan and reported:

“[a]fter (being attacked by the Japanese pirates and) moving to the mountain areas, they (the indigenous people in Taiwan) started to have contact with China, and the exchange is thriving now. People from Huei-min, Chung-long, and Lei-yu ports of Zhang County

---

<sup>122</sup> 曹永和, 多族群的臺灣島史, 載於臺灣早期歷史研究續集 TSAO YUNG-HO, *Duozuqun De Taiwandaoshi* [The Multi-ethnic History of Taiwan Island], in TAIWAN ZAOQI LISHI YANJIU XUJI [The Follow-up Collection of the Early Taiwan History Research] 474 (Linking 2000) (Taiwan).

<sup>123</sup> *Id.* at 474-5.

<sup>124</sup> TAY-SHENG WANG, *LEGAL REFORM IN TAIWAN UNDER JAPANESE COLONIAL RULE (1895-1945): THE RECEPTION OF WESTERN LAW* 13 (Univ. of Wash. Press, 2000).

<sup>125</sup> *Id.* at 13.

<sup>126</sup> TSAO, *supra* note 122, at 474-5.

and Quan County constantly translate their language and trade with them. They (the aforementioned Chinese people) exchange agate, china, fabric, salt, and things like copper pins and rings for venison, antlers, and deerskin (with the indigenous people)".<sup>127</sup>

Chen Di's writing indicates that the Han depended on interpreters to barter with the indigenous people for deer products. Furthermore, it shows that before the VOC (Verenigde Oostindische Compagnie, or Dutch East India Company) and the Spanish occupied parts of Taiwan in the 1620s, Taiwan's indigenous tribes were autonomous. Tsao's research relates that different tribes spoke different languages at that time, and some indigenous people spoke the Han language(s) because of interracial marriages and trade relationships.<sup>128</sup> To serve their own interests, warring indigenous tribes sought advantage from cooperation with the Han Chinese, the Japanese, the Dutch, and the Spanish.<sup>129</sup>

After Japan started its policy of seclusion (*sakoku*) in the 1630s and the Spanish were expelled from Taiwan in 1642, Taiwan Island came under Dutch control. To trade and evangelize, the Dutch taught their language in schools and trained interpreters. In addition, the government sought assistance from the interpreters to set up courts, levy taxes, and administer

---

<sup>127</sup> 陳第, 東番記 Chen Di, DONG FAN JI [Description of the Eastern Barbarians] (1603). The original text is “居山後, 始通中國, 今則日盛。漳、泉之惠民、充龍、烈嶼諸澳, 往往譯其語, 與貿易; 以瑪瑙、磁器、布、鹽、銅簪環之類, 易其鹿脯、皮角”。 According to the Chinese calendar in the Ming dynasty, the date when Chen Di stayed in Taiwan (in the 12<sup>th</sup> month of the 30<sup>th</sup> year of Wan Li era), is January, 1603 in the Gregorian calendar. See 周婉窈, 陳第-東番記-十七世紀初臺灣西南地區的實地調查報告, 載於故宮文物月刊第 241 期 Chou Wan-Yao, *Chen Di- Dong Fan Ji- Shiqishiji Chu Taiwan Xinan Diqu De Shidi Diaocha Baogao* [Chen Di- Dong Fan Ji- A Field Research Report on the Southwest Area of Taiwan in the Early 17<sup>th</sup> Century], 241 THE NATIONAL PALACE MUSEUM MONTHLY OF CHINESE ART 22-45 (Apr. 2003) (Taiwan) (citing 沈有容, 閩海贈言 Shen Yurong, *Ming Hai Zeng Yan* [Writings Collected on the Ming Sea]).

<sup>128</sup> 曹永和, 明鄭時期以降之臺灣, 臺灣早期歷史研究續集 TSAO YUNG-HO, *Mingzhengshiqi Yijiang Zhi Taiwan* [Taiwan before the Period of the Cheng Regime], in TAIWAN ZAOQI LISHI YANJIU XUJI [The Follow-up Collection of the Early Taiwan History Research] 78 (Linking 2000) (Taiwan).

<sup>129</sup> TSAO YUNG-HO, *supra* note 122, at 475.

Taiwan. Dutch documents, including the “Archives of the Dutch East India Company”, report that missionaries and some government officers learned local languages, such as the Siraya language; however, interpreters remained important in periodic village assemblies (*Langddagh*).<sup>130</sup> These documents also mention that dozens of languages were then in use -- including Siraya, Tacabul, Camachats (Camachatse, Chamecat, or Chamachat), Tongotovael (Torigo Tovael or Tongotaval), and Paroangh -- some of which were Romanized with missionary assistance.<sup>131</sup>

Missionaries played an important role in language interpretation for the purpose of evangelizing and dealing with administrative affairs. They studied indigenous languages and then translated Christian writings into them. Georgius Candidius, the first missionary sent to Taiwan by VOC in 1627, learned the Formosan language (新港語, Sinckan language);<sup>132</sup> he was representative of the Dutch presence in Taiwan at the time, learning local languages and then teaching locals to Romanize them.<sup>133</sup> While Pieter A. Overtwater (1646-1649) served as Taiwan’s governor, the VOC started to pursue Dutch language education in schools.<sup>134</sup> In 1657, the VOC set up a school to train indigenous bilingual teachers, some of whom became clerks

---

<sup>130</sup> 程紹剛, 荷蘭人在福爾摩莎 CHENG SHAO-GANG, DE VOC EN FORMOSA 1624-1662 [Dutch East India Company in Formosa 1624-1662] xxxiii, I& 263 (Linking 2000); 曹永和, 明鄭時期以降之臺灣 TSAO, *supra* note 128, at 80-1; 李雄揮, 臺灣歷史各時期語言政策之分析比較 Li Xiong-hui, *Taiwan Lishigeshiqi Yuyan Zhengce Zhi Fenxi Bijiao* [Analysis and Comparison of the Language Policies of Different Periods in Taiwan] (Taiwan), available at <http://203.64.42.21/giankiu/GTH/2004/LanguageRights/> (Dec. 18, 2004).

<sup>131</sup> 程紹剛, 荷蘭人在福爾摩莎 CHENG, *supra* note 130, at 263, 285, 314-5, 338, 424 & 440; 李雄揮, 臺灣歷史各時期語言政策之分析比較 Li, *supra* note 130.

<sup>132</sup> 楊彥杰, 荷據時代臺灣史 YANG YAN-JIE, HEJUSHIDAI TAIWANSI [Taiwan History of the Dutch Occupation Period] 107 (Linking 2000) (Taiwan).

<sup>133</sup> *Id.* at 112-3.

<sup>134</sup> 黃秀仍, 荷據時代臺灣原住民語言政策及教育, 載於遠東學報第二十二卷第一期 Huang Xiu-Reng, *Formosa Aboriginal Language Policy and Education Under the Dutch*, 22:1 JOURNAL OF FAR EAST COLLEGE 53 (Mar. 2005) (Taiwan).

when the Qing dynasty ruled Taiwan.<sup>135</sup> Under Dutch control, the Dutch, Han, and indigenous languages made Taiwan a multilingual society.

However, the variety of languages perplexed the orderly Dutch missionaries. With the VOC's help, the southwest indigenous peoples began to Romanize their languages; over 150 years after the VOC left Taiwan, they still used these writing skills to make contracts and keep accounts in documents called "Sinckan writings" (新港文書, *xin gang wen shu*), the last piece of which can be traced back to 1818.<sup>136</sup> When William Campbell, an English Presbyterian evangelist in Taiwan from 1871 to 1917, professed surprise that the Siraya people gave Christianity an extraordinarily warm welcome, they responded that they were offspring of the Dutch.<sup>137</sup> The Siraya people retained their Dutch books and clothing and believed that Westerners would one day return to bring back their lost languages.<sup>138</sup>

Some Dutch vocabulary is used in Taiwan to this day. Although the Taiwan Land Office registers land area using the metric system, locals still refer to the "kaa" (甲, *jia*) as the unit of measurement: one *kaa* equals approximately 9,699 square meters in Taiwan. According to Nakamura's research, one *kaa* means one *morgen*.<sup>139</sup> A *morgen* was a unit of land measurement

---

<sup>135</sup> 楊彥杰, 荷據時代臺灣史 YANG, *supra* note 132, 116-7.

<sup>136</sup> 黃秀仍, 荷據時代臺灣原住民語言政策及教育, 載於遠東學報第二十二卷第一期 Huang, *supra* note 134, at 54 (citing 王世慶, 臺灣公私藏古文書彙編, 第二輯目錄, NO.638 WANG SHI-QING, TAIWAN GONGSICANG GUWENSHU HUIBIAN DIERJI [Collection of Taiwanese Private and Public Ancient Documents vol.2], Index, no. 638 (Taiwan)).

<sup>137</sup> 林昌華, 甘為霖牧師:一位十七世紀臺灣教會史的研究者, 載於臺灣風物 Lin Chang-Hua, *Ganweling Mushi: Yiwei Shiqi Shiji Taiwan Jiaohuishi De Yanjiuzhe* [Presbyter William Campbell: A Researcher of the History of the 17th Century Taiwanese Churches], 54:1 THE TAIWAN FOLKSWAY 167-82 (Mar. 2004) (Taiwan), available at [http://www.laijohn.com/articles/Lim,CHoa/Campbell,W.htm#\\_ftn4](http://www.laijohn.com/articles/Lim,CHoa/Campbell,W.htm#_ftn4) (last visited May 5, 2008).

<sup>138</sup> *Id.* at 167-82.

<sup>139</sup> 中村孝志, 荷蘭時代臺灣史研究(上) NAKAMURA TAKASHI, HELANSHIDAI TAIWANSHI YANJIU (SHANG) [Taiwan History Studies of the Dutch Period (First)] (Wu Mi-cha et. al trans., Nantian 1997) (Taiwan).

in Germany, the Netherlands and the Dutch colonies (including those in South Africa).<sup>140</sup> A *morgen* is assumed to derive from the German and Dutch word for ‘morning’, or the land area equal to that covered by a morning's plowing.<sup>141</sup>

Although the VOC gradually found a path to deal with language barriers, the Cheng Regime (1662-1683) (Koxinga) expelled the Dutch from Taiwan to acquire a base to antagonize the Qing. The Qing Dynasty defeated the Cheng in 1683 and became the first regime in mainland China to govern Taiwan Island. As a Chinese proverb says, the Qing government made “responding to all changes with no change” (以不變應萬變) the guiding principle for language policy.<sup>142</sup> The Han Chinese brought Han languages, such as Holo and Hakka, to Taiwan. However, language barriers remained. Although Mandarin, Holo, and Hakka are rooted in the same source -- the Han language -- and Han language speakers can write with the same Chinese characters, mutual intelligibility among these language speakers is very low. A famous event of 1728 illustrated this situation. The Yongzheng Emperor (1723-1735) interviewed officers and civilians and found that he could not understand speakers from Fujian and Guangdong. He therefore ordered the construction of “*zheng yin shu yuan*” (正音書院, orthoepy schools) in the Fujian Province, which included Taiwan before 1885, to teach Mandarin.<sup>143</sup> This policy lasted less than 30 years, during which time the Qing Dynasty banned certain officers from serving in the province where they were born.<sup>144</sup> Therefore, the officers in Taiwan and the Taiwanese people could not communicate without the assistance of interpreters: it was reported that officials sent to Taiwan

---

<sup>140</sup> *Morgen*, ENCYCLOPAEDIA BRITANNICA (11th ed. 1911), available at <http://www.britannica.com/> (last visited Jun. 2008).

<sup>141</sup> *Id.*

<sup>142</sup> See 李雄揮, 臺灣歷史各時期語言政策之分析比較 Li, *supra* note 130.

<sup>143</sup> 葉寶奎, 明清官話音系 YE BAO-KUI, MINGQING GUANHUA YINXI [The Genealogy of Mandarin in the Ming and the Ching Dynasties] 6 (Xia Men Univ. Press 2001) (P.R.C.).

<sup>144</sup> 李雄揮, 臺灣歷史各時期語言政策之分析比較 Li, *supra* note 130.

by the central government spoke Peking Mandarin (北京官話, *bei jing guan hua*) and required interpreters to be understood by the locals.<sup>145</sup> This situation continued until Taiwan was ceded to Japan in 1895.

### 2.3 THE JAPANESE COLONIAL PERIOD (1895-1945)

Taiwan was ceded to Japan in 1895 after China lost the first Sino-Japanese war in 1894. The Japanese government pursued different language policies according to its ruling stages, but it did not expect a multilingual Taiwan. After the Treaty of Shimonoseki (下關條約, or *ma guan tiao yue* 馬關條約 in Mandarin) was signed in 1895, Izawa Shuōji (伊沢修二) brought his book, “Sino-Japanese Phonetic Dictionary”, (日清字音鑿, *nisshin jionkan*) when he visited Kabayama Sukenori (樺山資紀), who would later become the first Governor-General of Taiwan. After Kabayama appointed Izawa the first Director of the Department of Education (學務部長, *gakumubuchō*), Izawa brought 100 Japanese-Mandarin interpreters to Taiwan on June 17, 1895. They soon faced language obstacles since the interpreters who spoke Mandarin could not communicate with the local people.<sup>146</sup> Fortunately, Izawa, an English-speaking graduate of Harvard University, met Ba Lian De (巴連德 or 吧連德),<sup>147</sup> a person of English-Taiwanese mixed blood who received his high school education in Hong Kong.<sup>148</sup> With Ba Ren Toku’s interpretation, Izawa began to educate locals in the Japanese language using English as the

<sup>145</sup> See 王泰升, 臺灣法律史概論 WANG TAY-SHENG, TAIWAN FALUSHI GAILUN [An Introduction to the Legal History of Taiwan] 66-7 (Angle Publishing 2001) (Taiwan).

<sup>146</sup> 洪惟仁, 日據時代的臺語教育, 載於臺灣風物第四十二卷第三期 Hung Wei-Ren, *Rijushidai De Taiyu Jiaoyu* [Taiwanese Language Education in the Japanese Ruling Period], 42:3 TAIWAN FOLKSWAY 52 (1992) (Taiwan).

<sup>147</sup> ‘Ba Lian De’ is the mandarin pīnyīn of the characters, ‘巴連德’. At that time, his name might be pronounced in Holo, Japanese, or some other languages.

<sup>148</sup> See 吉野秀公, 臺灣教育史 YOSHINO HIDEKIMI, TAIWAN KYŌIKUSHI [The Educational History of Taiwan] 10-5 (1927) (Taiwan, Japan).

teaching medium rather than Mandarin.<sup>149</sup> This ‘indirect route’ was the result of the unexpected complexity of Taiwan’s lingual environment.

### 2.3.1 THE TRIPLE-TRACK PERIOD

Japanese language policies can be divided into three periods. The first was the “Triple-track Period” (1895 to 1921), divided, as the name implies, into three tracks. The first track involved teaching inlanders the vernacular languages. Izawa proposed erecting vernacular language schools (土語傳習所, *dogodenshu*□*jo*). ‘*Dogo*’ means ‘vernacular language’ in Japanese. In the beginning of Japanese rule, ‘*dogo*’ included: ‘*fukkengo*’ (福建語), which literally means the Fujian language but refers to Holo; ‘*kandongo*’ (廣東語), which literally means the Guangdong language but refers to Hakka; and ‘*bango*’ (蕃語), or barbarous languages, which refers to indigenous languages.<sup>150</sup> Vernacular languages were also taught in workshops and training courses held for government officials, teachers, police, and military police from the Japanese homeland.<sup>151</sup> In this way, the Japanese colonial government held a ‘language-as-means’ orientation to deal with the multilingual problems. Language was considered a communication

<sup>149</sup> See 吉野秀公, 臺灣教育史 YOSHINO, *supra* note 148, at 10-5.

<sup>150</sup> 臺灣總督府警務局, 臺灣總督府警察沿革誌 TAIWAN SŌTOKUFU KEIMUKYOKU [The Police Affairs Bureau of the Government-General of Taiwan], TAIWAN SŌTOKUFU KEISATSU ENKAKUSHI [A History of the Police of the Government-General of Taiwan] 913 (Nan Tian 1995) (1934) (Taiwan, Japan).

<sup>151</sup> 県立語学校創設方法 KEIRITSU GOGAKKO SŌSETSU HŌHŌ [Regulation on the Establishment of County Language Schools] (1895), 明治 29 年府令 38 号 MEIJI NIJU□NANANEN FUREI SANJU□HACHIGO [No. 38 Order of the Governor-General Office of the 29<sup>th</sup> Year of Meiji] (1896), and 明治 30 年府令 28 號 MEIJI SANJU□NEN FUREI NIJU□HACHIGO [No. 28 Order of the Governor-General Office of the 30<sup>th</sup> Year of Meiji] (1897). For further information and analyses, 臺灣教育会, 臺灣教育沿革誌 TAIWAN KYŌIKUKAI [TAIWAN EDUCATION ASSOCIATION], TAIWAN KYŌIKU ENKAKUSHI [The Education History of Taiwan] 6-12, 155-88, 196-202, 540-78, 706-19 (Nan Tian 1995) (1939) (Taiwan, Japan).

tool. Vernacular language was useful for administering locals and smoothing the transition to Japanese language acquisition.<sup>152</sup>

The second track of the Triple-track Period was acquiring and promoting Japanese. In 1895, Izawa Shuōji set up a national language school, stating:

“It is necessary to unite people to build a state, and it is necessary to move the hearts to unite the people. For the purpose of moving people’s hearts, at first, language, which connects the minds with each other, is definitely necessary. Taiwan Island is on the far south frontier of the old China. The dialects there are quite dissimilar from the northern dialects. It was proven by the military experience that although the military interpreters were proficient in Mandarin, they could not avail. However, only a few inlanders can understand the vernacular languages, and nearly no local people can understand the national language. Under the circumstances, it is really difficult to administrate and to civilize (the Taiwanese people). Therefore, it is necessary to set up this national language school to teach the national language to facilitate our administration. Furthermore, it can lay the basis of further civilization.”<sup>153</sup>

---

<sup>152</sup> See Richard Ruiz, *Orientations in Language Planning*, in LANGUAGE DIVERSITY: PROBLEM OR RESOURCE 4-5 (S.L. McKay & S.C. Wong eds., Newbury House Publisher 1988) (1984) (citing Valter Tauli, *The Theory of Language Planning*, in ADVANCES IN LANGUAGE PLANNING 51 (Joshua A. Fishman ed., The Hague: Mouton 1974)).

<sup>153</sup> 臺灣教育會, 臺灣教育沿革誌 TAIWAN KYŌIKUKAI, *supra* note 151, at 164-6.

Izawa referred to Japanese as the “national language” that needed to move the people in order to build a state. He thus indicated that the process of nation-building took place through language acquisition. Izawa also noted that “to teach the national language to facilitate our administration...lay the basis of further civilization.” He hereby indicated that the communication function of language still held an important position. If we apply Richard Ruiz’s analysis, the Japanese colonial government applied the dual orientation of ‘language-as-means’ (i.e., nation-building) and ‘language-as-sentimental-attachment’ (i.e., communicating).<sup>154</sup>

Unlike the British colonial policy, which did not intend to assimilate every individual in its colonies, the Japanese government adopted a French assimilative stance. The French and Japanese both sought to make fellow citizens of their colonial subjects: ‘the Greater France of one hundred million Frenchmen’ and ‘the imperial subjects of Great Japan’.<sup>155</sup> This represented a ‘language-as-tool-of-assimilation’ orientation. Gotō Shinpei (後藤新平, 1857-1929), the Minister of Civil Affairs, declared in 1903:

“The rationales of regarding “popularizing the national language” as the basis of education are as follows.....it is a necessary means to assimilation. In order to make the thinking, folkways, and the customs of the Taiwanese people as unified as those of the

---

<sup>154</sup> See Ruiz, *supra* note 152, at 4-5 (citing Valter Tauli, *The Theory of Language Planning*, in *ADVANCES IN LANGUAGE PLANNING* 51 (Joshua A. Fishman ed., The Hague: Mouton 1974) and Herbert C. Kelman, *The Problem-solving Workshop in Conflict Resolution*, in *COMMUNICATION IN INTERNATIONAL POLITICS* 199-200 (Richard Merrit ed., Univ. of Illinois Press 1972)).

<sup>155</sup> LEO T.S. CHING, *BECOMING JAPANESE- COLONIAL TAIWAN AND THE POLITICS OF IDENTITY FORMATION* 37-8 (Univ. of Cali. Press 2001).

“mainlanders’, popularizing the national language is the shortcut.”<sup>156</sup>

Mochiji Rokusaburō (持地六三郎, 1867-1923), the Minister of Education, declared in 1904 that:

“Assimilation, which means assimilating the people, is the unchangeable guideline from the beginning of the rule of Taiwan till now. The radical goal of being proficient in the national language is to build the characteristics of the state’s people.”<sup>157</sup>

Gotō and Mochiji thus reflected Izawa’s nationalist ideology of education. The political desire for assimilation laid the foundation for Japanese language education: a “real Japanese national” not only had Japanese nationality, but also spoke Japanese, the national language.

The third track of the Triple-track Period was private Chinese schools (書房, *shu fang*). Because of financial constraints in the early ruling period, the Japanese government could not provide modern school education on a large scale for the Taiwanese people. The Japanese school system still needed to compete with private Chinese schools. Teaching Chinese was not banned in the Japanese ruling period, at least before 1937. The Imperial Examination System (科舉, *keju*) had been held in Taiwan for two centuries. Scholars hoped to pass the Imperial Exam to start their political careers.

---

<sup>156</sup> 吉野秀公, 臺灣教育史 YOSHINO, *supra* note 148, at 123-6.

<sup>157</sup> 佐藤源治, 臺灣教育の進展 SATŌ GENJI, TAIWAN KYŌIKUSHI NO SHINTEN [The Development of Education in Taiwan] 72 (Taiwan Shubban Bunka Kabushikigaisha 1943) (Taiwan, Japan).

In the early Japanese ruling period, people had little confidence in the modern school system. Scholars who no longer saw the need to take the Imperial Exam began teaching Chinese, and private Chinese schools exceeded Japanese public schools in their numbers of students and school quality.<sup>158</sup> Furthermore, scholars who wanted to take the Imperial Exams did so in the Fujian Province of China. In 1897, the provincial governor of the Fujian Province (福建巡撫, *fu jian xun fu*) and the Ministry of Rites (禮部, *li bu*) reported that

“All the Taiwanese scholars may return to take the provincial exams (鄉試, *xiang shi*) and the metropolitan examinations (會試, *hui shi*). Their seats belong to of the *ji* (至) group in examination venues, and the number of the first-degree scholars (舉人, *ju ren*) and the imperial scholars (進士, *jin shi*) are guaranteed.”<sup>159</sup>

After China stopped offering the Imperial Exam in 1906, the number of private Chinese schools in Taiwan dropped dramatically. By 1921, only 6,962 students enrolled in 197 private Chinese schools, while 173,795 students enrolled in 531 public schools.<sup>160</sup> Enrollment rates in public schools eventually reached 27.22%,<sup>161</sup> and private Chinese schools gradually became

---

<sup>158</sup> 吳文星, 日據時代臺灣書房之研究, 載於思與言第 16 卷第 3 期 Wu Wen-Hsing, *Rijushidai Taiwan Shufang Zhi Yanjiu* [Taiwan Private Chinese Schools in the Japanese Colonial Period], 16:3 THOUGHT AND WORDS 264-5, 284 (Sept. 1978) (Taiwan).

<sup>159</sup> 張博宇, 臺灣地區國語運動史料 ZHANG BO-YU, TAIWAN DIQU GUOYUYUNDONG SHILIAO [The Historical Materials of the National Language Movement in Taiwan District] 13 (Taiwan Shangwu Yinshuguan, 1974) (Taiwan).

<sup>160</sup> 吳文星, 日據時代臺灣書房之研究, 載於思與言第 16 卷第 3 期 Wu, *supra* note 158, at 284-5.

<sup>161</sup> 臺灣教育研究會, 臺灣學事年鑑(昭和十五年) TAIWAN KYŌIKU KENKYU KAI [Taiwan Education Research Association], TAIWAN GAKUJI NENKAN (SHŌWA JU GO NEN) [Taiwan Education Yearbook: the 15th Year of Shōwa] 79 (1940) (Taiwan).

subsidiary Chinese education providers for those who wanted their children to study the Chinese language after regular public school hours.<sup>162</sup>

### 2.3.2 INLAND EXTENSION PERIOD

The second stage of Japanese language policies, the Inland Extension Period (内地延長, *naichienchō*) (1921-1937), implied that Taiwan became an extension of the Japanese homeland rather than a mere colony. ‘Inland extension’ represented not only the extension of homeland systems, but also that of homeland nationality, i.e., becoming ‘real’ Japanese. In 1922, the Japanese central government declared the ‘Taiwan Education Order’ (臺灣教育令, *Taiwan kyōikurei*).<sup>163</sup> This order decreed that “The primary education of those people who are habitual national language speakers is in accordance with the Order of Elementary Schools (小學校令, *shōgakkōrei*) (Article 2), and the primary education of those people who are not habitual national language speakers is provided by Common Schools (公學校, *kōgakkō*) (Article 3).”<sup>164</sup>

Taiwanese primary schools were thus divided into two groups: elementary schools (小學校, *shōgakkō*) and common schools (公學校, *kōgakkō*). Prior to the 1922 Taiwan Education Order, islanders (本島人, *hondōjin*) went to common schools, and inlanders (内地人, *naichijin*) to elementary schools; ‘islanders’ referred to those whose domiciles of origin (本籍, *honseki*) were in Taiwan, while ‘inlanders’ referred to those whose domiciles of origin were in Japan. From a contemporary prospective, islanders can be considered Taiwanese and inlanders Japanese.

<sup>162</sup> See 許佩賢, 臺灣近代學校的誕生-日本時代初等教育體系的成立(1895-1911) Hsu Pei-Hsien, The Establishment of Taiwan “Modern School” in Japanese Period (1895-1945) 196-207 (Jan. 2001) (unpublished Ph.D. dissertation, Nat’l Taiwan Univ.) (on file with Main Library, Nat’l Taiwan Univ.) (Taiwan).

<sup>163</sup> 臺灣教育令 (大正 11 年勅令第 20 号) TAIWAN KYŌIKUREI [Order of Taiwan Education], No. 20 Imperial Order of the 11<sup>th</sup> Year of Daishō (1922).

<sup>164</sup> The original text is “第二条: 国語ヲ常用スル者ノ初等教育ハ小學校令ニ依ル; 第三条: 国語ヲ常用セサル者ニ初等教育ヲ為ス學校ハ公學校トス”.

In general, elementary schools were superior to common schools in several aspects, including the quality of their teachers and the pupil-teacher ratios. For example, in 1904 a pupil in common school accounted for 15 to 16 Japanese yen of the total education budget, while an elementary pupil enjoyed 27 Japanese yen.<sup>165</sup> The 1922 pupil-teacher ratio was 39.6:1 in common schools but 29.5:1 in elementary schools.<sup>166</sup> Pupils had more educational resources in elementary schools, and the national language advantage helped pupils prepare better for high school entrance exams. Elementary schools were thus the preferred option for parents who wanted their children to pursue higher education.

The 1922 Taiwan Education Order changed the requirements for entering elementary schools. National language proficiency -- rather than domicile of origin, which was actually ethnicity -- became the prerequisite for receiving better educational resources. In theory, the order established a milestone of ‘inlanders-Taiwanese coeducation’ (内台共学, *naitaikyōgaku*), and Taiwanese were considered equal to homeland Japanese. In fact, however, national language (Japanese) proficiency became the standard to determine elementary school eligibility to the clear advantage of ethnic Japanese. The statutory standard of national language proficiency in fact created a strong link between language and character: the character of the Japanese was projected on the national language. The Privy Council (枢密院, *sūmitsuin*), the emperor’s highest advisory committee under the Constitution of the Empire of Japan, stated in regard to the Taiwan Education Order that “In such an important regulation, to set up a provision of

---

<sup>165</sup> 陳培豐, 同化の同床異夢- 日治時期臺灣的語言政策、近代化與認同 CHEN PEI-FENG, THE DIFFERENT INTENTIONS BEHIND THE SEMBLANCE OF “DOUKA”- THE LANGUAGE POLICY, MODERNIZATION AND IDENTITY IN TAIWAN DURING THE JAPAN RULING PERIOD 145 (Rye Field 2006) (Taiwan) (citing 持地六三郎, 臺灣ニ於ケル教育設施ノ要領覚書, 後藤新平文書 7-87-2 (1904)).

<sup>166</sup> PATRICIA E. TSURUMI, JAPANESE COLONIAL EDUCATION IN TAIWAN (1895-1945) 243-4 (Harvard Univ. Press 1977). In 1922 there were 195,783 pupils (160,409 boys & 35,374 girls) and 4,942 teachers (4,212 males & 730 females) in common schools. On the other hand, elementary schools had 21,801 pupils (11,225 boys and 10,576 girls) and 737 teachers.

distinction due to races does not comply with the gist that equation serves as the core of our ruling policy... therefore, ‘inlanders’ are replaced with ‘habitual national language speakers’ (国語常用者, *gokugojōyōsha*) and ‘Korean’ or ‘Taiwanese’ are replaced with ‘non-habitual national language speakers’ (非国語常用者, *higokugojōyōsha*) in this revision.”<sup>167</sup>

While the colonial government thought a national language was the best way to assimilate Taiwanese, the Taiwanese considered the Japanese language to be a means of modernization, or a ladder to the modern world.<sup>168</sup> Thus, promoting the national language created a ‘win-win’ situation. During the Inland Extension Period, the Japanese proficiency rates in Taiwan accelerated at full speed by various measures, including speech competitions, workshops, short-term schools, radio programs, honor certificates, and a series of promotional projects.<sup>169</sup> By 1936, about 1,641,000 Taiwanese people were fluent in Japanese, which accounted for 32.9% of the total population.<sup>170</sup>

### 2.3.3 IMPERIAL SUBJECT PERIOD

After the Second Sino-Japanese War started in 1937, language policy in Taiwan entered its third stage, the Imperial Subject Period (皇民化, *kōminka*). This period was characterized by sweeping reforms. At the onset of Japanese rule, the Taiwanese were still considered to be Japanese nationals with Chinese blood. Molding pure, loyal, and mobilizable imperial subjects

<sup>167</sup> 陳培豐, 同化の同床異夢- 日治時期臺灣的語言政策、近代化與認同 CHEN, *supra* note 165, at 289 (citing 朝鮮教育令臺灣教育令二閣スル件, 樞密院會議筆記 (Jan. 25, 1922)).

<sup>168</sup> *See Id.* at 177-87.

<sup>169</sup> For further detailed contents of the measures, *see Id.* at 386-89.

<sup>170</sup> *Id.* at 395 (citing 中越栄二, 臺灣の社会教育 65-7 (臺灣の社会教育刊行所 1936)).

from those in-between nationals became the core of the Japanese language policy.<sup>171</sup> Language acquisition measures went to two extremes. The Japanese language was not only promoted, but its purity and accuracy were demanded.<sup>172</sup> The Chinese language, variously described as ‘Chinese awareness’ and an ‘impediment to national spirit’, suffered; Chinese literature classes were dropped from school curricula, and Chinese newspaper editions were cancelled.<sup>173</sup> In 1943, Taiwan began to implement its full-scale compulsory education according to the 1941 National School Order (国民学校令, *kokumingakkorei*).<sup>174</sup> By the end of Japanese rule, the enrollment rate of Taiwanese pupils was 71.6%,<sup>175</sup> and 80% of Taiwanese people were recognized by the colonial government as eligible national language (Japanese) speakers.<sup>176</sup>

The Japanese language policy created a diglossic society in which Japanese was the high language and others were considered low. Taiwanese intelligentsia used Japanese to discuss Dostoevsky’s works or to write diaries, but Holo or Hakka was used for the trivialities of daily life.<sup>177</sup> In 1945, a Japanese journalist reported overhearing a Taiwanese woman lament that young people could not use accurate Taiwanese (Holo), which had the ‘vulgar feeling of vernacular language’ when they spoke it.<sup>178</sup>

---

<sup>171</sup> See 驚巢敦哉, 臺灣保甲皇民化讀本 WASHIZU ATSUYA, TAIWAN HOKŌKŌMINKA TOKUHON [Textbook of Taiwan Hokō System (an administrative system organized on the basis of households) and the Movement of Imperial Subjective] 232-4 (Taiwan Keisatsu Kyōkai [Taiwan Policemen Association] 1941) (Taiwan, Japan).

<sup>172</sup> 陳培豐, 同化の同床異夢- 日治時期臺灣的語言政策、近代化與認同 CHEN, *supra* note 165, at 407-13.

<sup>173</sup> 臺灣教育會, 臺灣教育沿革誌 TAIWAN KYŌIKUKAI, *supra* note 151, at 388.

<sup>174</sup> 国民学校令(昭和 16 年勅令第 148 号) KOKUMINGAKKOREI [National School Order], No. 148 Imperial Order of the 16<sup>th</sup> Year of Shōwa (1941) (Taiwan, Japan).

<sup>175</sup> 臺灣總督府, 昭和二十年臺灣統治概要 TAIWAN SŌTOKUFU [Taiwan Governor-General Office], SHŌWA NIJU-NEN TAIWAN TŌJIGAIYŌ [Summary of the Rule of Taiwan in the 20<sup>th</sup> Year of Shōwa] 52 (1945) (Taiwan, Japan).

<sup>176</sup> 周婉窈, 臺灣人第一次的「國語」經驗, 載於海行兮的年代 Chou, *supra* note 112, at 89.

<sup>177</sup> *Id.* at 120-2; 吳新榮, 吳新榮全集六- 吳新榮日記(戰前) WU HSIN-RONG, WU HSIN-RONG QUANJI LIU- WU HSIN-RONG RIJI (ZHANQIAN) [Collection of Writings (6)- Diary (Prewar)] 59 (Liang-Ze Zhang ed. 1981) (Taiwan).

<sup>178</sup> Chou, *supra* note 112, at 123 (citing 池田敏雄, 戰敗日記 IKEDA TOSHIO, SENBAI NIKKI [Diary of Defeat] 80 (1982)).

From a mild start to a harsh end, the Japanese language policy dramatically expanded the Japanese language population in Taiwan. Japanese efforts at identity-building melded closely with Taiwanese aspirations for modernization. The Japanese language experience installed a golden rule in Taiwanese minds: a modern state has a national language, and a national should speak the national language. Taiwanese people thus assumed the existence of a national language and gave the next one (viz., Mandarin) a warm welcome.

## **2.4 THE CHINESE NATIONALIST PARTY ADMINISTRATION PERIOD (1945-2000)**

The famous atomic bombings of Hiroshima and Nagasaki ended WWII in 1945 and, with it, the Empire of Japan. MacArthur's General Order No. 1 declared that

“[t]he senior Japanese commanders and all ground, sea, air and auxiliary forces within China (excluding Manchuria), Formosa (author's annotation: Taiwan) and French Indo-China north of 16 north latitude (author's annotation: North Vietnam) shall surrender to Generalissimo Chiang Kai-shek.”<sup>179</sup>

The Republic of China (中華民國, *zhonghuaminguo*, ROC), controlled by the Chinese Nationalist Party (國民黨, *Kuomintang* or KMT), began its military occupation of Taiwan. Although the legal status of Taiwan has been contested for more than half a century, the government of the Republic of China has enjoyed the de facto rule of Taiwan since 1945.

---

<sup>179</sup> Imperial General Headquarters, Supreme Commander for the Allied Powers General Order No.1, J.C.S. 1467/2 (Sept. 2, 1945), *approved by the President of the United States*, Aug. 17, 1945, CONGRESSIONAL RECORD (Sept. 6, 1945).

Due to several convenient circumstances, the ROC pursued its own national language movement in Taiwan. First, the concept of ‘state-national/language-national’ had been rooted in Taiwanese consciousness during Japanese rule. The ROC’s arrival reawakened the ‘fever of national language:<sup>180</sup> most Taiwanese were ethnic Chinese Han and therefore expected equal treatment by the Chinese upon learning *another* national language. (Although national language proficiency was improved during Japanese rule, racial/ethnic differences persisted. As Wu Cho-Liu (吳濁流) wrote in his novel, “She is Japanese, and I am Taiwanese. It is the fact that no one is able to change.”<sup>181</sup>) The Taiwanese people transformed this kind of sense to the victorious ROC and viewed it as a more advanced, capable country.

Second, the Japanese colonial government left a valuable and substantial educational infrastructure spread across Taiwan: 1,099 primary schools, 46 high schools, 117 vocational schools, 5 normal schools, 5 professional schools, 1 university and 1 blind/mute school covered an island about one-sixth the size of Washington State.<sup>182</sup>

Third, the ROC government adopted as their teaching medium the ‘*zhu yin fu hao*’ (注音符號; phonetic symbol) rather than the Romanized pinyin system. The Central Committee (中央執行委員會, *zhongyang zhixing weiyuanhui*) of the Nationalist Party -- the substantial ruling organ according to the 1928 Program of Political Tutelage (訓政綱領, *xunzheng gangling*) and the 1929 Organic Law of the National Government (國民政府組織法, *guominzhengfu zuzhifa*) -- made a resolution that

---

<sup>180</sup> For further details, see 許雪姬, 臺灣光復初期的語文問題, 載於思與言 29 卷 4 期 Hsu Hsueh-Chi, *Taiwan Guangfu Chuqi De Yuwenwenti* [Language Problems in the Early Period of Taiwan Restoration], 29:4 THOUGHT AND WORDS 157-69 (Dec. 1991) (Taiwan).

<sup>181</sup> CHING, *supra* note 155, at 264.

<sup>182</sup> 臺灣總督府, 昭和二十年臺灣統治概要 TAIWAN SŌTOKUFU, *supra* note 175, at 51-2.

“..... the Japanese kana auxiliary to the characters popularly became the best instrument. The effect of kana was greater than that of those European or American phonograms..... The phonetic symbols declared by the Ministry of Education followed such approach and were even better than kana because of the organized and unified contents.”<sup>183</sup>

Fourth, the Japanese and Mandarin languages shared a common culture legacy: Chinese characters. Both Chinese characters (漢字, *kanji* in Japanese and *hanzi* in Mandarin) and the method of teaching phonetic symbols (仮名, *kana* in Japanese and 注音符號, *zhu yin fu hao* in Mandarin) were the common characteristics of Japanese and Mandarin. Based on their Japanese ruling experiences, the Taiwanese found it natural to attend existing institutions, learn phonetic symbols first, write characters, and acquire *the* national language.

It is understandable that Chinese nationalists would regard Mandarin proficiency as an element of Chinese nationalism and view antagonistically the speaking of Japanese. Although Taiwan was ruled by a different regime, the idea of “regarding language as an identity instrument” still dominated. Before the KMT governed Taiwan, its founder, Sun Wen (孫文) (1866-1925), said in 1924,

“The causes of building a nation contain natural forces..... The third natural force is language. If outlanders acquire our language, it is easy for them to be assimilated by us. As time goes by, they

---

<sup>183</sup> The 88th Executive Meeting of Central Committee of the Chinese Nationalist Party (Apr. 21, 1930) (R.O.C.). 方師鐸, 五十年來中國國語運動史 FANG SHI-DUO, WUSHINIANLAI ZHONGGUO GUOYU YUNDONGSHI [The History of the Chinese National Language Movement for 50 Years] 59-61 (Mandarin Daily News 1965) (Taiwan).

will be assimilated into one nation, and vice versa, if we learn foreign languages, it is easy for us to be assimilated by the foreigners. If people have the same blood and the same language, it is easier to assimilate. Therefore, language is also a powerful force with which to build a nation in this world.”<sup>184</sup>

Speaking Mandarin represented the force of building a Chinese nation, while speaking Japanese meant giving voice to Japan, the Chinese enemy for the past decades.

According to the 1945 Taiwan Takeover Program (臺灣接管計畫綱要, *Taiwan jieguanjihua gangyao*), the ROC language policy aimed to promote the national language (Mandarin) and to ban Japanese.<sup>185</sup> As mentioned, the Taiwanese held out hope for equal treatment and advancement. In practice, however, the promotion of Mandarin became an excuse for nepotism as local officials were replaced by Mandarin speakers from mainland China<sup>186</sup> who, in some cases, could not even speak standard Mandarin. For example, Lan De-He (藍德和), the principal of Fu Gang Elementary School (富崗國小) in Taitung County, was fired for insufficient Mandarin proficiency, but his successor, Deng Yao-Zu (鄧耀祖) spoke Hunan (湖南) rather than standard Mandarin.<sup>187</sup>

The Japanese language ban greatly disadvantaged the Taiwanese because Japanese remained an important medium for them to acquire information and knowledge; in contrast, the

---

<sup>184</sup> 孫文, 民族主義第一講 SUN WEN, MINZUZHUYI DIYIJIANG [The First Speech of Nationalism] (Jan. 27, 1924) (R.O.C.).

<sup>185</sup> 李西勤, 臺灣光復初期推行國語運動情形, 載於臺灣文獻 46 卷 3 期 Li Xiqin, *Taiwan Guangfu Chuqi Tuixing Guoyuyundong Qingxing* [The Situation of the National Language Promotion Movement in the Early Period of Taiwan Restoration], 46:3 TAIWAN WENXIAN 177 (1995) (Taiwan).

<sup>186</sup> 李雄揮, 臺灣歷史各時期語言政策之分析比較 Li, *supra* note 130.

<sup>187</sup> *Id.*

ROC government considered it a ‘servile disposition’ (奴性, *nuxin*) whose speakers were ‘enslaved’ (奴化, *nuhua*).<sup>188</sup> By the second year of ROC rule (1946), the Japanese language was banned in movies, books, records, newspapers, and schools.<sup>189</sup> Those who received their education during Japanese rule suddenly became ‘statutory illiterates’.

Language-as-an-identity instrument and Chinese nationalism rationales could not fully explain some instances of discrimination and double standards. Since the late Qing dynasty, many mainland Chinese scholars studied abroad in Japan. Speaking Japanese reflected a well-educated Chinese person who could absorb European modern knowledge through Japanese translations. However, Taiwanese who spoke Japanese were considered to be ‘enslaved people’.<sup>190</sup> Chinese occupiers said that Taiwanese who spoke the national language (Mandarin) with a Taiwanese accent were speaking the ‘Taiwanese national language’ (臺灣國語, *Taiwan guoyu*), a derogatory term that often appeared in jokes; however, no such insults were accorded to those who spoke Mandarin with other provincial accents because their loyalty and identity is presumably undoubtful.<sup>191</sup> Speaking Japanese meant one was unpatriotic, and speaking local languages showed one to be incapable for public service. Fair treatment and modernization were extremely constrained. Based on this colonialist attitude,<sup>192</sup> language policy became a major cause of the “228 incident”.<sup>193</sup>

<sup>188</sup> 許雪姬, 臺灣光復初期的語文問題, 載於思與言 29 卷 4 期 Hsu, *supra* note 180, at 156-7, 173; 李雄揮, 臺灣歷史各時期語言政策之分析比較 Li, *supra* note 130.

<sup>189</sup> 臺灣省行政長官公署, 臺灣省行政長官公署施政報告-臺灣省參議會第一屆第二次大會 TAIWAN PROVINCIAL ADMINISTRATIVE EXECUTIVE OFFICE, TAIWANSHENG XINGZHENGZHANGGUAN GONGSHU SHIZHENG BAOGAO- TAIWANSHENG CANYIHUI DIYIJIE DIERCI DAHUI [Administration Report of the Taiwan Administrative Office- The 2<sup>nd</sup> Meeting, 1st Term, Senate of Taiwan Province] 278-281 (Taipei, 1946) (Taiwan).

<sup>190</sup> See 李雄揮, 臺灣歷史各時期語言政策之分析比較 Li, *supra* note 130.

<sup>191</sup> See 周婉窈, 臺灣人第一次的「國語」經驗, 載於海行兮的年代 Chou, *supra* note 112, at 116-7.

<sup>192</sup> See 周婉窈, 臺灣人第一次的「國語」經驗, 載於海行兮的年代 Chou, *supra* note 112, at 117.

<sup>193</sup> See 許雪姬, 臺灣光復初期的語文問題, 載於思與言 29 卷 4 期 Hsu, *supra* note 180, at 182-4.

The 228 (for February 28, the day the governmental massacre began) incident resulted from the confiscation of black market cigarettes on February 27, 1947 and expanded into an anti-government movement. The incident ended in tragedy by military suppression, with thousands of Taiwanese people dying or disappearing. The 228 incident raised the curtain on the White Terror Period (白色恐怖, *bai se kong bu*), when language policy became much more severe.

It took decades to recover literary creativity after this language crackdown. It was only after the 1960s that a new generation of local writers began to emerge.<sup>194</sup> People of the “Japanese generation” had to learn Mandarin to survive under the new ruling system, which they were forced to join. Their whole generation never transitioned to national language fluency. Sadly, they became victims of strict language policies and suffered from obvious or subtle discrimination.

After Chiang Kai-shek’s Nationalists lost the Chinese civil war and retreated to Taiwan in 1949, the ROC lost most of its territory and retreated to Taiwan Island. Upon Sun’s death, Chiang Kai-shek (1887-1975) appointed himself Sun’s successor; he ostensibly followed Sun’s theories and supported Sun’s language policy. Chiang noted in 1973 that

“Language is an important instrument for expediting the formation of the national spirit. With the advantages of ‘writing the same characters’, we can advocate ‘speaking the same language’. Furthermore, we can achieve the effect of ‘unifying the minds’ in

---

<sup>194</sup> See 周婉窈, 臺灣人第一次的「國語」經驗, 載於海行兮的年代 Chou, *supra* note 112, at 116.

order to suppress sectionalism and to facilitate the unification of our country.”<sup>195</sup>

To justify ruling Taiwan with the few who came with the KMT from mainland China, and to preclude the rise of “local identity”, other local languages, especially Holo, were suppressed under the Mandarin Only Policy (獨尊國語, *du zun guo yu*).

Between 1976 and 1985, the national language movement reached its peak. The language policy can be summarized by Legislator Mu Chao (穆超), a KMT representative from mainland China, as follows:

“The problems of dialects..... will gradually vanish. We do not need to worry, nor do we feel regret..... dialects are underdeveloped languages because they have speech sounds without words. There is no room for it in place of refinement.”<sup>196</sup>

Mu Chao also mentioned that

“Speaking the national language and writing fine words in the national language are a basic condition of being a Chinese..... Nowadays, the Taiwanese compatriots, who do not understand the national language, should learn the national language because a Chinese should speak the national language. People who speak the

---

<sup>195</sup> 蔣介石，對中國語文學會成立二十年大會訓詞，載於蔣總統集 Chiang Kai-Shek, *Due Zhongkuo yuwenxuehui Chengli Ershinian Dahui Xunci* [Address on the 20<sup>th</sup> Anniversary of the Chinese Language Society] (Oct. 21, 1973), in JIANGZONGTONG JI [Corpora of President Chiang] 3236 (Xiaoyi Qin et al. ed., Zhonghua Dadian Bianyinhui, 4<sup>th</sup> ed. 1974) (Taiwan).

<sup>196</sup> 李雄揮，臺灣歷史各時期語言政策之分析比較 Li, *supra* note 130 (citing 立法院公報 64 卷 93 期 64:93 LIFAYUAN GONGBAO [Gazette of the Legislative Yuan] 13 (Nov. 1975)).

national language do not need to learn the dialects.....the Taiwanese compatriots speak Min-nan yu (閩南語, Holo language) and take a relatively small part of the makeup of the population of the whole mainland China. Furthermore, Min-nan yu is an underdeveloped dialect, so we should not lament.”<sup>197</sup>

“All vernacular dramas are behind the times and vulgar... every dialect is an ignorant and backward language.”<sup>198</sup>

His statement represents the government’s view. Vernacular and other foreign languages (e.g., Japanese) were called ‘convulsions’ in the 1971 “Enforcement Plan in Pursuance of the National Language in Taiwan Province” (original text: 方言外語甚熾，亟應予以糾正),<sup>199</sup> and many restrictions were imposed by the government.<sup>200</sup> For instance, bibles written in Romanized local languages were confiscated.<sup>201</sup> Officials and teachers were required to speak Mandarin at home even though implementation could not be monitored.<sup>202</sup> Speaking the national language was required at public events.<sup>203</sup> The “Radio and Television Act and the Enforcement Regulation of the Radio and Television Act” decreed that

<sup>197</sup> 李雄揮，臺灣歷史各時期語言政策之分析比較 Li, *supra* note 130 (citing 立法院公報 64 卷 93 期 Statement of Mu Cao, 64:93 LIFAYUAN GONGBAO [Gazette of the Legislative Yuan] 13-4 (Nov. 1975).

<sup>198</sup> 立法院公報 59 卷 56 期 Statement of Mu Cao, 59:56 LIFAYUAN GONGBAO [Gazette of the Legislative Yuan] 15-6 (Jul 25, 1970).

<sup>199</sup> 臺灣省政府(六〇)府教語字第一一二九七五號令(1971) Taiwan Province Government Order (60) Fujiaoyu Zi No.112975 (Jul. 7, 1971) (Taiwan).

<sup>200</sup> For detailed information about language legislation history from 1945 to 1988, please see Appendix 2.

<sup>201</sup> 臺灣省警務處(四八)二二〇府警行字第一〇四七一號(1959) Department of Police, Taiwan Province Notice (48) 220 Fujingxing Zi No.10471 (Feb. 20, 1959) (Taiwan).

<sup>202</sup> 臺灣省政府(五三)九一一府教國字第六〇五九二號(1964) Government of Taiwan Province Notice (53) 911 Fujiaoguo Zi No.60592 (Sept. 11, 1964) (Taiwan).

<sup>203</sup> 教育部臺(六四)社字第二〇〇五四號(1975) Ministry of Education Order Tai (64) She Zi No. 20054 (Aug. 7, 1975)(Taiwan).

“More than 55% of radio programs and 70% of TV programs shall be broadcasted in the national language. Programs in vernacular languages shall be reduced year by year.”<sup>204</sup>

Many people were fined or punished for speaking vernacular languages in school during the Mandarin Only period *without* explicit statutory rules. In 1985, the Ministry of Education even proposed the Language Act Draft (never enforced) that imposed warnings or fines on groups of three or more people not speaking the national language.<sup>205</sup>

The language policy was maintained by Chiang Kai-Shek’s son, Chiang Ching-Kuo (蔣經國). After Chiang Ching-Kuo’s demise, Taiwan started large-scale political reforms. On April 30, 1991, President Lee Teng-Hui proclaimed that “The termination of the Period of Communist Rebellion” (終止動員戡亂時期, *zhong zhi dong yuan kan luan shi qi*) goes into effect on May 1, 1991.” The Proclamation officially confirmed that mainland China and Taiwan were ruled by two different political entities; it also implied that the government of the Republic of China in Taiwan relinquished the claim to be the exclusive legitimate representative of China. Therefore, relevant political and social reforms could focus on the territory effectively ruled by the ROC government. This included Taipei municipal city, Kaohsiung municipal City, Taiwan Province, and a small part of the Fujian Province. Geographically, this territory includes Taiwan Island, the Pescadores, Kinmen Islands, Matzu Islands, Pratas Islands (Dongsha), and Taiping Island (disputed with several Southeast Asian countries).

---

<sup>204</sup> 廣播電視法第 20 條及廣播電視法施行細則第 19 條(1976) GUANGBO DIANSHI FA [Radio and Television Act] art. 20 (Jan. 8, 1976)& Guangbo Dianshi Fa Shixingxize [Enforcement Regulation of the Radio and Television Act] art. 19 (Jan. 8, 1976).

<sup>205</sup> 語文法草案 The Ministry of Education, Yuwenfa Caoan [Language Act Draft] (Oct., 1985) (Taiwan). See 洪固, 臺灣地區的方言與語言政策, 載於東師語文學刊 Hong Gu, *Taiwan Diqu De Fangyan Yu Yuyan Zhengce* [Dialects and Language Policies in Taiwan District], 9 TONGSHI YUWEN XUEKAN 83-4 (Jun. 1996) (Taiwan).

As conditions changed, the legitimacy of “Reconquering the Mainland” and “Recovering China” were strongly questioned.<sup>206</sup> The desire of the internal culture, language preservation, and the need to take countermeasures against external political stress joined together to generate the relevant reforms. The 1992 Additional Articles of Constitution of the ROC first proclaimed that the state should promote culture, social welfare, and the economic development of indigenous people.<sup>207</sup> In 1997, the Additional Articles of Constitution of the ROC were amended to state that

“The State affirms cultural pluralism and shall actively preserve and foster the development of aboriginal languages and cultures.”<sup>208</sup>

Studies show that language attitudes and language varieties can be related to social and cultural identity, to power and control, to notions of prestige and solidarity, and our language attitudes are influenced by conventional stereotypes of language forms and their speakers.<sup>209</sup> Robert Cheng reviewed the Mandarin Only policy in 1979; he maintained that the main side effects included incalculable advantages to Mandarin speakers and extreme disadvantages to the Southern Min (Holo) and Hakka speakers in almost all aspects of life, economic, political, social, and educational.<sup>210</sup> Language and accent are often used to judge a person’s background and status. Unless people learn a second language at an early age, they rarely lose their original

<sup>206</sup> See 王泰升, 臺灣法律史概論 WANG, *supra* note 145, at 138, 169-71.

<sup>207</sup> 中華民國憲法第二次增修條文第 18 條(1992) ZHONGHUA MINGUO XIANFA DIERCI ZENGXIUTIAOWEN [The Second Additional Articles of the Constitution of the Republic of China] art. 18, sec. 6 (1992) (Taiwan).

<sup>208</sup> 中華民國憲法第四次增修條文第 10 條(1997) ZHONGHUA MINGUO XIANFA DISICI ZENGXIUTIAOWEN art. 10, sec. 9 (1997) (Taiwan).

<sup>209</sup> LINDA THOMAS, SHAN WAREING & ISHTLA SINGH, LANGUAGE, SOCIETY, AND POWER- AN INTRODUCTION 205 (Oxen: Routledge, 2nd ed., 2004).

<sup>210</sup> Chen Ping, *Standard Language as a Source of Conflict in Taiwan*, in LANGUAGE PLANNING AND LANGUAGE POLICY- EAST ASIAN PERSPECTIVES 106 (Nanette Gottlieb & Chen Ping eds., Curzon Press, 2001).

accents.<sup>211</sup> Even though a certain language is not per se attached to stigmatizing stereotypes, when listening to an adult who speaks a dominant language poorly, most infer that such talk resembles that of a child or the most poor and illiterate in society.<sup>212</sup>

This language/accnt discrimination featured prominently in Taiwan.<sup>213</sup> In 1993, the Minister of Interior, Wu Po-Hsiung, recognized that

“the measures which discriminated against the mother tongues were mismanaged, and the government should admit that the previous language education was not proper. As the social circumstances changed, the government should have respected the mother tongues.”<sup>214</sup>

By this time, however, the vulgar, inelegant, obsolete, and even “unity-impeding” epithets were deeply embedded in the minds of those people who experienced the Mandarin Only period. In 1976, Sakaiya Taichi (堺屋太一) described the idea of the massive group (団塊の世代,

<sup>211</sup> Ruth Rubio-Marín, *Exploring the Competing Rationales*, in LANGUAGE RIGHTS AND POLITICAL THEORY 63 (Will Kymlicka & Alan Patten eds., Oxford: 2003).

<sup>212</sup> *Id.* at 63. In this regard, the first and foremost instrumental language right should be the right not to be discriminated against because of one’s language or accent. However, Holo, Hakka, and indigenous languages were often described as vulgar, inelegant, obsolete, and even “togetherness-impeding” languages, and the accents of these languages therefore became the subjects of jokes in plays, dramas, radio, and TV shows. Under such circumstances, retaining a certain language or a language’s accent may have a tremendous and often permanently stigmatizing impact.

<sup>213</sup> For example, a famous TV star hastily said “How come I speak Holo? It will hurt my image.” after she just blurted out “I am not afraid” (in Holo) in an interview. 黃宣範, 語言、社會與族群意識：臺灣語言社會學的研究 HUANG, *supra* note 111, at 63.

Another example is: I heard a joke saying that a girl student had a crush on a handsome military police gateway guard. She could see him every day on her way home, but she was too shy to talk to him. One day, she was finally encouraged by her friends to ask him directions, but she looked sad after asking the question. “What happened?” “I asked him the question, but he said ‘Go straight’ (with a Holo accent)”. In this joke, the girl’s romance was suddenly broken because of the handsome guard’s accent. Contrary to his appearance, his accent made him seem poor and uneducated to her.

<sup>214</sup> 許嘉文, 臺灣鄉土教育發展史 Hsu Chia-Wen, *Taiwan Xiangtujúiaoyu Fazhanshi [The Development and History of the Taiwanese Vernacular Education]*, 45 E-SOC J. (Mar. 15, 2005) (Taiwan), available at <http://mail.nhu.edu.tw/~society/e-j/45/45-16.htm> (last visited Apr. 15, 2008).

*dankai no sedai*). According to his concept, people within a certain age range tend toward ‘group thinking,’ like those in the Mandarin Only period who deeply discriminated against local language speakers and passed their negative impressions on to future generations.

## **2.5 THE DEMOCRATIC PROGRESSIVE PARTY ADMINISTRATION PERIOD (2000 - 2008)**

After the 2000 presidential election victory of the Democratic Progressive Party (DPP) that favors Taiwan’s independence, language policy took a totally different course. According to “the principle of state succession” in international legal theory and “Resolution 2758 of October 25, 1971” passed by the General Assembly of the United Nations, the Chinese government alleged that Taiwan was part of the People’s Republic of China:

“Taiwan is part of the sacred territory of the People’s Republic of China” and “it is the lofty duty of the entire Chinese people, including our compatriots in Taiwan, to accomplish the great task of reunifying the motherland.”<sup>215</sup>

The People’s Republic of China contended that, as the successor of the Republic of China, it enjoyed the legal status to possess all the rights, privileges, and territory of the ROC after its demise in 1949: Taiwan is part of the Republic of China, so it also should be governed by the PRC.

The facts that Taiwan has never been ruled by the PRC since the 1949 establishment of the “New China,” and that the ROC still exists, make the application of the principle of state succession still open to debate. In addition, after the ROC in Taiwan officially terminated the

---

<sup>215</sup> 中华人民共和国宪法 ZHONGHUA RENMIN GONGHEGUO XIANFA [Constitution of the People’s Republic of China] preamble sec. 9 (1982) (P.R.C.).

Period of Communist Rebellion and recognized the existence of the two political entities, it also relinquished the right to be the exclusive representative of China. The main cross-strait issue is no longer the representation of China, but the representation of Taiwan. Thus, Resolution 2758, which resolved only the ROC v PRC dispute about legitimate representation of China, failed to address the salient issue of Taiwanese representation.

To establish another rationale for annexing Taiwan, the People's Republic of China started to enforce its arguments with an "emotional and cultural" perspective when its legal theories failed to match the facts. This approach maintained that most Taiwanese (Han people) were the offspring of immigrants from mainland China, and Mandarin was the common language between China and Taiwan. Because of the ethnic, cultural, and linguistic commonality, the PRC contended that the Taiwanese also belonged to the "Chinese Nation" (中華民族, *zhong hua min zu*). Since people who are in Taiwan and mainland China belonged to the same nation, a nation-state of the Chinese Nation was mandated.<sup>216</sup>

Counter-evidence to the Chinese nation-state arguments focus on the differences between the Taiwanese and mainland Chinese. Besides the geographic separation, the minorities, especially the indigenous peoples, and the language diversity in Taiwan are cited to prove that Taiwan is a multicultural society rather than a "pure" Chinese cultural society even though the PRC is also multilingual and multiethnic. Hence, the ethnic and linguistic formulae cannot be applied to every Taiwanese. In this way, the Taiwanese government started to emphasize the

---

<sup>216</sup> The word "Chinese people" has two relevant but different meanings in Chinese language. '*Hua ren*' (華人), a cultural and ethnic notion, is different from '*zhong guo ren*' (中國人), which is a notion of nationality. Those people who strongly support independence still regard themselves as '*hua ren*', but not '*zhong guo ren*'.

issues of indigenous people and multiculturalism to highlight the differences between the two societies.

Taiwan first adopted multiculturalism and a diversity maintenance approach at the constitutional level. Then the Taiwanese government took language affairs reform measures and introduced several legal drafts.<sup>217</sup> The measures and the drafts are summarized in Table 2-6:

*Table 2-6: Major Language Legislation after the 1997 Multicultural Declaration*

Year	Draft\Measures	Result
2000	Broadcast Languages Equality Protection of the Mass Rapid Transportation Instruments Law	Continuing
2000	The Mandarin Promotion Council was reorganized as the National Languages Committee	Continuing
2001	Required Vernacular Language Classes in All Primary Schools based on Mandarin Plus	Continuing
2001	New Language Curriculum of the 9-Year Integrated Curriculum	Continuing
2003	Abolishment of the 1973 Mandarin Promotion Measures	Enforced
2003	Language Equality Law Draft	Deferred sine die
2003	National Language Development Law Draft	Deferred sine die
2005	Hakka Language Development Law Draft	Deferred sine die
2007	National Language Development Law Draft	Deferred sine die

<sup>217</sup> 大眾運輸工具播音語言平等保障法(2000) DAZHONG YUNSHU GONGJU BOYINYUYAN PINGDENG BAOZHANGFA [Broadcast Languages Equality Protection of the Mass Rapid Transportation Instruments Law] (Apr. 19, 2000) (Taiwan); the Council of Hakka Affairs was also established in 2001. The MPC of the MOE changed its name from the Mandarin Promotion Council to the National Languages Promotion Committee in the same year. The NLPC further expanded its organization to include Holo, Hakka, and indigenous languages. In the following years, different versions of the drafts of language laws were proposed by different departments in the government, including the Council of Hakka Affairs (2002), Institute of Linguistics, Academia Sinica (2002), the Council of Indigenous Peoples (2003). The Ministry of Education formulated a final draft of the Language Equality Law (2003). 語言公平法草案 Yuyan Gongpingfa Caoan [The Draft of the Language Equality Law] (2003) (Taiwan), available at <http://mail.tku.edu.tw/cfshih/ln/enactment.htm>. (last visited Apr. 15, 2012).

The proposed drafts drew on work in other multilingual countries, including Canada and the United States. However, the most recent drafts were deferred, and the drafts provided on relevant official websites were deleted, for several reasons, including concerns about communication inefficiencies, secessionism, and desinicization. In addition, the Hakka and indigenous peoples did not wholeheartedly support the drafts, out of concern that that the status of Holo people would be promoted and further handicap the “existing space” of other languages.<sup>218</sup>

Since the 2001 implementation of a Nine-Year Integrated Curriculum for Primary and Junior High Schools (國民中小學九年一貫課程, *guomin zhongxiaoxue jionianyiguankecheng*) by the Ministry of Education (MOE), all primary school children in Taiwan have been required to study at least one local language at school.<sup>219</sup> Under this Curriculum, *Mandarin plus* local languages and English comprise the ‘language subject area.’<sup>220</sup> Vernacular language classes are known officially as ‘local (or vernacular) language education’ (鄉土語言教育, *xiangtu yuyan jiaoyu*) and are generally referred to as ‘mother tongue education’ (母語教育, *mu yu jiaoyu*) in public discussion.<sup>221</sup> By the end of the 1980s, some counties, such as Yi-Lan County and Taipei County (the current New Taipei City), whose mayors belonged to the DPP had started small scale local language education.<sup>222</sup>

---

<sup>218</sup> See 施正鋒, 語言與多元文化政策 Shih Cheng-Feng, *Yuyan Yu Duoyuanwenhua Zhengce* [Language and Multiculturalism Policy], available at [www.ihakka.net/hakka2003/Big5/word/09.doc](http://www.ihakka.net/hakka2003/Big5/word/09.doc) (last visited Feb 25, 2009).

<sup>219</sup> Mandy Scott & Hak-khiam Tiun, *Mandarin-Only to Mandarin-Plus*, 6 LANGUAGE POL’Y 60 (Spring 2007).

<sup>220</sup> *Id.* at 60 (citing ROBERT KAPLAN & RICHARD BALDAUF, JR, LANGUAGE AND LANGUAGE-IN-EDUCATION PLANNING IN THE PACIFIC BASIN 59 (Boston: Kluwer academic publishers 2003)).

<sup>221</sup> *Id.* at 60 (citing 張健成, 批判的教育社會學研究 Zhang Jiancheng, PIPANG DE JIAOYU SHEHUIXUE YANJIU [Towards a Critical Sociology of Education] 110 (Taipei: Pro-ed publishing 2002) (Taiwan)).

<sup>222</sup> 陳依玲, 語言教育政策促進族群融合之可能性探討 Chen Yi-Ling, *Yuyan Jiayu Zhengce Cujin Qunronghe Zhi Kenengxing Tangtao* [The Possibility of Implementing New Policy of Language Education to Reconcile and Unify Different Ethnic Groups in Taiwan], 4:3 JOURNAL OF EDUCATIONAL RESEARCH AND DEVELOPMENT 230 (Sep. 2008).

After the DPP won the presidential election in 2000, the task of pursuing language equality was nominally transferred from the Ministry of Education to the Council of Cultural Affairs in 2003, and the latter proposed a new draft of the “National Languages Development Law (2003).”<sup>223</sup> In the context of Taiwanese political culture, the reassignment implies the failure of the previous organization, and the project was delayed. It is worth noting that these drafts were mainly generated from 2002 to 2003, or about the third year of DPP’s administration. When President Chen sought his second term, he had to acquire more votes from numerous neutral voters, who would support neither rapid independence nor rapid unification. To erect a neutral flag and erase the doubt of “dechinazation” (or “desinicization”), Chen’s government cooled toward these affairs. Hence, language reform lost governmental support for political reasons. In addition, worry that the Holo language would be favored over other languages, the Hakka and indigenous people did not wholeheartedly support the drafts.<sup>224</sup> Therefore, all of the language equality drafts became mired in political skirmishes. Even the drafts provided on official websites have been deleted.<sup>225</sup>

Of the aforementioned language reforms, only vernacular language education, based on “Mandarin Plus,” is being continued.<sup>226</sup> The concept of Mandarin Plus (MP) was adopted from the U.S. idea of “English Plus”. According to the 1987 Statement of Purpose released by the English Plus Information Clearinghouse (EPIC), English Plus holds that while English remains the primary language of the United States, the national interest can best be served when all

---

<sup>223</sup> 文建會，國家語言發展法草案 Council for Cultural Affairs, Guojia Yuyan Fazhanfa Caoan [The Draft of the National Languages Development Law] (2003) (Taiwan), *available at* <http://mail.tku.edu.tw/cfshih/seminar/20051231.htm> (last visited Apr. 17, 2012). The original governmental link has been expired but Shih Cheng-Feng’s website keeps the text.

<sup>224</sup> 施正鋒，研訂客家語言發展法草案 Shih, *supra* note 218.

<sup>225</sup> *See Id.*

<sup>226</sup> Scott & Tiun, *supra* note 219, at 53.

members of the American society have full access to effective opportunities to acquire strong English language proficiency plus mastery of a second or multiple languages.<sup>227</sup> In this sense, the Native American Language Law was proclaimed in 1990 to support and preserve American native languages. Although only Rhode Island, Oregon, New Mexico, and Washington have adopted English Plus plans,<sup>228</sup> MP is considered the only practicable compromise in Taiwan.

However, the content and effect of MP remain doubtful for two key reasons. First, Mandarin Plus is a series of administrative ordinances declared and enforced by the Ministry of Education. The source of law for these ordinances is the Organic Law of the Ministry of Education (教育部組織法, *Jiaoyubu zuzhifa*) and the Organic Act of the National Languages Committee of the Ministry of Education (教育部國語推行委員會組織條例, *Jiaoyubu guoyu tuixing weiyuanhui zuzhitiaoli*). The Ministry of Education thus has the authority to add or cancel vernacular language courses *without* statutory limitation. To add vernacular language courses, the Ministry can use as a basis the Additional Article 10 of the 1992 Constitution of the ROC, which proclaimed that the state shall promote culture, social welfare, and economic development of indigenous people.<sup>229</sup>

In fact, this article mentions only indigenous people rather than all people. If the Ministry of Education wants to cancel all vernacular language courses, citizens cannot request that such courses be reinstated due to the practice and the tradition of education administration, viz., the Ministry of Education decides. Second, Mandarin Plus covers only vernacular languages

---

<sup>227</sup> English Plus Information Clearinghouse (EPIC), *The English Plus Alternative (1987)*, in LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY 151-3 (James Crawford ed. 1992).

<sup>228</sup> James Crawford, *Issues in U.S. Language Policy- English Plus*, available at <http://ourworld.compuserve.com/homepages/JWCRAWFORD/engplus.htm> (1997) (last visited May 20, 2008).

<sup>229</sup> 中華民國憲法第二次增修條文(1992) ZHONGHUA MINGUO XIANFA DIERCI ZENGXIUTIAOWEN [The Second Additional Articles of the Constitution of the Republic of China (Taiwan)] art. 18, sec. 6 (1992) (Taiwan).

acquisition. It does not address the languages of new immigrants from Southeast Asia or other foreign languages. In addition, the prototype for MP, English Plus, has been adopted by just four states in the United States. These facts cast doubts on MP's completeness and effectiveness.

Taiwan adopted Mandarin Only based on the concepts of nation-building and 'language as a communication tool'. It adopted Mandarin Plus based on concepts of constitutional multiculturalism. However, the hurried resolution seems like a compromise. Whether the plan resolves issues that arose in the aftermath of Mandarin Only is still in doubt and needs further discussion.



## CHAPTER 3: THE NORMATIVE STANDARD OF LANGUAGE LAW

To evaluate the Mandarin Plus system, this chapter discusses the normative standards of language law. Three questions are posed in the following sections: (1) What is the relationship between language and law? (2) What is the content of language law? (3) What is the most applicable normative standard of language law in Taiwan?

### 3.1 THE RELATIONSHIP BETWEEN LANGUAGE AND LAW

To understand the content of language law, it is necessary to first clarify the relationship between language and law.

#### 3.1.1 LANGUAGE CONSTITUTES THE NATURE OF LAW

*Language* is not simply a system of phonemes; rather, it is “the possibility of making meaning of and in the world”.<sup>230</sup> Oral and written surface structures are external signifiers of this meaning-making act, and these structures are generated by language, which is itself a rule-governed structure of meaning making.<sup>231</sup> The term *represents the enforceable body of rules that govern any society or one of the rules making up the body of law, such as an Act of Parliament*.<sup>232</sup> Theories about the relationship between language and law are usually derived from the interpretation of legal provisions with their normativity. In the history of the Western

---

<sup>230</sup> PATRICK L. COURTS, LITERACY AND EMPOWERMENT 7 (Donaldo Macedo ed., New York: Bergin & Garvey 1991).

<sup>231</sup> *Id.* at 7.

<sup>232</sup> Jonathan Law & Elizabeth A. Martin, *A Dictionary of Law*, available at OXFORD REFERENCE ONLINE <http://www.oxfordreference.com> (Oxford Univ. Press 2009) (last visited Jun. 2, 2010). Of course, the definition of law is clearly not this simple, but I would like to emphasize that language and law are both composed of specific rules.

legal philosophy, law was thought of as commands of a superior.<sup>233</sup> The meaning of the normativity of law refers to the pain and pleasure that a superior offered as motivation for compliance with the superior's will,<sup>234</sup> and "a law may be defined as an assemblage of signs declarative of a volition conceived or adopted by the sovereign in a state".<sup>235</sup> In this view, law is a particular form of assemblage of signs given by a superior and is highly involved with the use of language and various definitions, and "legal theorists have the linguistic task of defining the terms of legal discourse".<sup>236</sup>

The first aspect of the relationship between law and language can be considered *legal philosophy*, work that describes the authority to use words to make law; the law made in this way becomes a standard whose existence and content are determined by the legal effect the law ascribes to the use of words.<sup>237</sup> When a law is made by the use of signs, it is a standard of conduct rather than an assemblage of signs.<sup>238</sup> This approach focuses on *the nature of law*, and language is the indicator to determine whether a sign or a statement has legal effect. That is to say, among all the different kinds of norms, this one depends on the language used to know which rule is legal.

### 3.1.2 THE LANGUAGE OF LAW

The second aspect of the relationship at issue is the interpretation of language used by law. A straightforward example: since the age of William Blackstone (1723-1780), in property

---

<sup>233</sup> For example, John Austin's command theory says that laws are commands of the sovereign. See Brian Bix, *John Austin*, in STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Edward N. Zalta ed., 2010), at <http://plato.stanford.edu/archives/spr2010/entries/austin-john/> (last visited Feb. 21, 2009).

<sup>234</sup> Timothy Endicott, *Law and Language*, in STANFORD ENCYCLOPEDIA OF PHILOSOPHY, at <http://plato.stanford.edu/entries/law-language/> (Jun. 3, 2008) (Dec. 5, 2002) (last visited Apr. 4, 2010).

<sup>235</sup> JEREMY BENTHAM, OF LAWS IN GENERAL 1 (H.L.A. Hart ed., London: Athlone Press 1970)(1782).

<sup>236</sup> Endicott, *supra* note 234.

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

law the legal effect of a decree saying “*to A and the male heirs of his body*” differs from that of “*to A as long as the property is used for purpose X*”. Lawyers are trained to distinguish the former, which is called “fee tail”, from the latter, “fee simple determinable”, by the language used in the decrees. This is the most well-known aspect of the nexus of language and law: *to interpret the meaning of the law at issue to subsume the fact to the interpreted rule for deciding its legal effect*. This approach of research can be called the *language of law*, and most lawyers devote themselves to this aspect of language and law.

### 3.1.3 LANGUAGE IN LAW

Unlike the interpretation of legal provisions, the third aspect of the relationship between language and law discussed in this chapter refers to how the legal system treats language. This aspect can be called *language in law*. Every society has language issues, large or small, since language is a tool that people use to communicate. Without a common language, communication would be akin to guessing what is on another person’s mind. Even so, a common language does not guarantee communicative efficiency between individuals. Although two people are in the same language community and speak a common language, personal customs, pronunciation, comprehension, and corpus of use, mean that differences will still exist.<sup>239</sup> Many language issues can be dealt with by the general public or within families, but others affect broader plans or policies when they are brought to the level of the government. The process of dealing with language issues at a governmental level is called *language planning*.

Aiming at heterogeneity among languages or within a language, language planning refers to “deliberate efforts to influence the behavior of others with respect to the acquisition, structure,

---

<sup>239</sup> The example of a continuum is proposed by Xie. 謝國平, 語言學概論 XIE GUO-PING, YUYANXUE GAILUN [An Introduction to Linguistics] 17-8, 21-8, 317-8 (San Min 2002) (Taiwan).

or functional allocation of language”.<sup>240</sup> It can be divided into three major groups: (1) corpus planning, (2) status planning, and (3) acquisition planning. *Corpus planning* refers to activities such as coining new terms, reforming spelling, and adopting a new script.<sup>241</sup> It affects the creation of new forms, the modification of old ones, or the selection from alternative forms in a spoken or written code.<sup>242</sup>

*Status planning* refers to changes in the systems of speaking, changes in a language’s functions, language use, use of language, and organization of a community’s language resources.<sup>243</sup> According to Cooper, the definition also refers to what Gorman and Rubin call “language allocation,” which is defined by Gorman as authoritative decisions to maintain, extend, or restrict the range of uses (functional range) of a language in particular settings.<sup>244</sup>

*Acquisition planning* refers to language spread except for the rubric of status planning. When language planning is directed towards increasing a language’s uses, it falls within the rubric of status planning. But when it is directed toward increasing the number of users, then a separate analytic category for the focus of language planning is therefore justified.<sup>245</sup>

Language in law, then, centers on language planning. Cooper said in 1989 that

“[T]he research techniques which language-planning scholars employ, such as interviews, questionnaires, rating scales, tests, secondary analyses of census data, content analyses, structural analyses of texts, quasi-experiments, and unobtrusive observations,

---

<sup>240</sup> ROBERT L. COOPER, *LANGUAGE PLANNING AND SOCIAL CHANGE* 45 (Cambridge Univ. Press 1989).

<sup>241</sup> *Id.* at 31.

<sup>242</sup> *Id.* at 31.

<sup>243</sup> *Id.* at 32.

<sup>244</sup> *Id.* at 32 (Cambridge Univ. Press 1989) (citing Thomas P. Gorman, *Language Allocation and Language Planning in a Developing Action*, in *LANGUAGE PLANNING: CURRENT ISSUES AND RESEARCH* 73 (Joan Rubin & Roger Shuy eds., Georgetown Univ. Press 1973)).

<sup>245</sup> *Id.* at 33.

are employed by other social sciences as well. Scholars have not developed research techniques peculiar to the study of language planning.”<sup>246</sup>

Language planning is an interdisciplinary topic. Theories of language planning are derived from politics, linguistics, economy, education, anthropology, and sociology.

In the sphere of legal research, the theories of language planning do not provide enough support to legislate language policy. To be more precise, *the authority, the form, and the constitutionality of languages are not deeply discussed in current language planning works.* However, scant research does not imply that law and language do not have strong connections. On the contrary, language planning is carried out at every corner within any social or governmental unit, including a family,<sup>247</sup> non-profit organization, or even the Principality of Sealand.<sup>248</sup> Governmental involvement provides the nexus of language, language planning, and law. If law is considered an important instrument of policy and governing, governments must conduct language planning and policy through legal provisions, such as statutes or administrative ordinances. Language and law are connected through governmental language planning.

### 3.1.4 LANGUAGE MEDIATING LAW

Some law, including statutes or regulations, does not on its face relate to language, but language is the medium through which law is carried out the law. Speaking, listening, reading and writing are the links to connect people and their surroundings. Since language (which constitutes the nature of law) is a communication tool used to transfer or receive information, its

---

<sup>246</sup> *Id.* at 42.

<sup>247</sup> For example, parents want their children to speak or to learn a certain language in a family.

<sup>248</sup> The Principality of Sealand is a sovereign territory built in 1967 in international waters. The Principality of Sealand Home Page, <http://www.sealandgov.org/> (last visited May 2, 2010).

use covers almost all interactions between human beings.<sup>249</sup> Without a certain level of language proficiency, interactions among human beings are nearly impossible. Therefore, language proficiency affects the process of practicing law, including asserting a right, placing a charge, applying for a subsidy, and filing a claim, even though the word “language” or any language is not mentioned at first view.

In this sense, less language proficiency or language diversity influences the effect of a legal rule, especially those assertions or claims that require actions to be taken. For example, even food safety might be related to language proficiency. In 1986, a canned food company’s products were proven to be infected by clostridium botulinum, one kind of fatal bacteria. The Taiwanese government began to broadcast news about this in late November, but the intensive announcements were made only in Mandarin. Before the government realized the need to add Holo announcements, many people had consumed the infected products, and at least one person subsequently died.<sup>250</sup> Another recent example involved an Indonesian house maid who was charged with the negligent homicide of her employer because of confessions to the prosecutor who spoke to the defendant in Mandarin.<sup>251</sup> The defendant confessed that she forgot to secure the safety clutch of the employer’s wheelchair, from which she fell and died in 2007. The house maid was finally acquitted when the court discovered that she lacked sufficient Mandarin

---

<sup>249</sup> Sometimes, language barrier might be fatal. An extreme example is the so-called “Baka Incident” in the Japanese Ruling Period. After carrying his game from Habun to his home, Puhuk Nokan, the head of the Gungu tribe, met two Japanese policemen. According to a traditional rule (Gaya), a hunter has to share his game with people he meets on his way home. So, Puhuk Nokan shared the boar with the policemen. The policemen poured Japanese wine for Puhuk Nokan, but he had to get home before sunset and said “*Baka di, baka di*” (“Enough, enough!” in Seediq language). However, the Japanese policemen thought that he was saying “*baka*” (“fool” in Japanese) and beat him seriously. Puhuk Nokan died due to internal bleeding a few days later. His brother and successor, Tado Nokan, took part in an anti-Japanese rule rebellion in 1930. 郭明正, 真相巴萊 KUO MINGZHENG, TRUTH BALE 135-6 (Yuan-Liou 2011).

<sup>250</sup> For further detailed information, Kuan formulated abundant data of the event from old newspapers. 管仁健, 走過那我不說方言的荒謬時代 Kuan Ren-Jian, *Zouguo Na Wobushuo Fangyan De Huangmiu Shidai* [Experiencing the absurd era of ‘I don’t speak dialect’], available at <http://mypaper.pchome.com.tw/kuan0416/post/1322128051> (last visited May 2, 2011).

<sup>251</sup> 最高法院 99 台上 7468 號判決 Zuigao Fayuan [Supreme Court] 99 Taishang No.7468 (Dec. 2, 2010).

proficiency to defend herself and had simply nodded her head to each question asked by the prosecutor; questions that she did not understand.

These real-life cases remind us that law is generally made with a presumption that each party involved in the process has sufficient language proficiency, but the fact is that different laws require different degrees of language proficiency to be properly enforced. Furthermore, people's language proficiency varies and sometimes falls below the presumed standard. Language proficiency and language diversity influence the presumed legal effect. This aspect of the relationship between language and law can be considered *language mediating law*.

### **3.2 THE CONTENT OF LANGUAGE LAW**

Although language and law are related, law regarding language lacks a common terminology. We use "labor law" to indicate law about labor affairs and "women's law" to mean feminist jurisprudence. It is thus appropriate to call those legal provisions regarding language issues, especially language planning and language mediating law, *language law*. Naming the law regarding language planning intuitively falls within the scope of language law, but the concept of 'language mediating law' (which covers nearly every aspect of interactions between human beings) would therefore cover nearly every aspect of law. Myriad examples can be cited to prove that the language proficiency of a participant influences the legal effect of a certain rule, no matter whether it is a rule about food safety or a simple traffic sign. However, this dissertation focuses on *human rights* to provide more practical contributions within limited time and pages. Our research focus does not suggest that other legal areas are not involved in the concept of language mediating law; it means only that discussion about human rights is too important to be ignored. In sum, language law contains law regarding language planning (language in law) and law influenced by language proficiency or language diversity (language mediating law), but in

this dissertation the scope of discussion focuses only on the jurisprudence addressing language planning and human rights.

### 3.2.1 LANGUAGE LAW REGARDING LANGUAGE PLANNING

The content of language law includes language planning because a government carries out language planning through governmental actions, which are regulated by law and general legal principles. As noted previously, language planning refers to deliberate efforts to influence the behavior of others with respect to the acquisition, structure, or functional allocation of language.<sup>252</sup> The use of the term language planning is attributed to Haugen's study of language standardization in Norway, in which he wrote:

“By language planning I understand the activity of preparing a normative orthography, grammar, and dictionary for the guidance of writers and speakers in a non-homogeneous speech community. In this practical application of linguistic knowledge we are proceeding beyond descriptive linguistics into an area where judgment must be exercised in the form of choices among available linguistic forms”,<sup>253</sup>

and he identified the four steps of language planning, including selection of a language, codification of a language, elaboration of vocabulary, and securing its acceptance by implementation.<sup>254</sup>

---

<sup>252</sup> COOPER, *supra* note 240, at 45.

<sup>253</sup> Nancy H. Hornberger, *Frameworks and Models in Language Policy and Planning*, in AN INTRODUCTION TO LANGUAGE POLICY- THEORY AND METHOD 25-6 (Thomas Ricento ed., Blackwell Publishing 2006) (citing Eigar Haugen, *Planning for a standard language in Norway*, 1:3 ANTHROPOLOGICAL LINGUISTICS (1959)).

<sup>254</sup> Eigar Haugen, *Language Conflict and Language Planning*, in THE CASE OF MODERN NORWEGIAN (Harvard Univ. Press 1966).

Hornberger incorporates the work of Haugen (1983), Cooper (1989), Ferguson (1968), Hornberger (1994), Kloss (1968), Nahir (1984), Neustupny (1974), Rabin (1971), and Stewart (1968) to present his view of the relationship between language planning and language policy.<sup>255</sup>

**Table 3-1: The Content of Language Planning**

<b>Planning Approach</b> <b>Types of Planning</b>	<b>Policy (form)</b>	<b>Cultivation (function)</b>
Status planning (uses of language)	Officialization Nationalization Standardization of status Proscription	Revival Maintenance Spread Inter-lingual communication: inter-& intra-national
Acquisition planning (users of language)	Group Education/ School Literary Religious Mass media Work	Reacquisition Maintenance Shift Foreign language/ second language/ literacy
	<u>Selection</u> Language's formal role in society (Extra-linguistic aims)	<u>Implementation</u> Language's functional role in society (Extra-linguistic aims)
Corpus planning (about language)	Standardization of corpus Standardization of auxiliary code Graphization	Modernization (new functions) Lexical Stylistic Renovation (new forms, old functions) Purification Reform Stylistic simplification Terminology unification
	<u>Codification</u> Language's form (Linguistic aims)	<u>Elaboration</u> Language's functions (Semi-linguistic aims)

<sup>255</sup> Hornberger, *supra* note 253, at 29-30. This table contains Chaim Rabin's classification of the three aims of language planning: (1) extra-linguistic aims, concerning primarily sociologists and political scientists; (2) semi-linguistic aims, involving sociological and psychological factors, but mostly linguists do the relevant research; and (3) linguistic aims. See Bjorn H. Jernudd, *Agency Man*, in LANGUAGE PLANNING PROCESSES 131 (Joan Rubin ed., Mouton De Gruyter 1977) (citing Chaim Rabin, *A Tentative Classification of Language-planning Aims*, in CAN LANGUAGE BE PLANNED? 277-9 (Joan Rubin & Bjorn H. Jernudd eds., Univ. of Hawaii Press 1971)).

This chart reflects the wide scope of language planning; we can re-conceptualize Hornberger's table by replacing "form/function" with "means/purpose", as follows:

**Table 3-2: Law regarding Language Planning**

<b>Types</b>	<b>Core Content</b>	<b>Means</b>	<b>Purpose</b>
Language law of status planning	Uses of language	Officialization Nationalization Proscription Standardization of status	Revival Maintenance Spread Communication
Language law of acquisition planning	Improvement of language proficiency	Group Education/ School Literary Religious Mass media Work	Reacquisition Maintenance Shift Foreign language/ second language/ literacy
Language law of corpus planning	Standardization of language	Standardization of corpus Standardization of auxiliary code Graphization	Modernization Lexical Stylistic Renovation Purification Reform Stylistic simplification Terminology unification

Hence, the language law of status planning regulates uses of language by officialization, nationalization, proscription, and standardization of status. The language law of acquisition planning regulates improvements of language proficiency (or teaching a language in plain English) through various institutions or groups, especially the school system. Finally, the language law of corpus planning regulates standardization of language through standardization of forms, standardization of auxiliary code and graphization (viz., the development, selection, and modification of language, especially from spoken language to written language).<sup>256</sup>

<sup>256</sup> See Charles A. Ferguson, *Language Development*, in *SOCIOLINGUISTIC PERSPECTIVES: PAPERS ON LANGUAGE IN SOCIETY*, 1959-1994 40-7 (Charles A. Ferguson & Thom Huebner eds., Oxford Univ. Press 1996) (1968).

### 3.2.2 LANGUAGE LAW AND LANGUAGE RIGHTS

Besides law regarding language planning (language in law), this dissertation focuses on *human rights* with respect to ‘language mediating law’. In this sphere of legal research, *linguistic human rights*, is becoming an important research domain. Terms such as ‘language rights’,<sup>257</sup> ‘linguistic rights’,<sup>258</sup> and ‘linguistic human rights’<sup>259</sup> are co-mingled to refer to what Macías calls the “the right to freedom from discrimination on the basis of language,” and “the right to use one’s language in the activities of communal life.” The concept of ‘language’ itself is usually not considered as human rights subject matter.

No specific international treaty or convention addresses the language issue in the field of international human rights law. ‘The International Convention on Language Rights’ or the ‘International Covenant on Linguistic Human Rights’ remain ideals, not normative standards. Even though the “Universal Declaration of Linguistic Human Rights” was signed by several important (but mostly non-governmental) international organizations in June, 1996, it is a conference product of the World Conference on Linguistic Rights rather than an official declaration of the U.N. system.<sup>260</sup> However, taking into account the strong relationship between

---

<sup>257</sup> For example, Macías says that language rights contain “the right to freedom from discrimination on the basis of language” and “the right to use one’s language in the activities of communal life.” Terence G. Wiley, *Accessing Language Rights in Education: A Brief History of the U.S. Context*, in LANGUAGE POLICIES IN EDUCATION: CRITICAL ISSUES 40 (J.W. Tollefson ed., Portsmouth: Lawrence Erlbaum Associates 2002) (citing R. F. Macías, *Choice of Language as a Human Right: Public Policy Implication in the United States*, in BILINGUAL EDUCATION AND PUBLIC POLICY IN THE UNITED STATES 39-75 (R.V. Padilla ed., Ypsilanti: Eastern Michigan University 1979)).

<sup>258</sup> For instance, the Universal Declaration of Linguistic Human Rights adopts ‘linguistic rights’. UNESCO CULTURE OF PEACE PROGRAMME, THE UNIVERSAL DECLARATION OF LINGUISTIC RIGHTS (Barcelona 1996), [www.linguistic-declaration.org/versions/angles.pdf](http://www.linguistic-declaration.org/versions/angles.pdf) (last visited Apr. 23, 2012).

<sup>259</sup> See Stephen May, *Language Policy and Minority Rights*, in AN INTRODUCTION TO LANGUAGE POLICY 255-268 (Blackwell Publishing 2006). This article mentions Kontra, Skuttnabb-Kangas, Phillipson, and Varady’s approach of linguistic human rights. It does not mean that May adopts this approach.

<sup>260</sup> UNESCO CULTURE OF PEACE PROGRAMME, THE UNIVERSAL DECLARATION OF LINGUISTIC HUMAN RIGHTS, <http://www.unesco.org/cpp/uk/declarations/linguistic.pdf> (Barcelona, Jun. 1996) (last visited Jul. 5, 2010).

disappearing or changing languages and human rights concerns, it is important for us to consider how these two fields interact within the law, particularly in the international context.

### 3.2.3 SOURCE OF LANGUAGE LAW IN TAIWAN

Scholars usually discuss language law, especially language rights or linguistic rights, from the perspective of political theories, and they have developed a sizable body of research.<sup>261</sup> However, from the perspective of positive law, the theories *do not* explain the source of language law and its legal effect. In other words, because of the needs of legal practice, the materials might become a well-developed library of secondary source law, but law practitioners and judges still need primary source law, which is authoritative and precedential when a relevant issue is

---

<sup>261</sup> For example, Tove Skutanabb-Kangas' language-related identity, access to mother tongue, the right of access to an official language, voluntary language shift, access to formal primary education based on language, the right for minority groups to be a distinct linguistic group, and the right to learn foreign languages. TOVE SKUTNABB-KANGAS, *LINGUISTIC GENOCIDE IN EDUCATION- OR WORLDWIDE DIVERSITY AND HUMAN RIGHTS?* (Lawrence Erlbaum Associates Inc. 2000).

Macías' "the right to freedom from discrimination on the basis of language" and "the right to use one's language in the activities of communal life." Wiley, *supra* note 257, at 40 (citing R. F. Macías, *Choice of Language as a Human Right: Public Policy Implication in the United States*, in *BILINGUAL EDUCATION AND PUBLIC POLICY IN THE UNITED STATES* 39-75 (R.V. Padilla ed., Ypsilanti: Eastern Michigan University 1979)).

In addition, Kymlicka and Patten's benign neglect. WILL KYMLICKA, *MULTICULTURAL CITIZENSHIP* 111 (Oxford Univ. Press 1995); JOSEPH CARENS, *CULTURE, CITIZENSHIP AND COMMUNITY: A CONTEXTUAL EXPLORATION OF JUSTICE AS EVENHANDEDNESS* 77-8 (Oxford Univ. Press 2000); Alan Patten, *Political Theory and Language Policy*, 29:5 *POLITICAL THEORY* 693 (Oct. 2001); Rainer Bauböck, *Cultural Citizenship, Minority Rights and Self-Government*, in *CITIZENSHIP TODAY: GLOBAL PERSPECTIVES AND PRACTICES* 319-48 (Alex Aleinikoff & Doug Klumeyer eds., Washington, DC: Carnegie Endowment for International Peace, 2001).

Fernand De Varennes, Tove Skutanabb-Kangas, Robert Phillipson, Denise Réaume, Ruth Rubio-Marín, and Stephen May's general concepts. FERNAND DE VARENNE, *LANGUAGE, MINORITIES AND HUMAN RIGHTS* (Hague: Kluwer Law Internat'l, 1996); Fernand De Varennes, *Language Rights as an Integral Part of Human Rights*, 3:1 *INTERNATI'L J. ON MULTICULTURAL SOCIETIES* 15-25 (2001); Tove Skutanabb-Kangas & Robert Phillipson, *LINGUISTIC HUMAN RIGHTS: OVERCOMING LINGUISTIC DISCRIMINATION* (Berlin & New York: Mouton de Gruyter, 1994); Denise Réaume, *Official-Language Rights: Intrinsic Value and the Protection of Difference*, in *CITIZENSHIP IN DIVERSE SOCIETIES* (Will Kymlicka & Wayne Norman eds., Oxford Univ. Press, 2000); Ruth Rubio-Marín, *Language Rights: Exploring the Competing Rationales*, in *LANGUAGE RIGHTS AND POLITICAL THEORY* 52-79 (Will Kymlicka & Alan Patten eds., Oxford Univ. Press 2003). Stephan May, *Misconceiving Minority Language Rights: Implications for Liberal Political Theory*, in *LANGUAGE RIGHTS AND POLITICAL THEORY* 123-52 (Will Kymlicka & Alan Patten eds., Oxford Univ. Press 2003).

brought to court.<sup>262</sup> Although legislation and cases usually make law with official authority and constitute primary legal sources, every jurisdiction has a different structure for source law. In Taiwan, source law contains the 1947 Constitution of the Republic of China and its Additional Articles,<sup>263</sup> statutes,<sup>264</sup> authorized administrative regulations,<sup>265</sup> self-governance rules,<sup>266</sup> international treaties,<sup>267</sup> and custom or jurisprudence, if applicable.<sup>268</sup> Case law is only a de facto source of law with no absolute binding force. Domestic written law derived from the Constitution and international treaties also constitutes primary source law on language in Taiwan.

When analyzing the normative standards of language law in Taiwan, legal principles of the Constitution and international treaties should be first examined and applied. This approach does not mean discussion about the normative standard should be limited to the Constitution and international treaties, but it presents an important source law standard to be followed when practicing language law in Taiwan.

### 3.3 THE NORMATIVE STANDARDS OF LANGUAGE LAW

Compared to labor, environmental, and gender law, discussions about the normative standards of language planning and policy are relatively new and less-well researched.

---

<sup>262</sup> It seems discussion of source of law without the legal theories of Hans Kelsen, H.L.A. Hart, and Ronald Dworkin would be insufficient. I focus on how the discussion about language law helps daily legal practice: a practitioner or a judge can apply the result in a courtroom. Since Taiwan is a civil law country and it has a written law system. I believe no matter what is the result of comparison and discussion about Kelsen's Groundnorm, Hart's primary and secondary rules, and Dworkin's theory of legal principle, the result does not change the conclusion of this dissertation.

<sup>263</sup> 中華民國憲法(1947) ZHONGHUAMINGUO XIANFA [Constitution of the Republic of China] (1947); 中華民國憲法增修條文(2005) ZHONGHUAMINGUO XIANFA ZENGZUI TIAOWEN [Additional articles of the Constitution of the Republic of China] (2005) (Taiwan).

<sup>264</sup> 中華民國憲法(1947) ZHONGHUAMINGUO XIANFA [Constitution of the Republic of China] art. 80 (1947).

<sup>265</sup> *Id.* art. 172.

<sup>266</sup> *Id.* art. 112.

<sup>267</sup> *Id.* art. 141; 司法院大法官會議解釋第 329 號(1993) SIFAYUAN DAFAGUAN HUIYI JIESHI [Interpretation of the Grand Justices, Justice Yuan] No. 329 (1993).

<sup>268</sup> 民法(1929) MING FA [Civil Code] art. 1 (1929).

According to Alen Patten's list of the authors and articles regarding this field, there were only 11 scholars, including himself, and 13 articles prior to 2001.<sup>269</sup> Patten and Kymlicka formulated normative standards regarding language law, including concepts of: nation-building, benign neglect, resource orientation, diversity maintenance, procedural approaches, and linguistic human rights.<sup>270</sup> Each is described below.

### 3.3.1 NATION-BUILDING APPROACH

Linguistic 'nationalism' defines the boundaries of a nation by distinguishing language communities and was first applied to early nation-states, especially those in Europe, being established, expanded, and united. It then spread to the colonies and was used to resist colonial powers in order to further independence.

Language plays an important role in the processes of creating homogeneity or proving heterogeneity.<sup>271</sup> However, does language proficiency and commonality guarantee national identity? One language, even with minor variations, may be spoken in different countries. On the contrary, several languages may be spoken in one country. Although people belong to the same language community, they may have different nationalities and national identities. In addition, acquiring a language and building a national identity resemble the chicken-egg conundrum. The Vietnam and postcolonial Indonesia illustrate this point. In both cases, political elites or a political entity tried to occupy or define a territory as large as possible. Second, they created common ground through artificial measures, such as rewriting history and popularizing certain

---

<sup>269</sup> Alen Patten, *Political Theory and Language Policy*, 29:5 POLITICAL THEORY 691-715 (Oct. 2001).

<sup>270</sup> Alan Patten & Will Kymlicka, *Context, Issues, and Approaches*, in LANGUAGE RIGHTS AND POLITICAL THEORY 32-51 (Will Kymlicka & Alan Patten eds., Oxford Univ. Press 2003).

<sup>271</sup> As for further detailed description, see BENEDICT ANDERSON, *IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM* 113-140 (Verso, rev. ed. 1991) (1983).

languages within the borders. Third, through the above methods, a national identity was created and enforced.

The key to linguistic convergence is reducing social isolation and increasing language contact. The nation-building process directly or indirectly provides the platform for such convergence. Liberal democracies historically adopted policies to promote a common language or common sense of national identity and membership for nation-building;<sup>272</sup> even though some measures of nation-building do not focus on establishing a common language, they may unintentionally bring linguistic convergence by promoting language contact, such as policies for: building roads, railways, radio stations, and television broadcasting.<sup>273</sup> In addition, when we try to enhance national identity through the acquisition of certain languages, we are creating a model of an ideal national spontaneously. An ideal national, one who is supposed to have a strong national identity, can speak certain chosen languages. Others not proficient in those languages can then find their national identity/patriotism subject to mistrust.

Planned/coerced linguistic nationalism found strong support in many countries, including the US. From Theodore Roosevelt's "*One flag, One Language*" in 1917 and Huntington's

"There is only the American dream created by an Anglo-Protestant society. Mexican Americans will share in that dream and in that society only if they dream in English"

---

<sup>272</sup> Patten & Kymlicka, *supra* note 270, at 38.

<sup>273</sup> *Id.* at 38.

to the ground swell of “*English Only*” movement,<sup>274</sup> the ghost of linguistic nationalism haunts the US. US citizens still cannot choose their mother tongue, making us question whether the notion of regarding language as an identity instrument is suited to modern multiethnic societies.

The nation-building approach resembles a policy goal more so than a legal standard. If it served as the normative standard of language law, two obvious problems would occur. First, once a specific language represents the ideal of a nation, any other language suffers from second-class status. This exclusion can then become a defining trait for the “disenfranchised.” While seeking linguistic homogeneity, nation-building can thus foster a solidified sense of linguistic heterogeneity among citizens.

Second, linguistic nationalism does not provide a standard for how the state should treat other languages if the state does not adopt an exclusive monolingual approach. Such standards of treatment are needed to bind citizenry and avoid separatism. Linguistic convergence within a community enforces boundaries between converged language(s) and “others”, and any means, including ignorance, duress, coherence, allurements, and even violence, can then be seen as justified to protect languages/cultures if nationalism is the only standard.

### 3.3.2 BENIGN NEGLECT APPROACH

Benign neglect means “non-interference or neglect as a policy intended to benefit the subject more than continual attention;” this term is also called “well-intentioned or beneficial

---

<sup>274</sup> Theodore Roosevelt, *The Children of the Crucible*, 14 ANNALS OF AMERICA 129-31 (Chicago: Encyclopedia Britannica 1968); SAMUEL P. HUNTINGTON, WHO ARE WE: THE CHALLENGES TO AMERICA'S NATIONAL IDENTITY 256 (Simon & Schuster 2004).

neglect.”<sup>275</sup> “Benign neglect” as a policy was designed to ease tensions following the American Civil Rights Movement of the late 1960s. In 1970, New York Senator Daniel Patrick Moynihan wrote a memo to Richard Nixon that the issue of race in America had become so polarized that a period of “benign neglect” might be in order at the rhetorical level.<sup>276</sup> He suggested that

"[T]he issue of race could benefit from a period of 'benign neglect'. The subject has been too much talked about. The forum has been too much taken over to hysterics, paranoids, and boodlers on all sides. We may need a period in which Negro progress continues and racial rhetoric fades. The Administration can help bring this about by paying close attention to such progress -- as we are doing -- while seeking to avoid situations in which extremists of either race are given opportunities for martyrdom, heroics, histrionics, or whatever."<sup>277</sup>

‘Benign neglect’ was considered a reasonable tactic for calming the hysterical and paranoiac atmosphere and to avoid further polarizing the citizens. Although a government can make a “neutral” choice of a language to be taught in schools, the decision actively supports the culture related to the chosen language

---

<sup>275</sup> *Benign*, 3(b), Oxford English Dictionary Online Subscribers Additions Series (1993), available at <http://www.oed.com/> (last visited Apr. 25, 2012).

<sup>276</sup> Larry DeWitt, *Moynihan, Welfare Reform, and the Myth of “Benign Neglect”*, <http://www.larrydewitt.net/Essays/Moynihan.htm> (Oct. 2005) (last visited Jun. 3, 2010). Moynihan proposed a report “The Negro Family: The Case for National Action” about the status of the African-American families in 1965, but this is not the source of benign neglect. See Larry DeWitt, *Moynihan, Welfare Reform, and the Myth of “Benign Neglect”*, <http://www.larrydewitt.net/Essays/Moynihan.htm> (Oct. 2005) (last visited Jun. 3, 2010); Benign neglect was widely misinterpreted as a call to abandon federal programs to improve the lives of black families; Adam Clymer, *Obituary for Moynihan*, N.Y. TIMES, Mar. 26, 2003, <http://www.nytimes.com/2003/03/26/obituaries/26CND-MOYNIHAN.html> (last visited Apr. 12, 2012).

<sup>277</sup> DeWitt, *supra* note 276.

“[S]ince it guarantees the passing on of the language and its associated traditions and conventions to the next generation. The government therefore cannot avoid deciding which societal culture will be supported.”<sup>278</sup>

The fact that language policies inevitably involve privileging a limited number of languages is unavoidable, and language planning theories must therefore provide standards for evaluating the decision about which languages to be privileged and in which contexts.<sup>279</sup> Benign neglect can play a role in helping citizens tolerate a private-only use of non-chosen languages, but it cannot resolve the linguistic conflicts in public institutions, “which is the central issue confronting any normative theory of language rights”.<sup>280</sup>

Benign neglect is considered by many to be the best resolution to linguistic pluralism, but Patten argues that it cannot be applied to the case of public institutions under linguistic pluralism because of its practical complications.<sup>281</sup> Public services, public business, and public communication must be conducted in common language(s). For example, praying in a public school is viewed as unconstitutional in the United States, but speaking English while providing public services is not considered a legal problem, due to necessity. Political history shows that benign neglect as a policy was proposed to calm down racial disputes by not further irritating racial advocates, but in practice it is unavoidable to choose a common language and usually the dominant language is the chosen one. The phenomenon makes the gap between dominant and non-dominant languages wider when applied to linguistic disputes.

---

<sup>278</sup> WILL KYMLICKA, *MULTICULTURAL CITIZENSHIP* 110-1 (Oxford: Oxford Univ. Press 1995).

<sup>279</sup> Patten & Kymlicka, *supra* note 270, at 32.

<sup>280</sup> *Id.* at 32. This statement also reminds me of Anatole France’s work. In his *Le Lys Rouge* (1894), he said “the law, in its majestic equality, forbids rich and poor alike to sleep under bridges, to beg in the streets, and to steal their bread.” Even though a state prohibits infringement of the use of particular languages, the decision does not guarantee that language within its boundaries enjoy an equal status.

<sup>281</sup> Patten, *supra* note 269, at 693.

### 3.3.3 RESOURCE-ORIENTED APPROACH

Based on Kymlicka and Patten's analysis and Ruiz's "language-as-resource", the "resource-oriented approach" seeks to maintain language diversity in order to preserve resources that include: foreign language talents, culture, knowledge, ecological balance, and aesthetic appreciation. The concept of language-as-resource can be easily applied to certain languages, especially to the foreign ones widely used by millions of people. Those languages enjoy potential market or economic values, and they simply provide strong motives for people to learn and to use them. Ruiz proposed an example of students of the Japanese language being prepared for foreign services by benefitting from a State-Department-sponsored internship in a Japanese community center in San Francisco.<sup>282</sup>

This example is hardly applicable to many indigenous languages. In reality, some languages and language communities are becoming increasingly marginalized and even gradually disappearing. Why, then, should we care about the preservation of vulnerable languages used by few people? Those languages enjoy less market value. The rationale for maintaining these languages using the resource-based approach include: the maintenance of the linguistic 'ecosystem', preservation of knowledge, encouragement of self-identity,<sup>283</sup> and aesthetic appreciation.<sup>284</sup>

---

<sup>282</sup> Richard Ruiz, *Orientations in Language Planning*, in LANGUAGE DIVERSITY: PROBLEM OR RESOURCE? 17 (S. L. McKay & S. C. Wong eds., Newbury House Publisher 1988).

<sup>283</sup> DAVID CRYSTAL, LANGUAGE DEATH 33-9 (Canto ed., Cambridge Univ. Press 2004) (2000); KAMRANI DAVID HARRISON, WHEN LANGUAGE DIE 29-35 (Oxford Univ. Press 2007).

<sup>284</sup> Idil Boran, *Diversity, Public Goods, and Fairness*, in LANGUAGE RIGHTS AND POLITICAL THEORY 195 (Will Kymlicka & Alan Patten eds., Oxford Univ. Press 2003).

A ‘linguistic ecosystem’ implies that when a language dies,<sup>285</sup> irreversible damage may occur as a result. Ecological diversity maintains that preservation should be fostered because living entities exist through a network of interrelated organisms, plants, animals, bacteria, etc.<sup>286</sup> Any damage to one part of the ecosystem may generate unforeseeable and even unrecoverable results, so the maintenance of its diversity protects each part of the system as a whole. In a holistic conception, cultures and biological domains have a mutually reinforcing relationship: human ecology links the structure and organization of a human community to interactions with its localized environment.<sup>287</sup> In this sense, plural cultures present diverse ecosystems. Furthermore, diversity has a central place in evolutionary thought, where it is seen as the result of species genetically adapting in order to survive in different environments.<sup>288</sup> The strongest ecosystems are thus those that are most diverse.<sup>289</sup>

Applying these concepts to human development, success in colonizing this planet relies on our ability to develop diverse cultures that suit differing environments.<sup>290</sup> The vocabulary of a language, which is an inventory of items in a culture, contributes

“[T]o make sense of the world and to survive in a local ecosystem..... the economic and cultural importance of fish is reflected in the Oceanic languages of the Pacific.”<sup>291</sup>

---

<sup>285</sup> The vitality of language is generated by language utilization. David Crystal indicates “For a language is really alive only as long as there is someone to speak it to. When you are the only one left, your knowledge of your language is like a repository, or archive, of your people’s spoken linguistic past.” CRYSTAL, *supra* note 283, at 2.

<sup>286</sup> *Id.* at 32-3.

<sup>287</sup> *Id.* at 33 (citing Peter Haggertt, *Entry on Human Ecology*, in NEW FONTANA DICTIONARY OF MODERN THOUGHT 248 (Alan Bullock et al eds., 2nd ed., Fontana 1988) (1977)).

<sup>288</sup> *Id.* at 33.

<sup>289</sup> *Id.* at 33

<sup>290</sup> *Id.* at 33

<sup>291</sup> DANIEL NETTLE & SUZANNE ROMAINE, *VANISHING VOICES: THE EXTINCTION OF THE WORLD’S LANGUAGES* 60 (New York: Oxford Univ. Press 2000).

Because language is essential to human beings and their cultures, which are chiefly transmitted through spoken and written languages, the development of multiple cultures also makes the role of languages critical.<sup>292</sup>

Language is a container of knowledge, and even small languages are scientifically valuable. The knowledge may be far from the majority's daily lives, but it is useful and critical for those language speakers. Endangered languages may contain information that a mainstream language does not possess or currently need. For example, people may think English, a dominant language, can be used to describe the entire world. However, when compared to Todzhu (a southern Siberian language) and Musqueam (an indigenous Canadian language), English is neither precise nor scientifically sufficient. For example, reindeer, critical to Todzhu survival, are classified using 12 Todzhu nouns according to their age, gender, and castration status.<sup>293</sup> Importance or significance is subjective.

Another example concerns the taxonomy of *Schelten* [sce : ʃtən] in the Musqueam language. *Schelten* [sce : ʃtən], which contains *quisich* [k<sup>w</sup>ʃic], *chewche* [qi'wx], *qualihwe* [k<sup>w</sup>al'əx<sup>w</sup>], and *huen* [hu : n], is one kind of fish.<sup>294</sup> Genetically, *schelten* [sce : ʃtən] corresponds precisely to the taxonomy of *oncorhynchus*. *Quisich* [k<sup>w</sup>ʃic], *chewche* [qi'wx], *qualihwe* [k<sup>w</sup>al'əx<sup>w</sup>], and *huen* [hu : n] refer to 'clarki clarki', 'mykiss', 'keta', and 'gorbuscha', respectively.<sup>295</sup> In English, salmon and trout are considered as two groups of fish. Trout includes cutthroat (clarki clarki) and steelhead (mykiss), and salmon includes chum (keta) and pink

---

<sup>292</sup> CRYSTAL, *supra* note 283, at 33.

<sup>293</sup> HARRISON, *supra* note 283, at 29-30.

<sup>294</sup> *Id.* at 33-4. The names of *schelten*, *quisich*, *chewche*, *qualihwe*, and *huen* are my intuitive English transliteration. Harrison only provides their international phonetic alphabets in his book.

<sup>295</sup> *Id.* at 33-4.

(gorbuscha).<sup>296</sup> The taxonomy of English is not as scientifically precise as that of the Musqueam language regarding trout and salmon. This instance may be a casual coincidence. The Klingit and Klallam peoples, who live close to Musqueam, also group *oncorhynchus* into trout and salmon.<sup>297</sup>

These examples do not suggest that Todzhu or Musqueam is more refined than English. They posit that it is possible for at least some folk taxonomies to achieve genetically scientific groupings that are also useful to them in interacting with their animals and environments.<sup>298</sup> Even English, a well-developed language, is incomplete and can benefit from the precision of other languages.

Aesthetic appreciation gives intangible and emotional values in various languages. Various ways of expressing emotions, creating art, or engaging in forms of artistic performance are deeply associated with particular languages, which provide *aesthetic values* to the larger world community of human beings.<sup>299</sup> Take *haiku* (俳句) in the Japanese language and culture, for example; even though haiku is now produced in other languages, the rest of the world would not have had the opportunity to appreciate this kind of poetry if the Japanese language were dead before other people came into contact with Japanese culture.<sup>300</sup> The world of literature would be aesthetically impoverished if French disappeared, for example, or if other languages died, and this situation provides reasons for language preservation. However, aesthetic needs usually rank lower than other urgent needs, such as life, health, food, shelter, liberty, and freedom. Therefore,

---

<sup>296</sup> HARRISON, *supra* note 283, at 33-4.

<sup>297</sup> *Id.* at 34.

<sup>298</sup> *Id.* at 34-5.

<sup>299</sup> Idil Boran, *supra* note 284, at 195.

<sup>300</sup> *Id.* at 195.

mere aesthetic appreciation is not substantial or urgent enough for many to justify the moral obligations of language preservation.<sup>301</sup>

The relationship between identity and language is complex. Identity, which is a summation of characteristics, including physical appearance, customs dress, beliefs, rituals, or the whole panoply of personal behaviors, is what makes the members of a community recognizably the same and uniquely different.<sup>302</sup> Does language create identity, or does identity choose language? Theodore Roosevelt said in 1919 that

“There can be no divided allegiance here. Any man who says he is an American, but something else also, isn’t an American at all. We have room but for one language here and that is the English language, for we intend to see that the crucible turns our people out as Americans, of American nationality; we have room for but one soul loyalty, and that is loyalty to the American people.”<sup>303</sup>

The English language as Roosevelt’s definition is the only catalyst in the crucible to become an American. On the other hand, Kafka said that

“German is my mother tongue and therefore natural to me, but Czech is more intimate to my heart.”<sup>304</sup>

The Czech language spoke to Kafka’s sense of self and personal identity more so than the language of his birth.

---

<sup>301</sup> See Boran, *supra* note 284, at 196.

<sup>302</sup> CRYSTAL, *supra* note 283, at 39.

<sup>303</sup> Theodore Roosevelt, *Letter to the President of the American Defense Society* (Jan. 3, 1919).

<sup>304</sup> “Deutsch ist meine Muttersprache und deshalb mir natürlich, aber das Tschechische geht mir viel herzlicher.” Franz Kafka, *Brief an Milena* [Letters to Milena], in *LIZENZAUSGABE FÜR EUROPA 22* (Willy Haas ed., Schocken Books 1952).

Language links an individual to himself, his neighbors, and his broader culture of origin or of choice, lying at the heart of identity formation.

#### 3.3.4 DIVERSITY MAINTENANCE APPROACH

Diversity maintenance provides an attractive direction for language planning: any means necessary to promote a non-dominant language is justified according to this stance. Language ecosystems, knowledge preservation, aesthetic appreciation, and identity enhancement are arguments in favor of this concept.

Cost is one glass ceiling of the diversity maintenance approach. In addition, the approach itself does not provide further guidance about the extent to which a state should invest in linguistic diversity.

#### 3.3.5 PROCEDURAL APPROACH

Unlike outcome-generating approaches, procedural approaches focus on “articulating a non-outcome-based procedural account of basic normative principles”.<sup>305</sup> For this discussion, we can categorize procedural approaches as follows.

The first category is *democratic legitimacy*, an approach proposed by Latin and Reich. They suggest that a standard of democratic legitimacy should be satisfied: because language protection and security schemes are analogous to certain public goods provided by the state out of general tax revenues, provisions concerning language should be decided by democratic process rather than being required or prohibited by considerations of justice.<sup>306</sup>

---

<sup>305</sup> See Patten & Kymlicka, *supra* note 270, at 49.

<sup>306</sup> *Id.* at 49.

The key point is not whether a certain language outcome is generated, but whether the standards of democratic legitimacy are satisfied or not.<sup>307</sup> This approach accepts politics or political competition as a collective or public good, and it therefore encourages groups to seek linguistic remedies through political agitation, legal confrontation, and moderate levels of coercion.<sup>308</sup> This liberal democratic approach to linguistic justice holds an open and wide political where all doctrines regarding language planning compete.<sup>309</sup> Patten adds to this an ‘even-handed treatment’ standard by which people can legitimately request that their language-related identity be dealt with by public institutions in an “even-handed” way: if certain rights and accommodations are extended to one language, then even-handedness requires that they also be extended to others for everyone to strive to realize and to advance his or her identity on an even playing field.<sup>310</sup>

The second procedural approach category is ‘just action and working knowledge of language standard’. From the perspective of the “least advantaged linguistic class,” the most attractive language policy is one that goes no further than what is required for the state to communicate effectively with its citizens.<sup>311</sup> That is to say, a certain language can be no longer privileged when communication efficiency is satisfied. The requirement of effective communication differs in societies and structures of government, but it is common that states should not force their citizens to acquire more than a “working knowledge” of major language(s).<sup>312</sup> It is also reasonless for the state to intervene in areas not affecting its ability to

---

<sup>307</sup> Patten & Kymlicka, *supra* note 270, at 49.

<sup>308</sup> David Laitin & Rob Reich, *A Liberal Democratic Approach*, in LANGUAGE RIGHTS AND POLITICAL THEORY 93, 103 (Will Kymlicka & Alan Patten eds., Oxford Univ. Press 2003).

<sup>309</sup> *Id.* at 103-4.

<sup>310</sup> Patten & Kymlicka, *supra* note 270, at 51.

<sup>311</sup> Daniel M. Weinstock, *The Antinomy of Language Policy*, in LANGUAGE RIGHTS AND POLITICAL THEORY 267 (Will Kymlicka & Alan Patten eds., Oxford Univ. Press 2003).

<sup>312</sup> *Id.* at 267-8.

communicate effectively with its citizens.<sup>313</sup> In this sense, Weinstock maintains that three principles should be followed. (1) *minimalism* -- state measures must be least invasive, (2) *anti-symbolism* -- a state's linguistic choice must not have symbolic significance, and (3) *revisability* -- a state's linguistic choice must be open to the possibility of changes in the linguistic composition of society.<sup>314</sup>

The third factor aims to avoid oppression and injustice. Blake set the foundation of his argument by introducing the liberal idea that all the individuals within a political community have a right to be treated as equal participants within that community.<sup>315</sup> From the standpoint of liberal equality, Blake examines four pathways in which linguistic minorities might experience pressure towards assimilation: (1) present discrimination based upon linguistic status, (2) past discrimination based upon linguistic status, (3) refusal to grant official language status within the political sphere, and (4) unequal advantages stemming from minority linguistic status.<sup>316</sup> The common idea is that present and past discrimination constitutes legitimate bases for a claim to linguistic preservation. By means of employing historical injustice, we can often easily explain the plight of many linguistic minorities with reference to patterns of illegitimate acts of domination and colonization decades or centuries ago even though it is difficult to articulate the precise causation of language death.<sup>317</sup> By mocking, silencing, or making minority linguistic communities feel less worthy participants in the whole political community, a state in fact divides the populace into more and less worthy members in the whole political community.<sup>318</sup>

---

<sup>313</sup> Weinstock, *supra* note 311, at 268.

<sup>314</sup> *Id.* at 268.

<sup>315</sup> Michael Blake, *Language Death and Liberal Politics*, in LANGUAGE RIGHTS AND POLITICAL THEORY 220 (Will Kymlicka & Alan Patten eds., Oxford Univ. Press 2003).

<sup>316</sup> *Id.* at 220.

<sup>317</sup> *Id.* at 220.

<sup>318</sup> *Id.* at 220.

That is to say, an action designed to give reasons for people to see themselves as inferior builds up a caste-like system, and the action is counted as an illegitimate form of discrimination.<sup>319</sup>

Refusal to grant official linguistic status does not always constitute an illegitimate form of discrimination. Demography and history are the most important determinants. Demography is relevant because the language of political life follows the language of the political community to some extent.<sup>320</sup> The refusal to grant official status to a minority language if the language were the first language of a large part of the political community or when the language forms a majority within a territorial unit can represent in itself an illegitimate privileging of the dominant linguistic communities.<sup>321</sup> History is an indispensable consideration to determine when official linguistic status is in need of justice. When a linguistic minority once constituted a sovereign nation and was illegitimately colonized by a linguistic majority, it is a form of status discrimination to refuse official language status to the minority language.<sup>322</sup>

It is arguable whether unequal advantage or opportunity stemming from linguistic status is a form of injustice. Blake quotes Elizabeth Anderson, who states that not all forms of inequality are, or should be, the legitimate focus of a liberal theory; liberals have no reason, even in principle, to compensate the sexually unattractive; however much such inequalities can affect life chances.<sup>323</sup> Furthermore, even though Kymlicka suggests that, relative to members of the majority culture, members of the minority culture lack a secure cultural and linguistic framework, assimilation in fact can occur so gradually that at any given point all individuals have access to

---

<sup>319</sup> Blake, *supra* note 315, at 222-3.

<sup>320</sup> *Id.* at 224.

<sup>321</sup> *Id.* at 224.

<sup>322</sup> *Id.* at 225.

<sup>323</sup> *Id.* at 226 (citing Elizabeth Anderson, *What is the Point of Equality*, 109:2 ETHNICS 287-337 (1999)).

adequate cultural materials needed to act as autonomous agents.<sup>324</sup> In other words, all individuals have a need to maintain their cultural and linguistic communities, but it is always hard to see at what point an individual is left without adequate cultural materials to argue that the process of linguistic change itself involves any injustice.<sup>325</sup> The simple desire to teach a certain language to descendants so it can survive into the indefinite future is insufficient to justify any political considerations.<sup>326</sup> Therefore, avoiding oppression and injustice are more conceptual political goals than normative standards.

With the wide gap in the needs and status of languages between a dominant language and other languages, measures and actions taken according to the preceding procedural approaches face two problems. First, equal treatment is an impractical ideal. Governments, usually the largest employers in most countries, actively use at least one dominant language to provide public services and public education. According to Patten, a language enjoys public recognition in public life when “it is possible to access public services and/or conduct public business in that language.”<sup>327</sup> When language choice is made by the government, then, the largest share of the total resources and opportunities is distributed to the chosen language(s) through practice and public education. Those languages excluded from the range of working languages consequentially enjoy lower language status and much less government benefits. From the perspective of equal distribution of resources, roughly the same amounts of the government’s annual budget should be used to compensate excluded languages, clearly an impossibility.

---

<sup>324</sup> Blake, *supra* note 315, at 226 (citing Elizabeth Anderson, *What is the Point of Equality*, 109/2 ETHNICS 287-337 (1999)).

<sup>325</sup> *Id.* at 226 (citing Elizabeth Anderson, *What is the Point of Equality*, in 109/2 ETHNICS 287-337 (1999)).

<sup>326</sup> *Id.* at 226-8 (citing Elizabeth Anderson, *What is the Point of Equality*, 109/2 ETHNICS 287-337 (1999)). In this sense, even though the deterioration of social dominance is commonly felt as a threat, the complaint seems more a reflection of privilege lost of the caste-like system rather than of injustice imposed.

<sup>327</sup> Patten, *supra* note 269, at 692-5.

Second, although the values of aesthetic appreciation, identity, and cultural inheritance are not easily estimated, they do exist and are cherished by many people. These needs are not taken into consideration in the procedural approaches of language law.

### 3.3.6 LINGUISTIC HUMAN RIGHTS APPROACH

The final approach we discuss is “linguistic human rights”. Language rights could comprise an impressive normative and political foundation if it could be seen as integral to human rights.<sup>328</sup> As noted previously, existing international legal documents say very little about language even though human rights standards place constraints on how certain language policy objectives are pursued by governments, which sometimes adopt as a goal the diffusion of a single language across the whole of the state by humiliating, cruel and grossly illiberal steps.<sup>329</sup>

A few obvious examples of the combination of language and human rights standards are so-called *tolerance rights*, such as the rights of members of linguistic minorities to publish their own magazines, or to establish their own private schools, or to form their own cultural organizations, and the right not to be discriminated against on the basis of one’s mother tongue. These are seen as part of traditional individual rights to freedom of speech, freedom of the press, freedom of association, and non-discrimination.<sup>330</sup> International legal practice provides some arguably language-relating rights. The 1948 Universal Declaration of Human Rights recognizes rights to a fair trial (Article 10); not to be subjected to arbitrary interference with privacy, family, home or correspondence (Article 12), and to freedom of expression (Article 19). These rights are interpreted as rights to publish books and newspapers in one’s own language, rights to a

---

<sup>328</sup> Patten & Kymlicka, *supra* note 270, at 33.

<sup>329</sup> *See id.* at 33.

<sup>330</sup> *Id.* at 33-4.

court-appointed interpreter in certain circumstances, and rights to assign one's child a personal name associated with one's own language.<sup>331</sup>

The main battlefield of language rights conflicts is the adoption of *promotion rights*, such as the right to public funding of minority language schools or of minority language radio and television broadcasting, or the right to use one's language in dealing with public officials, or the right to have judicial proceedings in one's language or to receive government documents in one's language, or the right to official language status.<sup>332</sup> These rights are at the heart of most language conflicts around the world, but they appear less clear in international legal practice.<sup>333</sup>

The existence of promotion language rights is still arguable. First, scholars have not reached a consensus about promotion rights due to various desires, goals, needs, capacities, historic roots, and demographical or geographical conditions.<sup>334</sup> Second, any attempt to define a set of rights that applies to all linguistic groups is likely to end up focusing on relatively modest claims, which include primarily tolerance rights plus a few very modest promotion or accommodation rights.<sup>335</sup>

Third, international human rights practice still focuses on individual rights, which are inspired by the classic propaganda of the 1789 French Revolution: liberty, equality, fraternity (*liberté, égalité, fraternité*). Generally, linguistic human rights have to be entailed to, and be interpreted from, another human right. Languages need a number of people to be spoken, maintained, and passed on to further generations, so

---

<sup>331</sup> Patten & Kymlicka, *supra* note 270, at 33-4.

<sup>332</sup> *Id.* at 33-4.

<sup>333</sup> *Id.* at 33-4.

<sup>334</sup> *See id.* at 34.

<sup>335</sup> *See id.* at 35.

“[A]ny argument that appeals to public goods to make a case for the preservation of languages would have to assume the collectivity requirement”.<sup>336</sup>

The concepts of linguistic human rights arguments are involved in cultural and collective rights as well as individual rights. In addition, because of the principle of sovereignty and the preponderance of would-be offender nations, these rights have been hard to enact in legally binding documents.<sup>337</sup>

Fourth, like the ‘benign neglect’ approach, ‘linguistic human rights’ must face the same conflict: a state has to choose a subset of the whole languages spoken on its territory, and this kind of decision on its face violates equality among language communities which often represent particular ethnic groups.

### 3.3.7 APPLICABILITY OF NORMATIVE STANDARDS

Various normative standards have been discussed in this chapter. No matter which normative standard is adopted, language planning must be carried out through legal norms and provisions called language law. Since language law is composed of the legal provisions and norms regarding language planning and policy, this law is still part of the whole legal system of the state. In his book discussing the relationship between law and justice, Robert Alexy argues that any legal rule’s correctness (*Richtigkeit*) must be justified internally and externally.<sup>338</sup> Legal

---

<sup>336</sup> Boran, *supra* note 284, at 194.

<sup>337</sup> Karel Vasak, *Human Rights: A Thirty-Year Struggle: the Sustained Efforts to give Force of law to the Universal Declaration of Human Rights*, 30:11 UNESCO COURIER 29-32 (Paris: UN Educ., Scientific, and Cultural Org., Nov. 1977).

<sup>338</sup> 顏厥安, 法與實踐理性 YEN JUE-AN, FA YU SHIJIANLIXING [Law and Rational Practice] 288 (Asian Culture 1998) (citing ROBERT ALEXY, THEORIE DER JURISTISCHEN ARGUMENTATION. DIE THEORIE DES RATIONALEN DISKURSES ALS THEORIE DER JURISTISCHEN BEGRÜNDUNG [A Theory of Legal Argumentation: The Theory of Rational Discourse as Theory of Legal Justification] 262 (Frankfurt am Main: Suhrkamp 1983)).

argumentation is rationally based on the context within the field of the valid legal order, and it is therefore restricted by valid legal norms.<sup>339</sup> In this way, we must always question whether these standards are applicable when the discussion of legal system is involved. In fact, in the field of jurisprudence, constitutionality and human rights are unavoidably considered because these two notions are the justification bases of every legal norm, including language law. Accordingly, the general rule and principles of law, such as constitutionality and universal human rights protection, are applicable to language law.

Compared to other aforementioned approaches, linguistic human rights are proximal to the concerns of language law because human rights are the foundation of every individual accepting the rule of the state from the viewpoint of a social contract. Human rights enjoy universal recognition by the international community even though the details differ across political entities. Responding to human rights concerns is an unavoidable topic when discussing the actions of the state. Furthermore, the human rights approach does not exclude other approaches from consideration. According to Ruiz, legal and quasi-legal remedies of language-as-rights are “*regarded by minority communities as the last step before war or surrender.*”<sup>340</sup> His statement might be misunderstood to restrict the forms of legal remedies to pecuniary compensation; however, it points out that language rights are not introduced to maintain that linguistic diversity is always a better condition, but to guarantee that linguistic minorities can enjoy basic protection from the state. A linguistic human rights approach takes

---

<sup>339</sup> 顏厥安, 法與實踐理性 YEN, *supra* note 338, at 142 (citing ROBERT ALEXU, THEORIE DER JURISTISCHEN ARGUMENTATION. DIE THEORIE DES RATIONALEN DISKURSES ALS THEORIE DER JURISTISCHEN BEGRÜNDUNG [A Theory of Legal Argumentation: The Theory of Rational Discourse as Theory of Legal Justification] 264 (Frankfurt am Main: Suhrkamp 1983)).

<sup>340</sup> Richard Ruiz, *Official Languages and Language Planning*, in PERSPECTIVES ON OFFICIAL ENGLISH 17 (Karen L. Adams & Daniel T. Brink eds., Mouton de Gruyter: New York 1990).

priority in the language planning and policy process, but it leaves much room for other supplementary and complementary approaches.

### **3.4 CONCLUSION**

This chapter identified the relationship between language and law as “language law.” The content of language law includes laws regarding language planning (status planning, acquisition planning, and corpus planning) and language rights. Domestic written law derived from the Constitution and international treaties is the primary source of language law in Taiwan. Therefore, when analyzing Taiwan’s normative standards of language law, legal principles of the Constitution and international treaties should be first examined and applied. Furthermore, a linguistic human rights approach is viewed as an adoptable normative standard.



## CHAPTER 4: APPLYING INTERNATIONAL HUMAN RIGHTS TO TAIWAN

The concept of linguistic human rights is an underdeveloped field in the domestic legal practice of Taiwan. In order to adopt the human rights approach, source law is also introduced from outside the domestic jurisdiction. However, because of Taiwan's unique international political status, it is necessary to know how international human rights are applied to Taiwan before discussing the content of linguistic human rights.

### 4.1 SOURCES OF INTERNATIONAL HUMAN RIGHTS LAW

The concept of linguistic human rights is derived from the international debate on the status of ethno-linguistic minorities associated with fundamental human rights.<sup>341</sup> These rights are derived from many sources, as the following sections describe.

#### 4.1.1 CHARTER OF THE UNITED NATIONS

The most prominent source of international human rights law is the Charter of the United Nation.<sup>342</sup> The U.N. Charter provides application primacy relative to other international treaties. U.N. Charter Article 103 states that

“In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.”

---

<sup>341</sup> Rainer Enrique Hamel, *Introduction: Linguistic Human Rights in a Sociolinguistic Perspective*, 127 INT'L J. SOC. LANG. 1-24 (1997).

<sup>342</sup> U.N. Charter, June 26, 1945, 59 Stat. 1031, 1 U.N.T.S. XVI, entered into force Oct. 24, 1945.

U.N. “members” consist of 192 different countries, and the U.N. Charter represents the pinnacle of the modern international law post-World War II. The Republic of China represented China in the United Nations before it was replaced by the People’s Republic of China government in 1971. After being expelled from the United Nations, the Republic of China government was recognized by fewer and fewer countries. Signing a new treaty, which required the standing of statehood, became increasingly difficult. Therefore, international treaties signed by the Republic of China government when it was a member of the United Nations remain the most important legal source to Taiwan even though Taiwan is currently not a member of the United Nations.

Human rights concerns lay the foundation of the United Nations. The Charter preamble states that

“We the peoples of the United Nations are determined.....  
to reaffirm faith in fundamental human rights, in the dignity  
and worth of the human person, in the equal rights of men  
and women and of nations large and small.”

The Charter proclaims, in Article 1, that the purposes of the United Nations do not include only self-determination, equal rights, and international cooperation of economic, social, cultural, or humanitarian problems; they also include the promotion and encouragement of human rights and fundamental freedoms without distinction as to race, sex, *language* or religion.<sup>343</sup> Article 55 provides the standards and requirements that the United Nations promote: (1) higher standards of living, full employment, and conditions

---

<sup>343</sup> U.N. Charter art. 1, para. 3, June 26, 1945, 59 Stat. 1031, 1 U.N.T.S. XVI, entered into force Oct. 24, 1945.

of economic and social progress and development, (2) solutions for international economic, social, health, and related problems as well as international cultural and educational cooperation, and (3) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. Article 56 in addition obligates all members to pledge themselves to take action for human rights purposes.

#### 4.1.2 THE INTERNATIONAL BILL OF HUMAN RIGHTS

Based on the Charter of the United Nations, the International Bill of Human Rights passed by the United Nations General Assembly constitutes the corpus of U.N. human rights obligations. The International Bill of Human Rights covers a joint declaration, two international treaties, and three supplementary documents:

1. The 1948 Universal Declaration of Human Rights (UDHR)<sup>344</sup>
2. The 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>345</sup>
3. The 1966 International Covenant on Civil and Political Rights (ICCPR)<sup>346</sup>
4. The 1966 First Optional Protocol to the International Covenant on Civil and Political Rights<sup>347</sup>
5. The 1989 Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at abolishing the death penalty<sup>348</sup>

---

<sup>344</sup> The Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

<sup>345</sup> The International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976.

<sup>346</sup> The International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976.

<sup>347</sup> The First Optional Protocol to the International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 302, entered into force March 23, 1976.

## 6. The 2008 Optional Protocol on the International Covenant on Economic, Social and Cultural Rights<sup>349</sup>

In order to accommodate various viewpoints of human rights, the drafting committee of the Universal Declaration of Human Rights, adopted a dual-track system: *declaration* and *covenant* (convention). The committee set forth general principles or standards of human rights in declarations and defined specific rights and their limitations in covenants.<sup>350</sup> The most conspicuous difference between a declaration and a covenant is their effects. A declaration carries only *moral pressure* by being adopted by the international community, but a covenant is *legally binding* by entering into force upon ratification by a required number of party States. Without legal binding force, a declaration is more ideal and abstract.<sup>351</sup> Therefore, a declaration is either wider in content or more general in expression than a covenant. In addition, *protocols* are made to supplement covenants.

The 1948 Universal Declaration of Human Rights (UDHR) was the first document passed by the United Nations. With 48 votes, none against, and 8 abstentions, the Universal Declaration of Human Rights was proclaimed by the United Nations

---

<sup>348</sup> The Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at abolishing the death penalty, G.A. res. 44/128, annex, 44 U.N. GAOR Supp. (No. 49) at 207, U.N. Doc. A/44/49 (1989), entered into force July 11, 1991.

<sup>349</sup> The Optional Protocol on the International Covenant on Economic, Social and Cultural Rights, G.A. res. 63/117 (Dec. 10, 2008).

<sup>350</sup> Office of the High Commissioner for Human Rights, *The International Bill of Human Rights, in the International Human Rights Law Webpage*, <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf> (last visited Jan. 2010).

<sup>351</sup> Some scholars argue that the 1948 Declaration of Human Rights constitutes customary international law because of consistent international legal practice. See 陳隆志, 由國際人權法談人權立國 Chen Lung-Chu, *You Kuozi Renquanfa Tan Renquanlikuo* [Discussion about Human Rights State from the Perspective of International Human Rights], 34 NEW CENTURY THINK TANK FORUM 28 (New Century Institute Press Jun. 30, 2006) (Taiwan).

General Assembly in Paris on 10 December 1948.<sup>352</sup> It was intended to be a common standard of achievement for all peoples and all nations. The Declaration is described as

“a yardstick by which to measure the degree of respect for, and compliance with, international human rights standards” and “a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community.”<sup>353</sup>

Every individual and every organ of society is expected to strive by teaching and education to promote respect for these rights and freedoms set forth in the Declaration and by progressive measures, national or international, to secure their universal and effective recognition and observance among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.<sup>354</sup>

The UDHR consists of a preamble and 30 articles. Its text contains several parts: universal coverage (Article 1),<sup>355</sup> equality (Article 2),<sup>356</sup> the essential right to the

---

<sup>352</sup> Office of the High Commissioner for Human Rights, *The International Bill of Human Rights*, in the International Human Rights Law Webpage, <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf> (last visited Jan. 2010).

<sup>353</sup> *Id.*

<sup>354</sup> *Id.*

<sup>355</sup> Article 1 articulates the philosophy of the Declaration and assures that the right to liberty and equality is every human being's inalienable birthright: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

<sup>356</sup> Article 2 affirms the principle of equality. This article prohibits “distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” and states that “no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.”

enjoyment of all other rights and other civil and political rights (Articles 3 to 21),<sup>357</sup> economic, social and cultural rights (Articles 22 to 27),<sup>358</sup> and the concluding articles (Articles 28 to 30).<sup>359</sup>

The international covenants made in the 1960s are the continuation of the 1948 Declaration of Human Rights and fall into two categories: (1) civil and political rights, and (2) economic, social and cultural rights.<sup>360</sup> The International Bill of Human Rights therefore consists of two covenants: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) to supplement the international human rights system. The ICCPR contains 53 articles divided into 6 parts, and the ICESCR contains 31 articles divided into 5 parts. The content of the ICCPR and the ICESCR are shown in the following tables.

**Table 4-1: 1966 International Covenant on Civil and Political Rights**

<b>Part</b>	<b>Article</b>	<b>Content</b>
Part I	art. 1	Article 1, ICCPR is identical to Article 1, ICESCR. This article proclaims the right of self-determination.

<sup>357</sup> Articles 3 to 21 affirm the traditional civil and political rights by starting with a right essential to the enjoyment of all other rights first- the right to life, liberty and security of person.

<sup>358</sup> Articles 22 to 27 recognize economic, social and cultural rights. Articles 22 to 27 are on the basis of the rights as a member of society and they characterize these rights as indispensable for human dignity and the free development of personality “through national effort and international cooperation”. See Office of the High Commissioner for Human Rights, *The International Bill of Human Rights, in the International Human Rights Law Webpage*, <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf> (last visited Jan. 2010).

<sup>359</sup> Articles 28 to 30 conclude that everyone is entitled to a social and international order to realize the human rights and fundamental freedoms declared and emphasize the duties and responsibilities owed by an individual to his community. In no case may human rights and fundamental freedoms be exercised contrary to the purposes and principles of the United Nations. Any activity or any act may not be misconstrued to lead to the destruction of any of the rights and freedoms of the Declaration.

<sup>360</sup> Karel Vasak, *Human Rights: A Thirty-Year Struggle: the Sustained Efforts to Give Force of Law to the Universal Declaration of Human Rights*, 30:11 UNESCO COURIER 29 (Paris: United Nations Educational, Scientific, and Cultural Organization, 1977).

(Table 4-1 continued)

Part II	art.2-5	Articles 2 to 5 are similar to Articles 2 to 5, ICESCR. They provide equality and safeguards against the destruction or undue limitation of human rights. However, ICCPR allows a State to limit or suspend the enjoyment of certain rights in cases of officially proclaimed public emergency which threatens the life of the nation without discrimination solely of race, color, sex, language, religion or social origin.
Part III	art.6-27	Articles 6 to 27 are the third part enumerating civil and political rights, including physical integrity, personal liberty and security, procedural fairness of law, individual liberty, political participation, and non-discrimination and equality before the law.
Part IV	art.28-45	Articles 28 to 45 establish the Human Rights Committee and the reporting and monitoring processes. This part also recognizes the competence of the Committee to resolve disputes between State parties on the implementation of the Covenant.
Part V	art.46-47	Articles 46 and 47 clarify that the Covenant shall not be misinterpreted.
Part VI	art.48-53	Articles 48 to 53 are like the last part of the ICSECR. This part governs ratification, entry into force, and amendment of the Covenant.

**Table 4-2: 1966 International Covenant on Economic, Social and Cultural Rights**

<b>Part</b>	<b>Article</b>	<b>Content</b>
Part I	art.1	Article 1 recognizes the right of self-determination.
Part II	art.2-5	Articles 2 to 5 require the rights set forth in the Covenant to be recognized without discrimination and that they can only be limited by law in a manner compatible with the nature of the rights for the purpose of promoting the general welfare in a democratic society.
Part III	art.6-15	Articles 6 to 15 enumerate the rights to work under just and favorable condition, social security, family life, an adequate standard of living, health, education, and cultural life and the articles also regulate specific actions for realization.
Part IV	art.16-25	Articles 16 to 25 govern reporting and monitoring system and the steps taken by the State parties to implement it. The UN Committee on Economic, Social and Cultural Rights (CESCR) may make general recommendations to the UN General Assembly on appropriate measures to realize the rights.
Part V	art.26-31	Articles 26 to 31 govern ratification, entry into force, and amendment of the Covenant.

Besides the two Covenants, the United Nations also passed three Optional Protocols for further implementation. The First Optional Protocol to the ICCPR enables the Human Rights Committee to receive and consider communications from individuals

claiming to be victims of violations of the Covenant by a State party. The Second Optional Protocol advocates that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights, and all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life. The 2008 Optional Protocol to the ICESCR was signed by several State parties but has not entered into effect.<sup>361</sup>

#### 4.1.3 OTHER SOURCES OF INTERNATIONAL HUMAN RIGHTS

Besides the U.N. Charter and the International Bill of Human Rights, the United Nations and its agencies also direct the making of treaties relating to various subjects, such as genocide, refugees, racial or sex discrimination, torture, and child protection.<sup>362</sup> In addition to treaties, the United Nations has proclaimed numbers of declarations, codes, rules, guidelines, principles, resolutions, and other human rights instruments. Equally important, regional organizations such as the European Union, the Organization of American States, and the Organization of African Unity issue human rights instruments, as well. For instance, the 1950 European Convention for the Protection of Human Rights

---

<sup>361</sup> The 2008 Optional Protocol to the ICESCR, G.A. res. 63/117 (2008); The 2008 Open-Ended Working Group on an Optional Protocol to the ICESCR, Draft Optional Protocol to the ICESCR, U.N. Doc. A/HRC/8/WG.4/3 (Apr. 4, 2008).

<sup>362</sup> The Convention on the Prevention and Punishment of the Crime of Genocide (Dec. 9, 1948), International Convention on the Elimination of All Forms of Racial Discrimination (Mar. 7, 1966), the Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity (Nov. 26, 1968), the International Convention on the Suppression and Punishment of the Crime of Apartheid (Nov. 30, 1973), the Convention on the Elimination of All Forms of Discrimination against Women (Dec. 18, 1979), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Dec. 10, 1984), the International Convention against Apartheid in Sports (Dec. 10, 1985), the Convention on the Rights of the Child (Nov. 20, 1989), the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Dec. 18, 1990), the Convention on the Rights of Persons with Disabilities (Dec. 13, 2006), and the International Convention for the Protection of All Persons from Enforced Disappearance (Dec. 20, 2006).

and Fundamental Freedoms,<sup>363</sup> the 1969 American Convention on Human Rights,<sup>364</sup> and the 1981 African Charter on Human and Peoples' Rights were respectively passed by the preceding regional organizations.<sup>365</sup>

International custom is also a source of international law if there is evidence that a widespread general practice has been accepted as law.<sup>366</sup> No precise formula indicates how widespread a practice must be, but it should reflect wide acceptance among the states, particularly those involved in the relevant activity.<sup>367</sup> In the human rights field, widespread acceptance of treaties, declarations, resolutions, and other instruments has become a key source of evidence of state practice as well as *opinion juris* (the accompanying sense of legal obligation) in creating binding law.<sup>368</sup> A customary norm binds all governments, including those that have not recognized the norm, as long as they have not expressly and persistently objected to its development.<sup>369</sup> Commentators have suggested that prohibitions against genocide, slavery, racial discrimination, and other gross human rights violations is *jus cogens*, which is a peremptory rule of international law prevailing over any conflicting international rule or agreement.<sup>370</sup>

## 4.2 THE EVOLVING GENERATIONS OF HUMAN RIGHTS

After establishment of the United Nations, the discourse on modern human rights

---

<sup>363</sup> European Convention on Human Rights and Fundamental Freedoms (ECHR), 213 U.N.T.S. 221, E.T.S. 5 (entered into force Sep. 3, 1953) (1950).

<sup>364</sup> American Convention on Human Rights (ACHR), O.A.S. T.S. 36, 1144 U.N.T.S. 123 (entered into force Jul. 18, 1978) (1969).

<sup>365</sup> African Charter on Human and Peoples' Rights (ACHPR), CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (Entry into force Oct. 21, 1986) (1982).

<sup>366</sup> DAVID WEISSBRODT, JOAN FITZPATRICK & FRANK NEWMAN, INTERNATIONAL HUMAN RIGHTS- LAW, POLICY, AND PROCESS 22 (3d ed. 2001).

<sup>367</sup> *Id.* at 22.

<sup>368</sup> *Id.* at 22.

<sup>369</sup> *Id.* at 22.

<sup>370</sup> *Id.* at 23.

has expanded for decades. The Czech jurist and first Secretary General of the International Institute for Human Rights in Strasbourg divided human rights into three generations as early as 1977.<sup>371</sup>

The *first generation* of human rights, stipulated in the first 21 articles of the UDHR and the ICCPR, is viewed as addressing the classical and fundamental human rights.<sup>372</sup> Succeeding the tradition of the French Revolution, first-generation human rights are “negative rights” dealing with protecting an individual’s liberty, civil rights, and political rights from the intervention of the state.<sup>373</sup> These rights were first confirmed as a universal normative standard by the 1948 Universal Declaration of Human Rights.<sup>374</sup> With cumulative experience and the development of theories, this first generation is broadly recognized by and familiar to the general public.

Three principles were established in the first generation to guide the development of human rights. First was the general ownership of human rights: the human rights belong to all the ordinary people, individually or collectively. Just as the U.N. Charter and the UDHR were proclaimed in the name of “we the people”, the human rights set forth are not granted by the states but are entitlements enjoyed by every human being.<sup>375</sup> Second was the obligation of states and governments: states and governments have the obligation to promote and to protect human rights, and fulfillment of the obligation is the

---

<sup>371</sup> Vasak, *supra* note 360, at 29, 32; Oliver C. Ruppel, *Third-Generation Human Rights and the Protection of the Environment in Namibia*, available at Konrad-Adenauer Stiftung Website, <http://www.kas.de/wf/en/> (Mar. 29, 2008) (last visited Jul. 5, 2010); Derek G. Evans, *Human Rights: Four Generations of Practice and Development*, in *EDUCATING FOR HUMAN RIGHTS AND GLOBAL CITIZENSHIP 2* (A. Abdi & L. Shultz eds., Albany: State University of New York Press 2007).

<sup>372</sup> See ANDREW VINCENT, *THE POLITICS OF HUMAN RIGHTS* 132-4 (Oxford 2010). Vincent also argues that Articles 1 and 3 corresponding to the opening of the Constitution of the United States are ‘religious language’.

<sup>373</sup> Vasak, *supra* note 360, at 29.

<sup>374</sup> Evans, *supra* note 371, at 2.

<sup>375</sup> *Id.* at 3.

criterion for being a member of the international society.<sup>376</sup> Third was the integration of human rights: there is no hierarchy of the human rights, and all human rights set forth in the UDHR are deemed to be fundamental, interdependent, and indivisible.<sup>377</sup>

Specific first-generation human rights are listed in the following table.

**Table 4-3: First-Generation Human Rights: Liberty, Civil and Political Rights**

<b>Type of Rights</b>	<b>Source</b>
Self-determination	UDHR art.1
The right to equal treatment	UDHR art. 1, 2& 7
The right to life, liberty and security of person	UDHR art.3
The right to be protected against slavery	UDHR art.4
The right to be protected against torture and cruel punishment	UDHR art.5
The right to be recognized as a person before the law	UDHR art.6
The right to an effective remedy for acts violating fundamental rights	UDHR art.8
The right to be protected against arbitrary exile or arrest	UDHR art.9
The right to receive a fair and public hearing of criminal charge	UDHR art.10
The right to be considered innocent until proven guilty and have necessary guarantees for defense	UDHR art.11
The right to privacy at home	UDHR art.12
The right to move and reside anywhere within one's country	UDHR art.13
The right to seek asylum internationally	UDHR art.14
The right to have nationality	UDHR art.15
The right to marry and found a family	UDHR art.16
The right to property	UDHR art.17
The right of freedom of belief and religion	UDHR art.18
The right of freedom of speech and opinion	UDHR art.19
The right to peacefully assemble and associate	UDHR art.20
The right to be protected from compulsion to join an organization	UDHR art.20
The right to take part in the government directly or indirectly and equally enjoy public service	UDHR art.21
The right to periodic and genuine elections	UDHR art.21

*Second-generation* human rights, mainly defined by Articles 22 to 27 of the UDHR and ICESCR, relate to welfare and social security of individuals to guarantee

<sup>376</sup> *Id.* at 3.

<sup>377</sup> Evans, *supra* note 371, at 3-4.

equal conditions and treatment for the well-being of the whole society.<sup>378</sup> In order to translate the moral force of the 1948 UDHR into legal instruments to further realize first-generation human rights, second-generation human rights were largely established on the basis of international covenants, conventions, and treaties from the 1960s to the 1980s.<sup>379</sup>

Requiring positive action by the state to be implemented, these rights are collective, rather than individual, and social, economic, and cultural in nature.<sup>380</sup> Examples of second-generation rights include the right to education, work, social security, food, self-determination, and an adequate standard of living.<sup>381</sup> Unlike the general confirmation of first-generation human rights, scholars are usually reluctant to recognize second-generation rights: human rights advocates have often based their arguments on the assumption that courts are unable to enforce affirmative duties on states, which makes these rights merely aspirational rather than legally enforceable.<sup>382</sup> Furthermore, critics also point out that not all states have the ability to provide the financial and technical resources for the realization of affirmative obligations, such as education and an adequate standard of living.<sup>383</sup> The rights recognized as the second-generation al include the following.

**Table 4-4: Second-Generation Human Rights: Social, Economic, and Cultural Rights**

<b>Type of Rights</b>	<b>Source</b>
The right to social security and to realization of economic, social and cultural rights	UDHR art.22
The right to work and protection against unemployment	UDHR art.23 (1)

<sup>378</sup> See VINCENT, *supra* note 372, at 134.

<sup>379</sup> Evans, *supra* note 371, at 4.

<sup>380</sup> Vasak, *supra* note 360, at 29.

<sup>381</sup> Ruppel, *supra* note 371.

<sup>382</sup> *Id.*

<sup>383</sup> *Id.*

(Table 4-4 continued)

The right to just and favorable conditions of work	UDHR art.23 (1)
The right to equal work for equal pay and equal opportunity	UDHR art.23 (2)
The right to enjoy remuneration ensuring human dignity and necessary social protection	UDHR art.23 (3)
The right to form and to join trade unions	UDHR art.23 (4)
The right to rest and leisure as an employee	UDHR art.24
The right to reasonable limitation of working hours and periodic paid holidays	UDHR art.24
The right to food, clothing, housing, medical care, and necessary social services	UDHR art.25 (1)
The right to security in the event of unemployment, sickness, disability, widowhood, old age	UDHR art.25 (1)
The right to special care and assistance for mothers and children	UDHR art.25 (2)
The right to free elementary education and the availability of secondary education	UDHR art.26 (1)
The right to higher education equally accessible to all via merit	UDHR art.26 (1)
The right to an education of full development of human personality and freedom, which promotes tolerance and understanding	UDHR art.26 (2)
The right of parent to choose the education given to their children	UDHR art.26 (3)
The right to cultural life and achievement of arts and science	UDHR art.27 (1)
The right to the interests of scientific, literary or artistic production	UDHR art.27 (2)

*Third-generation* human rights, collective or group-oriented rights,<sup>384</sup> are those rights that go beyond the mere civil and social, as expressed in many progressive documents of international law, including the ICESCR, the 1972 Stockholm Declaration of the United Nations Conference on the Human Environment, the 1992 Rio Declaration on Environment and Development, and other pieces of generally aspirational "soft law."<sup>385</sup> Third-generation rights, often called "rights of solidarity", are distinguished from the other two generations of human rights because their realization is predicated upon

<sup>384</sup> VINCENT, *supra* note 372, at 139.

<sup>385</sup> See Gunes Serkan and Yilmaz Gülsen, *Human Rights and the Urban Ecology*, available at SEAGA Home Page, <http://www.seaga.co.nr/> (Singapore: NIE-SEAGA Conference 2006 Paper, Nov., 2006) (last visited Jul.15, 2010). See also, VINCENT, *supra* note 372, at 135.

both the affirmative and negative duties of the state and the behavior of each individual.<sup>386</sup>

The term "third-generation human rights" is discussed by scholars and remains unofficial, and it covers a broad spectrum of rights, including: group and collective rights, the right to self-determination, as well as rights to economic and social development, to a healthy environment, to natural resources, to communicate and communication rights, to participation in cultural heritage and to intergenerational equity, to peace, and to sustainability.<sup>387</sup> Because race, language, religion, ethnicity, culture and kinship are not easily identified terms, and the principle of sovereignty and the preponderance of would-be offender nations are often not challengeable, these rights have been hard to enact in legally binding documents.<sup>388</sup> See Table 4-5.

**Table 4-5: Third-Generation Human Rights: The Rights of Solidarity**

Type of Rights	Source
Right to self-determination,	ICCPR art.1, ICESCR art.1
Right to economic and social development	ICCPR art.1, ICESCR art.1
Right to a healthy environment	ICESCR art.12& the 1972 Stockholm Declaration
Right to land and natural resources	UDHR art.17, ICESER art.11&25
Right to communicate and communication rights	Derived from the freedom of expression and theories <sup>389</sup>
Right to participation in cultural heritage	Derived from the ICESER art. 15
Rights to intergenerational equity and sustainability	Theories <sup>390</sup>

Fourth and fifth generation human rights are extremely new categories, and scholars have not reached a consensus about their content. For example, rights to

<sup>386</sup> Vasak, *supra* note 360, at 29; Ruppel, *supra* note 371.

<sup>387</sup> Serkan& Gülsen,*supra* note 385; Ruppel, *supra* note 371.

<sup>388</sup> VINCENT, *supra* note 372, at 139; Vasak, *supra* note 360, at 29; Serkan& Gülsen, *supra* note 385.

<sup>389</sup> Vasak, *supra* note 360, at 29.

<sup>390</sup> Vasak, *supra* note 360, at 29.

communication are viewed as the fourth-generation human rights in the modern information society,<sup>391</sup> and the right to a sustainable environment is mentioned as belonging to the fifth generation of human rights.<sup>392</sup> However, fourth and fifth generation human rights are also considered safeguards and extensions of the other three generations.<sup>393</sup> Regardless the different content of the generations, Tables 4-2 to 4-5 show that the first and the second generation human rights are clearly written in the ICCPR and the ICESCR. The information about the generations of human rights shows that the concepts of human rights are not limited to the International Bill of Human Rights. Scholars have also been developing the relevant concepts. Nevertheless, in this dissertation the scope of discussion regarding the application of human rights in Taiwan is neither boundless nor completely follows the scholars. In fact, this dissertation focuses on the adopted legal instruments which provide an important explanation of the legal source of the applicable human rights; and the explicitly written content makes it difficult for the government to refuse to apply them.

### 4.3 ADOPTION OF INTERNATIONAL HUMAN RIGHTS

Because of the complicated international status of Taiwan, international human rights instruments are not easily applied to this historically disputed territory. Generally, the UN international treaties adopt a *signatory-ratification-deposit* process to enter into force in the territories of the State Members. Article 48, Paragraph 1 of the ICCPR

---

<sup>391</sup> Rights to communication include freedoms that a person or group can mobile whatever the resources he or it has to communicate freely without interference and, in contrast, the rights claims others to yield, provide, or allocate resources form communication. In this sense, rights to communication confirm libraries, postal services, and basic telephone services as prerequisite resources for the exercise of other human rights. L. S. Harms, *Some Essential of the Right to Communicate*, available at the Center of Communication Rights Website, <http://www.righttocommunicate.org/> (2002) (last visited Jul. 15, 2010).

<sup>392</sup> VINCENT, *supra* note 372, at 147.

<sup>393</sup> Serkan& Gülsen, *supra* note 385; *see also* VINCENT, *supra* note 372, at 146-7.

stipulates that the covenant is open for *signature* by: (1) any of the UN's State Members, (2) any member of the UN's specialized agencies, (3) any State Party to the Statute of the International Court of Justice, or (4) any other State that has been invited by the General Assembly. Paragraph 2 of the same article further stipulates that the covenant is subject to *ratification*, and the instruments of ratification shall be *deposited* with the Secretary-General of the United Nations. The ICESCR and CEDAW have identical or similar stipulations.<sup>394</sup> This process is established on the precondition that State Members signing the instruments remain members of the qualified organizations.

On the other hand, Monism is the dominant theory of international law in Taiwan, and Taiwan applies international treaties by a “signature and ratification mode”. This means that an international instrument is applied through signature and ratification, and it is directly applied to its territory without further legislation.<sup>395</sup> The Council of Grand

---

<sup>394</sup> ICESCR, Art. 26: “1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant. 2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations. 3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article. 4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations. 5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.”;

CEDAW, Art. 25: “1. The present Convention shall be open for signature by all States. 2. The Secretary-General of the United Nations is designated as the depositary of the present Convention. 3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations. 4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.”

<sup>395</sup> General speaking, theories about the relationship between international law and state law (municipal law) can be categorized to “monism” and “dualism”. The former means that international law is viewed as a “foreign state law” and is directly applied to the domestic legal system. The latter thinks that international law does not surpass the internal legal system and it might be applied by the domestic competent authorities. See J. G. Starke, *Monism and Dualism in the Theory of International Law*, 17 BRIT. Y.B. INT’L L. 66 (1936). For example, the United States, Japan and the Republic of Korea are monism countries; The United Kingdom, Malta, Ireland, Norway and Finland are dualism countries. 臺灣國際法學會, 國際公約內國法化的實踐 TAIWANESE SOCIETY OF INTERNATIONAL LAW, GUOJIGONGYUE NEGUOFAHUA DE SHIJIJIAN [PRACTICE OF TRANSFORMING INTERNATIONAL LAW TO DOMESTIC LAW] 3-5 (Oct. 29, 2009) (Taiwan).

Justices Interpretation No. 329 (Dec. 24, 1993) says

“Within the Constitution, ‘treaty’ means an international agreement concluded between the R.O.C. and other nations or international organizations whose title may apply to a treaty, convention or an agreement. Its content involves important issues of the Nation or rights and duties of the people and its legality is sustained. Such agreements, which employ the title of ‘treaty,’ ‘convention’ or ‘agreement’ and have ratification clauses, should be sent to the Legislative Yuan for deliberation. Other international agreements, except those authorized by laws or pre-determined by the Legislative Yuan, should also be sent to the Legislative Yuan for deliberation.”<sup>396</sup>

The Judicial Yuan interpreted that

“Any treaty ratified and promulgated by law should be directly applied without any other specific legislative process or any order.”<sup>397</sup>

Hence, an international agreement is applied in Taiwan after it is signed, ratified and promulgated.

---

<sup>396</sup> 司法院大法官會議解釋第 329 號(1993) Shifayuan Dafaguan Huiyi Jieshi [Interpretation of the Grand Justices, Judicial Yuan] NO. 329 (Taipei: Ministry of Justice, Dec. 24, 1993).

<sup>397</sup> 司法院(五三)台函參字第一四五〇號, 民事法令釋示彙編 Judicial Yuan (53) Taihansan Zhi No.1450 (Mar. 2, 1964), in MINSHI FALING SHISHI HUIBIAN 2 (Jun. 1983). This administrative interpretation notice also cites Judicial Yuan Order No. 459 (司法院令 第 459 號), but this order cannot be searched in the Judicial Yuan’s electronic database at <http://jirs.judicial.gov.tw/Index.htm> (last visited May 12, 2011). However, it does not change the inference.

According to the Ministry of Foreign Affairs, the Republic of China (Taiwan) signed and ratified 169 international treaties before 1971.<sup>398</sup> The Republic of China (Taiwan) could successfully deposit the signed and ratified treaties signed when its statehood was not challenged or denied. The 1948 Convention on the Prevention and Punishment of the Crime of Genocide is an example.<sup>399</sup> The Republic of China signed the Convention on July 20, 1949 and ratified it on May 5, 1951. To implement the Convention, the Legislative Yuan further passed the Punishment of the Crime of Genocide Act, and the President promulgated it on May 22, 1953.<sup>400</sup> The Convention was signed, ratified, applied to Taiwan and implemented by legislative process. Besides the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the 1953 Convention on the Political Rights of Women,<sup>401</sup> the 1953 Slavery Convention (signed at Geneva on 25 September 1926 and Amended by the Protocol),<sup>402</sup> the 1953 Protocol amending the Slavery Convention (signed at Geneva on 25 September 1926),<sup>403</sup> etc., belong to this group. They fulfilled the requirements of signature, ratification and depositary, and they therefore took force domestically and international.<sup>404</sup>

The application problem resulted from Taiwan's disputed statehood and its

---

<sup>398</sup> 臺灣國際法學會，國際公約內國法化的實踐 TAIWANESE SOCIETY OF INTERNATIONAL LAW, *supra* note 395, at 69-88. However, the Ministry of Foreign Affairs' data include treaties with unilateral accession, signature proclaimed to be invalid after 1971 and rejected depositary. In addition, 31 treaties were signed but not ratified.

<sup>399</sup> Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277.

<sup>400</sup> 總統令，總統府公報第四〇〇號 President Order of May 22, 1953, 400 OFFICE OF THE PRESIDENT GAZETTE 1 (May 26, 1953).

<sup>401</sup> Convention on the Political Rights of Women, Mar. 31, 1953, 193 U.N.T.S. 135.

<sup>402</sup> Slavery Convention, Signed at Geneva on 25 September 1926 and Amended by the Protocol, Dec. 7, 1953, 212 U.N.T.S. 17.

<sup>403</sup> Protocol amending the Slavery Convention signed at Geneva on 25 September 1926, Dec. 7, 1953, 182 U.N.T.S. 51.

<sup>404</sup> I used past tense here because the PRC replaced the ROC in nearly all international treaties and organizations after 1971. The legal effect of the treaties is under dispute.

inconsistent membership in the United Nations. These events are chronicled in the table below.

*Table 4-6: International Events and their Influence on Taiwan*

<b>Date</b>	<b>Event</b>	<b>Status and Influence</b>
1945/8/15	The Japanese Shōwa Emperor terminates the Pacific War.	Taiwan is still part of the Empire of Japan.
1945/8/17	The United States directs Japanese forces in Taiwan to surrender to the ROC by General Order No. 1. <sup>405</sup>	The ROC starts to take over Taiwan.
1945/10/24	The Charter of the United Nations enters into force.	China, which is represented by the Republic of China government, organizes the United Nations with the United States, the Soviet Union, the United Kingdom, France and 46 other countries.
1945/10/25	The ROC proclaims “Retrosession Day”.	The Republic of China officially takes over Taiwan.
1949/12/7	The ROC Central Government loses the Chinese Civil War and retreats to Taiwan. <sup>406</sup>	The ROC Central Government loses control over mainland China, and its substantial territory is restricted to Taiwan Island and other islands.
1952/4/28	The Sino-Japanese Peace Treaty (the Treaty of Taipei) between the ROC and Japan is ratified. <sup>407</sup>	Nationals of the Republic of China are deemed to include all the inhabitants and former inhabitants of Taiwan and Penghu.

<sup>405</sup> General Order No. 1, 1945, 4 F.R.U.S. 658-9 (Washington: GPO, 1969).

<sup>406</sup> 總統令，總統府公報第二四五號 President Order, Dec. 7, 1949, 245 OFFICE OF THE PRESIDENT GAZETTE 1 (Dec. 31, 1949).

<sup>407</sup> The key articles of the 1952 Sino-Japanese Peace Treaty are Article 2: "It is recognised that under Article 2 of the Treaty of Peace which Japan signed at the city of San Francisco on 8 September 1951 (hereinafter referred to as the San Francisco Treaty), Japan has renounced all right, title, and claim to Taiwan (Formosa) and Penghu (the Pescadores) as well as the Spratley Islands and the Paracel Islands.", Article 4: "It is recognised that all treaties, conventions, and agreements concluded before 9 December 1941 between Japan and China have become null and void as a consequence of the war." and Article 10: "For the purposes of the present Treaty, nationals of the Republic of China shall be deemed to include all the inhabitants and former inhabitants of Taiwan (Formosa) and Penghu (the Pescadores) and their descendents who are of the Chinese nationality in accordance with the laws and regulations which have been or may hereafter be enforced by the Republic of China in Taiwan (Formosa) and Penghu (the Pescadores); and juridical persons of the Republic of China shall be deemed to include all those registered under the laws and regulations which have been or may hereafter be enforced by the Republic of China in Taiwan (Formosa) and Penghu (the Pescadores).

(Table 4-6 continued)

1952/4/28	The Treaty of Peace with Japan (the San Francisco Peace Treaty) enters into force. <sup>408</sup>	Without participation of the ROC or the PRC in the formation of the treaty, Japan cedes sovereignty over Taiwan. The Republic of China government still represents China in the United Nations.
1971/10/25	The United Nations General Assembly passes Resolution 2758, Session 26.	Chiang Kai-shek's Republic of China government is expelled from the United Nations, and the People's Republic of China government is deemed the only legitimate representative.
1972/9/29	The Joint Communiqué of the Government of Japan and the Government of the People's Republic of China is signed in Beijing, China.	Japan and the PRC establish an official foreign relationship, and Japan unilaterally abrogates the Treaty of Taipei.

Most countries today recognize the PRC government as the only legitimate government of China. However, myriad legal and political questions remain. Whether and when did Japan turn over its sovereignty in Taiwan to the ROC? Is the 1972 Treaty of Taipei still binding? Does the PRC have sovereignty over Taiwan because it succeeded the ROC? Is Taiwan represented by any government in the United Nations? Is Taiwan part of China? Is 'Taiwan' synonymous with the 'Republic of China'? These questions regarding representation of Taiwan and its statehood remain under dispute.<sup>409</sup>

Under Taiwan's current political status, two kinds of legal defects affect international treaties that Taiwan may wish to apply. First, the signature or ratification might have been invalidated. Second, even though they may fulfill the requirements of signature, ratification, or accession, the deposit of treaties is not accepted by the U.N.

<sup>408</sup> Article 2(b) of the Treaty of Peace with Japan: "Japan renounces all right, title and claim to Formosa and the Pescadores."

<sup>409</sup> Even though these issues are hot topics in several academic fields, this dissertation does not discuss about the political status of Taiwan or so-called "Taiwan problem" because it focuses on application of international human rights in Taiwan.

Treaties with invalidated signatures or ratifications are those that the PRC later joined after 1971. For instance, the PRC deposited its ratification of the 1966 International Convention on the Elimination of All Forms of Racial Discrimination and declared that

“The signing and ratification of the said Convention by the Taiwan authorities in the name of China are illegal and null and void.”<sup>410</sup>

If the PRC replaced the ROC as the only legitimate representative of China, it therefore had the authority to invalidate or nullify the ROC’s signatures and ratifications made while the ROC represented China.

However, according to Article 11 of the Vienna Convention on the Law of Treaties, the means of expressing consent to be bound by a treaty include signature, exchange of instruments constituting a treaty, ratification, acceptance, approval, accession, or any other means if so agreed.<sup>411</sup> That is to say, signature and ratification are means of expressing consent to be bound by the content of an international treaty. A state party can declare its intent to be bound by its own signing or ratifying and only declares another signature or ratification not binding to itself. A state party cannot declare that another signature is not binding on the original signer. In this sense, the PRC government could declare the ROC’s signature and ratification were not binding itself, but the PRC’s declaration cannot nullify the binding force applied to the ROC. Even though the ROC still exists and exercises sovereignty over Taiwan and other minor islands, the PRC

---

<sup>410</sup> See United Nations Status of Treaties, in UNITED NATIONS TREATY COLLECTION WEBSITE, at [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=IV-2&chapter=4&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-2&chapter=4&lang=en) (last visited Jul. 2, 2011).

<sup>411</sup> Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 33.

proclaims itself to be the successor state of the whole ROC and views the ROC government as an invalid legal entity.

Depositary is another barrier. Taking part in UN affairs before losing its seat on October 25, 1971, the ROC signed more than one hundred international treaties, including the ICCPR and the ICESCR.<sup>412</sup> After the PRC began to represent China in the United Nations and join international treaties, signatures and ratifications made by the ROC were declared to be invalid.<sup>413</sup> Taiwan was prevented from joining any international treaty of the UN, whether under the name of the ROC or Taiwan,<sup>414</sup> and its political status also makes its depositary of any UN treaty unfulfillable.

For example, according to Article 49 of the ICCPR and Article 27 of the ICESCR, the ICCPR and ICESCR respectively entered into force on March 23, 1976 and January 3, 1976 after they collected 35 ratifications. When Chiang's Republic of China government was expelled from the UN in 1971, these two covenants were signed but not ratified by

---

<sup>412</sup> The Republic of China signed the ICCPR and the ICESCR on October 5, 1967. United Nations Treaty Collection Website, <http://treaties.un.org/pages/Treaties.aspx> (follow "Chapter IV: Human Rights") (last visited May 21, 2011).

<sup>413</sup> For instance, the PRC deposited its ratification of the 1966 International Convention on the Elimination of All Forms of Racial Discrimination and declared "The signing and ratification of the said Convention by the Taiwan authorities in the name of China are illegal and null and void." However, the PRC did not declare every signature or ratification to be invalid. For example, when PRC ratified and deposited the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, it only declared: "The ratification to the said Convention by the Taiwan local authorities on 19 July 1951 in the name of China is illegal and therefore null and void." The signature made by the ROC remained valid and official. United Nations Status of Treaties, *in* United Nations Treaty Collection Website, *available at* <http://treaties.un.org/pages/ParticipationStatus.aspx> (follow "Chapter IV: Human Rights" hyperlink; then follow "2" hyperlink) (last visited Jul. 2, 2011).

<sup>414</sup> Taiwan is viewed as a province of China in the United Nations system. The Secretary-General delivered his opinion: "The Taiwan Province of China, the Secretary-General follows the General Assembly's guidance incorporated in resolution 2758 (XXVI) of the General Assembly of 25 October 1971 on the restoration of the lawful rights of the People's Republic of China in the United Nations. The General Assembly decided to recognize the representatives of the Government of the People's Republic of China as the only legitimate representatives of China to the United Nations. Hence, instruments received from the Taiwan Province of China will not be accepted by the Secretary-General in his capacity as depositary." UNITED NATIONS, FINAL CLAUSES OF MULTILATERAL TREATIES HANDBOOK 15 (2003).

the Republic of China government. The Republic of China (Taiwan) finally ratified the two covenants on March 31, 2009, and then deposited its ratification with the Secretary General of the UN. However, the Secretary General rejected this deposit on June 15, 2009, citing Resolution No. 2758 (1971).<sup>415</sup> Obviously, because the Republic of China (Taiwan) is no longer a Member State of the United Nations nor viewed as a province of China rather than a State by the United Nations, the Secretary General could not accept its deposit of the ratification.

Besides ratification, a state can apply signed treaties by succession or accession. *Succession* means the replacement of the old predecessor state by the new successor state in the responsibility for international relations regarding territory, including the succession of treaties.<sup>416</sup> To succeed a multinational treaty, a successor state needs only to notify the depositor of the treaty by a written notification.<sup>417</sup> The ROC and the PRC have different assertions of succession of multilateral treaties. The PRC generally rejected the succession of any international treaty signed or ratified by the ROC, but the ROC does not deny its previous signatures and ratifications because it views itself as the same ROC as it was when the treaties were signed or ratified. Even though the PRC's refusal of

---

<sup>415</sup> The Secretary-General's opinion: "The Taiwan Province of China, the Secretary-General follows the General Assembly's guidance incorporated in resolution 2758 (XXVI) of the General Assembly of 25 October 1971 on the restoration of the lawful rights of the People's Republic of China in the United Nations. The General Assembly decided to recognize the representatives of the Government of the People's Republic of China as the only legitimate representatives of China to the United Nations. Hence, instruments received from the Taiwan Province of China will not be accepted by the Secretary-General in his capacity as depositary." UNITED NATIONS, *supra* note 414, at 15.

<sup>416</sup> Vienna Convention on Succession of States in respect of Treaties art. 2, *opened for signature* Aug. 23, 1978, 1946 U.N.T.S. 3. Neither the ROC nor the PRC is a party of this convention, but this convention can be viewed as customary international law.

<sup>417</sup> Todor Dzunov, *Succession of States in respect of Citizenship: the Case of the Former SFRY*, in SUCCESSION OF STATE 145 (Mojmir Mrak ed., Kluwer Law Int'l 1999); 廖福特, 國際人權法 FORT FU-TE LIAO, GUOJI RENQUANFA [International Human Rights Law] 36 (Taipei: Angle Publishing 2005) (Taiwan).

succession of treaties does not mean that the ROC cannot succeed the treaties,<sup>418</sup> the ROC does not assert to succeed the signed treaties because it has not formed an internal consensus of its political status. Asserting succession is the easiest way to apply a multilateral treaty by delivery of a written notification, but it also means that the current ROC recognizes itself as a successor state of the previous ROC and denies its unity.

Accessions made by Taiwan are not accepted by the depositors. *Accession* means the act of joining a treaty by a party who did not take part in the formation or negotiations.<sup>419</sup> Most international treaties require accession based on a party's being a member of a certain organization enlisted in the treaties, such as the United Nations, the European Union, or the International Court of Justice. Taiwan therefore can access only those treaties open to "any state" rather than those open only to their listed members.<sup>420</sup>

Taiwan accessed two international treaties in the last decade. The WHO Framework Convention on Tobacco Control (FCTC) was ratified by the Legislative Yuan on January 14, 2005,<sup>421</sup> and the Accession was signed by President Chen Shui-bian on March 30, 2005.<sup>422</sup> In addition, the Legislative Yuan ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on January 5,

---

<sup>418</sup> 廖福特，國際人權法 LIAO, *supra* note 417, at 35.

<sup>419</sup> Vienna Convention on the Law of Treaties art.15, *opened for signature* May 23, 1969, 1155 U.N.T.S. 331.

<sup>420</sup> For instance, the Paragraph 1, Article 48 of the ICCPR says: *The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.*" International Covenant on Civil and Political Rights, art. 48, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171.

<sup>421</sup> 立法院公報第 94 卷第 6 期第 1 冊 94:6(1) (3388) LIFAYUAN GONGBAO [Gazette of the Legislative Yuan] 410-61 (Jan. 24, 2005).

<sup>422</sup> 立法院公報第 94 卷第 29 期 94:29 (3411) LIFAYUAN GONGBAO [Gazette of the Legislative Yuan] 123 (May 27, 2005). However, the official record of issuing the Accession is not on ZONGTONGFU GONGBAO [The Office of the President Gazette].

2007,<sup>423</sup> and President Chen Shui-bian issued its Accession on February 9, 2007.<sup>424</sup> Under the name of the ROC, Taiwan delivered its Accessions to the WHO and the United Nations. However, the Accession of the FCTC was ignored without any reply, and the Accession of the CEDAW was rejected by the Secretary-General of the UN.<sup>425</sup>

Being blocked from major international organizations, Taiwan adopted a dualistic way to apply human rights international treaties.<sup>426</sup> The validity of its human rights instruments is secured through specific statutes – “the Act to Implement the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights” (2009) (hereafter “the Implement Act of the Two Covenants”) and “the Act to Implement the Convention on the Elimination of All Forms of Discrimination against Women” (2011) (hereafter “the Act to Implement the CEDAW”) in Taiwan.<sup>427</sup> That is to say, the Republic of China (Taiwan) is no longer a party of the

---

<sup>423</sup> 立法院公報第 96 卷第 10 期上冊 96:10(Shang) (3533) LIFAYUAN GONGBAO [Gazette of the Legislative Yuan] 33-5 (Jan. 22, 2007).

<sup>424</sup> 立法院公報第 100 卷第 43 期 100:43 (3895) LIFAYUAN GONGBAO [Gazette of the Legislative Yuan] 89-90 (Jun. 1, 2011). The official record of issuing the Accession is not on ZONGTONGFU GONGBAO [The Office of the President Gazette].

<sup>425</sup> 立法院公報第 100 卷第 43 期 100:43 (3895) LIFAYUAN GONGBAO [Gazette of the Legislative Yuan] 90 (Jun. 1, 2011). Taiwan keeps providing its Annual Reports according to the FCTC and the CEDAW, but they are not accepted.

<sup>426</sup> Being unfamiliar to international human rights, the court generally does apply international treaties on its decisions. For example, even though Taiwan adopts monism of international law, a district court rejected to apply CEDAW after it was ratified by the Legislative Yuan. *See* 台北地方法院 96 年度國字第 25 號判決 Taipei Difang Fayuan [Taipei District Court], 96 Guo Zhi No.25 (Mar. 11, 2009). In my opinion, the phenomenon that the court does not familiar with international human rights is resulted from the international status of Taiwan. The dispute over Taiwan’s statehood makes it not able to take part in many international organizations and activities. International law except for commercial law is therefore not practicable by the lawyers. This situation affected the curricula in law schools. When I studied in the National Taiwan University, only two academic credits of international public law were on the whole curriculum. Most law students are unfamiliar with this field due to a lack of training.

<sup>427</sup> 公民與政治權利國際公約及經濟社會文化權利國際公約施行法(2009) GONGMIN YU ZHENGZHI QUANLI GONGYUE JI JINGJI SHEHUI WENHUA QUANLI GUOJIGONGYUE SHIXINGFA [Act to Implement the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights] (promulgated by the President, Apr. 22, 2009, effective Dec. 10, 2009); 消除對婦女一切形式歧視公約施行法(2011) XIAOCHU TUI FUNU YIQIE XINGSHI QISHI GONGYUE SHIXINGFA [Act to

United Nations and its depository of international human rights treaties is generally rejected. However, Taiwan unilaterally adopts the contents of the instruments through enforcement statutes to its domestic legal system. This method of application is a “citation mode”, which means that the content of an international legal instrument is cited or introduced by a statute to be applied to Taiwan.

Article 141 of the Constitution of the Republic of China takes the lead by declaring that

"The foreign policy of the Republic of China shall, in a spirit of independence and initiative and on the basis of the principles of equality and reciprocity, cultivate good-neighborliness with other nations, and respect treaties and **the Charter of the United Nations**, in order to protect the rights and interests of Chinese citizens residing abroad, promote international cooperation, advance international justice and ensure world peace." (Bold added.)

The content of the Charter of the UN is by this means applied to the internal legal system of Taiwan. Citation mode, like super glue, closes the gap between the monism of international law and the current status.

According to Article 2 of the Implement Act of the Two Covenants:

“Human rights protection provisions in the two Covenants  
have domestic legal status”

---

Implement the Convention on the Elimination of All Forms of Discrimination against Women] (promulgated by the President, June 8, 2011, effective Jan. 1, 2012).

and Article 2 of the Act to Implement the CEDAW:

“Provisions of gender rights protection and gender equality promotion in the Convention on the Elimination of All Forms of Discrimination against Women have domestic legal status”,

the content of human rights instruments is applied to Taiwan by this means. The validity and effectiveness of the international treaties are therefore not influenced by the refusal to deposit, because Taiwan is voluntarily bound by the instruments and admits their domestic legal effect. See Table 4-7 below for Taiwan’s approach to rights stipulated by the UN.

**Table 4-7: Taiwan Government’s Efforts to Apply the ICCPR, ICESCR, and CEDAW**

<b>Time</b>	<b>Governmental Effort</b>
1967	The Republic of China government representing China signs the ICCPR and the ICESCR.
1971	The Republic of China government loses its representation of China and is expelled from the United Nations by Resolution No. 2758.
2000/5	The former president Chen delivers his inauguration speech: “ <i>The new government will request the Legislative Yuan to ratify the International Bill of Rights to domesticize it as the Taiwanese Bill of Rights.</i> ”
2001-2002	The Human Rights Protection and Promotion Committee of the Administrative Yuan establishes the “Legislative Committee” to promote 6 drafts of laws, including the Organization Law of the National Human Rights Committee, Article 17 of the Office of the President Organization Law, Conflict Review between the Domestic Laws and the Two Covenants, the Investigation Rights Law of the National Human Rights Committee, and the Basic Law of Human Rights Protection.
2007/1-2	The Legislative Yuan ratified the CEDAW on January 5, 2007, and President Chen Shui-bian issued its Accession on February 9, 2007.
2009/3/31	The Legislative Yuan ratifies the ICCPR and the ICESCR, and it also passed their enforcement acts.
2009/5/14	President Ma signs and confirms ICCPR, the ICESCR, and their enforcement acts.
2009/6/8	The Republic of China government deposits its Ratification to the Secretary General of the United Nations.

(Table 4-7 continued)

2009/6/15	The United Nations rejects the deposit according to Resolution No. 2758.
2009/12/10	President Ma declares the ICCPR and the ICESCR in force in Taiwan. The Ministry of Justice declares the “Complication Review List of All Laws and Regulations of the Two Covenants”.
2010/4/30	The Administrative Yuan establishes the Human Rights Workshop of Ten Ministries and Agencies to review the process of the enforcement of the two covenants.
2010/12/10	The Office of the President establishes the Human Rights Consult Committee which consists of 18 commissioners, to review the status quo of human rights and to publish annual human rights reports.
2011/5/11	The Legislative Yuan passed “the Act to Implement the CEDAW,” which took force on January 1, 2012.

This form of applying international instruments to Taiwan raises several issues. First, the Implement Act of the Two Covenants is inferior to the Constitution, and the content of the human rights instruments is theoretically not able to trump the Constitution. According to the Implement Act of the Two Covenants, the authority of interpretation is held by the Human Rights Council.<sup>428</sup> However, Article 78 of the Constitution of the Republic of China regulates that the Judicial Yuan interprets the Constitution, and it has the authority to interpret statutes and administrative orders. That means that the interpretation authority is held by the Grand Justices according to the Constitution, but the Implement Act of the Two Covenants regulates that the opinions of the Human Rights Committee should be followed. If the Human Rights Committee’s opinions differ from those of the Grand Justices, the Grand Justices are not bound.

Second, the articles that regulate interactions with the UN are not enforceable. For example, the ICCPR and the ICESCR regulate the duty of a Member State to report.

---

<sup>428</sup> Article 3 of the 2009 Act to Implement the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights: "Applications of the two Covenants should make reference to their legislative purposes and interpretations by the Human Rights Committee."

According to the ICCPR Article 40 and ICESCR Article 16, each Member State to the present Covenants has to submit reports on the measures it has adopted which give effect to the rights recognized herein and on the progress made in the Covenants. Because of Taiwan's international status, it is very likely that the report submission will be rejected by the U.N. Secretary General according to its consistent U.N. policy that

“The General Assembly decided to recognize the representatives of the Government of the People's Republic of China as the only legitimate representatives of China to the United Nations. Hence, instruments received from the Taiwan Province of China will not be accepted by the Secretary-General in his capacity as depositary.”<sup>429</sup>

In other words, by adopting the ICCPR and the ICESCR without any reservation, the Implement Act of the Two Covenants introduces the duty to report at the same time, and Taiwan is not eligible to fulfill the duty under the current United Nations practice.

Third, Article 3 of the Implement Act of the Two Covenants says that

“Applications of the two Covenants should make reference to their legislative purposes and interpretations by ‘the Human Rights Committee’” (emphasis added).

According to Article 28 of the ICCPR, the Human Rights Committee is the body of independent experts that monitors implementation of the ICCPR by its State parties. The ICCPR regulates the establishment and function of the Human Rights Committee.

---

<sup>429</sup> UNITED NATIONS, *supra* note 414, at 15.

However, the ICESCR is not included in the authority of the Human Rights Committee. The ICESCR originally assigned the monitoring functions to the United Nations Economic and Social Council (ECOSOC) (Articles 16 to 22 of the ICESCR), but the ECOSOC established the “Committee on Economic, Social and Cultural Rights” (CESCR) to further implement monitoring of the ICESCR by the ECOSOC Resolution 1985/17 (1985).<sup>430</sup> Article 3 of the Implement Act of the Two Covenants has an obvious loophole.

The two Acts bring a significant start to human rights in Taiwan. This is comparable to the first eight Amendments to the U.S. Constitution, which were applicable to the states by means of the incorporation doctrine of the Fourteenth Amendment and further created a great moment when the Warren Court made vigorous progress in the 1960s Civil Rights period.<sup>431</sup>

#### **4.4 CONCLUSION**

This chapter first introduces the background and the general content of the international human rights development and focuses on the Charter of the United Nations and the ICCPR and the ICESCR because these instruments are the core of the International Bill of Human Rights which is followed by most countries in the world. Taiwan under the rule of the Republic of China government also attended to the system of International Bill of Human Rights.

After the seat of the Republic of China government in the United Nations was replaced by the People’s Republic of China government, it became disputable whether

---

<sup>430</sup> Economic and Social Council Resolution 1985/17 (May 28, 1985).

<sup>431</sup> See MARY ANN GELNDON, *RIGHTS TALK- THE IMPROVERISHMENT OF POLITICAL DISCOURSE* 4-5, 10-12 (The Free Press 1991).

the signatures of the ICCPR and the ICESCR were valid and whether other treaties and instruments signed by the Republic of China government could be applied to Taiwan. Despite the issues described in this chapter, Taiwan made a detour when adopting international human rights instruments.

The Implement Act of the Two Covenants and the Act to Implement the CEDAW make the proclaimed human rights in the ICCPR, the ICESCR, and the CEDAW formally applicable in Taiwan. In fact, linguistic human rights have not constituted a particular instrument, and the normative standards of language rights are attached to the listed human rights of the concurrent international human rights instruments, including the 1966 ICCPR, the 1966 ICESCR, and the 1979 CEDAW. Even though the procedural regulations of the instruments are not enforceable due to the international status of Taiwan, the ICCPR, the ICESCR, and the CEDAW are de jure effective because Taiwan voluntarily adopted the three international human rights instruments through the Implement Act of the Two Covenants and the Act to Implement the CEDAW. In this way, the two Acts introduce linguistic human rights in the international human rights system to Taiwan's immured domestic legal system given its vulnerable international status.



## CHAPTER 5: THE CONTENT OF THE LINGUISTIC HUMAN RIGHTS

This chapter describes the linguistic factors that affect international human rights and the generation of rights to which they apply. Further, it identifies and explores the content of specific linguistic rights and the government's role and responsibilities with respect to them.

### 5.1 LINGUISTIC FACTORS IN THE INTERNATIONAL HUMAN RIGHTS CONTEXT

Language rights have developed into a central concern in the field of multilingualism in recent years (e.g., Benson, Grundy, & Skutnabb-Kangas, 1998; Kibbee, 1998; Kontra, Phillipson, Skutnabb-Kangas, & Varady, 1999), and most of the work published in this area deals with issues of language maintenance, bilingual services and educational matters as they affect minority languages.<sup>432</sup> Language is the communication medium between an individual and the rest of the world, and human beings need language to carry out reasoned actions. In this sense, if any individual or group wants to assert any right set forth in the international human rights system that has been infringed, language plays an indispensable role.

The traditional way to discuss the development of linguistic human rights is to divide them into five periods by major historic events, their scope, relevant interests, and

---

<sup>432</sup> Ingrid Piller, *Naturalization Language Testing and its Basis in Ideologies of National Identity and Citizenship*, 5 INT'L JOURNAL OF BILINGUAL 259-277 (Sep. 2001).

the fluctuations in the extent of rights.<sup>433</sup> See Table 5-1 for a summary of this information.

**Table 5-1: Development Phases of International Linguistic Human Rights<sup>434</sup>**

Phase	Year	Source of Authority	Features
1 <sup>st</sup>	Pre-1815	Nationalism accompanied by monolingualism prevailed	One state, one nation, one language.
2 <sup>nd</sup>	1815-1918	The Final Act of the Congress of Vienna 1815	Poles in Poznan were granted the right to use Polish for official business, jointly with German.
		Several national constitutions and some multilateral instruments.	Ex. Austrian Constitutional Law of 1867: "All the ethnic minorities..... shall..... have an absolute right to maintain and develop their nationality and their language."
3 <sup>rd</sup>	1918-1945	Peace Treaties after WWI and major multilateral and international conventions.	Ex. The Paris treaties listed in the League of Nations Official Journal No.73 of June 13 <sup>th</sup> 1929, at p. 47: "4. Teaching the official language is not prevented."
4 <sup>th</sup>	1945- 1970s	The U.N. instruments, including the U.N. Charter and the Universal Declaration of Human Rights.	Focus on the protection of individuals but relative neglect of minorities.
5 <sup>th</sup>	After the 1970s	Capotorti Report (1979)	<ol style="list-style-type: none"> <li>1. No further legal force is laudable.</li> <li>2. Limited coverage of educational linguistic human rights.</li> <li>3. Language has not figured prominently as a concern.</li> <li>4. Immigrant minorities, including migrant workers, refugees, stateless persons and other non-nationals are deliberately excluded from consideration.</li> </ol>

This kind of classification focuses on the educational aspects of human rights and ignores other aspects, such as political rights. On the other hand, if we define a language

<sup>433</sup> Tove Skutnabb-Kangas & Robert Phillipson, *Linguistic Human Rights, Past and Present*, in LINGUISTIC HUMAN RIGHTS: OVERCOMING LINGUISTIC DISCRIMINATION 74-9 (Tove Skutnabb-Kangas & Robert Phillipson eds., Berlin: Bouton de Gruyter 1995).

<sup>434</sup> *Id.* at 74-9.

right as merely one that involves language, nearly every right can be called a language right. This definition obviously covers an extremely broad range. A clarification, then, could be to define language rights as the rights whose *exercise* must involve a communication process. That is to say, language must be used to enjoy the rights proclaimed or protected.

We have identified five linguistic factors in the human rights domain. These include: language as a standardizer, language as a classification indicator, language as an urgent necessity, language as a subsidiary instrument, and language as an internal value. Each is discussed below.

#### 5.1.1 LANGUAGE AS A STANDARDIZER

The first type and most obvious linguistic factor is *language as a standardizer* of communication. This involves directly selecting/mandating specific language use in a given context. In other words, it means to adopt a language as a communication medium. While running an international organization or making an international treaty or agreement, certain languages are designated as ‘working languages’ or ‘standard languages’. For example, the United Nations (particularly the General Assembly and the Security Council) adopted English, French, Spanish, Chinese, Arabic, or Russian as its official languages or working languages.<sup>435</sup>

Where there is language diversity, there is the demand for a common communication medium. In the ancient centers of civilization, Sumerian, Akkadian,

---

<sup>435</sup> Rules of Procedure of the General Assembly, A/520/Rev.15 (1985); Provisional Rules of Procedure of the Security Council, S/96/Rev.7 (1983).

Assyrian, Persian, Aramaic, Chinese, Greek and Arabic each had served at some time as the recognized language of diplomacy,<sup>436</sup> as the following table illustrates.

**Table 5-2: The Major Western Diplomatic Languages before 1945<sup>437</sup>**

<b>Time</b>	<b>Language</b>	<b>Territory</b>
15 <sup>th</sup> Century	Castilian Spanish	Castilian Spanish was used in several courts and political correspondence.
18 <sup>th</sup> Century	French	French began to enjoy linguistic supremacy between sovereign States.
19 <sup>th</sup> Century	English	The Court of Saint James introduced English as a diplomatic language, while French continued to serve as the unchallenged common language.
1899	English or French	Tribunals of the Permanent Court of Arbitration employed both languages.
1919-1945	English, French, and others	Paris Peace Conference, the Treaty of Versailles, the Covenant of the League of Nations, the League of Nations Assembly, and the Permanent Court of International Justice (PCIJ) operated in bilingual and even multilingual communication forms.

Generally speaking, the speeches and the texts in each of the UN-mandated six languages are equally authoritative.<sup>438</sup> Any representative of member states may speak in one of these languages, and the UN further provides simultaneous interpretation from one official language into the other five official languages.<sup>439</sup> If a speech is made in a non-official language, the speaker must first provide an interpretation in an official language.<sup>440</sup> The following table illustrates official/working languages used in various UN agencies.

<sup>436</sup> MALA TABORY, *MULTILINGUALISM IN INTERNATIONAL LAW AND INSTITUTIONS* 4 (Alphen aan den Rijn: Sijthoff and Noordhoff 1980).

<sup>437</sup> *Id.* at 4-5.

<sup>438</sup> U.N. Charter art. 111 (1945); Resolution 35/219 (Dec. 17, 1980).

<sup>439</sup> Rules 41-47, Provisional Rules of Procedure of the Security Council, S/96/Rev.7 (1983).

<sup>440</sup> *Id.*

*Table 5-3: Language Adoption in the United Nations*<sup>441</sup>

<b>Organization</b>	<b>Official Languages</b>	<b>Working Languages</b>
General Assembly	Arabic, Chinese, English, French, Russian and Spanish	The six GA languages
Security Council	The six GA languages	The six GA languages
Economic and Social Council	The six GA languages	English, French, and Spanish
General Conference of UNESCO	The six GA languages plus Hindi, Italian, and Portuguese	The six GA languages plus Hindi, Italian, and Portuguese
Universal Postal Union	French and English	French and English
International Fund for Agricultural Development	Arabic, English, French and Spanish	Arabic, English, French and Spanish

In the interpretation/creation of some international treaties, certain languages are designated as ‘authentic’ and enjoy the highest status. For instance, the 1969 Vienna Convention on the Law of Treaties, in Article 85, says that

“The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.”<sup>442</sup>

<sup>441</sup> Source: TABORY, *supra* note 436, at 4-5; The U.N. Charter art. 111 (1945); General Assembly Resolution 2 (I) Rules of Procedure Concerning Languages (Feb. 1, 1946); Resolution 173 (II) (1947); Resolution 262 (III) (Dec. 11, 1948); Resolution 2479 (XXIII) (Dec. 21, 1968); Resolution 3189 (XXVIII) (Dec. 18, 1973); Resolution 3190 (XXVIII) (Dec. 18, 1973); Resolution 3191 (XXVIII) (Dec. 18, 1973); Resolution 35/219; (Dec. 17, 1980); Provisional Rules of Procedure of the Security Council, Rules 41 to 47, S/96/Rev.7 (1983); Rules of Procedure of the Economic and Social Council, rules 32 to 35, E/5715/Rev.2 (New York 1992); UNESCO, Rules of Procedure of the General Conference, Rule 54 (Paris, 2010); *Universal Postal Union, Languages*, at <http://www.upu.int/en/the-upu/languages.html> (last visited Jul. 3, 2010); International Fund for Agricultural Development, Rules of Procedure of the Governing Council, Rule 20 (Feb. 20, 1997); International Fund for Agricultural Development, Rules of Procedure of the Executive Board, Rule 26 (Feb. 20, 1997).

<sup>442</sup> Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 33 (Entered into force on Jan. 27, 1980) (Vienna, May 23, 1969).

Usually, the use of language is designated through this process and language status is created by written consent.

### 5.1.2 LANGUAGE AS A CLASSIFICATION INDICATOR

The second linguistic factor is *language as a classification indicator*. Language, like race or gender, herein becomes an element used to distinguish a certain group from others. In the Western world, the history of language serving as an indicator can be traced back to the Greek era. The Greeks distinguished themselves from ‘barbarians’ by speaking or not speaking Greek.<sup>443</sup> In ancient Greek, *bárbarous* (βάρβαρος) originally meant all non-Greek-speaking peoples, especially the Medes and Persians.<sup>444</sup> Another interesting example can be found in the Russian language. In Russian, *немой* (немой) originally meant dumb, mute, inarticulate, and speechless. It is said that the word “German” in Russian is *nemetskii* (немецкий), derived from “немой” because Germans did not speak the Russian language.<sup>445</sup>

After Napoléon was defeated in the War of the Sixth Coalition (1812–1814), European powers met to establish a power-balanced Europe. The Congress of Vienna (1814-1815) confirmed the borders among European states according to the legitimacy

---

<sup>443</sup> “Barbarian” refers to an uncivilized or boor person. It can also be a foreigner, either from a different tribe or a different nation. It is possibly indicating the existence of a sense of identity distinguishing the people of Pylos from those of other regions. Palaeolexicon, <http://www.palaeolexicon.com/default.aspx?static=12&wid=519> (last visited Jul. 25, 2010).

<sup>444</sup> Henry George Liddell & Robert Scott, *βάρβαρος*, A GREEK-ENGLISH LEXICON (revised and augmented throughout by Sir Henry Stuart Jones & Roderick McKenzie, Oxford: Clarendon Press 1940), <http://www.perseus.tufts.edu/> (last visited Jul. 2, 2010).

<sup>445</sup> I heard this example from a Russian class at the University of Washington in 2008, but the only source I can find so far is from the Wiktionary website, which is not academically authoritative. *See Talk: немецкий*, at <http://en.wiktionary.org/wiki/Talk:%D0%BD%D0%B5%D0%BC%D0%B5%D1%86%D0%BA%D0%B8%D0%B9> (last visited Jan. 22, 2011).

principle to restore those territories gained by France after 1792.<sup>446</sup> The Final Act of the Congress of Vienna (1815) was the first important international instrument to contain clauses safeguarding national minorities, most of which were linguistic minorities.<sup>447</sup> Since then, the concept of linguistic diversity held that individuals should not be treated unfairly because of linguistic diversity in the international legal context.<sup>448</sup>

The equality proclamation in the International Covenant on Civil and Political Rights (Article 2) and the International Covenant on Economic, Social, and Cultural Rights (Article 2) is the most prominent example. The ICCPR, in Article 2, declares that rights set forth in the covenant must be respected and ensured without distinction of any kind, such as race, color, sex, *language*, religion, political or other opinion, national or social origin, property, birth or other status; the same principle is also in the ICESCR. This sort of language legislation establishes that language is an indicator that can be used to classify people and to discriminate against them, as well.

### 5.1.3 LANGUAGE AS AN URGENT NECESSITY

The third linguistic factor is *language as an urgent necessity*. That means that a specific language is instrumental to the enjoyment of certain rights or freedom **and** the enjoyment arises in urgent situations. In criminal procedure, it is a consensus that a defendant should have the right to defend himself. Ruth Rubio-Marín described as expressly sanctioned "...the right to the assistance of an interpreter in criminal

---

<sup>446</sup> Definitive Treaty of Peace between Great Britain et al. and France. [Ratifications exchanged at London, 17th June, 1814 (Paris, May 1814). This Treaty was confirmed by the Definitive Treaty of 20th November, 1815, Art. XI.

<sup>447</sup> In this case, Poles in Poznan were granted the right to use Polish for official business, jointly with German. Skutnabb-Kangas & Phillipson, *supra* note 433, at 74-5

<sup>448</sup> See the 1948 Universal Declaration of Human Rights, Article 2.

proceedings as part of a larger set of procedural guarantees.”<sup>449</sup> An instrumental language right aims at avoiding linguistic obstacles that may curtail the enjoyment of rights, freedoms, and opportunities that rest on the possibility of comprehensible linguistic interactions.<sup>450</sup>

#### 5.1.4 LANGUAGE AS A SUBSIDIARY INSTRUMENT

The fourth factor, *language as a subsidiary instrument*, views language as a subsidiary tool to realize certain human rights, such as indigenous peoples’ rights and educational rights. For instance, the International Labor Organization Convention No.169, Articles 28 to 30, state that indigenous peoples’ languages should be taught and preserved.<sup>451</sup> These articles are made to provide indigenous peoples general knowledge and skills through language acquisition. Language is a means in the legislation to fulfill labor rights; for example, Ruth Rubio-Marín categorized the right to education, the right to a fair trial, and the right to vote as instrumental language rights.<sup>452</sup>

I distinguish the third from the fourth types based on the urgency of language acquisition, and the fourth type emphasizes acquisition and status planning aspects. This type varies from the third type in two ways. First, the linkage between the protected human rights and language is stronger in the third: the right of defense can hardly be realized if a defendant cannot understand the trial procedure and express himself without a learned language. Unlike the right of defense, the right to education (fourth type) may be carried out in a language other than a mother tongue. Furthermore, the goal of

---

<sup>449</sup> Ruth Rubio-Marín, *Language Rights: Exploring the Competing Rationales*, in LANGUAGE RIGHTS AND POLITICAL THEORY 52-79 (Will Kymlicka & Alan Patten eds., Oxford Univ. Press 2003).

<sup>450</sup> *Id.* at 68..

<sup>451</sup> 72 ILO Official Bull. 59; 28 I.L.M. 1382 (entered into force: Sept. 5, 1991) (1989).

<sup>452</sup> It is a general notion to facilitate people’s learning of the dominant language, rather than devising mechanisms to assist them in their own language. Rubio-Marín, *supra* note 449, at 52-79.

education is often to teach a particular language other than a mother tongue. Second, urgent necessity could make the acquisition of a dominant or working language impracticable. Learning the dominant language to defend oneself in a criminal trial may take the defendant months and even years, if possible at all; in this case, a court interpreter is usually provided. From the perspective of language planning, the third type of language legislation does not consider language acquisition due to efficiency concerns or focus on language use, i.e., language status planning.

#### 5.1.5 LANGUAGE AS AN INTRINSIC VALUE

The fifth and final linguistic factor is *language as an intrinsic value*. Réaume seeks to justify linguistic rights based on the intrinsically valuable dimension of language rather in terms of goals such as general communication, social cohesion, language survival, political stability, and encouraging diversity.<sup>453</sup> A language rights regime should include both negative liberties (protection from state intrusion) and positive accommodations that protect spaces in which these collective choices can be made.<sup>454</sup> In addition, a normative theory of language rights ought to proceed from the value of individual participation with others in acts of creating and sustaining language communities.<sup>455</sup>

Réaume's theory is used by Patten and Kymlicka in their procedural approaches, but her central concept concerns linguistic human rights. Laying the theoretical foundation on constitutionalism, Levy further proposes that a state should establish

---

<sup>453</sup> Alan Patten & Will Kymlicka, *Context, Issues, and Approaches*, in LANGUAGE RIGHTS AND POLITICAL THEORY 50 (Will Kymlicka & Alan Patten eds., Oxford Univ. Press 2003).

<sup>454</sup> *Id.* at 50.

<sup>455</sup> *Id.* at 50.

institutional safeguards and mechanisms as conditions to counterbalance the predictable tendency of modern states to engage in unjust nationalizing projects.<sup>456</sup> Language rights can give institutional weight and power to members of linguistic minorities and thereby make it difficult for the state to abuse basic minority interests.<sup>457</sup>

The concept of the intrinsic value of language is similar to the right to property. Even though property cannot guarantee freedom and equality, to exchange, to possess, and to utilize property are highly related to the enjoyment of freedom and equality. The enjoyment of the right to property is therefore a means to the enjoyment of freedom and equality. The 1948 Universal Declaration of Human Rights, Article 17 states that:

“(1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property”

to protect property rights and indirectly protect other human rights. In the same way, the 1996 Universal Declaration of Linguistic Human Rights, Preliminaries, states that:

“Considering that various factors of an extra-linguistic nature (historical, political, territorial, demographic, economic, sociocultural and sociolinguistic factors and those related to collective attitudes) give rise to problems which lead to the extinction, marginalization and degeneration of numerous languages, linguistic rights must

---

<sup>456</sup> Patten & Kymlicka, *supra* note 453, at 50.

<sup>457</sup> *Id.* at 50.

therefore be examined in an overall perspective, so as to apply appropriate solutions in each case.”<sup>458</sup>

It is important to confirm the intrinsic value of language rather than to merely attach language to the enjoyment of other rights, including educational rights and cultural rights.

## 5.2 APPLYING LINGUISTIC FACTORS TO HUMAN RIGHTS

Applying an indispensable factor to an international human rights instrument to formulate a particular category of human rights is not an unprecedented move. In 2003, The UN Committee on Economic, Social and Cultural Rights declared its General Comment No. 15 on ‘the right to water’.<sup>459</sup> Even though ‘water’ does not appear in the context of the ICESCR, it is recognized as a factor of the right to an adequate standard of living and the right to the enjoyment of the highest attainable standard of physical and mental health because water is indispensable for daily uses and hygienic requirements.<sup>460</sup> The formation of the CESCR General Comment No.15 highlights the idea that language, which is an indispensable factor in enjoying several human rights, can form an independent category of human rights. In this sense, applying the preceding linguistic factors to Tables 5-2 and 5-3 and to the content of the ICCPR and ICESCR yields Table

---

<sup>458</sup> The 1996 Declaration of Linguistic Human Rights is *not* an official declaration of the United Nations. This declaration is the result of efforts of a number of organizations (the International PEN Club's Translations and Linguistic Rights Committee and the Escarr per International Centre for Ethnic Minorities and Nations) which entrusted its preparation to a committee of fifty experts. It was finally approved on 6 June 1996 in Barcelona, Spain, by two hundred and twenty persons from almost ninety different states, representing some one hundred NGOs and International PEN Club Centres. The text of the Universal Declaration can also be found in Spanish, French and Catalan versions at the Internet site of the Centre Internacional Escarr per a les Minories antiques i Nacionals. UNESCO, Universal Declaration of Linguistic Rights, *in* the MOST PHASE I Website (1994-2003), <http://www.linguistic-declaration.org/decl-gb.htm> (last visited Jul. 27, 2010).

<sup>459</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General comment 15: The Right to Water (arts. 11&12 of the Covenant), E/C.12/2002/11 (Jan. 23, 2003).

<sup>460</sup> *Id.* Introduction.

5-4. Each linguistic factor is represented as a numbered type (e.g., Type 1 indicates 'language as a standardizer'.)

**Table 5-4: International Human Rights Exercised through Language**

Type of Rights	Source	Linguistic Factor
<b>First Generation of Human Rights (per Chapter 4)</b>		
The right to self-determination	UDHR art.1, ICCPR art. 1	
The right to equal treatment	UDHR art. 1, 2, 7 ICCPR art. 2(1), 3, 4(1), 20(2), 24(1), 26, 27 ICESCR art. 2, 3	I (language as a standardizer of communication and language proficiency therefore is involved), II (language as an classifier of race, ethnic group, or nationality)
The right to life, liberty and security of person	UDHR art.3 ICCPR art. 6	
The right to be protected against slavery	UDHR art.4 ICCPR art. 8	
The right to be protected against torture and cruel punishment	UDHR art.5 ICCPR art. 7	
The right to be recognized as a person before the law	UDHR art.6 ICCPR art. 16	V (Full personality through culture)
The right to an effective remedy for acts violating fundamental rights	UDHR art.8 ICCPR art. 2(2)&(3)	
The right to be protected against arbitrary exile or arrest	UDHR art.9 ICCPR art. 9	
The right to receive a fair and public hearing of criminal charge	UDHR art.10 ICCPR art. 14	III (linguistic assistance)
The right to be considered innocent until proven guilty and have necessary guarantees for defense	UDHR art.11 ICCPR art. 14(2)	III (linguistic assistance)
The right to privacy at home	UDHR art.12 ICCPR art. 17	
The right to move and reside anywhere within one's country	UDHR art.13 ICCPR art. 12	
The right to seek asylum internationally	UDHR art.14	
The right to have nationality	UDHR art.15 ICCPR art. 24(3)	I (language proficiency), II (language as an classifier of race, ethnic group, or nationality)
The right to marry and found a family	UDHR art.16 ICCPR art. 17, 23	II (language as an classifier of race or nationality), V (compulsory family language shift)
The right to property	UDHR art.17	
The right of freedom of belief and religion	UDHR art.18 ICCPR art. 18	

(Table 5-4 continued)

The right of freedom of speech and opinion	UDHR art.19 ICCPR art. 19	I (selected or restricted forum language), III (instant communication), VI (language as a tool of receiving information)
The right to peacefully assemble and associate	UDHR art.20 ICCPR art. 21&22	
The right to be protected from compulsion to join an organization	UDHR art.20 ICCPR art. 22	
The right to take part in the government directly or indirectly and equally enjoy public service	UDHR art.21 ICCPR art. 25(a)(c)	III (instant communication), IV (language as a tool of receiving information)
The right to periodic and genuine elections	UDHR art.21 ICCPR 25 (b)	
<b>Second Generation of Human Rights (per Chapter 4)</b>		
The right to social security and realization of economic, social and cultural rights	UDHR art.22 ICCPR art. 27 ICESCR art. 9	V (language as a part of culture)
The right to work and protection against unemployment	UDHR art.23 (1) ICESCR art. 6	IV (guidance and training program)
The right to just and favorable conditions of work	UDHR art.23 (1) ICESCR art.7	III (required working language), IV (linguistic environment)
The right to equal work for equal pay and equal opportunity	UDHR art.23 (2) ICESCR art.7	II, V (language ability as working competence)
The right to enjoy remuneration ensuring human dignity and necessary social protection	UDHR art.23 (3) ICESCR art.7, 13	IV (enjoy social protection)
The right to form and to join trade unions	UDHR art.23 (4) ICESCR art. 8	
The right to rest and leisure as an employee	UDHR art.24 ICESCR art. 7(d)	
The right to reasonable limitation of working hours and periodic paid holidays	UDHR art.24 ICESCR art. 7(d)	
The right to food, clothing, housing, medical care, and necessary social services	UDHR art.25 (1) ICESCR art.11	IV (enjoy social services)
The right to security in the event of unemployment, sickness, disability, widowhood, old age	UDHR art.25 (1) ICESCR art.12	IV (need assistance)
The right to special care and assistance for mothers and children	UDHR art.25 (2) ICESCR art.10	IV (enjoy special social protection and assistance)
The right to free elementary education and the availability of secondary education	UDHR art.26 (1) ICESCR art. 13(2)& 14	IV (acquiring knowledge through language), V (language as a subject)
The right to higher education equally accessible to all via merit	UDHR art.26 (1) ICESCR art. 13(2)	IV (acquiring knowledge through language), V (language as a subject)

(Table 5-4 continued)

The right to education of human personality and freedom which promotes tolerance and understanding	UDHR art.26 (2) ICESCR art. 13(1)	V (language as a part of human personality in the cultural aspect)
The right of parents to choose education given to their children	UDHR art.26 (3) ICESCR art. 13(3)	V (language as a part of culture)
The right to cultural life and achievement of arts and science	UDHR art.27 (1) ICCPR art.27 ICESCR art. 15	V (to participate in culture and to use their language)
The right to the interests of scientific, literary or artistic production	UDHR art.27 (2) ICESCR art. 15	IV (language as a tool to have access to information)
<b>Third Generation of Human Rights (per Chapter 4)</b>		
Right to self-determination	ICCPR art. 1, ICESCR art. 1	V (language as part of culture)
Right to economic and social development	ICCPR art. 1, ICESCR art. 1	IV (language as a tool to have access to information)
Right to a healthy environment	ICESCR art. 12& the Stockholm Declaration	
Right to land and natural resources	UDHR art.17, ICESER art. 11& 25	
Right to communicate and communication rights	Derived from the freedom of expression and theories <sup>461</sup>	III (instant communication), IV (have access to media), V (cultural sustainability)
Right to participation in cultural heritage	Derived from the ICESER art.15	IV (language as a tool of cultural studies), V (language as a part of culture)
Rights to intergenerational equity and sustainability	Theories <sup>462</sup>	V (linguistic sustainability)

From the preceding table, we can conclude that language rights are found in all generations of human rights. This finding explains the Kymlicka and Patten's theoretical taxonomy. Kymlicka and Patten formulate the theoretical developments of linguistic human rights into four areas: (1) tolerance- vs. promotion-oriented rights, (2)

<sup>461</sup> Karel Vasak, *Human Rights: A Thirty-Year Struggle: the Sustained Efforts to Give Force of Law to the Universal Declaration of Human Rights*, 30:11 UNESCO COURIER 29 (Paris: United Nations Educational, Scientific, and Cultural Organization, 1977).

<sup>462</sup> *Id.* at 29.

norm-and-accommodation vs. official-language rights, (3) personality vs. territoriality rights, and (4) individual vs. collective rights.<sup>463</sup> Table 5-5 shows this formulation.

*Table 5-5: Kymlicka and Patten's Framework of Language Rights*<sup>464</sup>

<b>Category</b>	<b>Approach</b>	<b>Content</b>
First	Tolerance-oriented Rights	Individuals have protections against government interference with their private language choices.
	Promotion-oriented Rights	Rights that an individual might have to the public use of a particular language -- in the courts, the legislature, the public school system, the delivery of public services, and so on.
Second	Norm-and-accommodation Rights	Some language of public communication predominates, but special accommodations are made for people who lack sufficient proficiency in this language.
	Official-languages Rights	This approach designates certain selected languages as official and then accords a series of rights to speakers of those languages. The enjoyment of official language rights is not contingent on a lack of proficiency in the majority or usual language of society.
Third	Personality Rights	Citizens should enjoy the same set of official language rights no matter where they are in the country.
	Territoriality Rights	Language rights should vary from region to region according to local conditions.
Fourth	Individual Rights	Rights an individual can claim irrespective of the number of co-linguists residing in the state or jurisdiction relevant to the exercise of the right.
	Collective Rights	Rights that need to reach some threshold of demand for service or accommodation.

Kymlicka and Patten's analysis narrows down the approaches we can take when discussing linguistic human rights and also provides a framework to examine Taiwan's

<sup>463</sup> Patten & Kymlicka, *supra* note 453, at 26-31.

<sup>464</sup> *Id.* at 26-7.

Official-Language-Plus centric language planning and policy.<sup>465</sup> While their analysis lays the foundation of discussion, it is not sufficient to explain the internal conflicts of language rights. The conflicts of language rights are in fact the epitome of conflicts between various human rights.<sup>466</sup>

Obviously, the content of language rights is not limited to the enjoyment of freedom and equality by an individual (first-generation human rights). Prior to the modern elementary education system, language rights were not identified. Marc Block said that “It is certainly very tempting to trace the whole chain of causation back to a single technological innovation.”<sup>467</sup> Inventions such as the radio, audio recorder, movie, television, car, airplane, and internet, along with several historical events, including the two world wars, have catalyzed movements of people and information and have also changed global linguistic environments. Modern bureaucracies, especially, need adequate human resources to keep the state machine running smoothly, and compulsory education with common languages lays the foundation of the supply of government employees.

According to Table 5-4, linguistic human rights can be mainly formulated into the following groups by their linguistic factors: standardizer (I), classification indicator (II), urgent communication instrument (III), subsidiary Communication Instrument (IV), and intrinsic value (e.g., culture rights, identity, and linguistic sustainability) (V).

---

<sup>465</sup> Patten & Kymlicka, *supra* note 453, at 26-31.

<sup>466</sup> Mary Ann Glendon proposed an interesting example about flag-burning and the conflicts it raises with respect to the freedom of expression, symbolic rights, right to property, and even environmental protection. It showed that a single action could involve multiple assertions of rights, and the rights could conflict with each other. MARY ANN GELNDON, *RIGHT TALK- THE IMPROVERISHMENT OF POLITICAL DISCOURSE* 8-10 (The Free Press 1991).

<sup>467</sup> MARC BLOCH, *FRENCH RURAL HISTORY: AN ESSAY ON ITS BASIC CHARACTERISTICS* 54 (Janet Sondheimer trans., 1966).

**Table 5-6: Groups of Linguistic Human Rights**

<b>Group of Rights</b>	<b>Type of Rights</b>	<b>Source</b>
Standardizer/Equalizer (I)	The right to equal treatment	UDHR art. 1, 2, 7 ICCPR art. 2(1), 3, 4(1), 20(2), 24(1), 26, 27 ICESCR art. 2, 3
	The right to have nationality	UDHR art.15 ICCPR art. 24(3)
Classification indicator (II)	The right to have nationality	UDHR art.15 ICCPR art. 24(3)
	The right of freedom of speech and opinion	UDHR art.19 ICCPR art. 19
	The right to marry and found a family	UDHR art.16 ICCPR art. 17, 23
	The right to equal work for equal pay and equal opportunity	UDHR art.23 (2) ICESCR art.7
Urgent communication instrument (III)	The right to receive a fair and public hearing of criminal charge	UDHR art.10 ICCPR art. 14
	The right to be considered innocent until proven guilty and have necessary guarantees for defense	UDHR art.11 ICCPR art. 14(2)
	The right of freedom of speech and opinion	UDHR art.19 ICCPR art. 19
	The right to take part in the government directly or indirectly and equally enjoy public service	UDHR art.21 ICCPR art. 25(a)(c)
	The right to take part in the government directly or indirectly and equally enjoy public service	UDHR art.21 ICCPR art. 25(a)(c)
	The right to just and favorable conditions of work	UDHR art.23 (1) ICESCR art.7
	Right to communicate and communication rights	Derived from the freedom of expression and theories <sup>468</sup>
Subsidiary communication instrument (IV)	The right of freedom of speech and opinion	UDHR art.19 ICCPR art. 19
	The right to take part in the government directly or indirectly and equally enjoy public service	UDHR art.21 ICCPR art. 25(a)(c)
	The right to take part in the government directly or indirectly and equally enjoy public service	UDHR art.21 ICCPR art. 25(a)(c)
	The right to work and protection against unemployment	UDHR art.23 (1) ICESCR art. 6
	The right to just and favorable conditions of work	UDHR art.23 (1) ICESCR art.7
	The right to enjoy remuneration ensuring human dignity and necessary social protection	UDHR art.23 (3) ICESCR art.7, 13

<sup>468</sup> Vasak, *supra* note 461, at 29.

(Table 5-6 continued)

	The right to food, clothing, housing, medical care, and necessary social services	UDHR art.25 (1) ICESCR art.11
	The right to security in the event of unemployment, sickness, disability, widowhood, old age	UDHR art.25 (1) ICESCR art.12
	The right to special care and assistance for mothers and children	UDHR art.25 (2) ICESCR art.10
	The right to free elementary education and the availability of secondary education	UDHR art.26 (1) ICESCR art. 13(2)& 14
	The right to higher education equally accessible to all via merit	UDHR art.26 (1) ICESCR art. 13(2)
	The right to the interests of scientific, literary or artistic production	UDHR art.27 (2) ICESCR art. 15
	Right to economic and social development	ICCPR art. 1, ICESCR art. 1
	Right to communicate and communication rights	Derived from the freedom of expression and theories <sup>469</sup>
	Right to participation in cultural heritage	Derived from the ICESER art.15
Language as an Intrinsic Value: Culture Rights, Identity, and Linguistic Sustainability (V)	The right to be recognized as a person before the law	UDHR art.6 ICCPR art. 16
	The right to marry and found a family	UDHR art.16 ICCPR art. 17, 23
	the right to social security and is entitled to realization of the economic, social and cultural rights	UDHR art.22 ICCPR art. 27 ICESCR art. 9
	The right to equal work for equal pay and equal opportunity	UDHR art.23 (2) ICESCR art.7
	The right to free elementary education and the availability of secondary education	UDHR art.26 (1) ICESCR art. 13(2)& 14
	The right to higher education equally accessible to all via merit	UDHR art.26 (1) ICESCR art. 13(2)
	The right to education of human personality and freedom which promotes tolerance and understanding	UDHR art.26 (2) ICESCR art. 13(1)
	The right of parents to choose education given to their children	UDHR art.26 (3) ICESCR art. 13(3)

<sup>469</sup> Vasak, *supra* note 461, at 29.

(Table 5-6 continued)

	The right to cultural life and achievement of arts and science	UDHR art.27 (1) ICCPR art.27 ICESCR art. 15
	Right to self-determination	ICCPR art. 1, ICESCR art. 1
	Right to communicate and communication rights	Derived from the freedom of expression and theories <sup>470</sup>
	Right to participation in cultural heritage	Derived from the ICESER art.15
	Rights to intergenerational equity and sustainability	Theories <sup>471</sup>

### 5.3 THE CONTENT OF LINGUISTIC HUMAN RIGHTS

According to Table 5-6, linguistic human rights consist of the following elements.

#### 5.3.1 STANDARDIZER AND CLASSIFICATION INDICATORS (FACTORS I AND II)

Language is conventionally used as a classification indicator of people, such as Françoise and Anglophone. Furthermore, linguistic classification is often related to other forms of classification, such as race. As seen previously, speaking Greek was viewed as being Greek and racially superior to the ‘barbarians’ who could not speak the language. Modern examples can be found in the past decade, when speaking Holo, Hakka, and indigenous peoples’ languages was thought of as being less educated and refined than speaking Mandarin.

Discrimination on the basis of language or regional accent is often closely linked to unequal treatment on the basis of national or ethnic origin.<sup>472</sup> Similar to “racial profiling,” where individuals are judged by their race or ethnicity, “*linguistic profiling*”

<sup>470</sup> Vasak, *supra* note 461, at 29.

<sup>471</sup> *Id.* at 29.

<sup>472</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General comment 20: Non-discrimination in Economic, Social and Cultural Rights (art. 2, para. 2), ¶21, E/C.12/GC/20 (Jul. 2, 2009).

can be defined as the judging of individuals based on their accents, language use, or language choice. Does a linguistic discrimination measure also discriminate against the ethnicity represented by the language at issue?

The right to equality and non-discrimination is proclaimed in UDHR Article 2 and is repeatedly mentioned in various human rights instruments, including the ICCPR Articles 2(1), 3, 4(1), 20(2), 24(1), 26, and 27, the ICESCR Articles 2 and 3, the CEDAW, Article 1, the CRC, Article 2, the CMW, Article 7, the CRPD, Article 2, and the ICERD, Article 1. Although the principle of non-discrimination is contained in human rights instruments, only a few instruments explicitly define *discrimination*.<sup>473</sup> However, the CCPR Human Rights Committee General Comment No.18 defines ‘discrimination’ as

“any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”<sup>474</sup>

---

<sup>473</sup> For example, the CEDAW, Article 1 defines “discrimination against women” as “Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” The ICERD, Article 1(1), the CRPD, Article 2, the ILO Convention No. 111, Article 1(1), and the CDE, Article 1(1) also respectively define discrimination under the instruments.

<sup>474</sup> Human Rights Committee, General Comment 18, Non-discrimination (Thirty-seventh session, 1989), ¶7, U.N. Doc. HRI/GEN/1/Rev.6 at 146 (2003).

The Committee on Economic, Social and Cultural Rights General Comment No. 20 defines ‘direct discrimination’, ‘indirect discrimination’ and ‘systematic discrimination’, as follows:<sup>475</sup>

- **Direct discrimination** occurs when an individual is treated less favorably than another person in a similar situation for a reason related to a prohibited ground.<sup>476</sup>
- **Indirect discrimination** refers to laws, policies or practices that appear neutral at face value but have a disproportionate impact on the exercise of Covenant rights as distinguished by prohibited grounds of discrimination.<sup>477</sup>
- **Systematic discrimination** against some groups is defined as pervasive, persistent, and deeply entrenched social behavior and organization, often involving unchallenged or indirect discrimination. Such systemic discrimination can be understood as legal rules, policies, practices or predominant cultural attitudes in either the public or private sector that create relative disadvantages for some groups, and privileges for other groups.<sup>478</sup>

At the international level, it is usually considered a violation of human rights if an individual enjoys less rights or freedoms on one of the stipulated grounds.<sup>479</sup>

---

<sup>475</sup> CESCR, General comment 20, *supra* note 472, ¶¶ 8, 10& 12.

<sup>476</sup> E.g. where employment in educational or cultural institutions or membership of a trade union is based on the political opinions of applicants or employees. Direct discrimination also includes detrimental acts or omissions on the basis of prohibited grounds where there is no comparable similar situation (e.g. the case of a woman who is pregnant). CESCR, General comment 20, *supra* note 472, ¶10.

<sup>477</sup> For instance, requiring a birth registration certificate for school enrolment may discriminate against ethnic minorities or non-nationals who do not possess, or have been denied, such certificates. CESCR, General comment 20, *supra* note 472, ¶10.

<sup>478</sup> CESCR, General comment 20, *supra* note 472, ¶12.

<sup>479</sup> Sometimes the protection of equality is not limited to the rights stipulated in the human rights instruments. For Instance, Article 26 of the ICCPR establishes free-standing rights such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status to equality, and its application is not limited to the rights set forth in the Convention. So do Article 3 of the ACHPR, Article 24 of the ACHR and Protocol No. 12 of the ECHR. Icelandic Human Rights Centre, *The*

Nevertheless, people are not perfect mirror images of each other. They have differences, slight or considerable, and it is impossible to treat everyone exactly the same in this world. Therefore, if the criteria for a differentiation measure are reasonable and objective and if the aim is to achieve a legitimate purpose under a covenant, a differentiation of treatment will not constitute discrimination.<sup>480</sup> The non-discrimination clause of each human rights covenant is a general and primary provision, and it is complemented by other stipulated rules of the same instrument. In other words, whether a governmental measure or a law conforms to a substantive provision of a human rights instrument should be examined in conjunction with the non-discrimination clause.

For example, ICESCR's Article 7(a)(i) says that a State should recognize the rights of just and favorable conditions of work that ensure remuneration. When this article is read in conjunction with Article 2 of the same instrument, a State should recognize the rights of just and favorable working conditions that ensure remuneration without distinction between men and women, or between various races, etc. On the other hand, the protection of equality is not limited to the rights stipulated in the human rights instruments. For Instance, Article 26 of the ICCPR establishes a free-standing right to equality on several grounds, such as *race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*.<sup>481</sup> So do Article 3 of the ACHPR, Article 24 of the ACHR and Protocol No. 12 of the ECHR.<sup>482</sup>

---

*Right to Equality and Non-discrimination, available at <http://www.humanrights.is/the-human-rights-project/> (last visited Mar. 26, 2010).*

<sup>480</sup> HRC, General Comment 18, *supra* note 474, ¶13.

<sup>481</sup> *Id.* ¶12.

<sup>482</sup> For further information about the ECHR of the EU and the ACHPR of the African Union: Icelandic Human Rights Centre, *supra* note 479.

Everyone has the right to a nationality, and no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality; furthermore, every child has the right to acquire a nationality.<sup>483</sup> The nexus of language and the right to nationality concerns language proficiency requirements in the process of naturalization. Linguistic restrictions usually arise during the naturalization interview and tests on the applicant's proficiency in an official or a majority language; test content and required proficiency are often highly related to the ideology of national identity rather than a pure necessity of social adaptability.<sup>484</sup> “Ideologies of national identity are a central facet of modern social identities and they are intricately bound up with linguistic identity.”<sup>485</sup> Furthermore, it is logical that it is easier for those people who belong to closer language families to satisfy linguistic requirements, and linguistic restrictions can be used as filters to include or exclude certain linguistic groups or even races, which is one of the grounds of the free-standing right established by Article 26 of the ICCPR.<sup>486</sup>

As was mentioned, the relationship between linguistic factors and equal treatment has two parts. First, whether a governmental measure or a law conforms to a substantive provision of a human rights instrument should be examined in conjunction with the non-discrimination clause. Second, language proficiency and accent can be used to infer

---

<sup>483</sup> UDHR art. 15&24; ICCPR, art. 24(3). The right to equal work for equal pay and equal opportunity (UDHR art.23 (2), ICESCR art.7) has similar issue that language proficiency may be viewed as an indicator of working competence. *See* UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment 18, The Right to Work (Art. 6 of the Covenant), ¶12, E/C.12/GC/18 (Feb. 6, 2006).

<sup>484</sup> *See* Piller, *supra* note 432, at 259-277.

<sup>485</sup> *Id.* at 259-277.

<sup>486</sup> Specific conventions designed to settle the problems of double nationality, to guard against statelessness and to facilitate the exercise of human rights by refugees and stateless persons have been drawn up by the U.N. These are: the Convention on the Nationality of Married Women (Jan. 29, 1957), the Convention on the Reduction of Statelessness (Aug. 30, 1961), the Convention relating to the Status of Stateless Persons (Sep. 28, 1954), the Convention relating to the Status of Refugees (Jul. 28, 1951), and the Protocol relating to the Status of Refugees (Jan. 31, 1967). Frank C. Newman and Karel Vasak, *Civil and Political Rights*, in *THE INTERNATIONAL DIMENSIONS OF HUMAN RIGHTS* 145 (Westport: Greenwood Press, 1982).

one's background of growth, race, ethnicity, or nationality. Therefore, differentiation of treatment on a linguistic ground may constitute 'linguistic profiling' or indirect racial discrimination.<sup>487</sup>

The responsibility of a state to deal with unequal treatment is stipulated in the relevant international instruments, but it is written in a vague way. According to certain human rights instruments, a State is required to take *appropriate* or *adequate* measures to promote equality and to prohibit discrimination. For example, in some cases concerning women's and children's human rights protection, it is possible to submit individual complaints in case of violations of the rights stipulated. In the case of CEDAW, such a procedure was established by the Optional Protocol adopted in 1999.<sup>488</sup> Article 2(e) CEDAW requires states "to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise".<sup>489</sup> "Appropriate" is not a fixed standard, and its meaning changes as the circumstances change. The CCPR Human Rights Committee takes a further step and requires States parties:

"...to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant. For example, in a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions. Such action may involve granting for a time to

---

<sup>487</sup> The right to marry and found a family (UDHR art.16, ICCPR art. 17, 23) and the right of freedom of speech and opinion (UDHR art.19, ICCPR art. 19) might be infringed under this category.

<sup>488</sup> See Icelandic Human Rights Centre, *supra* note 479.

<sup>489</sup> See Icelandic Human Rights Centre, *supra* note 479.

the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population. However, as long as such action is needed to correct discrimination in fact, it is a case of legitimate differentiation under the Covenant.”<sup>490</sup>

In this sense, any linguistic differentiation of treatment violates the non-discrimination principle unless action is taken to correct discrimination in fact. Governments should ensure that any language requirements relating to employment and education are based on reasonable and objective criteria.<sup>491</sup>

### 5.3.2 COMMUNICATION FUNCTIONS (FACTORS III AND IV)

Language as a communication instrument is used to exercise various human rights, including those that arise in urgent situations or non-urgent situations; language barriers can therefore hinder the enjoyment of many rights. In this regard, besides “*the right to freedom from discrimination on the basis of language*”, Macías says that language rights also contain “the right to use one's language in the activities of communal life.”<sup>492</sup>

Linguistic human rights in urgent situations mainly contain the right to receive a fair and public hearing where one is innocent before proven guilty, the right of freedom of speech and opinion,<sup>493</sup> and the rights to take part in the government directly or

---

<sup>490</sup> HRC, General Comment 18, *supra* note 474, ¶10.

<sup>491</sup> CESCR, General comment 20, *supra* note 472, ¶21.

<sup>492</sup> Terence G. Wiley, *Assessing Language Rights in Education: A Brief History of the U.S. Context*, in LANGUAGE POLICIES IN EDUCATION: CRITICAL ISSUES 40 (J.W. Tollefson ed., Portsmouth: Lawrence Erlbaum Associates 2002) (citing R. F. Macías, *Choice of Language as a Human Right: Public Policy Implication in the United States*, in BILINGUAL EDUCATION AND PUBLIC POLICY IN THE UNITED STATES 39-75 (R.V. Padilla ed., Ypsilanti: Eastern Michigan University 1979)).

<sup>493</sup> Article 19, Para 2 of the ICCPR protects all forms of expression and the means of their dissemination. Such forms include spoken, written and sign language and such non-verbal expression as images and

indirectly and equally enjoy public service (ex. UDHR art.10, 19& 21). A defendant's right to have interpreter in a court is the most historical linguistic human right in the international context. ICCPR General Comment No. 32 says that

“The right to have the free assistance of an interpreter if the accused cannot understand or speak the language used in court as provided for by article 14, paragraph 3 (f) enshrines another aspect of the principles of fairness and equality of arms in criminal proceedings. This right arises at all stages of the oral proceedings. It applies to aliens as well as to nationals.”<sup>494</sup>

A public hearing cannot be just if a defendant lacks any chance the defend himself. In this sense, providing a qualified interpreter for the defendant is required from the perspective of international human rights.

Furthermore, it is nearly impossible for a citizen to express his opinions or exchange ideas without use of language. Limiting an individual's use of language is another way to suppress his freedom of speech and opinion. In most countries, states adopted official languages, de facto or de jure, to facilitate governmental functions and

---

objects of art. Human Rights Committee, General Comment 34, Article 19, (102nd session, Jul. 2011), ¶33, CCPR/C/GC/34 (Sep. 12, 2011) (citing Communication No. 926/2000, *Shin v. Republic of Korea*).

<sup>494</sup> Human Rights Committee, General Comment 32, Article 14, Right to equality before courts and tribunals and to a fair trial, ¶40, U.N. Doc. CCPR/C/GC/32 (2007) (citing Communication No. 219/1986, *Guesdon v. France*, para. 10.2). However, accused persons whose mother tongue differs from the official court language are, in principle, not entitled to the free assistance of an interpreter if they know the official language sufficiently to defend themselves effectively. Furthermore, in cases of an indigent defendant, communication with counsel might only be assured if a free interpreter is provided during the pre-trial and trial phase. However, if the accused does not speak the language in which the proceedings are held, but is represented by counsel who is familiar with the language, it may be sufficient that the relevant documents in the case file are made available to counsel. HRC, General Comment 32, *supra* note 494, ¶¶32-3 (citing Communication No. 451/1991, *Harward v. Norway*, para. 9.5).

public services. From the perspective of human rights, a state does not release its liability to provide governmental functions and public services to a non-official language speaker once it adopts an official language.<sup>495</sup> Promoting a common language does not guarantee that every individual speaks the language fluently or has adequate linguistic proficiency.

Highly entwined with the use of language, the rights to an adequate living standard include the right to just and favorable conditions of work (UDHR art.23 I), the right to food, clothing, housing, medical care, and necessary social services (UDHR art.25 (1)), the right to security in the event of unemployment, sickness, disability, widowhood, old age (UDHR art.25 (1)), the right to economic and social development (ICCPR art.1, ICESCR art.1), and the right to communicate and communication rights, etc. In this dissertation, these rights are grouped because they are currently needed by people to sustain and nourish their lives in a modern society.

Most people need to work for remuneration to acquire everyday materials and services. Discussions about work conditions usually focus on working time, remuneration, and the physical environment in which an individual works, and linguistic environment is not included. However, the connection between language and human rights in labor law concerns designated working language and linguistic requirements of employment. For example, the English-only rules in the U.S. workplace resulted in several legal cases.<sup>496</sup>

---

<sup>495</sup> Article 19, Para 2 of the ICCPR protects all forms of expression and the means of their dissemination. Such forms include spoken, written and sign language and such non-verbal expression as images and objects of art. HRC, General Comment 34, *supra* note 493, ¶33 (citing Communication No. 926/2000, *Shin v. Republic of Korea*).

<sup>496</sup> Such as *Saucedo v. Brothers Well Services, Inc.*, 464 F. Supp. 919 (S.D. Tex. 1979), *Garcia v. Gloor*, 618 F. 2d 264 (5th Cir. 1980), *Jurado v. Eleven-Fifty Corporation*, 813 F.2d 1406 (9th Cir.1987), *Gutierrez v. Municipal Court*, 838 F.2d 1031 (1988), and *Garcia v. Spun Steak Co.*, 998 F.2d 1480 (1993) are about English-only at workplace, and the Equal Employment Opportunity Commission (EEOC) guidelines' definition that unemployment based on "an individual has the physical, cultural or linguistic characteristics of a national origin group" constitutes national origin discrimination is accepted by the courts. Peter. L

International law does not explicitly regulate these issues, and the interpretation of the right to just and favorable conditions of work regarding language still relies on the domestic law of each state.

The right to food, clothing, housing, medical care, and necessary social services (UDHR art.25 (1)), and the right to security in the event of unemployment, sickness, disability, widowhood, old age (UDHR art.25 (1)), are usually not included in discussions about language rights. However, since the linguistic environment is a condition for the exchange of information to maintain the quality of life, language should be considered in discussions of the rights to a standard of living. Although Plautus' "*lupus est homo homini*" and Hobbes' "*homo homini lupus*" are considered keen descriptions of man's nature,<sup>497</sup> there are countless obvious differences between a human being and other species of animals. It is a general consensus that an individual has needs beyond mere survival to maintain the dignity of being human. Meeting these needs often depends on the use of language.

In the United States, the Social Security Administration started a plan for "Providing Access to Benefits and Services for Persons with Limited English Proficiency (LEP)", including resource allocation, service delivery, bilingual/bicultural staffing, qualified interpreter services, public information, written communications, listening to LEP individuals, and outreach to LEP individuals to improve their access to services and

---

Patrick, *Linguistic Human Rights: A Sociolinguistic Introduction* (Nov. 2, 2005), <http://privatewww.essex.ac.uk/~patrick/lhr/lhrengonlywork.htm> (last visited Nov. 2, 2010).

<sup>497</sup> TITUS MACCIUS PLAUTUS, ASINARIA, <http://www.perseus.tufts.edu/> (search "Pl. As. 2.4") (last visited Aug. 3, 2010); THOMAS HOBBS, DE CIVE (1651); *English version of De Cive*, <http://www.constitution.org/th/decive.htm> (last visited Apr. 2, 2012).

participation in federally conducted programs and activities.<sup>498</sup> It is obvious that people with less dominant language proficiency face linguistic restrictions on access to social security or welfare benefits. Since the UDHR declares that the rights set forth in its Articles should not be enjoyed with the distinction of language, closing the information gap created by linguistic restrictions is an obligation of each State.

Like linguistic human rights, communication rights are attached to several human rights rather than contained in or derived from a single provision in international human rights instruments.<sup>499</sup> “Communication rights” center on the use of media to disperse and exchange information. Media’s use of language (choice of words, voice, narration style) deeply affects language status, language corpus and language acquisition. Whether media should adopt various languages is the major dispute of communication rights, especially when there are privately owned media.

In looking at this issue, a number of human rights conflicts arise. First, media cannot be linguistically neutral. At least one language must be chosen to broadcast or print. Second, profit is a decisive driving force in running a medium. The right to property is highly valued and considered. A market-oriented medium is less willing to use non-dominant languages because of associated costs. Nevertheless, dominant languages are welcomed by media because they represent a larger market. Third,

---

<sup>498</sup> Social Security Administration, *Social Security Administration's Plan for Providing Access to Benefits and Services for Persons with Limited English Proficiency (LEP)* (Feb. 2010), <http://www.ssa.gov/multilanguage/LEPPlan2.htm> (last visited Oct. 1, 2010).

<sup>499</sup> Discussions about communication rights can be categorized to (1) communicating on the public sphere: The role of communication and media in exercising democratic political participation in society, (2) communication knowledge: The terms and means by which knowledge generated by society is communicated, or blocked, for use by different groups, (3) civil rights in communication: The exercise of civil rights relating to the processes of communication in society, and (4) cultural rights in communication: The communication of diverse cultures, cultural forms and identities at the individual and social levels. *The Right to Communicate in the Information Society, Communication – An Essential Human Need*, <http://www.crisinfo.org/> (last visited Oct. 3, 2010).

efficiency of transmitting information is a well-known criterion of media competition. A medium that provides faster news and information gets better market share. Fourth, once a language is labeled non-dominant, it is rarely used in education or official events; speakers begin to borrow words/concepts from dominant languages to use in mother tongue speech. Over the longer term, then, non-dominant languages can become impoverished and static.

Despite these concerns, according to the Human Rights Committee General Comment No. 34, a basic rule in communication law is that restrictions must be “necessary” for a legitimate purpose. Thus, for instance, a prohibition on commercial advertising in one language, with a view to protecting the language of a particular community, violates the test of necessity if the protection could be achieved in other ways that do not restrict freedom of expression.<sup>500</sup>

To sum up, when society has standardized on a common language, people lacking adequate language proficiency will face a high probability of being ignored when striving to access governmental functions, public services, and media communication. Every right has the same normative standard: *language should not be the barrier to exercise these fundamental human rights, even though the barrier is slight*. Governments must take *specific activities* and *positive measures* to overcome specific difficulties, such as illiteracy and language barriers that prevent persons from exercising their rights effectively.<sup>501</sup> Furthermore, to eliminate substantive discrimination, government in some

---

<sup>500</sup> HRC, General Comment 34, *supra* note 493, ¶33 (citing Communication No. 359, 385/89, *Ballantyne, Davidson and McIntyre v. Canada*).

<sup>501</sup> See Human Rights Committee, General Comment 3, Article 2 Implementation at the national level (Thirteenth session, 1981), ¶1, U.N. Doc. HRI/GEN/1/Rev.6 at 125 (2003); Human Rights Committee,

cases *must* adopt positive measures, which are legitimate to the extent that they represent reasonable, objective and proportional means to redress de facto discrimination.<sup>502</sup> For example, information about public services and goods should be available, as far as possible, in languages spoken by minorities.<sup>503</sup>

### 5.3.3. LANGUAGE AS AN INTRINSIC VALUE (FACTOR V)

As discussed in Chapter 3, language itself is a protectable value. The protection of cultural heritages is part, but not all, of cultural preservation. Buildings, paintings, and museums cannot replace poetry, tales, and songs. The right to participation in cultural heritage and the rights to intergenerational equity and sustainability represent a lasting desire to maintain and develop one's own culture. When language is viewed as an 'intangible cultural good',<sup>504</sup> using a language is also reproducing its culture.

The intangible aspect of cultural inheritance strongly relies on language preservation. The Bill of Human Rights takes a multicultural viewpoint. The CESCR General Comment No. 21 says that

“The full promotion of and respect for cultural rights is essential for the maintenance of human dignity and positive

---

General Comment 25, The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25), (Fifty-seventh session, 1996), ¶12, U.N. Doc. HRI/GEN/1/Rev.6 at 168 (2003).

<sup>502</sup> CESCR, General comment 20, *supra* note 472, ¶9. Such positive measures may exceptionally, however, need to be of a permanent nature, such as interpretation services for linguistic minorities. CESCR, General comment 20, *supra* note 472, ¶9.

<sup>503</sup> CESCR, General comment 20, *supra* note 472, ¶21.

<sup>504</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment 21: The Right of Everyone to Take Part in Cultural Life (Sep. 2009), ¶¶13& 16, E/C.12/GC/21 (Dec. 21, 2009).

social interaction between individuals and communities in a diverse and multicultural world.”<sup>505</sup>

Cultural rights, including the right to cultural education, to participation in cultural life, to communications, and to information, generally refer to the essential rights to the relationship between people and their society and full human potential development within that of society.<sup>506</sup> UN CESCR General Comment No. 21 interprets the accessibility of culture to

“include the right of everyone to seek, receive and share information on all manifestations of culture in the language of the person’s choice, and the access of communities to means of expressions and dissemination.”<sup>507</sup>

A meaningful participation in cultural life is possible only if there is effective protection and preservation of cultural heritage.<sup>508</sup>

Regarding the protection and preservation of cultural heritage, particular attention is usually given to preserving monuments, sights, buildings, and manuscripts. However, a culture is not able to sustain itself without its language(s). Skutnabb-Kangas notes that languages are vanishing in the modern states because of “*linguistic genocide*”.<sup>509</sup> The Convention on the Prevention and Punishment of the Crime of Genocide has been

---

<sup>505</sup> CESCR, General Comment 21, *supra* note 504, ¶1.

<sup>506</sup> Vladimir Kartashkin, *Economic, Social and Cultural Rights, in THE INTERNATIONAL DIMENSIONS OF HUMAN RIGHTS* 127 (Karel Vasak & Philip Alston et al eds, UNESCO 1982); *See also* CESCR, General Comment 21, *supra* note 504, ¶¶2-3& 16.

<sup>507</sup> CESCR, General Comment 21, *supra* note 504, ¶16.

<sup>508</sup> Kartashkin, *supra* note 506, at 128.

<sup>509</sup> TOVE SKUTNABB-KANGAS, *LINGUISTIC GENOCIDE IN EDUCATION- OR WORLDWIDE DIVERSITY AND HUMAN RIGHTS?* 289-378(London: Lawrence Erlbaum Associates 2000).

interpreted to prohibit the deliberate destruction of a people and thus their culture.<sup>510</sup> In this sense, even though the cultural aspect and function of language are usually ignored, the survival of culture depends on the passing on of its language.

The right to take part in cultural life is also interdependent with other rights enshrined in the ICESCR, including the right of all peoples to self-determination.<sup>511</sup> International human rights law explicitly prescribes the right to self-determination in the ICCPR, Article 1 and the ICESCR, Article 2 to mean that

“all people have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” The goal of the right to self-determination is to establish “conditions from whence human rights will subsequently emerge.”<sup>512</sup>

At the international level, language is not directly stipulated in the instruments regarding self-determination. Nevertheless, since language is a key element in distinguishing ‘you’ and ‘we’ and to defining the scope of ‘self’, the link between language and self-determination cannot be ignored.

Compared to the right to nationality, the right to self-determination is a broader concept. Language consolidates or transfers an individual’s identity, especially national identity, which is the basis of self-determination. Language is not only an objective

---

<sup>510</sup> The Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277 (Dec. 9, 1948).

<sup>511</sup> CESCR, General Comment 21, *supra* note 504, ¶2.

<sup>512</sup> Imre Szabo, *Historical Foundations of Human Rights, in THE INTERNATIONAL DIMENSIONS OF HUMAN RIGHTS* 29 (Westport: Greenwood Press, 1982).

element of ethnic groups, but it is also a subjective representation of identity. Anderson writes that people consider themselves as members of the same group by using the same language.<sup>513</sup>

Choosing to use a different or non-dominant language finds meaning in the socio-political context. The theory of ‘markedness’ treats language choice as an interactional behavior and helps to rationalize speakers’ choice of a language as a way to negotiate a set of rights and obligations incurred in the language.<sup>514</sup> An unmarked language choice, which is a basic and default form sanctioned by society, means that the speaker conforms to the expectations of other participants to gain access or acceptance to certain roles or memberships.<sup>515</sup> On the other hand, a marked choice, in terms of style or vernacular, signals the speaker’s desire to redefine the relationships with participants, either by breaking conventional expectations or constructing a new role.<sup>516</sup> In this sense, if self-determination (rather than constructing one’s identity) is viewed as a necessity for realizing other human rights, the standard of international law should focus on the promotion and protection of self-determination. Theoretically, whether a governmental

---

<sup>513</sup> BENEDICT ANDERSON, *IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM* 52-8 (Rev. ed., London: Verso 1991).

<sup>514</sup> Jennifer M. Wei, *Language Choice in Taiwanese Political Discourse*, 14 *NTU STUDIES IN LANGUAGE AND LITERATURE* 81-106 (Sep. 2005). The distinction between a marked choice and an unmarked choice is a continuum and it always involves some tying and ambiguities. *Id.* at 81-106 (citing Carol Myers-Scotton, *Explaining the Role of Norms and Rationality in Codeswitching*, 32 *JOURNAL OF PRAGMATICS* 1266-1270 (1999)).

<sup>515</sup> *Id.* at 86. Language choice has more detailed discussions. “In linguistics, codeswitching is the concurrent use of more than one language or language variety during a conversation. Using more than one code and choosing the appropriate one, as speakers see fit, from the interaction become the preferred strategy. In fact, the creation of ambiguities through codeswitching is very much a useful thing since the ambiguities produced by codeswitching can permit speakers to say and do and indeed be two or more things where normally a choice is expected. It allows speakers to take refuge in the voice of the other, in order to say or do things that they normally won’t be able to get away with, and it also allows speakers to assert their own voice to claim new roles, new rights and obligations.” *Id.* at 87 (citing Monica Heller, *Strategic Ambiguity: Codeswitching in the Management of Conflict*, in *CODESWITCHING: ANTHROPOLOGICAL AND SOCIOLINGUISTIC PERSPECTIVES* 93 (Monica Hellder ed., New York: Mouton de Gruyter 1988)).

<sup>516</sup> *Id.* at 86.

measure or law merely affects or damages an individual's opportunities to build his or her own identity is not viewed as impairment within the international law without being proved that it hinges upon self-determination.

According to the language used in the international instruments, cultural rights traditionally take a tolerance-oriented approach, and only limited standards have been adopted at a universal level. The UDHR Article 27 says that "everyone has the right freely to participate in the cultural life of the community".<sup>517</sup> Article 27 of the ICCPR sets out an important and broad standard of the rights of linguistic minorities to enjoy their cultures and use their own languages:

"In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."

The standard of cultural sustainability set forth in the International Bill of Rights is not explicit; "*adequate*" is the explicit standard in the UDHR Article 23, which proclaims that the right to enjoy remuneration and standards of living *adequate* for the health, well-being, and dignity of citizens and their families. The 1976 General Conference of UNESCO adopted a *Recommendation on Participation by the People at*

---

<sup>517</sup> People, including children and those people who with disabilities, are guaranteed to have the rights to freely pursue cultural development (ICCPR, Article 1 and ICESCR, Article 1) and to take part in cultural life (ESC, Article 15, CRC, Article 31 & CPRD, Article 10). For migrant worker and their families, the right to a cultural identity is stipulated. (CMW, Article 31).

*Large in Cultural Life and their Contribution to It*,<sup>518</sup> which is a detailed instrument containing a series of principles and norms implemented according to the constitutional practice of each State Party.<sup>519</sup> Further, the UN Human Rights Committee General Comment No. 23 and the Committee on Economic, Social and Cultural Rights General Comment No. 21 take a positive standard for ICCPR and ICESCR's members, who are under the *obligation* to recognize, respect and protect minority cultures as an essential component of membership itself.<sup>520</sup>

Consequently, minorities have the right to their languages, and government *should adopt measures and spare no effort* to ensure that educational programs for minorities and indigenous groups are conducted on or in their own languages, taking into consideration the wishes expressed by communities and the international human rights

---

<sup>518</sup> United Nations Educational, Scientific and Cultural Organization, 19C/Resolution 4.126 (Nov. 26, 1976)

<sup>519</sup> (1) under the terms of Article 27 of the Universal Declaration of Human Rights, 'everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits', (2) the Constitution of UNESCO states, in its Preamble, that the wide diffusion of culture, and the education of humanity for justice and liberty and peace are indispensable to the dignity of man, and (3) the provisions of the Declaration of the Principles of International Cultural Co-operation adopted by the General Conference of UNESCO on 4 November 1966 at its fourteenth session, and in particular Article I which states that 'each culture has a dignity and value which must be respected and preserved', and Article IV which stipulates that one of the aims of international cultural co-operation is 'to enable everyone to have access to knowledge, to enjoy the arts and literature of all peoples, to share in advances made in science in all parts of the world and in the resulting benefits, and to contribute to the enrichment of cultural life', and also the provisions of the Final Act of the Conference on Security and Co-operation in Europe to the effect that the participating States, 'desiring to contribute to the strengthening of peace and understanding among peoples and to the spiritual enrichment of the human personality without distinction as to race, sex, language or religion', will set themselves the objective, amongst others, of promoting access by all to their respective cultural achievements. U.N. E.S.C.R. 19C/Res. 4.126, *supra* note 518.

<sup>520</sup> CESCR, General Comment 21, *supra* note 504, ¶32.

standards in this area,<sup>521</sup> and should pay particular attention to the protection of the cultural identities of migrants, as well as their language.<sup>522</sup>

#### 5.3.4. EDUCATIONAL LINGUISTIC HUMAN RIGHTS (ALL FACTORS)

Education, one of the most prominent concerns about linguistic human rights, is the key instrument for duplicating knowledge and information of both the dominant language(s) and cultures to ethno-linguistic minorities, including indigenous peoples, regional majorities, and immigrants.<sup>523</sup> The right to education has been included in several international instruments, e.g., the UDHR (Preamble & art. 26), the ICESCR (art. 13 & 14), the CEDAW (art. 10 & 14), and the Convention on the Rights of the Child (art. 28 & 29). Even though most international instruments do not mention ‘language’, educational rights are currently the most developed field of linguistic human rights in the international context because of the close relationship between language and education; see Table 5-7. Moreover, the nature of Mandarin Plus is an educational program. So, the relevant discussions in this dissertation fall in this category.

**Table 5-7: Educational Human Rights in the International Context<sup>524</sup>**

<b>Year</b>	<b>Title</b>	<b>Content</b>	<b>Linguistic Concerns</b>
1945	The Charter of the U.N.	Does not have any specific education article.	Non-discrimination prescription (Article 2) mentions language.
1948	The Universal Declaration of Human Rights	Article 26	Language is not mentioned.
1948	American Declaration of the Rights and Duties of Man	Article XII: Right to education	Language is not mentioned.

<sup>521</sup> CESCR, General Comment 21, *supra* note 504, ¶¶27&32; Human Rights Committee, General Comment 23, Article 27 (Fiftieth session, 1994), ¶¶1, 5&6, U.N. Doc. CCPR/C/21/Rev.1/Add.5 (1994), U.N. Doc. HRI/GEN/1/Rev.6 at 158 (2003).

<sup>522</sup> CESCR, General Comment 21, *supra* note 504, ¶¶27&32; HRC, General Comment 23, *supra* note 521, ¶¶1, 5&6.

<sup>523</sup> See Skutnabb-Kangas & Phillipson, *supra* note 433, at 71-110.

<sup>524</sup> *Id.* at 71-110.

(Table 5-7 continued)

1950	The Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms	Education Section (First Protocol, 2)	European Court's interpretation in the Belgian linguistic case
1966	International Covenant on Economic, Social and Cultural Rights	Article 13	Non-discrimination prescription (Article 2.2) mentions language, but inconsistency exists on the education article. Language is not mentioned in the education article.
1966	International Covenant on Civil and Political Rights	Does not have any specific education article.	Linguistic minorities' rights are protected in Article 27.
1969	American Convention on Human Rights (Pact of San José, Costa Rica)	Does not have any specific education article.	Non-discrimination prescription (Article 1.1) mentions language but not in the education article.
1981	The African Charter on Human and Peoples' Rights	Article 17.1 Education Clause	Language is not mentioned.
1989	The U.N. Convention on the Rights of the Child	Article 28: Educational rights	Language is not mentioned.

The relationship between language and education has two aspects. First, it means language acquisition: language as a subject on the curriculum. Second, it means the communication medium used in education: teaching in a language. From the perspective of language planning, education affairs are involved in all three fields: status planning, corpus planning and acquisition planning. The authority of language affairs standardizes a language or chooses standard language(s) (corpus planning), then languages are taught and acquired through the education system (acquisition planning), and finally the prescribed teaching languages are broadly acquired and used (status planning). Education is the confluence of all the three branches of language planning. In this way, educational

rights cover almost all the functions of language, and they are also related to various types of language legislation.

Skutnabb-Kangas and Phillipson write that educational linguistic rights contain “necessary rights” and “enrichment-oriented rights”. Necessary rights, which are considered to be inalienable fundamental human rights, mean to learn and use one’s mother tongue and to learn an official language, as well, for basic social and psychological survival and economic and political participation.<sup>525</sup> Enrichment-oriented rights are concerned with the right to learn and use foreign languages.<sup>526</sup>

This dissertation does not adhere to their taxonomy for many reasons. First, it mixes learning mother tongue and learning an official language as necessary rights and then distinguishes necessary rights from enrichment-oriented rights by language’s locality. In this sense, their taxonomy cannot explain *voluntary* language shifts, e.g., when parents adopt a dominant language, usually synonymous with an official language, as the family language. Language shift is usually caused by a language with greater political power, privilege and social prestige through public education and governmental system to increase pressure on minority language speakers to speak the dominant language, especially in formal domains.<sup>527</sup> Once the number of minority language speakers decreases and their language use becomes limited, speakers of the minority languages eventually shift over time to speaking the dominant language.<sup>528</sup>

---

<sup>525</sup> Skutnabb-Kangas & Phillipson, *supra* note 433, at 102.

<sup>526</sup> *Id.* at 102.

<sup>527</sup> Stephen May, *Uncommon Languages: the Challenges and Possibilities of Minority Language Rights*, 21:5 JOURNAL OF MULTILINGUAL AND MULTICULTURAL DEVELOPMENT 366 (2000).

<sup>528</sup> *Id.* at 366-7.

Second, mother tongue acquisition and official language education often have internal conflicts, especially when parents' mother tongues (ethnic mother tongue) differ from children's mother tongue (individual mother tongue). Which mother tongue is viewed as the object of necessary rights remains under dispute. Furthermore, mother tongue, foreign language and official language are relative concepts. In an immigrant family, a child's mother tongue is also a foreign language. Third, under their taxonomy, except for the situation where a native speaker of a dominant language learns a foreign language, other people's language acquisition can be considered as necessary rights. In addition, indigenous peoples' languages are not clearly located in this map of rights. Theirs are not foreign languages and are therefore not covered by "enrichment-oriented rights". Finally, it is doubtful if "enrichment-oriented rights" are "rights" or mere "interests".

Learning a language is usually classified as an interest, especially from the perspective of language-as-resource.<sup>529</sup> However, once a dominant language speaker has rejected the opportunity to learn a second language, it is not clear if the speaker can assert any legal remedy or judicial relief. Forbidding people to learn a certain language certainly infringes their freedom, but it is generally not considered that the State is obliged to facilitate an individual's learning a language *other than* his mother tongue, a regional majority language, or an official language. Whether a State should put a language other than mother tongues or regional dominant languages on the curriculum is less a legal than a policy consideration. Like the process of putting various subjects (such as mathematics or physics) on a curriculum, the concerns of cost, time, labor, and interest always take

---

<sup>529</sup> Richard Ruiz, *Orientations in Language Planning*, in LANGUAGE DIVERSITY: PROBLEM OR RESOURCE? 17 (S.L. McKay & S.C. Wong eds., Newbury House Publisher 1988).

precedence. In this regard, it is obvious that learning mathematics or physics is not viewed as a right, nor is learning a second language other than mother tongue, regional majority language, or official language.

From the perspective of educational goals, learning a dominant language and learning an ethnic mother tongue are based on different rationales. Learning a dominant language is thought of as realizing the rights in Chapter 5.2.2, such as the right of freedom of speech and opinion (UDHR art.19& ICCPR art. 19), the right to take part in the government directly or indirectly and equally enjoy public service (UDHR art. 21& ICCPR art. 25(a)(c)), the right to food, clothing, housing, medical care, and necessary social services (UDHR art.25 (1)& ICESCR art.11), and the right to security in the event of unemployment, sickness, disability, widowhood, old age (UDHR art.25 (1) & ICESCR art.12) to help an individual enter and survive in today's society. On the other hand, "the importance of education is not just practical: a well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence."<sup>530</sup>

Derived from an intrinsic viewpoint, such as cultural rights (the ICESER art. 15), learning an ethnic mother tongue serves to pass on and sustain a culture.<sup>531</sup> Government

---

<sup>530</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment 13, The Right to Education (Art. 13 of the Covenant), ¶¶1,4& 9, E/C.12/1999/10 (Dec. 8, 1999).

<sup>531</sup> See Vasak, *supra* note 461, at 29. For further information, a similar taxonomy is to distinguish two major dimensions in the right to education: the social dimension and the freedom dimension. The social dimension requires states to make various forms of education available and easily accessible to all and to introduce progressively several forms of free education. The freedom dimension applies to the right to academic freedom and institutional autonomy and it implies the personal freedom of individuals or their parents or guardians to choose the educational institutions meeting their educational standards, or their religious or moral convictions. This freedom implies, in addition, the freedom of individuals and bodies to establish and direct their own educational institutions. Icelandic Human Rights Centre, *The Rights to Education and Culture*, available at <http://www.humanrights.is/the-human-rights-project/> (last visited Mar. 28, 2010).

should be under the *obligation* to take deliberate, concrete and targeted steps as expeditiously and effectively as possible to ensure that educational programs for minorities and indigenous groups are conducted on or in their own languages, taking into consideration the wishes expressed by communities and the international human rights standards in this area.<sup>532</sup>

#### 5.4. CONCLUSION

Unlike traditional discourse about linguistic rights, which focuses on one particular area, this chapter breaks out the linguistic factors involved in linguistic human rights (viz., language as a standardizer, language as a classification indicator, language as an urgent necessity, language as a subsidiary instrument, and language as an intrinsic value). Linguistic factors exist from the first through the third generations of human rights in the UDHR, the ICCPR and the ICESCR.

We can thus formulate the following principles. First, *equal treatment with reasonable and objective criteria*: any linguistic differentiation of treatment violates the non-discrimination principle unless the action at issue is taken to correct discrimination in fact. Government must ensure that any language requirements relating to employment and education are based on reasonable and objective criteria.

---

<sup>532</sup> CESCR, General Comment 13, *supra* note 530, ¶¶43-4; CESCR, General Comment 21, *supra* note 504, ¶27. In a world with unlimited resources, learning more languages is practicable. However, a state has limited resources and any individual has limited time to acquire languages. When the conflicts of choice of the type of education exist, article 26 of the UDHR and article 13(3) of the ICESCR provide the right to a parent to have the priority to choose the type of education for his or her child. Article 2(b) of the UNESCO Convention against Discrimination in Education (1960) takes the same position "The establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions offering an education which is **in keeping with the wishes of the pupil's parents or legal guardians**, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education of the same level."

Second, *communicative function protection*: when language is viewed as a communication instrument, those human rights whose exercise depends on use of language have the same normative standard: language should not be a barrier to the exercise of fundamental human rights, even though the barrier is slight. Government should take specific activities and positive measures to overcome specific difficulties, such as illiteracy and language barriers that prevent persons from exercising their rights effectively.

Third, *affirmative action*: in order to eliminate substantive discrimination, government in some cases should adopt positive measures, which are legitimate to the extent that they represent reasonable, objective and proportional means to redress de facto discrimination. For example, information about public services and goods should be available, as far as possible, in languages spoken by minorities.

Fourth, *educational use*: with respect of educational goals, learning a dominant language and learning an ethnic mother tongue are based on different rationales. From the perspective of multiculturalism, international human rights adopt a positive standard for the ICCPR and the ICESCR's members, who are under the obligation to recognize, respect and protect minority cultures as an essential component of membership itself. Consequently, minorities have the right to their languages. Government should adopt measures and spare no effort to ensure that educational programs for minorities and indigenous groups are conducted in their own languages, taking into consideration the wishes expressed by communities and the international human rights standards in this area; they should also pay particular attention to protecting the cultural identities and languages of migrants.



## CHAPTER 6: MULTILINGUAL SOCIETY AND ITS DISCONTENTS -- MANDARIN PLUS IN THE CONTEXT OF LINGUISTIC HUMAN RIGHTS AND THE CONSTITUTIONAL MULTICULTURAL DECLARATION

In light of prior discussions about language law and linguistic human rights, this Chapter examines whether Mandarin Plus is supported by normative standards of linguistic human rights and Taiwan's Constitution. We review historical background, analyze the position of language in Taiwan's current legal system, examine Mandarin Plus using the structure of language planning and linguistic human rights, and provide direction for further reform.

### 6.1 BACKGROUND SUMMARY

After Chiang Kai-shek's Nationalists lost the Chinese civil war, the ROC central government retreated to Taiwan in 1949. To justify ruling Taiwan with the few who came with the KMT from mainland China, and to preclude the rise of local identity, other local languages, especially Holo, were suppressed under the National Language Movement (國語運動, *guo yu yun dong*) and Mandarin Only Policy (獨尊國語, *du zun guo yu*) for the purpose of Chinese nation-building.<sup>533</sup> However, after the demise of Chiang's son, Chiang Ching-Kuo, in 1988, Taiwan started large-scale political reforms.

---

<sup>533</sup> This dissertation limits the language involved to Mandarin, Holo, Hakka, and indigenous languages according to the structure of the National Languages Promotion Committee and the content of the 2003 Draft of the Language Equality Law. Japanese is also a significant language in Taiwan. While mainland China started to establish a standard language, Taiwan was under the Japanese colonial rule and another national language (Japanese) movement. 4.2 million people which were 70% of the Taiwanese population could speak Japanese before WWII ended. However, Japanese is not included in the sphere of discussion. As for Japanese population in Taiwan, see 張良澤, 臺灣に生き残った日本語- 國語教育より論ずる Zhang Liang-ze, *Taiwan Ni Ikinokotta Nihongo- Gokugo Kyōiku Yori Ronzuru* [Japanese Language and its Survival in Taiwan: from the National Language Education], 22 CHŪGOKUGO KENKYŪ [Chinese Language Research] 17 (Jun., 1983) (Japan).

As political and social conditions changed, the desire for cultural preservation and the need to take countermeasures against political stress joined to generate relevant reforms. The 1992 Additional Articles of Constitution of the ROC first proclaimed that the State should promote culture, social welfare, and the economic development of indigenous people.<sup>534</sup> In 1997, the Additional Articles of Constitution of the ROC were further amended to state that “the State affirms cultural pluralism and shall actively preserve and foster the development of aboriginal languages and cultures” under the pressure of indigenous peoples’ groups in exchange for their support of passing the Additional Articles.<sup>535</sup> This was the first time that Taiwan adopted multiculturalism and a diversity maintenance approach at the constitutional level, and then the Taiwanese government thereafter took language affairs reform measures and introduced several legal drafts.<sup>536</sup> The measures and drafts are summarized in the following table.

---

<sup>534</sup> 中華民國憲法第二次增修條文(1992) ZHONGHUA MINGUO XIANFA DIERCI ZENGXIUTIAOWEN [The Second Additional Articles of the Constitution of the Republic of China] art. 18, sec. 6 (1992) (Taiwan).

<sup>535</sup> 中華民國憲法第四次增修條文(1997) ZHONGHUA MINGUO XIANFA DISICI ZENGXIUTIAOWEN, art. 10, sec. 9 (1997) (Taiwan); 張茂桂, 臺灣是多元文化國家?! Chang Mau-kuei, *Taiwan Shi Duoyuan Wenhua Guojia?! [Taiwan is a multicultural state?!]*, in CULTURAL STUDIES MONTHLY (Mar. 15, 2002), [http://www.ncu.edu.tw/~eng/csa/journal/journal\\_park86.htm](http://www.ncu.edu.tw/~eng/csa/journal/journal_park86.htm) (last visited Apr. 2, 2012).

<sup>536</sup> 大眾運輸工具播音語言平等保障法(2000) DAZHONG YUNSHU GONGJU BOYINYUYAN PINGDENG BAOZHANGFA [Broadcast Languages Equality Protection of the Mass Rapid Transportation Instruments Law] (Apr. 19, 2000) (Taiwan); The Council of Hakka Affairs was also established in 2001. The MPC of the MOE changed its name from the Mandarin Promotion Council to the National Languages Committee in the same year. The NLPC further expanded its organization to include Holo, Hakka, and indigenous languages. In the following years, different versions of the drafts of language laws were proposed by different departments in the government, including the Council of Hakka Affairs (2002), Institute of Linguistics, Academia Sinica (2002), the Council of Indigenous Peoples (2003). The Ministry of Education formulated a final draft of the Language Equality Law (2003). See 語言公平法草案 *Yuyan Gongpingfa Caoan [The Draft of the Language Equality Law]* (2003), <http://mail.tku.edu.tw/cfshih/ln/enactment.htm> (last visited Dec. 2, 2009). The change of the English title of the National Languages Committee was viewed as an internal affair within the authority of the Ministry of Education and did not release any official order. This change represents a huge turn of the direction of the language policy, but the milestone was not under the spotlight. It might result from the desire not to attract attention from the conservative Mandarin Only supporters.

*Table 6-1: Major Language Legislation after the 1997 Multicultural Declaration*

<b>Year</b>	<b>Draft\Measures</b>	<b>Result</b>
2000	Broadcast Languages Equality Protection of the Mass Rapid Transportation Instruments Law	Continuing
2000	The Mandarin Promotion Council renamed the National Languages Committee	Continuing
2001	Required Vernacular Language Classes in All Primary Schools based on Mandarin Plus	Continuing
2001	New Language Curriculum in the 9-Year Integrated Curriculum	Continuing
2003	Abolishment of the 1973 Mandarin Promotion Measures	Enforced
2003	Language Equality Law Draft	Deferred sine die
2003	National Language Development Law Draft	Deferred sine die
2005	Hakka Language Development Law Draft	Deferred sine die
2007	National Language Development Law Draft	Deferred sine die
2008	Revised Language Curriculum in the 9-Year Integrated Curriculum <sup>537</sup>	Continuing

The previous paragraphs represent the basic structure of the language legislation in Taiwan. However, does the system comply with the linguistic human rights under the international law and the constitutional law? In order to understand the further developing direction and applicable legal source of the language policy and planning, a series of interviews were conducted by the author of this dissertation from 2009 to 2010 in Taiwan. However, the results of the interviews show that most scholars and officers could only provide information about slogans like "languages should enjoy equal status" or "promoting language rights," and they put their focus only on the public measures of promoting non-official languages by providing limited vernacular language classes or encouraging students to use non-official languages on certain days on campus.<sup>538</sup> Most

<sup>537</sup> The curriculum guidance was last revised in 2008, and revised version has been enforced since August 1, 2011. 教育部臺國(二)字第 1000060859C 號函(2011) Ministry of Education Notice Taiguo (Er) Zi No.1000060859C (Apr. 26, 2011) (Taiwan).

<sup>538</sup> Interview with Interviewee 101409G, previous government officer, in Taipei, Taiwan (Oct. 14, 2009); interview with Interviewee, 032510G, previous government officer, in Hsinchu, Taiwan (Mar. 25, 2010); interview with Interviewee 040610L, congressman, in Taipei, Taiwan (Apr. 06, 2010); interview with Interviewee, 110909S, scholar, in Tainan, Taiwan (Nov. 09, 2009); interview with Interviewee 111109S,

interviewees could not indicate the legal source of language rights, and only one scholar roughly mentioned the Additional Articles of Constitution ICCPR and the ICESCR might be applicable to the linguistic issues without pointing out any particular provisions or general comments to turn the theories into practice.<sup>539</sup>

In the previous chapters, this dissertation analyzes and concludes that ‘language law’ contains ‘law regarding language planning’ and ‘language rights’. Domestic written law derived from the Constitution and international treaties is the primary source of language law in Taiwan. Furthermore, linguistic factors can be found in several provisions and their relevant general comments in the ICCPR, the ICESCR, and the CEDAW, which are de jure effective because Taiwan voluntarily adopted the three international human rights instruments through the Implement Act of the Two Covenants and the Act to Implement the CEDAW. In the following sections, this dissertation analyzes the Mandarin-Plus centered system from the perspectives of the constitutional law and the applicable linguistic human rights provisions and the relevant general comments.

## **6.2 LANGUAGE IN TAIWAN’S LEGAL SYSTEM**

### **6.2.1 LANGUAGE AND CONSTITUTIONAL LAW**

A constitution is the foundation of most legal systems.<sup>540</sup> Therefore, this discussion begins with a brief review of Taiwan’s constitutional law.<sup>541</sup>

---

scholar, in Taipei, Taiwan (Nov. 11, 2009); and interview with Interviewee 032310S, scholar, in Taitung, Taiwan (Mar. 23, 2010).

<sup>539</sup> Interview with Interviewee 101909S, scholar, in Taipei, Taiwan (Oct. 19, 2009).

<sup>540</sup> 顏厥安, 法與實踐理性 YEN JUE-AN, FA YU SHIJIANLIXING [Law and Rational Practice] 289 (Asian Culture 1998) (Taiwan) (citing RALF DREIER, GTLS, S. 116, 401; RR, S. 204ff., & ATdN, S. 206f.).

Even though it was not unusual for that time, language was not included in the civil rights chapter of the 1947 ROC Constitution because it was conventionally *not* viewed as an indicator of civil rights or freedoms. As the foundation of governmental structure, Taiwan's constitutional law consists of the Original Text of the Constitution (1947), the Additional Articles (1991, 1992, 1994, 1997, 1999, 2000, 2004), and interpretation(s) of the Grand Justices.<sup>542</sup>

Prior to when '*language*' appeared in the 1997 Additional Articles of the Constitution, language affairs had no constitutional focus within the Republic of China. The ROC's leading theory of constitutional law adhered to the concepts of the French Revolution and the 1919 Weimar Constitution; it basically assumed that equality meant "legally equal" and asserted that legality before the law was the avoidance of anyone enjoying a privilege.<sup>543</sup> ROC law initially focused on the privileges of the noble class; after the 1919 Weimar Constitution, Taiwan protections were extended to the abandonment of gender-based discrimination.<sup>544</sup>

Linguistic equality was *not* part of the development discourse of civil rights in the France,<sup>545</sup> and the ROC followed this trend.<sup>546</sup> Language diversity was viewed as a barrier to unity in many countries, especially those strongly influenced by the ideal of nationalism. A common language was thought to draw a line between *us and them*. The

---

<sup>541</sup> Dreier interprets the layered structure within a state as a pyramid: the constitution provides the source of law to statutes which further work as the source of law for administrative orders or regulations from up to down. *Id.* at 289 (citing HORST DREIER, a.a.O., S. 51 Anm.140, S. 130, 146).

<sup>542</sup> The 1947 Republic of China Constitution adapted Sun Wun's "five-branch" (五權分立) system.

<sup>543</sup> See 王世杰、錢端升, 比較憲法 WANG SHI-JIE AND QIAN DUAN-SHENG, BIJIAO XIANFA [Comparative Constitution] 68-71 (China University of Political Science and Law Press, 1997) (1925, 1936) (R.O.C.).

<sup>544</sup> *Id.* at 68-71.

<sup>545</sup> See Harold Schiffman, *Language Policy and Linguistic Culture*, in AN INTRODUCTION TO LANGUAGE POLICY 117-20 (Thomas Ricento ed., Blackwell Publishing 2006).

<sup>546</sup> The Republic of China frequently adapts German, French, Japanese, and American law to its legal system.

wording of the 1947 Constitution adhered to the 1912 Temporary Constitution, the 1923 Constitution, and the 1931 Constitution and therefore did not leave room for language considerations.<sup>547</sup> Furthermore, even though the 1947 Constitution was written in Mandarin, the fact that many dialects of the Han language shared most of the Chinese characters made language issues unnoticeable at that time: the Original Text could be generally understood in various Han dialects, in the same way that Han dialect speakers understand Chinese literature in multiple forms. See the table below for equal protection indicators in Taiwan's various constitutions.

**Table 6-2: Equal Protection Indicators in the Constitutions**

<b>Article</b>	<b>Content</b>
1912 ROC Temporary Constitution Art. 5	People of the Republic of China are equal without distinctions of <i>race, class or religion</i> .
1931 ROC Constitution Art. 6	All citizens of the Republic of China shall be equal before the law without distinctions of <i>sex, race, class, or religion</i> .
1947 ROC Constitution Arts. 5&7	There shall be equality among the various <i>racial groups</i> in the Republic of China.
	All citizens of the Republic of China, irrespective of <i>sex, religion, race, class, or party affiliation</i> , shall be equal before the law.

Civil rights protection in the ROC Constitution was not highly developed, and vernacular languages were suppressed in pursuance of nation-building before the 1990s political and social changes. It is interesting that in the 1948 United Declaration of Human Rights (UDHR), Article 2, language was included as an indicator of the equal protection of human rights; ROC's Peng Chun Chang *'was able to explain the Chinese*

<sup>547</sup> See 王世杰、錢端升, 比較憲法 WANG ET AL., *supra* note 543, at 70.

It is interesting that in the 1948 United Declaration of Human Rights, Article 2, language is included as an indicator of the equal protection of human rights. The Republic of China's Peng Chun Chang joined the Draft Committee of the 1948 UDHR. Although the proclamation dates of the 1948 Universal Declaration of Human Rights (UDHR) and the 1947 Constitution were close, the range of equality covered by the 1948 UDHR is much broader than that of the 1947 Constitution. The 1948 UDHR included 'language' in its Article 2 to assert equality, but the 1947 Original Text of the Constitution remained silent about language affairs. The difference shows that the ROC human rights and the international human rights are on different development discourses.

*concept of human rights*' to the Drafting Committee of that document.<sup>548</sup> Although the proclamation dates of the 1948 UDHR and the 1947 Constitution were close, the range of equality covered by the 1948 UDHR is much broader than that of the 1947 Constitution. The 1948 UDHR included 'language' in its Article 2 to assert equality, but the 1947 Original Text of the Constitution remained silent about language affairs: ROC human rights and international human rights were on different developmental trajectories.

The term "language" first appeared in the 1997 Additional Article 10:

"The State affirms cultural pluralism and shall actively preserve and foster the development of aboriginal languages and cultures."<sup>549</sup>

Article 10 declares the "basic State policies" (基本國策), which are guidelines of development. It is still arguable how strong the legal effect of the basic State policies is,<sup>550</sup> but Additional Article 10 was the first time in constitutional law that language is elevated to such a high level.

### 6.2.2 LANGUAGE PLANNING AUTHORITY

As we have seen, language was not an indicator of civil rights in the constitutional tradition of the ROC.<sup>551</sup> In fact, language affairs were governed by the Ministry of

<sup>548</sup> Peng-Chun Chang's bibliography, *Members of the Drafting Committee of the UDHR*, [http://www.un.org/depts/dhl/udhr/members\\_pchang.shtml](http://www.un.org/depts/dhl/udhr/members_pchang.shtml) (last visited May 1, 2010).

<sup>549</sup> 中華民國憲法第四次增修條文(1997) ZHONGHUAMINGUO XIANFA DICICI ZENGXIUTIAOWEN [The Fourth Additional Articles of the Constitution of the Republic of China], art. 10 (Jul. 21, 1997) (Taiwan).

<sup>550</sup> 李震山, 論憲改與基本權保障 Lee Zheng-shan, *Lun Xiangai Yu Jibanquan Baozhang* [Constitution Amendment and Foundation Rights Protection] 12, [www.rdec.gov.tw/public/Attachment/512016524071.pdf](http://www.rdec.gov.tw/public/Attachment/512016524071.pdf) (last visited Mar. 15, 2010).

<sup>551</sup> The Original Text of the 1947 Constitution remains silent on language affairs, and the Constitution only enumerates the equality of racial group (Article 5), the equality of sex, religion, race, class, or party affiliation (Article 7), and the others, including personal freedom (Article 8), immunity from trial by military tribunal (Article 9), freedom of residence (Article 10), freedom of speech (Article 11), right of privacy (Article 12), freedom of religious belief (Article 13), freedom of assembly (Article 14), right of

Education, even though the Ministry had authority over academic, cultural, and educational affairs rather than language according to the Organic Law of the Ministry of Education (教育部組織法).<sup>552</sup> Deeply influenced by the German legal system, administrative law in Taiwan is divided into *organic law* (*Organisationsrecht*; 組織法) and *active law* (*Verhaltensrecht*; 行為法). Organic law regulates an organization's structure, jurisdiction (*Zuständigkeit*), branches, internal division, personnel, discipline, etc.<sup>553</sup> Theoretically, a government organization requires its organic law to provide the legal source of its existence and personnel.<sup>554</sup> A government organization without its organic law is called a 'black organ' (黑機關) and is not included in the annual government budget program.<sup>555</sup>

From the perspective of organic law, the main concern is which administrative organ has the authority over language affairs.<sup>556</sup> On one hand, every governmental unit

---

existence, work and property (Article 15), right of filing suits and complaints (Article 16), right of suffrage (Article 17), right of taking civil service exam (Article 18), right of Receiving Education (Article 21). As for other non-enumerated civil rights, Article 22 and 23 of the ROC Constitution further declared that freedoms and rights shall be guaranteed under the Constitution and they cannot be restrained by law without special reasons. Article 22: "All other freedoms and rights of the people that are not detrimental to social order or public welfare shall be guaranteed under the Constitution."; Article 23: "All the freedoms and rights enumerated in the preceding articles shall not be abridged by law except such as may be necessary to prevent infringement upon the freedoms of others, to avert an imminent danger, to maintain social order, or to promote public welfare."

<sup>552</sup> 教育部組織法第1條(1973) JIAOYUBU ZUZHIFA [Organization Law of the Ministry of Education] art. 1 (Jul. 25, 1973) (Taiwan).

<sup>553</sup> 吳庚, 行政法之理論與實用 WU GENG, XINGZHENGFA ZHI LILUN YU SHIYONG [The Theory and Practice of Administrative Law] 165-6 (Sanmin 9<sup>th</sup> ed., 2006) (Taiwan).

<sup>554</sup> *Id.* at 165-6.

<sup>555</sup> On the other hand, active law regulates the authority of administrative actions and the relationship between the actions and people's rights and obligations. *See id.* at 165-6.

<sup>556</sup> The national language promotion movement, which rose in the late period of the Qing dynasty (1644-1911) and the early years of the Republic of China (1912- ), was conventionally regarded as educational affairs because the way to elimination of illiteracy was through the education system at the state level, and it also meant to make more people recognize Chinese characters. The high threshold of Chinese literacy rate had haunted education scholars due to the characters-pronunciation separation system, diglossia between writing and speaking, and the various dialects. Elimination of illiteracy for 80% of the population inspired scholars to devote themselves to language planning affairs in the early 20th century. In the areas influenced by Chinese culture, Chinese characters to some certain had uniformity after Emperor

can choose the working language for affairs under its administrative authority. For instance, the Ministry of Justice (MOJ) can declare that relevant persons should speak one of the national languages and can require interpreters to be available under specific circumstances in the Enforcement Regulation of the Detention Law and the Enforcement Regulation of the Prison Execution Law: the MOJ implements policies related to criminal custody and prisons.<sup>557</sup>

On the other hand, triggered by the desire to eliminate illiteracy, language planning, simplification, standardization and education were connected. The national language movement at first made an effort to unify the pronunciation of the characters to make Chinese characters easier to learn; since Peking dialect is easier for language acquisition, it was chosen in order to develop a standard language.<sup>558</sup> Although the Ministry of Education (MOE) did not have explicit authority over language planning affairs, it implicitly acquired the major authority -- especially for acquisition planning and corpus planning -- and implemented policies while the law remained silent on the distribution of authority regarding languages. Language planning and its legislation were categorized under the authority of the MOE according to the “Organic Law of the

---

Qin Shi Huang (秦始皇) established a strong autocratic centralization system in 221 B.C. From the 3rd century B.C. to the early 20th century, information could be transferred by united writing systems without a particular unified pronunciation system. The current Chinese languages are derived from Han language, which has several dialects. After generations, dialects of Han language have their regional distinctions and many lack intelligibility. For example, both Cantonese and Mandarin are derived from Han Language, but a Cantonese speaker and a Mandarin speaker can hardly communicate with each other orally. The diversity in speaking was thought of as the major obstacle to be literate.

<sup>557</sup> 法務部法令字第 0940902930 號令修正發布第 81 條條文 Ministry of Justice Order Faling Zi No.0940902930, Revised Article 81 of the Enforcement Regulation of the Prison Execution Law (Sep. 23, 2005) (Taiwan); 法務部法令字第 0940902940 號令修正發布第 74 條條文 Ministry of Justice Order Faling Zi No.0940902940, Revised Article 74 of the Enforcement Regulation of the Detention Law (Sep. 23, 2005) (Taiwan).

<sup>558</sup> For detailed information, see 方師鐸, 五十年來中國國語運動史 FANG SHIDUO, WUSHINIANLAI ZHONGGUO GUOYU YUNDONGSHI [Chinese National Language Movement for Fifty Years] 31-8, 51-4 (Mandarin Daily News 1965) (Taiwan); 藤井久美子, 近現代中国における言語政策 FUJI'I KUMIKO, KINGENDAI CHŪGOKU NI OKERU GENGOSEISAKU [Language Policy of Modern China] 41-6 (Sangensha 2003) (Japan).

Ministry of Education” (教育部組織法) because of the MOE’s authority over educational affairs. In other words, because organic law did not explicitly regulate language affairs, the MOE expanded its authority from education to language acquisition and other fields of language planning under the nation-building approach during the national language movement period.

Even though the MOE did not have explicit statutory authority over language affairs, the authority at issue was officially distributed to a subordinate organization of the MOE -- the Mandarin Promotion Council (教育部國語推行委員會; MPC). To promote the national language, the 1945 Organic Act of the Mandarin Promotion Council of the Ministry of Education (教育部國語推行委員會組織條例) provided authority over language affairs regarding Mandarin to the Mandarin Promotion Council of the ROC central government.<sup>559</sup> Making more people speak and use the national language became the only goal of this organization. The MPC’s function became dormant after the central government moved to Taipei in 1949, and this organization was nearly abolished in 1973.<sup>560</sup> After the ROC took over Taiwan, the national language promotion movement was mainly led by promotion committees at a provincial or special municipal level.

---

<sup>559</sup> According to the Organic Act of the Mandarin Promotion Council of the Ministry of Education, Article 1, the council’s jobs include: 1. Review of formulation of languages and characters of the State; 2. Editing the books of the standard of the languages and characters of the State; 3. Data collection of the languages and characters of the State; 4. Experiment and improvement of teaching skills of the languages and characters of the State; 5. Decision of the unification of Chinese and foreign translation pronunciation standard; 6. Training the promotion personnel of Mandarin education; 7. Design, enforcement, and inspection of the language education for the illiterate and oversea compatriots; 8. Design of enforcement of language education in the frontier areas; 9. Other events regarding language education.

<sup>560</sup> 立法院公報, 繼續審查廢止「教育部國語推行委員會組織條例」及「教育部國民教育輔導研究委員會組織條例」案(1973) *Jixu Shencha Fezhi Jiaoyubu Guoyu Tuixing Weyuanhui Zuzhitiaoli Ji Jiaoyubu Guominjiaoyu Fudaoyanjiu Wenyuanhui An* [Continuing to Review on Abolishment of the Organic Law of the Mandarin Promotion Council and the Organic Law of the National Education Consulting and Researching Council], 62:53 LIFAYUAN GONGBAO [Gazette of the Legislative Yuan] 22-3 (Jul. 14, 1973) (Taiwan).

Table 6-3: Mandarin Promotion Organizations in Taiwan

Level Year	Central Government	Taiwan Province/ Special Municipality	County/City
1945	Mandarin Promotion Council (MPC), Ministry of Education	MPC, Taiwan Provincial Administration Executive Office <sup>561</sup>	
		Chief Executive Order	
1947	NLPC Fujian-Taiwan District Office <sup>562</sup>	MPC, Taiwan Province Government <sup>563</sup>	
	Without statutory org. law	Without statutory org. law	
1948			MPC of Each County/ City
			Without statutory org. law
1951	Mandarin Education Council, Social Education Promotion Council, MOE		
	Without statutory org. law		
1955	Mandarin Education Consultative Board, MOE		
	Without statutory org. law		
1959		MPC, Department of Education, Taiwan Province Government <sup>564</sup> (till December)	
		Without statutory org. law	
1960			MPC, Education Bureau/Division of Each County/ City
			Without statutory org. law
1967		MPC, Taiwan Province	MPC of Each County/ City <sup>565</sup>

<sup>561</sup> A Taiwan Provincial Administrative Executive Office Order set up the Taiwan Provincial Mandarin Promotion Council and recruited Wei Chien-Gong (魏建功) as committee member in 1945. 臺灣行政長官公署教育處, 臺灣一年來之教育 EDUCATION OFFICE OF THE TAIWAN PROVINCIAL ADMINISTRATIVE EXECUTIVE OFFICE, TAIWAN YINIANLAI ZHI JIAOYU [EDUCATION IN ONE YEAR IN TAIWAN] 97 (1946) (Taiwan).

<sup>562</sup> 教育部國語推行委員會閩臺區辦事處組織規程(1952) Jiaoyubu Guoyu Tuixing Weiyuanhui Mintai Banshichu Zuzhigüeceng [Organic Regulation of the Min Tai Office of the Mandarin Promotion Council of the Ministry of Education] (abolished Jul. 1952) (Taiwan).

<sup>563</sup> 臺灣省政府令(四四)府人丙字第 4865 號(1955) Taiwan Province Government Order (44) Furenbing Zi No.4865 (May 21, 1955), in 44:Xia TAIWAN PROVINCE GOVERNMENT GAZETTE 447-84 (May 23, 1955) (Taiwan).

<sup>564</sup> 臺灣省政府教育廳國語推行委員會組織規程 Taiwan Shengzhengfu Jiaoyuting Guoyu Tuixing Weiyuanhui Zuzhigüeceng [Organic Regulation of the Mandarin Promotion Council of the Education Office of the Taiwan Province] (abolished Sep. 12, 1959) (Taiwan); 臺灣省政府令(四八)府人丙字第 68644 號(1959) Taiwan Province Government Order (48) Furenbing Zi No.68644 (Sep. 12, 1959); Taiwan Province Government, 48:Qiu TAIWAN PROVINCE GOVERNMENT GAZETTE 764, 775 (Sep. 15, 1959) (Taiwan); Taiwan Province Government, 48:Dong TAIWAN PROVINCE GOVERNMENT GAZETTE 854 (Dec. 23, 1959) (Taiwan).

<sup>565</sup> 行政院臺(五六)教字第四五四八號令(1967) Executive Yuan Order Tai (56) Jaio Zi No.4548 (1967) (citing (Taiwan) Province Government Order (56) Fujiao Zi No.18211 regarding the Fourth Meeting Decisions of the National Assembly: Resumption of Mandarin Promotion Councils at Various Levels of Taiwan Province) (Mar. 17, 1967) (Taiwan); 臺灣省政府令(五六)府教語字第四九一六四號(1967) Taiwan Province Government Order (56) Fujiaoyu Zi No.49164 (Jul. 7, 1967), 56:Qiu:9 TAIWAN

(Table 6-3 continued)

(1967)		Without statutory org. law	Without statutory org. law
1969		Establish MPC, Taipei City (municipality)	
		Without statutory org. law	
1972		5 <sup>th</sup> Division, Department of Education	3 <sup>rd</sup> Branch, Education Bureau/ Division
		Part of Department Education	Part of Educ. Bureau/ Division
1973		Mandarin Promotion Direction Council, Taiwan Province Government <sup>566</sup>	Mandarin Promotion Direction Council of Each County/ City <sup>567</sup>
		Without statutory org. law	Without statutory org. law
1979	Mandarin Language and Literature Education Promotion Council <sup>568</sup>		
	Without statutory org. law		
1981	Resume the MPC, MOE		
2000	Name Changed to the National Languages Promotion Committee		

In sum, the MPC became the only statutory administrative organ regarding language affairs with explicit authority under the 1947 Constitution system, but its function was limited because the MPC of Taiwan Province overlapped with most of the

---

PROVINCE GOVERNMENT GAZETTE 5 (Jul. 11, 1967) (Taiwan); “The Mandarin Promotion Councils at the level of city and county is a subordinate organ rather than an internal unit of city or county government,” 58:Qiu:39 TAIWAN PROVINCE GOVERNMENT GAZETTE 5 (Aug. 14, 1969); 臺灣省政府令(五七)府財一字第 五三三五〇號(1968) Taiwan Province Government Order (57) Fucayi Zi No.53350 (Jul. 25, 1968), 57:Qiu:28 TAIWAN PROVINCE GOVERNMENT GAZETTE 7 (Aug. 1, 1968) (Taiwan).

<sup>566</sup> The Organic Regulation of the Mandarin Promotion Direction Council of the Taiwan Province and its City or County was revised as the Organic Regulation of the Mandarin Promotion Direction Council of the Taiwan Province and the Organic Regulation of the Mandarin Promotion Direction Council of Each City or County of the Taiwan Province. 臺灣省教育廳函(六二)教五字第一七七七八號 Department of Education, Taiwan Province Notice (62) Fujiaowu Zi No.17778, 62:Chun:53 TAIWAN PROVINCE GOVERNMENT GAZETTE 6-7 (Mar. 7, 1973). The Council was dissolved in 2006. 臺灣省政府令(九五)府法二字第 0951800098A 號(2006) Taiwan Province Government Order (95) Fufaer Zi No.0951800098A (Dec. 12, 2006) (Taiwan).

<sup>567</sup> As for the Explanation of the Position and Pay Grade of the Mandarin Promotion Direction Councils at the Level of City or County, Mandarin promotion personnel are paid according to the pay grade of a elementary or junior high school teacher and shall be transferred to the third division of the Bureau of Education. The expenditure is on the Mandarin Promotion Budget of each city or county government. 臺灣省教育廳函(六五)府教五字第 51410 號(1976) Department of Education, Taiwan Province Notice (65) Fujiaowu Zi No.51410, 65:Qiu:23 TAIWAN PROVINCE GOVERNMENT GAZETTE 4 (Jul. 27, 1976).

<sup>568</sup> Mandarin Language and Literature Education Promotion Council (教育部國語文教育促進委員會) was established on April 24, 1979. I could not find its organization law in the Gazette of the Ministry of Education. So, it might be a ‘black organ’. 國立臺灣師範大學, 國音學 NATIONAL TAIWAN NORMAL UNIVERSITY, KUO YIN SHUE [Mandarin Chinese Phonetics] 53 (8<sup>th</sup> ed., 2008).

same territory after the central government moved to Taiwan.<sup>569</sup> The area that the MPC of MOE could control was limited to Taiwan Province, some islands of Fujian Province, and part of the Spratly Islands. The function of the central government's MPC was replaced by the Mandarin Education Council (國語教育輔導會) (1951-1955), the Mandarin Education Consultative Board (教育部國語教育輔導會議) (1955-1981), and the MPCs at province and county/city levels.<sup>570</sup> However, the Council, the Board, and local MPCs all lacked organic law to act legally, as Table 6-3 shows. The irony was thus that the organization with statutory organic law did not function, while its function was carried out by other organizations that lacked statutory organic law authorization.

For a long period, the MPC was an internal advisory unit of the MOE. The National Language Promotion Committee (NLPC) succeeded it, also in more of an advisory than enforcement role: decisions made by the NLPC were implemented by other units of the MOE and were not automatically enforceable.<sup>571</sup> NLPC officials were temporarily transferred to other units of the MOE. Furthermore, the NLPC did not have its own budget or an annual budget project.<sup>572</sup> They could thus not even conduct vernacular languages proficiency tests, which were instead held by other MOE units or even the Legislative Yuan.<sup>573</sup> The real function of the NLPC was limited to language

---

<sup>569</sup> The Mandarin Promotion Direction Council of the Taiwan Province was officially dissolved in 2006. 臺灣省政府令府法二字第 0951800098A 號(2006) Taiwan Province Government Order Fufaer Zi No.0951800098A (Dec. 12, 2006) (Taiwan).

<sup>570</sup> The end date of the Mandarin Education Consultative Board is inferred according to the establishment date of the Mandarin Promotion Council because the latter was assumed by the central government to carry out Mandarin promotion affairs.

<sup>571</sup> Interview with Interviewee 101409G, previous government officer, in Taipei, Taiwan (Oct. 14, 2009).

<sup>572</sup> 九十九年度中央政府教育部單位預算書 *Jiaoyubu Danwei* [The Budget Project of the Ministry of Education], in *JIUISHIJIU NIANDU ZHONGYANGZHENGFU YUSUANSHU* [the General Budget Project of the Central Government of the 99<sup>th</sup> Year of the Republic of China (Taiwan)] 102-254 (Taipei: Directorate General of Budget, Accounting and Statistics, Executive Yuan 2009) (Taiwan).

<sup>573</sup> Legislators Hong Xiao-Zhu (洪秀柱) and Zhang Shuo-Wen (張碩文) proposed to delete nearly all the budget of Taiwanese Min-nan [Holo] Testing and just left NTD 2 million (About US\$ 60,000). 立法院第 7

standardization: language acquisition planning and language status planning affairs were de facto beyond its authority.

The legitimacy of language affairs is even more debatable from the perspective of ‘active law’. According to the Constitution, Articles 22 and 23 establish the “principle of statutory reservation” (法律保留原則): affairs involved in civil rights and freedoms guaranteed by the Constitution must be regulated or authorized by statute passed by the Legislative Yuan.<sup>574</sup> That is to say, administrative regulations or orders involved in civil rights are unconstitutional if they are not authorized by the Legislative Yuan.<sup>575</sup> Nevertheless, language had not been covered by the protection of civil rights in the constitutional tradition for decades. As I have argued previously, the nation-building approach trumped civil rights and constitutionality concerns during the national movement period.<sup>576</sup>

Despite the lack of explicit authority, the Ministry of Education declared Mandarin Promotion Measures (國語推行辦法) in 1973.<sup>577</sup> The 1973 Mandarin Promotion Measures recruited Mandarin promotion committee members and promotion personnel, held Mandarin competitions, and encouraged the use of the Mandarin phonetic symbols (注音符號, *zhu yin fu hao*). (Article 6 to 13) In fact, many of the positions that

---

屆第 2 會期黨團協商會議 (98.01.09) The Consultative Conference Among Parties in the 2<sup>nd</sup> Meeting Period of the Legislative Yuan of the 7<sup>th</sup> Session (Jan. 09, 2009), 98:5 GAZETTE OF THE LEGISLATIVE YUAN 156 (Feb. 2, 2009) (Taiwan).

<sup>574</sup> 司法院大法官會議解釋 443 號(1997) SIFAYUAN DAFAGUAN HUIYI JIESHI [Interpretation of the Grand Justices, Judicial Yuan] No. 443 (Dec. 26, 1997) (Taiwan).

<sup>575</sup> *id.*

<sup>576</sup> For further detailed information, 吳欣陽, 臺灣近代型國家語言法令之形成與演變 Hsin-Yang Wu, The Formation and Evolution of the Language Laws and Regulations of the Modern States in Taiwan (June 2004) 115-27 (unpublished LL.M. Thesis, Nat’l Taiwan Univ.)(on file with Law Library, Nat’l Taiwan Univ.).

<sup>577</sup> 國語推行辦法, 教育部(六二)臺參字第一九四六號令(1973) Guoyu Tuixing Banfa [Mandarin Promotion Measures], Ministry of Education Order (62) Taisan Zi No.1946, (Jan. 21, 1973) (*abolished* Feb. 12, 2003) (Taiwan).

the measures mentioned overlapped with other existing organizations, such the Mandarin promotion councils at various governmental levels and the Mandarin Education Council. Moreover, Mandarin phonetic symbols courses were begun decades earlier than the enforcement of the Measures. The 1973 Mandarin Promotion Measures were no more than symbolic during the national language movement period.

The national language movement was not based on systematic legal provisions. Schiffman describes language planning and language policy in France as *mythologies* because the ancient and explicit monolingual policy was based on a strong belief that certain legal provisions regarding use of French existed, while in reality they did not.<sup>578</sup> Schiffman provides an example that the Barère Decree (*le decret Barère*), which regulated non-standard forms of French, was actually much milder and weaker than depicted, and it never took effect.<sup>579</sup> However, it is a mystery that ordinary people and even scholars believe in something that never happened in the name of the Barère Decree.<sup>580</sup> The national language promotion movement and Mandarin Promotion Measures are objects of faith in the same way.

Although the 2003 abolition of the Mandarin Promotion Measures resolved the conflict of the principle of statutory reservation,<sup>581</sup> the decision hardly changed the practice of language planning affairs. The MOE still has full authority over the tasks mentioned in the Measures through its organic law. The abolition was more a symbolic than a substantial change.

---

<sup>578</sup> Schiffman, *supra* note 545, at 117.

<sup>579</sup> *Id.* at 118.

<sup>580</sup> *Id.* at 118.

<sup>581</sup> 教育部台參字第 09200019503A 號令(2003) Ministry of Education Order Taisan Zi No.09200019503A (Feb. 22, 2003) (Taiwan).

### 6.3 EXAMINING THE CURRENT SYSTEM

A widespread belief regarding language affairs is that the high status of Mandarin and the increase of the Mandarin-speaking population were enhanced by the national language movement and its exclusive measures. So, after the national language movement officially ended due to the multiculturalism declaration of the Constitution, and when no statutes or regulations excluded the use of other languages, it is logical to assume that languages in Taiwan would reach an equal status. However, is this general belief supported by empirical evidence? By borrowing Hornberger's structure of language planning and Kloss's analysis of language status,<sup>582</sup> I analyze in the following sections the current legal system of language in Taiwan.

#### 6.3.1 CORPUS PLANNING CHANGES

Obviously, the success of the National Language Movement could not rely solely on the MPC of the MOE. From 1945 to 1981, the central MPC had not functioned normally for more than 30 years. The central government's MPC restarted in Taiwan in 1981 with the climax of the National Language Movement.<sup>583</sup> The MPC further changed

---

<sup>582</sup> Hornberger incorporates the work of Haugen (1983), Cooper (1989), Ferguson (1968), Hornberger (1994), Kloss (1968), Nahir (1984), Neustupny (1974), Rabin (1971), and Stewart (1968). Nancy H. Hornberger, *Frameworks and models in Language Policy and Planning*, in *An Introduction to Language Policy* 29-30 (Thomas Ricento ed., Blackwell Publishing 2006).

<sup>583</sup> The task of standardization fell to the Mandarin Education Council (國語教育輔導會) (1951-1955) and the Mandarin Education Consultative Board (教育部國語教育輔導會議) (1955-1981) before 1981. The Mandarin Education Consultative Board replaced the statutory Mandarin Promotion Council of the Ministry of Education to decide the standard pronunciation and characters. So, the end date of the Mandarin Education Consultative Board is inferred according to the date when the Mandarin Promotion Council was assumed. In addition, the National Institute of Compilation and Translation (NICT, 國立編譯館, *guoli bienyiguan*) played an important role of Mandarin standardization in Taiwan. Based on the 1947 National Institute of Compilation and Translation Organization Act, the NICT published the standard textbooks of junior high school and elementary school from 1968 to 1996. A 1989 report states that the NICT edited and published 46 million textbooks covering 94 subjects to 3,500 schools each year. Chinese literature, civics education, history, and geography were the main four subjects published by the NICT according to the 1952 Course Standards under the 1950 Education Enforcement Outline for Suppression of

its name from the Mandarin Promotion Council to the *National Languages Promotion Committee* in 2000.<sup>584</sup> The NLPC further expanded its organization to include Holo, Hakka, and indigenous languages.

According to the Organic Act of the Mandarin Promotion Council of the Ministry of Education, Article 1, the council's jobs theoretically included events regarding language education, but the function of the NLPC is specifically limited to the formulation, editing, data collection, and unification of languages and characters of the State due to its lack of enforcement capacity. Even though the NLPC made great progress in the field of corpus planning by editing dictionaries of various languages and unifying the Romanized spelling systems in the last decade,<sup>585</sup> language standardization (corpus planning) was the only -- and nearly the last -- achievement of the NLPC because of its restricted organic law authority.

---

the Communist Rebellion and Nation-Building (戡亂建國教育實施綱要). The NICT cooperated with the MPC of the Taiwan Province to recruit writers and experts writing standard and the only version of the Mandarin textbooks. In 1967, the NICT proclaimed the "Often Used Characters for Elementary Schools" (國民小學常用字) containing 4,864 Chinese characters as the pronunciation and glyph standard which was learned by every pupil before the resumed MPC of the MOE formulated the "Often Used Characters Standard Table" containing 4,808 characters in 1982. 張博宇等, 臺灣地區國語推行資料彙編(下) CHANG BO-YU ET AL., TAIWAN DIQU GUOYU TUIXING ZILIAO HUIBIAN (XIA) [Information and Materials of the National Language Movement in Taiwan (2nd half)] 831 (Chang Bo-Yu ed., Taipei: Dept. of Educ., Taiwan Province Government 1989) (Taiwan).; 國立編譯館組織條例 (1947) Guoli Bianyiguan Zuzhitiaoli [The Organic Law of the National Institute of Compilation and Translation] (May 29, 1947); 陳木城, 臺灣地區教科書發展的回顧與前瞻 Chen Mu-Cheng, *Taiwan Diqu jiaokeshu Fazhan De Huigu Yu Qianzhan* [Review and Envision of the Development of Textbooks in Taiwan District] 5, available at <http://www.trd.org.tw/> (last visited May 5, 2010)(citing 曾濟群, 我國國立編譯館之功能探討, 載於各國教科書比較研究 Zen Ji-Qun, *Woguo Guoli Bianyiguan Zhi Gongneng Tanta* [The Functions of the National Institute of Compilation and Translation], in GEGUO JIAOKESHU BIJIAO YANJIO [Comparison of Textbooks of Various Countries] 105-37 (Chinese Comparative Education Society ed., Taipei: Taiwan Book Store 1989) (Taiwan)); 教育部臺普字第三三六一號訓令(1950) Ministry of Education Order Taipu Zi No.3361 (June 15, 1950); 林國樑, 編審教科用書的故事-以小學國語科為例, 載於國立編譯館通訊 Lin Guo-Liang, *Bianshen Jiaoke Yongshu De Gushi: Yi Xiaoxue Guoyuke Weli* [The Story of Compilation and Review of Textbooks: Elementary School Mandarin Course as An Example], 14:3 NATIONAL INSTITUTE FOR COMPILATION AND TRANSLATION NEWS BULLETIN 23-32 (Jul. 2001).

<sup>584</sup> For detailed information, NLPC Website, <http://www.edu.tw/mandr/> (last visited May 5, 2010).

<sup>585</sup> For detailed information, NLPC Website, <http://www.edu.tw/mandr/> (last visited May 5, 2010).

## 6.3.2 ACQUISITION PLANNING REFORM

When language planning is directed towards increasing a language's uses, it falls within the rubric of status planning.<sup>586</sup> But when it is directed toward increasing the number of users, then a separate analytic category for the focus of language planning, called acquisition planning, is at issue.<sup>587</sup>

Of the language planning reforms after 1997, vernacular language education, based on “Mandarin Plus,” is still underway.<sup>588</sup> Vernacular language education started in the counties governed by DPP mayors in 1990.<sup>589</sup> The Minister of Education, Kuo, officially declared that he would start Mandarin Plus (Mandarin and other mother tongues) in 1993, and the MOE helped to edit mother tongue education materials and provide teacher training courses in 1996.<sup>590</sup> Each mother tongue was assigned to one or two counties for editing course materials, and the materials were then distributed to other counties for coursework.<sup>591</sup> From 1997 to 1999, the MOE carried out a two-stage revision of the education standards to propose a new national curriculum guideline. The MOE added one hour per week of “Vernacular Education Activities” (鄉土教學活動) to the curriculum of third to sixth graders at local county government's discretion in 1998.<sup>592</sup>

<sup>586</sup> For detailed information, NLPC Website, <http://www.edu.tw/mandr/> (last visited May 5, 2010).

<sup>587</sup> ROBERT L. COOPER, LANGUAGE PLANNING AND SOCIAL CHANGE 33 (Cambridge Univ. Press 1989).

<sup>588</sup> See Mandy Scott & Hak-khiam Tiun, *Mandarin-Only to Mandarin-Plus*, 6 LANGUAGE POL'Y 53 (Spring 2007); As for the concept of Mandarin Plus (MP), see James Crawford, *Issues in U.S. Language Policy- English Plus*, <http://ourworld.compuserve.com/homepages/JWCRAWFORD/engplus.htm> (1997) (last visited May 20, 2008).

<sup>589</sup> 徐錦輝, 臺灣客家族群「語言權」保障之研究—以國家語言發展法草案為例 Chin-Hui Hsu, Preservation of Taiwan Hakka “Linguistic Rights”: A research using the National Language Development Bill 40 (2008) (Master Thesis, Central Univ.) (on file with Central Univ.).

<sup>590</sup> *Id.* at 40.

<sup>591</sup> *Id.* at 40.

<sup>592</sup> *Id.* at 40.

Since the 2001 implementation of a Nine-Year Temporary Integrated Curriculum Outline for Primary and Junior High Schools (國民中小學九年一貫暫行課程綱要) by the MOE, all primary school children in Taiwan have been required to study at least one local language at school.<sup>593</sup> Under this Curriculum, *Mandarin plus local languages and English* comprise the ‘language subject area.’<sup>594</sup> Vernacular language classes are known officially as ‘local (or vernacular) language education’ (鄉土語言教育, *xiangtu yuyan jiaoyu*) and are generally referred to as ‘mother tongue education’ (母語教育, *muyu jiaoyu*) in public discussion.<sup>595</sup>

The detailed Mandarin Plus measures are as follows:<sup>596</sup>

**Table 6-4: Mandarin Plus Measures**

<b>Measures</b>	<b>Detailed Measures</b>	<b>Annotation</b>
Mother Tongue/ Vernacular Language/ Local language Education	Compulsory vernacular language education	All primary school children in Taiwan are required to study at least one local language at school.
	Taiwan Mother Tongue Day	The Kaohsiung City government encourages staff, faculty, and students to speak mother tongues in junior high schools, primary schools, and kindergartens.
	Bilingual education	Mother tongue and Mandarin bilingual education is conducted in two primary schools in Tainan County.
	Language integration courses	Social studies classes, fine art and humanities, music, performing arts and games are encouraged to use local languages under the new 9-year curriculum.

<sup>593</sup> Scott & Tiun, *supra* note 588, at 60.

<sup>594</sup> *Id.* at 60 (Spring 2007) (citing Robert Kaplan & Richard Baldauf, Jr, LANGUAGE AND LANGUAGE-IN-EDUCATION PLANNING IN THE PACIFIC BASIN 59 (Boston: Kluwer academic publishers 2003)).

<sup>595</sup> *Id.* at 60.

<sup>596</sup> *See id.* at 59-65.

(Table 6-4 continued)

Language teacher certification and training courses	Language teacher certificate	<ul style="list-style-type: none"> <li>• Grade 1 to grade 4 required 3,000 mother tongue teachers.</li> <li>• 7,400 candidates took certification tests.</li> <li>• Before taking the training courses, the candidates who passed the tests could work as supplementary teachers.</li> </ul>
	Training courses	<ul style="list-style-type: none"> <li>• 36 or 72 hours of teacher training courses.</li> <li>• The courses consist of local language teaching, local language ability, and language teaching professional training.</li> <li>• 15 required courses and 8 elective courses. Each course lasts 3 to 8 hours.</li> <li>• The MOE encourages universities to establish Taiwan language and literature departments or graduate programs to provide enough teachers.</li> </ul>

Mandarin Plus is a series of administrative ordinances declared and enforced by the MOE, and the 2001 Temporary Integrated Curriculum was replaced by the 2003 and 2008 Integrated Curriculum Outlines.<sup>597</sup> The source of law for these ordinances can be traced back to the Organic Law of the MOE (教育部組織法); the Ministry thus had the authority to add or cancel vernacular language courses *without* statutory limitation. To add vernacular language courses, it used as a basis Additional Article 10 of the 1997 Constitution. If it cancelled all vernacular language courses, citizens could not request that such courses be reinstated due to the practice and tradition of education administration -- the Ministry of Education decides.

<sup>597</sup> 九年一貫課程實施要點 Ministry of Education, *Jiunianyiguan Kecheng Shishi Yaodian* [The Enforcement Guideline of the Integrated Curriculum Outlines] (2011), [http://www.edu.tw/eje/content.aspx?site\\_content\\_sn=15326](http://www.edu.tw/eje/content.aspx?site_content_sn=15326) (last visited May 5, 2012).

Furthermore, according to the 2008 Integrated Curriculum Outline, the language sphere made up 20 to 30 percent of all curriculum hours.<sup>598</sup> That is to say, languages shared the total hours of language learning per week, and vernacular language education was limited to one hour per week. Table 6-5 shows weekly language learning hours.<sup>599</sup> Although the name of the MPC changed, schools did not make much time for vernacular languages education. According to the MOE's course outlines, Mandarin and English, required courses, consume more hours than any other language. Other languages are just "required optional courses" or "optional courses".<sup>600</sup>

**Table 6-5: Course Credits of Language Sphere per Week<sup>601</sup>**

Item Year	Total Credits	Language Sphere	Mandarin	English	Vernacular Languages
1 <sup>st</sup> Year	22-24	4-6	3-4	0-3	1
2 <sup>nd</sup> Year	22-24	4-6	3-4	0-3	1
3 <sup>rd</sup> Year	28-31	5-7	3-5	1-4	1
4 <sup>th</sup> Year	28-31	5-7	3-5	1-4	1
5 <sup>th</sup> Year	30-33	6-8	4-6	1-4	1
6 <sup>th</sup> Year	30-33	6-8	4-6	1-4	1
7 <sup>th</sup> Year	32-34	6-8	5	4	0-1
8 <sup>th</sup> Year	32-34	6-8	5	4	0-1
9 <sup>th</sup> Year	33-35	6-9	5	4	0-1
Credits	257-279	48-67	35-45	16-34	6-9
Total Classes <sup>602</sup>	9,252-10,044	1,728-2,412	1,260-1,620	576-1,224	216-324

<sup>598</sup> *Id.*

<sup>599</sup> *Id.*; 臺北縣政府教育局, 活化課程實驗方案業務說明 Bureau of Education, Taipei County Government, *Huohua Kecheng Shiyang Fangan Yewu Shuoming* [Business Presentation the Experimental Plan of the Active Curriculum], [www.tpc.gov.tw/web66/file/2052/ABdownload/1272860880425file.ppt](http://www.tpc.gov.tw/web66/file/2052/ABdownload/1272860880425file.ppt) (2010) (last visited May 5, 2010); 中央社, 國小英語時數 北市擬加開 Central News Agency, *Guoxiao Yingyu Shishu Beshi Nijiakai* [Taipei City Plans to Increase English Class Hours], <http://www.gov.tw/NewsCenter/Pages/detail.aspx?page=20100427cfp0261.aspx> (Apr. 27, 2010) (last visited May 5, 2010); 行政院研究發展考核委員會, 提升國人英語力建設計畫 (2009) The Research, Development and Evaluation Commission (RDEC) of the Executive Yuan, *Tisheng Guoren Yingyuli Jianshe Jihua* [Plan for Enhancing National English Proficiency] (Sept. 23, 2009), <http://www.rdec.gov.tw/ct.asp?xItem=4160289&ctNode=12232&mp=100> (last visited May 5, 2012). The actual situation varies in specific schools.

<sup>600</sup> 九年一貫課程實施要點 Ministry of Education, *supra* note 597.

<sup>601</sup> Each credit means 45 minutes per week.

<sup>602</sup> An academic year has 2 semesters, and each semester contains 18 weeks.

Even though local languages other than Mandarin can be put on the school curriculum, their limited course hours reveal their inessential status and necessarily oversimplified content.<sup>603</sup> The fact that vernacular languages are not tested in high school or college entrance exams declares the minimal weight their education carries in a utilitarian society.

The system not only accords less privilege to people whose mother tongues are not Mandarin, making it harder for them to transmit their cultures through their local languages in the public schools, but it is also an example of how the government does not meet its obligation. The government's indifference is far from the ideal proclaimed by the UN Committee on Economic, Social and Cultural Rights, despite its obligation to adopt measures and *spare no effort* to ensure that educational programs for minorities and indigenous groups are conducted on or in local languages.<sup>604</sup>

### 6.3.3 LANGUAGE STATUS PLANNING CHANGES

Language status is the position or standing of a language compared to other languages.<sup>605</sup> Status planning refers to changes in the systems of speaking, changes in a language's functions, language use, use of language, and organization of a community's

---

<sup>603</sup> Interview with Interview 032310S, scholar, in Taitung, Taiwan (Mar. 23, 2010); Interview with Interviewee 032010T, local language teacher, in Taitung, Taiwan (Mar. 20, 2010). It is a great research project to compare the content of the courses with the ILR language proficiency scale or the language levels of the Common European Framework of Reference (CEF) to have an exact comparison result, but this dissertation takes the content of the interviews conducted in the field research as the source to describe the insufficient content of the local language courses because the situation is empirically obvious.

<sup>604</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment 21: The Right of Everyone to Take Part in Cultural Life (Sep. 2009), ¶¶27&32, E/C.12/GC/21 (Dec. 21, 2009); Human Rights Committee, General Comment 23, Article 27 (Fiftieth session, 1994), ¶¶1, 5&6, U.N. Doc. CCPR/C/21/Rev.1/Add.5 (1994), U.N. Doc. HRI/GEN/1/Rev.6 at 158 (2003). I believe that the wording "obligation" of this General Comment confirms the duty of government to carry out the Covenant actively. See MAR Y ANN GELNDON, RIGHTS TALK- THE IMPROVERISHMENT OF POLITICAL DISCOURSE 93 (The Free Press 1991).

<sup>605</sup> John Edwards, *Language, Prestige, and Stigma*, in CONTACT LINGUISTICS 703-8 (Hans Goebel et al eds., Walter de Gruyter 1996).

language resources.<sup>606</sup> According to Cooper, the definition also implies or refers to what Gorman and Rubin call *language allocation*. Gorman defines language allocation as authoritative decisions to maintain, extend, or restrict the range of uses (functional range) of a language in particular settings.<sup>607</sup> A language acquires status according to four major variables: (1) the language's origin, (2) its stage of development, (3) its judicial status, and (4) its vitality/numerical strength.<sup>608</sup> Each variable is discussed below.

### 6.3.3.1 Language Origin

The origin of a language means whether a given language is indigenous or imported to a speech community.<sup>609</sup> After the National Language Movement (國語運動, *Guo yu yun dong*), the nation-building approach was supported by the government for decades. Mandarin was taught in school and tested in every important examination. It constituted an important political goal to increase use of this language and make the imported language be an exclusive one. In addition, because the percentage of children going to school exceeded 93% after 1956, and has been higher than 99% since 1976,<sup>610</sup> the national language population has been increasing. According to Professor Huang,

---

<sup>606</sup> COOPER, *supra* note 587, at 32.

<sup>607</sup> *Id.* at 32 (citing Thomas P. Gorman, Language Allocation and Language Planning in a Developing Action, in LANGUAGE PLANNING: CURRENT ISSUES AND RESEARCH 73 (Joan Rubin & Roger Shuy eds., Georgetown Univ. Press 1973)).

<sup>608</sup> Heinz Kloss, *Notes concerning a language-nation typology*, in LANGUAGE PROBLEMS OF DEVELOPING NATIONS 70 (Joshua Fishman, Charles Ferguson & Jyotirindra Das. Gupta eds., John Wiley and Sons 1968).

<sup>609</sup> Even though a nation-state means that a state is dominated by a single ethnic group, the group may or may not form a considerable majority (exceeding 70 percent) of the citizenry. To be called an *exoglossic* nation-state, the entity must make use of one imported language. *Id.* at 69-85.

<sup>610</sup> See Government Information Office, Republic of China (Taiwan), *Taiwan's Educational Development and Present Situation*, available at <http://www.gio.gov.tw/info/taiwan-story/education/eframe/frame3.htm> (last visited Apr. 15, 2006).

Shuan-Fan's research, about 82.5% of the Taiwanese people could speak Mandarin in the early 1990s.<sup>611</sup>

*Table 6-6: Language Origin and the Official Language*

<b>Nation-state Classification</b>	<b>Monolingual Nation-state (One national official language)</b>	<b>Multilingual Nation-state (Two or more national official languages)</b>
Endoglossic (Indigenous)	After the 1997 Multicultural Declaration of Constitution	Not Applicable in Taiwan
Exoglossic (Imported)	Mandarin movement period	Not Applicable in Taiwan

Mandarin is not just an imported language, but a common language that is, in reality, people's new mother tongue. A linguistic environment described as a *diglossia* situation persists, with Mandarin fulfilling the formal and written functions and Southern Min [Holo] fulfilling oral communication functions.<sup>612</sup> Nevertheless, a 2005 research study conducted in the town of Taitung County indicates that Mandarin was chosen by parents to be the family language in 89.4% of Hakka families, 86.4% of Holo families, and 94.0% of indigenous peoples' families.<sup>613</sup> In addition, a national census indicates that 95.4% of Hakka families adopted Mandarin as their family language.<sup>614</sup>

<sup>611</sup> 黃宣範, 語言、社會與族群意識: 臺灣語言社會學的研究 HUANG SHUAN-FAN, YUYAN SHEHUI YU ZUQUNYISHI: TAIWAN YUYAN SHEHUIXUE DE YANJIU [Language, Society, and Ethnic Identity: A Study of Taiwanese Lingual Sociology] 444 (Taipei: Crane 1995) (Taiwan).

<sup>612</sup> Florian Coulmas, *The Far East*, in HANDBOOK OF LANGUAGE AND ETHNIC IDENTITY 404 (Joshua A. Fishman ed., Oxford Univ. Press 2001).

<sup>613</sup> 張學謙, 從單數到複數的國語: 多元化的臺灣國語政策, 於從「國語政策」到「多元文化政策」學術研討會 Tiun Hak-khiam, *Cong Danshu Dao Fushu De Guoyu: Duoyuanhua De Taiwan Guoyu Zhengce* [National Language from Monolism to Pluralism: Pluralistic National Language Policy of Taiwan], in CONG 「GUOYU ZHENGCE」 DAO 「DUOYUAN WENHUA ZHENGCE」 XUESHU YANTAOHUI [The 2007 Academic Symposium of "from National Language Policy to Multicultural Policy"] 2 (Apr. 28, 2007) (Taiwan).

<sup>614</sup> 客家事務委員會, 九十九年至一百年全國客家人口基礎資料調查研究 COUNCIL OF HAKKA AFFAIRS, JIUSHIJIUNIAN ZHI YIBAINIAN QUANGUO KEJIA RENKOU JIZHU ZILIAO DIAOCHA YANJIU [A Research Study of the Basic Data of the Population of the Hakka People in the 99<sup>th</sup> to 100<sup>th</sup> years (of the ROC)] 90 (2011) (Taiwan).

The census shows that the National Language Movement has made Mandarin dominant in every aspect of language use. From an exoglossic nation-state to an endoglossic nation-state, Taiwan's Mandarin's status has ascended to a higher level. From the viewpoint of language origin, Mandarin's language status was maintained after the 1997 declaration without significant changes.

### 6.3.3.2 Stage of Development

Stage of development represents the extent of language elaboration. To increase language prestige and dominate in inter-lingual competition, languages evolve a formal set of norms that define correct usage.<sup>615</sup> Language development has six stages; a comparison before and after the 1997 declaration follows.<sup>616</sup>

*Table 6-7: Developmental Stage of the Languages in Taiwan*

<b>Developmental Stage</b>	<b>Before 1997</b>	<b>After 1997</b>
1. Mature standard language	Mandarin (& even English)	Mandarin (& even English)
2. Small-group standard language		
3. Archaic standard language		
4. Young standard language	Holo, Hakka, Indigenous languages	Holo, Hakka, Indigenous languages

<sup>615</sup> Kloss, *supra* note 608, at 69-85.

<sup>616</sup> *Id.* at 69-85. (1) Mature standard language: It means that a language is fully modernized and through which all modern branches including the sciences and technology may be taught at secondary-school and college level institutions of learning. (2) Small-group standard language: Because of the smallness of the speech community it is doomed to remain forever excluded from broad domains of modern civilization. (3) Archaic standard language: Archaic standard language is within some pre-occidental and pre-industrial civilization. Great poetry and deep-searching religious and philosophical treatises may have been written in it, but it may as yet be unfit for the teaching of modern biology or modern physics. (4) Young standard language: Young standard language means that a language has been standardized in very recent time, and its remolding is still in the earliest stage. It may be used in writing for mass education (fundamental education) and community development, as well as for religious and for political indoctrination. Although it may be used in the first three primary grades of the public schools, most stages of advanced education are reserved to some other language or languages. (5) Unstandardized alphabetized language: A language, in most instances, has been reduced to writing only recently but the standardization of which has not yet been accomplished. Its use in writing extends to pretty much the same domains as that of the semi elaborated young standard languages. (6) Preliterate languages: A language is never, or only at rare intervals, used in writing.

(Table 6-7 continued)

5. Un-standardized alphabetized language	Indigenous languages	Indigenous languages
6. Pre-literate languages		

By applying the previous table to Taiwan's languages, Mandarin undoubtedly enjoys the development stage of a mature standard language. Holo and Hakka are interesting cases. Kloss mentioned that archaic standard languages are restricted almost exclusively to Asia,<sup>617</sup> but his analysis is not applicable in Taiwan. Since Holo and Hakka have dialects and various writing styles without nationwide common standards,<sup>618</sup> the NLPC unified their Romanization standard. Indigenous languages might be standardized through translated bibles, but most of them are at the stages of young standard languages or un-standardized alphabetized languages. The reorganization and functional expansion of the NLPC helped local languages other than Mandarin acquire official standardization efforts. However, compared to Mandarin, other languages are on a less-developed stage of standardization. The huge gap between Mandarin and other languages is gradually being amended, but local languages are still far from achieving the goal of equal status.

<sup>617</sup> Kloss, *supra* note 608, at 84.

<sup>618</sup> See Annette Lu's (呂秀蓮) speech: "It is pathetic that Taiwanese people do not speak fluent Taiwanese [Holo]. By the efforts made from various spheres, the dark period of Taiwanese [Holo] has already gone. However, the problem that a word may have its phone but it does not have an appropriate or applicable character does exist. Furthermore, accents are not formulated. They need further efforts to resolve. 臺灣語文測驗中心新聞稿 (Apr. 17, 2010) Center for Taiwanese Languages Testing (CTLT) Press Release, *Taiwanyuwen Ceyanzhongxin Jiepai* [the Opening Ceremony of the Center for Taiwanese Languages Testing] (Apr. 17, 2010), <http://ctl.twnku.edu.tw/Chuliau/press/20100417singlip.doc> (last visited May 5, 2010); 中央社, 台語認證成大台語文測驗中心揭牌, *Central News Agency, Taiyurenzheng Chengda Taiyuwen Ceyanzhongxin Jiepai* [the Opening Ceremony of the Center for Taiwanese Languages Testing] (Apr. 17, 2010), <http://www.cna.com.tw/ShowNews/Detail.aspx?pNewsID=201004170047> (last visited May 5, 2010).

### 6.3.3.3 Juridical Status

Juridical status means a language's status as set by the State. Kloss explains that juridical status means *statutory* status,<sup>619</sup> but juridical status should be interpreted as the whole legal system, including constitutional law, statutes, and the administrative regulations and orders from the perspective of a legally valid hierarchy. Even though Mandarin did not belong to the indigenous languages group in the beginning, it was the exclusive language privileged by the State during the National Language Movement Period and de facto enjoys the status of sole official language now.

Status planning of language in Taiwan was chiefly changed judicially by abolishing language prohibition statutes and administrative regulations. The abolishment measures promoted local non-national languages from prohibited to 'tolerated' languages. From the perspective of status planning, the current system has unfair effects. Like the analysis of French by Schiffman,<sup>620</sup> the national language movement did not have a corresponding legal basis.

Mandarin was designated as the national language by decree rather than through a democratic process. In the beginning of the national language movement, which Han dialect should be chosen as the standard pronunciation evoked furious arguments, but this issue was settled by the MOE with its advisory National Language Unification Preparatory Committee (國語統一籌備會) in 1924.<sup>621</sup> Peking (Beijing) dialect was chosen as the standard language because it

---

<sup>619</sup> Kloss, *supra* note 608, at 69-85.

<sup>620</sup> Schiffman, *supra* note 545, at 117-20.

<sup>621</sup> 方師鐸, 五十年來中國國語運動史 FANG, *supra* note 558, at 59-61.

“is used in a broader area, and its population is larger; it has a profusion of literature works and adequate acquisition texts, its phonemes are simple and consist of just twenty one initial phonemes (聲母, *sheng mu*), sixteen ending phonemes (韻母, *yun mu*), and four tones so that it is easier to study.”<sup>622</sup>

In order to calm debate over the issue of standardization, the decision also included the entering tone (入聲, *ru sheng*) of the Nanjing dialect to create a new standard pronunciation system.<sup>623</sup>

Theoretically, the terms “national language”, “Peking dialect”, and “Mandarin” are not interchangeable, but they are customarily mixed in practice.<sup>624</sup> The National Government (國民政府) lead by KMT reaped the fruit of the previous governments’ national language movement after 1928.<sup>625</sup> KMT’s national language movement succeeded the “Peking dialect with entering tone” system.<sup>626</sup> Influenced by the Japanese experience of adapting *kana* (仮名) syllables,<sup>627</sup> KMT further adopted Mandarin phonetic symbols (MPS, *zhu yin fu hao*, 注音符號) as its standard phonograms in 1930.<sup>628</sup>

There is no specific statute proclaiming Mandarin as the national language of Taiwan. Thus, Mandarin is a de facto national language rather than a de jure one.

---

<sup>622</sup> *Id.*

<sup>623</sup> *Id.*

<sup>624</sup> *Id.*

<sup>625</sup> *Id.*

<sup>626</sup> *Id.*

<sup>627</sup> Japan promoted *kana* for people to spell and learn Chinese characters (*kanji*; 漢字) and the measures brought successful results.

<sup>628</sup> 方師鐸, 五十年來中國國語運動史 FANG, *supra* note 558, at 59-61.

Nevertheless, Mandarin has been called the national language for decades by the government,<sup>629</sup> and the idea that the imported Mandarin should be a local language was over time implanted in people's minds.

*Table 6-8: Judicial Status of Language in Taiwan*

Level	Juridical Status	Content	Named Language
1	Sole official language	National language: a symbol of national identity and quite often an indigenous language	Mandarin
2	Joint official language	National official language: not necessarily an indigenous language – called 'language of wider communication' (LWC)	
3	Regional official language	Usually indigenous	
4	Promoted language	Lacks official status on a national or regional level but is promoted and sometimes used by public authorities for specific functions	English, Holo, Hakka, and other languages
5	Tolerated language	Neither promoted nor proscribed; acknowledged but ignored	
6	Proscribed language	Discouraged by official sanction or restriction	

After 1997, drafts of the 2003 Language Equality Law, 2005 Hakka Language Development Law, and 2003 & 2007 National Language Development Law attempted to promote Holo, Hakka, and the indigenous peoples' languages to a higher juridical status under the DPP administration, but the drafts were all deferred due to political concerns. The DPP administration revised the 2003 National Language Development Law and proposed it to the Legislative Yuan in 2007 during the second term of Chen's

<sup>629</sup> 教育部臺國(二)字第 1000060859C 號函(2011) Ministry of Education Notice Taiguo (Er) Zi No.1000060859C (Apr. 26, 2011).

presidency.<sup>630</sup> The 2007 Draft does not indicate which language is categorized as a national language but states that “national languages refer to the natural languages used by the ethnic groups in the State” in Article 2 to avoid disputes that would arise by conferring every natural language used in Taiwan the title of national language.<sup>631</sup> The 2007 Draft lays its legal basis on multiculturalism and the equality among ethnic groups, but the draft does not actually officialize any language nor regulate the procedure to officially designate a language to change the status quo.

#### 6.3.3.4 Vitality

Vitality, also called ‘numeral strength’, means the ratio, or percent, of users of a language to another variable, like the total population.<sup>632</sup> Kloss and Stewart both distinguish six classes of statistical distribution. However, they draw the line between classes at different percentages.<sup>633</sup>

**Table 6-9: Numeral Strength of Languages in Taiwan**

<b>Theory</b> <b>Class</b>	<b>Kloss</b>	<b>Stewart</b>	<b>Languages</b>
1 <sup>st</sup> class	90%+	75%	Mandarin
2 <sup>nd</sup> class	70-89%	50%	Holo
3 <sup>rd</sup> class	40-69%	25%	
4 <sup>th</sup> class	20-39%	10%	Hakka (Stewart)
5 <sup>th</sup> class	3-19%	5%	Hakka (Kloss)
6 <sup>th</sup> class	Less than 3%	Less than 5%	Others

<sup>630</sup> 國家語言發展法草案(2007) Guojia Yuyan Fazhanfa Caoan [The Draft of the National Languages Development Law] (May 25, 2007) (Taiwan), available at <http://www.ey.gov.tw/ct.asp?xItem=29933&ctNode=2288&mp=1> (last visited May 5, 2010).

<sup>631</sup> *Id.*

<sup>632</sup> Kloss, *supra* note 608, at 81-83; William Stewart, *Sociolinguistic Typology of Multilingualism*, in READINGS IN THE SOCIOLOGY OF LANGUAGE (Joshua Fishman ed., Hague: Mouton Publishers 1968).

<sup>633</sup> *Id.*

Both Kloss's and Stewart's statistical rank orders are arbitrary scales without further explanation of the numeral lines; however, they serve to facilitate further discussion. A deficiency in leveling by percentage is that percentage cannot guarantee or consequently lead to a language's absolute vitality. Since language status is widely understood as the *perceived relative value* of a certain language in a society's linguistic culture and communication market,<sup>634</sup> these six-level scales fairly indicate the relative vitality differences among the named languages, including Mandarin, Holo, Hakka, and the others.

#### **6.4 THE DIRECTION OF FURTHER CHANGES**

Mandarin Plus started a new age for language planning and policy in Taiwan. However, the current system continues to maintain the language acquisition structure of the Period of Political Tutelage: elementary and junior high schools are regulated by the Ministry of Education and the local governments rather than by the National Languages Promotion Committee.

Chapter 5 described four international linguistic human rights principles: (1) equal treatment with reasonable and objective criteria, (2) communicative function protection, (3) affirmative action, and (4) educational use,<sup>635</sup> Taiwan's current system does not fully comply with these principles. Ramcharan's proposed national protection system of human rights -- including a constitutional dimension, legislative dimension, judicial dimension, institutional dimension and monitoring dimension -- is a solid structure for

---

<sup>634</sup> Thomas Ricento, *Theoretical Perspectives: An Overview*, in AN INTRODUCTION TO LANGUAGE POLICY 5 (THOMAS RICENTO ed., Blackwell Publishing 2006).

<sup>635</sup> See Chapter 5.4 Conclusion.

further analysis.<sup>636</sup> Nevertheless, this dissertation does not intend to propose a modified system. It focuses on the legal basis for comparing the status quo and the international human rights standards. Therefore, its contribution is to point out the legal basis for further modification and research. Several possible argument(s) and direction(s) follow.

First, unequal language status persists due to the gap in language acquisition resources after Mandarin Plus started. The right to equality and non-discrimination is proclaimed in UDHR Article 2, and the CCPR Human Rights Committee General Comment No.18 and the Committee on Economic, Social and Cultural Rights General Comment No. 20 further define ‘direct discrimination’, ‘indirect discrimination’ and ‘systematic discrimination’.<sup>637</sup> According to the UN Committee on Economic, Social and Cultural Rights General comment No. 20, systematic discrimination against some groups is pervasive, persistent, and deeply entrenched in social behavior and organizations, often involving unchallenged or indirect discrimination. Such systemic discrimination can be understood as legal rules, policies, practices or predominant cultural attitudes in either the public or private sector that create relative disadvantages for some groups, and privileges for other groups.<sup>638</sup> From the perspectives of its development stage, judicial status, and vitality, Mandarin still claims the highest status

---

<sup>636</sup> BERTRAND G. RAMCHARAN, *THE FUNDAMENTALS OF INTERNATIONAL HUMAN RIGHTS TREATY LAW* 39-44 (2011).

<sup>637</sup> Human Rights Committee, General Comment 18, Non-discrimination (Thirty-seventh session, 1989), ¶7, U.N. Doc. HRI/GEN/1/Rev.6 at 146 (2003); UN Committee on Economic, Social and Cultural Rights (CESCR), General comment 20, Non-discrimination in Economic, Social and Cultural Rights (art. 2, para. 2), ¶¶ 8, 10& 12, E/C.12/GC/20 (Jul. 2, 2009).

<sup>638</sup> CESCR, General comment 20, *supra* note 637, ¶12.

among the vernacular languages, and local languages have suffered systematic discrimination since Mandarin Plus was adopted.<sup>639</sup>

In addition, “minority” or “minorities” are not defined simply from a numerical or proportional aspect, but also from the experiences of collective discrimination, marginalization, or outright oppression at the hands of dominant communities that control the workings of the nation-states within which they reside.<sup>640</sup> In this sense, a group that has relatively little power or representation relative to other groups can be described as a *minority*. Mandarin and even English are still privileged languages in the legal system, especially in the public education system, and other languages remain *legal status minorities*.

Second, the Taiwanese government does not systematically examine whether its communicative function protection is sufficient. It does not survey linguistic needs and devotes almost all its resources to Mandarin and English. The legal authority of language planning is not clearly held by a particular administrative organization, and the task of acquisition planning and corpus planning fall to the Ministry of Education. The government does not consider specific minority needs for communication function or culture preservation in its language planning and policy formation. Especially, newly

---

<sup>639</sup> A similar example was that Chinese literature was taught in school in the Japanese colonial period, but a few hours of Chinese literature in the curriculum could hardly prove that the Japanese colonial government promoted Chinese and made them equal in school. The analogous situation just repeats as it was in the 1920s when Taiwan was ruled by the Japanese colonial government. See Hsin-Yang Wu, *supra* note 578, at 145-65. Furthermore, CESCR General Comment 21 says “States parties should pay particular attention to the protection of the cultural identities of migrants, as well as their language”. CESCR, General Comment 21, *supra* note 504, ¶34. In fact, the migrants’ languages, including Vietnamese, Thai, and Indonesian language are in a worse position.

<sup>640</sup> Patrick Wolfe, Zvi Ben-Dor Benite & Kirsten Refsing, *Minorities*, in OXFORD ENCYCLOPEDIA OF THE MODERN WORLD (Peter N. Stearns ed., Oxford Univ. Press 2008), available at <http://www.oxford-modernworld.com.offcampus.lib.washington.edu/entry?entry=t254.e1031-s1> (last visited May 6, 2010).

arriving immigrants and migrant workers' language barriers can be resolved only on a case-by-case basis.

Language planning and policy involve the distribution and allocation of resources. The indifferent attitude of the Taiwanese government toward linguistic human rights, especially the concept of non-discrimination, can be seen from the fact that it still lacks official data on the exact language population for language planning purposes. The language population and a unified language proficiency scale are *basic data* for further language planning, particularly language acquisition and use of language. In addition, new immigrants must be included in both data collection and relevant policy formation according to the ICESCR General Comment No. 21:

“States parties should pay particular attention to the protection of the cultural identities of migrants, as well as their language.”<sup>641</sup>

Third, contrary to the general concept that all languages are legally equal, if State law does not enjoin using a certain language, a laissez-faire market for languages is surely not a fair market in Taiwan, and affirmative action is necessary. Based on the definition of discrimination and the governmental obligation stipulated in the aforementioned linguistic human rights, affirmative action is allowed to correct past discriminatory conditions. The Human Rights Committee General Comment No. 18 says that:

“the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate

---

<sup>641</sup> CESCR, General Comment 21, *supra* note 504, ¶34.

conditions which cause or help to perpetuate discrimination prohibited by the Covenant..... as long as such action is needed to correct discrimination in fact, it is a case of legitimate differentiation under the Covenant.”<sup>642</sup>

For example, monetary incentives for local vernacular language proficiency might be taken into consideration. Learning language sometimes needs material motives, such as special benefits, promotion opportunities, and career planning.

After Taiwan was ceded from China to Japan in 1895, most Taiwanese students attended private Chinese schools to learn classic Chinese because the Chinese imperial examination was still open to Taiwanese people.<sup>643</sup> However, after the imperial examination was abolished in 1906, the number of private Chinese schools suddenly dropped from 1,055 to 567 in 5 years, and an increasing number of Taiwanese students chose to go to Japanese public schools even though primary education was not compulsory before 1943.<sup>644</sup> On the other hand, because the Japanese government adopted measures to encourage the Japanese police to learn local languages, including special incentives, more than two thousand Japanese policemen acquired local language proficiency certificates in 1932.<sup>645</sup> The preceding examples prove that the motives to learn a language can be affected by institutional designs.

---

<sup>642</sup> HRC, General Comment 18, *supra* note 637, ¶10.

<sup>643</sup> 張博宇, 臺灣地區國語運動史料 ZHANG BUOYU, TAIWAN DIQU GUOYUYUNDONG SHILIAO [History Materials of the National Language Movement in the Taiwan Area] 13 (1974) (Taiwan).

<sup>644</sup> 吳文星, 日據時代臺灣書房之研究 Wu Wenxing, *Rijushidai Taiwan Shufang Zhi Yanjiao* [Private Chinese Schools in the Japanese Ruling Period], 16: 3 THOUGHT AND WORDS 284-5 (Sep. 1978) (Taiwan).

<sup>645</sup> 臺灣總督府警務局, 臺灣總督府警察沿革誌 (五) TAIWAN SŌTOKUFU KEIMUKYOKU [The Bureau of Police Affairs of the Taiwan Governor-General Office], TAIWAN SŌTOKUFU KEISATSU ENKAKUSHI (GO) [The History of Police of the Taiwan Governor-General Office (5)] 941 (1933) (Taiwan, Japan).

*Table 6-10: Local Language Proficiency of Japanese Policemen in 1932*<sup>646</sup>

<b>Language Rank</b>	<b>Holo</b>	<b>Hakka</b>	<b>Atayal</b>	<b>Bunon</b>	<b>Tsou</b>	<b>Amis</b>	<b>Paiwan</b>	<b>Tau</b>	<b>Total</b>
<b>Captain</b>	130	5	8	1	0	1	1	0	146
<b>Lieutenant</b>	151	3	13	10	0	0	6	1	184
<b>Sergeant</b>	356	38	63	18	2	21	19	0	517
<b>Patrolman, 1<sup>st</sup></b>	950	30	165	69	3	11	59	1	1,288
<b>Patrolman, 2<sup>nd</sup></b>	4	1	72	40	4	7	7	0	135
<b>Total</b>	<b>1,591</b>	<b>77</b>	<b>321</b>	<b>138</b>	<b>9</b>	<b>40</b>	<b>92</b>	<b>2</b>	<b>2,270</b>

Fourth, the government should contribute more resources to local language schools, such as ‘language nests’,<sup>647</sup> and should encourage local languages to be adopted as teaching languages in classes. Table 6-5 shows that one vernacular class per week reaches a total of 216 to 324 classes in the 9 years of elementary school and junior high school. The quantity and intensity of the classes seem hardly sufficient to teach a vernacular language to students. One class per week of vernacular language education, and designating one day per year as Mother Tongue Day, cannot dramatically reverse language inequities in Taiwan. Statistics show that a native language loss is continuing to escalate.

In 2004, 81.7% of Hakka people over 13 could understand the Hakka language, but only 63.2% could speak it.<sup>648</sup> Holo suffered the same problems, and indigenous languages faced more severe ones. Mandarin is chosen by most parents to be the family language.<sup>649</sup> Implementing Mandarin Plus remains the mandated structure of language education and language use in schools. The government should therefore actively and

<sup>646</sup> *Id.* at 941.

<sup>647</sup> Language nest means a pre-school in which people use local languages.

<sup>648</sup> 客家事務委員會，九十三年度臺灣客家民眾客語使用狀況調查研究 COUNCIL OF HAKKA AFFAIRS, JIUSHISAN NIANDU TAIWAN KEJIA MINZHONG KEYU SHIYONG ZHUANGKUANG DIAOCHA YANJIU [A Research Study of the Usage Circumstances of the Hakka Language used by the Taiwanese Hakka People in the 93<sup>rd</sup> year (of the ROC)] 24 (2004) (Taiwan).

<sup>649</sup> 張學謙，從單數到複數的國語：多元化的臺灣國語政策，於從「國語政策」到「多元文化政策」學術研討會 Tiun, *supra* note 613, at 2.

positively conduct educational programs on or in local languages. The ICESCR requires the government to ensure that educational programs for minorities and indigenous groups are

“conducted on or in their own language, taking into consideration the wishes expressed by communities and in the international human rights standards in this area.”<sup>650</sup>

Moreover, by being adopted as a teaching language, a local language can be promoted in its language status and help students acquire practical language skills. This kind of language adoption in class also fulfills the obligation set forth in the UN Committee on Economic, Social and Cultural Rights’ interpretation of the ICESCR.

Finally, not only the Constitution should be followed, but also the linguistic human rights should be considered when dealing with language planning and language policy. Most states in this world have multiple language groups, and while not every state adopts the same language policy, they share several common international normative standards. From constitutional monolingualism to constitutional multilingualism, Table 6-10 shows the difference among several countries.

*Table 6-11: Language Law and Policy in Selected Countries*<sup>651</sup>

Country	Major Language Legislation
China	The People’s Republic of China declares protection of minority

<sup>650</sup> CESCR, General Comment 21, *supra* note 504, ¶¶27&32; HRC, General Comment 23, *supra* note 604, ¶¶1, 5&6.

<sup>651</sup> France, Germany, Japan, and the United States are chosen because their legal systems were historically transplanted to Taiwan. South Africa is chosen because it has official diplomat relation with Taiwan before its 1990s democratization and it has faced compatiple political transform with Taiwan. China is chosen because of its economic ties and political relations with Taiwan. This list can be further expanded, but a limited number of countries are selected here because this list only represents the possibility of vary language legislation and policies.

(Table 6-11 continued)

	languages in its 1982 Constitution, Articles 4 and 134. <sup>652</sup> Bilingual education is carried out in minority areas. <sup>653</sup>
France	France generally takes a monolingual attitude toward its language policy. The 1958 Constitution, Article 2 declares the language of the Republic shall be French, <sup>654</sup> and the 1994 Toubon Law ( <i>Loi Toubon</i> ) mandates the use of French in governmental units, subsidiaries, and publications. <sup>655</sup>
Germany	The 1949 Basic Law declares that no one may be prejudiced or favored because of his sex, his parentage, his race, his language, his homeland and origin, his faith or his religious or political opinions. <sup>656</sup> Even though German is the de facto official language and the German government generally takes an attitude toward germanization through the German language, <sup>657</sup> Germany ratified the European Charter for Regional or Minority Languages (ECRML) on September 16, 1998. <sup>658</sup>
Japan	Japanese which is called <i>kokugo</i> (國語, the national language) is the de facto official language. Japan promulgated the 1997 Act on the Promotion of Ainu Culture (アイヌ文化振興法), <sup>659</sup> but its effect is limited. <sup>660</sup>
South Africa	South Africa declares the official languages of the Republic are Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu in its Constitution. <sup>661</sup> The Constitution also regulates the responsibility of the State regarding

<sup>652</sup> XIAN FA arts. 4& 134 (1982) (P.R.C.).

<sup>653</sup> 林修澈, 中國的語言政策與少數民族語言活力, 載於各國語言政策- 多元文化與族群平等 Lim Siu-theh, *Zhongguo De Yuyanzhengce Yu Shaoshuminzu Yuyanhuoli* [Language Policy and Language Vitality of Minorities in China], in GEGUO YUYANZHENGCE- DUOYUANWENHUA YU ZUQUNPINGDENG [Language Policies in Different Countries- Multiculturalism and Ethnic Equality] 592-8 (Shih Cheng-Feng ed., Avanguard 2002) (Taiwan).

<sup>654</sup> 1958 CONST. art. 2 (Fr.).

<sup>655</sup> Law No. 94-665 of Aug. 4, 1994, Journal Officiel de la République Française [J.O.] [Official Gazette of France], Aug. 5, 1994, p. 11392 (Fr.).

<sup>656</sup> GRUNDGESETZ FÜR DIE BUNDESREPUBLIK DEUTSCHLAND [GG] [Basic Law] May 23, 1949, Bundesgesetzblatt, Teil I [BGBl. I] at 1, art 3 (F.R.G.).

<sup>657</sup> See 蔡芬芳, 德國語言政策- 以索勃人為例, 載於各國語言政策- 多元文化與族群平等 Cai Fen-Fang, *Deguo Yuyan Zhengce- Yi Suoboren Weili* [Language Policy in Germany- Sorbish as an Example], in GEGUO YUYANZHENGCE- DUOYUANWENHUA YU ZUQUNPINGDENG, *supra* note 653, at 279-82.

<sup>658</sup> European Charter for Regional or Minority Languages (ECRML), Nov. 5, 1992, C.E.T.S. 148.

<sup>659</sup> アイヌ文化の振興並びにアイヌの伝統等に関する知識の普及及び啓発に関する法律(1997) Ainu Bunka no Shikō narabini Ainu no Dentōtōni Kansuru Chishiki no Fukyū Oyobikeihatsuni Kansuru Hōritsu [Act on the Promotion of Ainu Culture, and Dissemination and Enlightenment of Knowledge about Ainu Tradition], Law No. 52 of 1997 (Japan).

<sup>660</sup> 胡慶山, 日本語言政策的考察與展望, 載於各國語言政策- 多元文化與族群平等 Hu Ching-shan, *Riban Yuyanzhengce De Kaocha Yu Zhanwang* [A Study of the Language Policy in Japan], in GEGUO YUYANZHENGCE- DUOYUANWENHUA YU ZUQUNPINGDENG, *supra* note 653, at 687-91.

<sup>661</sup> S. AFR. CONST. 1996 art. 1, sec. 6. (S. Afr.).

(Table 6-11 continued)

	language and creates the Pan South African Language Board to promote languages. <sup>662</sup>
United States	English is the de facto official language in the United States. The Native American Languages Act entitles Native Americans to use their own languages. <sup>663</sup> At state level, 29 states adopt official language laws and 4 states adopt English-plus resolutions. <sup>664</sup>

As noted, France takes the strongest position of monolingualism among the above countries, but it still has to comply with the international order regarding language. France declares French as its official language in the 1958 Constitution, Article 2 “The language of the Republic shall be French” (*Le Français est la langue de la République*).<sup>665</sup> France signed the 1992 European Charter for Regional or Minority Languages (ECRML) but refused to ratify it and declared only the Preamble of the Charter is accepted.<sup>666</sup> Furthermore, the 1994 Toubon Law (*Loi Toubon*) mandates the use of French in governmental units, subsidiaries, and publications.<sup>667</sup> France is an advocate of an exclusive official language, but the case of product labeling represents that even though a constitutionally monolingual country has to abide by international normative standards. The Toubon law requires product labels to be intelligible and in French, but the Court of Justice of the European Communities (CJEC) ruled that a national provision requiring the use of a specific language for food labeling without allowing another language easily understood by purchasers would constitute a quantitative restriction on imports and

---

<sup>662</sup> *Id.*

<sup>663</sup> Native American Languages Act, P.L. 101-477, 25 U.S.C. §2901 (Oct. 30, 1990) (U.S.A.).

<sup>664</sup> James Crawford, *Language Legislation in the U.S.A.* (Feb. 1, 2012), <http://www.languagepolicy.net/archives/langleg.htm#State> (last visited Apr. 10, 2012).

<sup>665</sup> 1958 CONST. art. 2 (Fr.).

<sup>666</sup> European Charter for Regional or Minority Languages (ECRML), Nov. 5, 1992, C.E.T.S. 148.

<sup>667</sup> Law No. 94-665 of Aug. 4, 1994, Journal Officiel de la République Française [J.O.] [Official Gazette of France], Aug. 5, 1994, p. 11392 (Fr.).

violate Article 30 of the Treaty on European Union.<sup>668</sup> So, product labels should not be restricted to French even within the territory of the Republic of France. Under the stress of the European Communities, France therefore made a concession and promulgated Decree No. 2002-1025 which amended Article R. 112-8 of the Consumer Code (*Code de la Consommation*) allowing the use of other languages on labels.<sup>669</sup> The case of France is an inspiring example to Taiwan, which adopted the ICCPR, the ICESCR, and the CEDAW through implementary statutes to its domestic legal system, and therefore the linguistic human rights should be considered when dealing with language planning and language policy work in concert with its constitutional multilingualism declaration.

## 6.5 CONCLUSION

After the 1997 Multicultural Declaration, language planning reforms did not follow the normative standard of diversity and maintenance at the lower levels of the legal structure hierarchy. The legal structure preserves and even enhances the privileged status of Mandarin. The Mandarin Only mechanism remains a fact of life in school language teaching. The current system keeps the language acquisition structure of the Period of Political Tutelage: elementary and junior high schools are regulated by the Ministry of Education and the local governments rather than by the National Languages Promotion Committee. Despite Mandarin Plus, the unequal language status remains due to the gap of language acquisition resources. From the perspective of Kloss's language status analysis, the current system will consolidate the status of Mandarin, albeit at a relatively slower pace than before.

---

<sup>668</sup> Case C-366/98, Yannick Geffroy v. Casino France SNC, 2000 E.C.R. I-06579.

<sup>669</sup> Decree No. 2002-1025 of Aug. 1 2002, Journal Officiel de la République Française [J.O.] [Official Gazette of France], Aug. 2, 2002, p. 13161.

Taiwan started a new stage of multilingualism at the level of constitutional law, but linguistic minorities are still treated unequally according to the principles of international linguistic human rights. A critical element of people's daily lives and culture inheritance -- their language -- still lumbers under the weight of antiquated administrative institutions that have ruled Taiwan since it became a modern state.

Based on international linguistic human rights principles, this dissertation proposes several arguments and developing directions. First, Mandarin and even English are still privileged languages in the legal system, especially in the public education system, and other languages remain legal status minorities. Second, language demographics and a unified language proficiency scale are basic (but currently unavailable) data needed for further language planning, particularly language acquisition and language use; new immigrants must be included in both data collection and relevant policy formation. Third, affirmative action should be considered. For example, monetary incentives for local vernacular language proficiency might be taken into consideration. Fourth, the government should contribute more resources to local language schools, such as 'language nests', and should encourage local languages to be adopted as teaching languages in classes. Finally, in addition to the Constitution, linguistic human rights principles should be considered when dealing with language planning and language policy.



## CHAPTER 7: CONCLUSION

After Chiang Kai-shek's Nationalists lost the Chinese civil war, the ROC central government retreated to Taiwan in 1949. To justify ruling Taiwan with the few who came with the KMT from mainland China, and to preclude the rise of local identity, other local languages, especially Holo, were suppressed under the National Language Movement and the Mandarin Only Policy for the purpose of Chinese nation-building. However, after the demise of Chiang's son, Chiang Ching-Kuo, in 1988, Taiwan began large-scale political reforms.

As political and social conditions changed, the desire for cultural preservation and the need to take countermeasures against political stress joined to generate relevant reforms. The 1992 Additional Articles of Constitution of the ROC first proclaimed that the state should promote culture, social welfare, and the economic development of indigenous people. In 1997, the Additional Articles of Constitution of the ROC were further amended to state that "the State affirms cultural pluralism and shall actively preserve and foster the development of aboriginal languages and cultures." For the first time, Taiwan adopted multiculturalism and a diversity maintenance approach at the constitutional level. The Taiwanese government then took language affairs reform measures and introduced several legal drafts.

To understand whether Taiwan can comply with its Constitution and achieve linguistic human rights, it is necessary to consider three questions. The first question concerns the relationship between language and law. Four aspects of this relationship are proposed in this dissertation: 'the nature of law' (language is the indicator to determine

whether a sign or a statement has legal effect), ‘languages of law’ (the interpretation of language used by law), ‘language in law’ (the way that the legal system treats language), and ‘language mediating law’ (language as the medium through which law is carried out the law). The discussion of the relationship between language and law in this dissertation enriches the concept of ‘language law’. The content of language law includes law regarding language planning (status/acquisition/corpus planning) and language rights.

Considering the critical experience of nation-building in Taiwan and the insight that nationality and language are not absolutely bound, this dissertation starts with the position of abandoning the nation-building approach: it analyzes normative standards pertaining to Taiwan’s source law from the perspectives of positive law and practicability, domestic written law derived from Taiwan’s Constitution and international treaties. Therefore, when analyzing the normative standards of language law in Taiwan, legal principles of the Constitution and international treaties should be first examined and applied. Furthermore, a linguistic human rights approach was viewed as an adoptable discourse in this dissertation.

In 2009, the Implement Act of the Two Covenants and the Act to Implement the CEDAW made the proclaimed human rights in the 1966 ICCPR, the 1966 ICESCR, and the 1979 CEDAW formally applicable in Taiwan. In this way, linguistic human rights did not constitute a new category of human rights instruments; further, the normative standards of language rights were derived from those international human rights instruments. Even though the procedural regulations of the instruments are not enforceable due to the international status of Taiwan, the ICCPR, the ICESCR, and the CEDAW are *de jure* effective because Taiwan voluntarily adopted the two international

human rights instruments through the Implement Act of the Two Covenants and the Act to Implement the CEDAW. The two Acts enhance the link between linguistic human rights in the international human rights system and the immured domestic legal system given the vulnerable international status of Taiwan.

Unlike the traditional discourse of linguistic rights, which focuses on one particular area, this dissertation indicates the *linguistic factors* (language as a standardizer, language as a classification indicator, language as an urgent necessity, language as a subsidiary instrument, and language as an intrinsic value) that comprise linguistic human rights. Applying an indispensable factor to an international human rights instrument to formulate a particular category of human rights is not an unprecedented move. The UN ICESCR's General Comment No. 15 on 'the right to water' is a precedent. It recognized 'water' as a factor of the right to an adequate standard of living and the right to the enjoyment of the highest attainable standard of physical and mental health because water is indispensable for daily uses and hygienic requirements even though the term 'water' does not explicitly appear in the context of the ICESCR. This interpretation supports the idea that language is an indispensable factor in enjoying several human rights and can form an independent category of human rights. In this sense, linguistic factors exist from the first to the third generation of human rights in the UDHR, the ICCPR and the ICESCR.

By applying linguistic factors to previous international instruments to locate linguistic human rights, we can formulate the following principles. The first principle addresses equal treatment with reasonable and objective criteria. Linguistic human rights content dictates that any linguistic differentiation of treatment violates the

non-discrimination principle unless the action at issue is taken to correct discrimination in fact. Government should ensure that any language requirements relating to employment and education are based on reasonable and objective criteria.

The second principle concerns communicative function protection. When language is viewed as a communication instrument, those human rights whose exercise depends on use of language have the same normative standard: language should not be a barrier to the exercise of fundamental human rights, even though the barrier is slight. Government should take specific actions and positive measures to overcome difficulties, such as illiteracy and language barriers that prevent persons from exercising their rights effectively.

The third principle is affirmative action. To eliminate substantive discrimination, government in some cases should adopt positive measures, which are legitimate to the extent that they represent reasonable, objective and proportional means to redress de facto discrimination. For example, information about public services and goods should also be available, as far as possible, in languages spoken by minorities.

The fourth principle concerns educational use. With respect to educational goals, learning a dominant language and learning an ethnic mother tongue are based on different rationales. From the perspective of multiculturalism, international human rights practices adopt a positive standard for ICCPR and ICESCR members, who are under the obligation to recognize, respect and protect minority cultures as an essential component of membership itself. Consequently, minorities have the right to their languages, and government should adopt measures and spare no effort to ensure that educational programs for minorities and indigenous groups are conducted in their own languages,

taking into consideration the wishes expressed by communities and the international human rights standards in this area. Government should also pay particular attention to protecting the cultural identities and language of migrants.

In sum, after the 1997 Multicultural Declaration, the Mandarin Plus centric reform of language planning did not follow the normative standard of diversity and maintenance at the lower levels of the legal structure hierarchy. The legal structure preserves and even enhances the fact that Mandarin enjoys a privileged status. Language planning in Taiwan still does not have an explicit statutory basis; rather, it is governed by the Ministry of Education, not the National Language Promotion Committee, because of their authority over schools where language education is taught. In the past, Mandarin comprised the majority of language learning time in the curriculum, and other languages were not part of the curriculum and were even prohibited from being used on campus. Mandarin undoubtedly enjoyed the highest language status. Therefore, the school-centric Mandarin education was the major factor in establishing its language status. Mandarin education, not national language movement measures, played the main role in promoting the language status of Mandarin.

The Mandarin Only mechanism still remains in schools. Although the NLPC established new divisions for some vernacular languages, the NLPC lacks complete authority for language planning. Mandarin still enjoys the most resources in schools, and other vernacular languages are relatively ignored. The NLPC can only carry out language standardization and does not have the authority to deal with language acquisition and status planning. From the perspective of Kloss's language status analysis, the current

system will consolidate the status of Mandarin, albeit at a relatively slower pace than before.

Taiwan entered a new era of multilingualism, but linguistic minorities are still treated unequally. Taiwan adopted Mandarin Only based on the nation-building approach and then adopted a Mandarin Plus centric legal system based on the concept of constitutional multiculturalism. However, the current system in Taiwan affords less privilege to those whose mother tongues are not Mandarin, putting them at a disadvantage with respect to transmitting their cultures through their local languages in the public schools. The government has not met its obligations relative to the aspirational goal of the UN Committee on Economic, Social and Cultural Rights, which stipulates that government is under the obligation to adopt measures and *spare no effort* to ensure that educational programs for minorities and indigenous groups are conducted in the local languages. Of course, ‘minorities within minorities’ could lead to further demand, but the ‘spare no effort’ assertion, which focuses on use of vernacular language, is still limited by the resources the government has, the expressed wishes of the minorities, and the human rights standards in the area according to the Committee on ESCR’s interpretation. A difficult case requiring the allocation of scarce resources for competing needs might arise in the future, but it is not the current situation in Taiwan.

The Mandarin Plus reform does not resolve issues that arose in the aftermath of Mandarin Only, nor does it deal with the new language problems in Taiwan. Even though Mandarin Plus is nominally similar to English Plus of the United States, it keeps most of the legal system of Mandarin Only. Thus, a critical element of people’s daily lives and culture inheritance -- their language -- still lumbers under the weight of antiquated

administrative institutions that have ruled Taiwan since it became a modern state. “Minority” or “minorities” are not just discussed from a numerical or proportional aspect, but also from the experiences of collective discrimination, marginalization, or outright oppression at the hands of the dominant communities that control the workings of the nation-states within which they reside. In this sense, a group that has relatively little power or representation compared to other groups can be described as minority. Mandarin and even English are still privileged in the legal system, especially in the public education system, and other languages remain legal status minorities.

Based on international linguistic human rights principles, this dissertation proposes several arguments and possible developing directions. First, Mandarin and even English are still privileged languages in the legal system, especially in the public education system, and other languages remain legal status minorities. Second, the language population and a unified language proficiency scale are critical (but now unavailable) basic data for further language planning, particularly language acquisition and use of language; new immigrants must be included in both data collection and relevant policy formation. Third, affirmative action is required. For example, monetary incentives for local vernacular language proficiency might be taken into consideration. Fourth, the government should contribute more resources to local language schools, such as ‘language nests’, and should encourage local languages to be adopted as teaching languages in classes. Finally, not only is the Constitution to be followed, but linguistic human rights principles should be considered when dealing with language planning and language policy. In Taiwan’s case, because the Constitution remains almost completely

silent on a practical standard regarding language issues, the normative standard is left to be decided by linguistic human rights principles.

Based on the different rights needing protection, the preceding principles can be applied. For example, indigenous peoples may ask the government to provide bilingual education based on culture preservation. Or the government should provide a Russian speaker an interpreter/translator when seeking welfare benefits because it is his right. However, the Russian speaker may not make an assertion of linguistic human rights based on cultural preservation because Russian is spoken in Russia and many other countries and a decline in the number of Taiwanese Russian speakers normally does not cause the Russian-speaking cultures to diminish.

Furthermore, change of quantity may causes change of nature. Vietnamese immigrant mothers, the largest foreign spouses group, may ask the government to enforce a policy of labeling baby food in Vietnamese according to food safety protection; they may even make an assertion of linguistic human rights based on culture protection if the population is large enough and they are recongnized as a distinct cultural community in the future.

In the future, cases may become more complicated, and we may need more detailed discussions on the application of linguistic rights principles. Thus far, however, the government barely recognizes the problems and makes only scant resources available to address them, and this dissertation highlights clearer, more basic needs.

Finally, inspired by the French labelling case, which shows that a constitutionally monolingual country still should comply with international language law, I would like to emphasize that this dissertation does not intend to negate the indispensability of the de

facto official language in Taiwan. Rather, it pursues a balanced perspective between an official language and other languages while proposing a necessary direction for modifications to the current Taiwanese legal system. I hope to contribute to a better understanding of Taiwan's special language circumstances by refining the concepts of linguistic human rights to further fulfill the multiculturalism declaration in Taiwan's Constitution.



## Appendix 1

LANGUAGES IN TAIWAN<sup>670</sup>

Language family	Language Name / ISO/ Branch/ Alternative Name	Population/ Region	Dialects	Language use, development, and comment
Austronesian	Amis ISO 639-3: ami Austronesian, East Formosan, Central (Ami, Amia, Pangcah, Pagcah, Pangtsah, Bakurut, Lam-Si-Hoan, Maran, Sabari, Tanah)	137,651 (2002 CIP) Plains in the valley along the railroad between Hualien and Taitung, and on the east coast near the sea between Hualien and Taitung.	Central Amis (Haian Ami, Hsiukulan Ami), Tavalong-Vataan (Kwangfu, Kuangfu), Southern Amis (Peinan, Hengch'un Amis, Taitung), Chengkung-Kwangshan, Northern Amis (Nanshi Amis). The Chengkung-Kwangshan dialect is closest to Central Amis.	1. Speakers also use Japanese or Mandarin. 2. Roman script. Dictionary. Grammar. Bible: 1997. 3. 'Amis' is their name for themselves; 'Ami' is the Chinese name. Traditionally matrilineal. Many are migrating to cities and industrial areas. Plains. Agriculturalists : rice.
	Amis, Nataoran ISO 639-3: ais Austronesian, East Formosan, Central Nataoran, Nataوران, Tauran	5(2002 CIP) Villages in the Hualien area and north of Fenglin.	Nataoran, Sakizaya (Sakiray, Sakiraya), Kaliyawan (Kaliyuawan), Nataوران, Cikosowan, Pokpok, Ridaw. Not generally understood by other Amis. Sakizaya is	1. All speakers are older adults. 2. Dictionary. 3. In 1878 the Sakizaya were forcibly removed from their traditional land in the northern Amis area, and

<sup>670</sup> *Languages of Taiwan*, in *ETHNOLOGUE: LANGUAGES OF THE WORLD* (Raymond G. Gordon, Jr. ed., Summer Inst. of Linguistics Int'l, 15<sup>th</sup> ed. 2005, [http://www.ethnologue.com/show\\_country.asp?name=TW](http://www.ethnologue.com/show_country.asp?name=TW) (last visited Feb. 16, 2009).

			even more divergent from Central Amis. In recent years the dialects have converged. Lexical similarity 50% with Central Amis.	resettled in the southern Amis area, interspersed with other Amis. Later some returned (Tsuchida 1981). Nearly extinct.
Atayal ISO 639-3: tay Austronesian, Atayalic Tayal, Tyal, Taiyal, Ataiyal, Attayal, Taijyal, Bonotsek, Shabogala, Takonan, Tangao, Yukan	84,330(2002 CIP) Mountains in the northeast, south of the Ketagalan area.	Sqoleq (Squliq), Ts'ole' (Ci'uli'). Mayrinax is a Ci'uli' subdialect.	1. In some areas Atayal is in active use. 2. Roman script. Dictionary. Grammar. Bible: 2002.	
Babuza ISO 639-3: bzg Austronesian, Western Plains, Central Western Plains Babusa, Favorlang, Favorlangsch, Jaborlang, Poavosa	3 to 4 (2000 Wurm) West central coast and inland, Tatu and Choshui rivers and beyond, around 24 degrees north.	Poavosa, Taokas. Taokas dialect is extinct.	1. Under 10% of the ethnic group speaks Babuza. Used in the home. No children speak Babuza. Neutral language attitude. 2. Bible portions. 3. Sinicized. Nearly extinct.	
Basay ISO 639-3: byq Austronesian, East Formosan, Northern Kawanuwan, Basai	Extinct. North around Tam Shui to near Kungliao, Fengtulin, Taipei, Sangchung, and northeast around Suao and east of Ilan.	Trobiawan, Linaw-Qauqaul .	Grammar. Sinicized. Older people can remember a few words.	
Bunun	37,989	Randai, Tondai,	1. Also spoken	

<p>ISO 639-3: bnn Austronesian, Bunun Bunti, Vonun, Bunan, Bubukun, Vunum, Vunun, Vunung, Bunum</p>	<p>East central plain, south of the Sediq (Taroko).</p>	<p>Shibukun (Sibukun, Sibukaun, Sibucoon, Sivukun), North Bunun (Takitudu, Takekodo, Takebakha, Takibakha), Central Bunun (Takbanuao, Takivatan, Takevatan), South Bunun (Ishbukun), Takopulan.</p>	<p>by the Kanakanabu and the Saaroa in everyday life. 2. Roman script. Dictionary. Grammar. Bible: 2000.</p>
<p>Kanakanabu ISO 639-3: xnb Austronesian, Tsouic Kanabu, Kanakanavu</p>	<p>6 to 8 (2000 Wurm). Ethnic population: 250 (UNESCO). Central Taiwan around Minchuan village, Sanmin Township, Kaohsiung County.</p>		<p>1. Members of the ethnic group now speak Bunun, Taiwanese, or Mandarin. 2. Nearly extinct.</p>
<p>Ketangalan ISO 639-3: kae Austronesian, Unclassified Ketagalan, Tangalan</p>	<p>Extinct. North central, around Panchiao and to the northwest, west, and southeast.</p>		<p>Sinicized.</p>
<p>Kavalan ISO 639-3: ckv Austronesian, East Formosan, Northern Kuwarawan, Kiw</p>	<p>24 (2000 Li). Northeast coast, above Toucheng to Ilan, nearly to Suao, and inland to Tayal language area. No longer spoken in the original area; a few migrants to the east coast, Hsishe village, Fengpin</p>	<p>Kareovan (Kareowan).</p>	<p>1. Under 10% of the ethnic group speaks Kavalan. Used only as a home language in 1930. Still spoken in Atayal territory (1987). Used in the home. No children speak Kavalan. Mainly older adult women. Neutral</p>

		Township, Hualien County (1990).		language attitude. They can speak Amis and Taiwanese fluently because they live among them, having migrated into the Amis region. 2. Roman script. Dictionary. Grammar. 3. Sinicized. Nearly extinct.
	Kulon-Pazeh ISO 639-3: uun Austronesian, Formosan, Paiwanic Kulun	1 (2000 Paul Jen-Kuei Li). Near the west coast just north of 24 degrees north, east of Tayal, around Cholan, Houli, Fengyuan, Tantzu, Taichung, Tungshih.		1. Used only as a home language in 1930. One 86-year-old speaker (P. Li 2000). 2. Roman script. Dictionary. Grammar. 3. Sinicized. Nearly extinct.
	Paiwan ISO 639-3: pwn Austronesian, Paiwan Paiuan, Payowan, Li-Li-Sha, Samobi, Samohai, Saprek, Tamari, Kadas, Kale-Whan, Kapiangan, Katausan, Butanglu, Stimul	66,084 (2002 CIP) Southern, southeastern mountains.		Roman script. Dictionary. Grammar. NT: 1973–1993.
	Papora-Hoanya	Extinct.	Papora,	Sinicized.

	ISO 639-3: ppu Austronesian, Formosan, Paiwanic  Bupuran, Hinapavosa, Vupuran, Papola	North central coast around Lishui, Chingshui, Shalu, and inland to Taichung.	Hoanya.	
	Puyuma ISO 639-3: pyu Austronesian, Puyuma  Pyuma, Pilam, Pelam, Piyuma, Panapanayan, Kadas, Tipun	8,487(2002 CIP)  Along the east coast south of Taitung and inland.	Nanwang, Pinan.	All domains. Most speakeres are older adults.  Dictionary. Grammar. Bible portions: 1990.
	Rukai ISO 639-3: dru Austronesian, Rukai  Drukay, Drukai, Dyokay, Dukai, Rutkai, Tsarisen, Tsalisen, Sarisen, Banga, Bantalang, Bantaurang, Taloma, Kadas	10,543(2002 CIP)  South central mountains, west of the Pyuma, 11 villages around Ping Tung, and 2 or 3 villages near Taitung.	Budai, Labuan, Tanan, Maga, Tona, Mantauran. The Mantauran, Tona and Maga dialects are divergent.	1. All domains. Some older adults are monolingual. Some speak Pyuma. Some older adults speak Japanese. Budai people speak Taiwanese.  2. Roman script. Dictionary. Grammar. NT: 2001.  3. Some linguists classify it as Paiwanic. There is Paiwanic influence. VSO.
	Saaroa ISO 639-3: sxr Austronesian, Tsouic  Saroa, Saarua, Rarua, La'alua,	5 to 6 (2000 Wurm). Ethnic population: 300 (2000 UNESCO Red Book).  West central	Close to Kanakanabu.	1. On the verge of extinction in 1990. Speakers are shifting to Bunun. Older people speak Taiwanese. Used in the

	La'arua, Pachien, Paichien, Sisyaban, Shishaban	mountains, south and southeast of Minchuan, along the Laonung River.		home. Some older people know Saaroa. No children speak it. The people have a neutral attitude toward Saaroa. There has been a major shift to Bunun since Bunun speakers migrated into the area. Older people speak Taiwanese.  2. Grammar.  3. Nearly extinct.
	Siraya ISO 639-3: fos  Austronesian, East Formosan, Southwest  Formosan, Siraia, Siraiya, Sideia, Sideis, Sideisch, Baksa, Pepohoan, Pepo-Hwan	Extinct.  Southwestern, around present-day Tainan, from Peimen to Hengchun to Tapu.	Siraya, Makatao (Makattaa, Takaraya, Tta'o), Pangsoia-Dolat ok, Taivoan (Tevorang), Lamai.	1. Dictionary. Bible portions: 1661.  2. It was still spoken in 1908. Sinicized.
	Taroko ISO 639-3: trv  Austronesian, Atayalic  Sediq, Saediq, Seedik, Sejiq, Sedeq, Seedek, Seedeq, Shedekka, Sedek, Sediakk, Sedik, Sazek, Bu-Hwan, Che-Hwan, Daiya-Ataiyal, Hogo, Iboho, Paran, Taruku,	4,750 (2002 CIP). Ethnic population: 4,750.  Central, eastern, and coastal; northern mountains in the Puli area and along the coast south of Hualien, south of the Atayal.	Teruku (Truku), Te'uda (Tuuda), Tekedaya (Tkdaya, Paran). Dialects differ mainly in phonology and lexicon, and some in grammar.	Chinese is used in schools. Older people also speak Japanese.  Roman script. Dictionary. Grammar. NT: 1963–1988.

	Toroko, Truku, Toda			
	Thao ISO 639-3: ssf Austronesian, Western Plains, Thao Sau, Sao, Shao, Chuihwan, Chui-Huan, Suihwan, Vulung	5 to 6 (2000 Wurm). Ethnic population: 248 (1989). Central, southeastern shore of Sun Moon Lake, Te-hua village, and Ta-p'ing-lin 14 km away.	Brawbaw, Shtafari.	1. Members of the ethnic group now speak Mandarin. Used in the home. Negative language attitude. 2. Roman script. 3. There is cooperation with the Bunun, and intermarriage with Bunun women, loanwords from Bunun. Nearly extinct.
	Tsuou ISO 639-3: tsu Austronesian, Tsouic Tsu-U, Tsou, Tsouou, Tsu-Wo, Tzo, Tso, Namakaban, Niitaka, Tibola, Tibolah, Tibolak, Tibolal	2,127 (2002 CIP) West central mountains southeast of Chiayi around Alishan (Mt. Ali).	Duhtu, Luhtu, Tapangu, Tfuea, Iimutsu.	1. Iimutsu is extinct (1981 Wurm and Hattori). The people speak Tsou in daily life. Young people speak Mandarin. Speakers also use Mandarin. 2. Roman script. Grammar. 3. Some linguistic work has been done.
	Yami ISO 639-3: tao Austronesian, Malayo-Polynesian, Northern Philippine, Bashiic-Central Luzon-Northern Mindoro,	3,384 (2002 CIP) Orchid Island, Botel Tobago (Lanyu) Island, southeast coast.	Close to Ivatan of northern Philippines.	1. Speakers also use Mandarin. 2. Roman script. Dictionary. Grammar. NT: 1994. 3. People prefer

	Bashiic, Yami Tao, Tawu, Botel Tabago, Botel Tobago, Lanyu			to be called 'Tao'. Traditional religion, Christian.
Deaf sign language	Taiwan Sign Language ISO 639-3: tss Deaf sign language Taiwan Ziran Shouyu	82,558 (2001).	Taipei, Tainan, Kaohsiung. 2 major dialects. The sources from which the sign language developed were indigenous sign systems before 1895, Japanese occupation and education 1895–1946, Mainland Chinese Sign Language brought by refugees in 1949 and some from Hongkong since. Lexical similarity 50% with Japanese Sign Language.	Quite different from (Mainland) Chinese Sign Language; only a few signs are the same or similar. Not related to Taiwanese languages. Some signs are borrowed from Mandarin through palmwriting. There is also a Signed Mandarin (Wenfa Shouyu).
Sino-Tibetan	Hakka ISO 639-3: hak Chinese, Hakka Hakka, Hokka, Kejia, Kechia, Ke, Xinminhua, Majiahua, Tu Guangdonghua	2,366,000 (1993) Taoyuan, Hsinchu, Miaoli, Pingtung counties. Shi Xien is in northern and southern Taiwan, Hi-Lu is central and north central.	Hailu (Hoiluk, Hoilluk, Hi-Lu), Sanhsien (Shigen, Shixien, Shi Xien).	1. 2. Settled in Taiwan for 200 years. Sanhsien closely resembles Yuetai of Mainland China. Hailu closely resembles Yong-Ting or Yuqui of Mainland China.
	Mandarin ISO 639-3: cmn Sino-Tibetan, Chinese	4,323,000 (1993) 15,000,000 second-languag e speakers.	Taipei Mandarin. Taipei Mandarin and Beijing Mandarin are	1. Official language. Many of the 30- to 50-year-old generation in

	Kuoyu, Mandarin, Putonghua, Guoyu	Mainly in Taipei and 5 provincial cities	fully inherently intelligible to each other's speakers. Nearly all first-language speakers in Taiwan speak with Min-influenced grammar and various degrees of Min-influenced pronunciation. Many of the educated strive to cultivate standard pronunciation. Grammatical differences of the Taiwan variety often appear in writing.	Taiwan are also fluent in Taiwan Min. 2. Kuoyu taught in all schools. 3. Traditional Chinese, Buddhist, Christian, Secular.
	Min-nan ISO 639-3: nan Min Nan, Minnan, Taiwanese	15,000,000 in Taiwan (1997 A. Chang) Tainan, Penghu Archipelago, cities on the east coast, western plain except for a few Hakka pockets.	Amoy (Taiwanese, Formosan).	1. Mandarin is used as second language. Those over 60 also speak Japanese. 2. The Taiwanese people are called Hoklo or Holo. Chinese traditional religion, Buddhist, Christian, secular.
Japanese	Japanese ISO 639-3: jpn			1. Japanese was the national language before 1945. Many over 70 also speak Japanese. 2. Trade language.

				10,000 second-language users in Taiwan (1993). Used among a few older adult aboriginal speakers.
--	--	--	--	--

## Appendix 2

A SHORT HISTORY OF LANGUAGE LEGISLATION (1945-2008)<sup>671</sup>

Year	Event
1945	KMT government introduced Mandarin as the national language after WWII.
1946	The Mandarin movement officially launched via the required learning of Mandarin through the Taiwanese local languages. <sup>672</sup>
	Japanese language was banned in movies, books, records, newspapers, and schools. <sup>673</sup>
1947	After the 228 incident, Holo and Hakka were removed from the national language learning project. <sup>674</sup>
	Japanese records, Japanese books, and Japanese style shoes (下駄, <i>geta</i> ) were confiscated in some counties. <sup>675</sup>
1949	The KMT government escaped to Taiwan and started ruling under martial law.
1950	The Enforcement Outline of Nation-Building During the Period of Mobilization for the Suppression of Communist Rebellion (戡亂建國教育實施綱要) emphasized national language education. <sup>676</sup>
1951	Vernacular languages and Japanese were banned in high schools. <sup>677</sup>
	Teacher whose Mandarin proficiency was poor could not be hired. <sup>678</sup>
1952	Teachers were required to speak Mandarin on campus. <sup>679</sup>

<sup>671</sup> Before the 1999 Administrative Process Law (行政程序法, *Xingzheng Chengxufa*) took in to effect, the Taiwanese administrative legal system did not strictly distinguish rule, regulation, ordinance, executive order, and even notice. An administrative agency might issue a notice (*han*, 函), and the content and the legal effect of the notice was compatible to an ordinance or an executive order.

<sup>672</sup> 臺灣省國語推行委員會, 臺灣省國語運動綱領(1946) Taiwansheng Guoyu Tuixing Weiyuanhui [the National Language Promotion Committee, Taiwan Province], Taiwansheng Guoyu Yundong Gangling [Guideline on the National Movement in Taiwan Province] (Apr. 2, 1946) (Taiwan).

<sup>673</sup> 臺灣省行政長官公署, 臺灣省行政長官公署施政報告-臺灣省參議會第一屆第二次大會(1946) TAIWAN PROVINCIAL ADMINISTRATIVE EXECUTIVE OFFICE, TAIWANSHENG XINGZHENGZHANGGUAN GONGSHU SHIZHENG BAOGAO- TAIWANSHENG CANYIHUI DIYIJIE DIERCI DAHUI [Administration Report of the Taiwan Administrative Office- The 2<sup>nd</sup> Meeting, 1st Term, Senate of Taiwan Province] 278-281 (Taipei, 1946) (Taiwan).

<sup>674</sup> 臺灣省國語推行委員會第二十四次會議決議(1947) Taiwansheng Guoyu Tuixing Weiyuanhui Diershisici Huiyi Jueyi [The 24<sup>th</sup> Meeting Decision of the National Language Promotion Committee, Taiwan Province] (Mar. 25, 1947).

<sup>675</sup> 許雪姬, 臺灣光復初期的語文問題, 載於思與言 29 卷 4 期(1991) Hsu Hsueh-Chi, *Taiwan Guangfu Chuqi De Yuwenwenti* [Language Problems in the Early Period of Taiwan Restoration], 29:4 THOUGHT AND WORDS 156-7, 173 (Dec. 1991) (citing 國聲報 GUOSHENGBAO [National Voice Newspaper], May 8, 1947, at 3)).

<sup>676</sup> 教育部臺普字第三三六一號訓令(1950) Ministry of Education Order Taipu Zi No.3361 (June 15, 1950).

<sup>677</sup> 臺灣省教育廳(四十)酉刪教四字第三〇六七三號(1951) Department of Education, Taiwan Province Notice (40) Yiushanjiao Zi No.30673 (Oct. 15, 1951).

<sup>678</sup> 臺灣省教育廳(四十)子世教四第〇〇二四二號(1951) Department of Education, Taiwan Province Notice (40) Zishijiao Zi No.00242 (Jan. 31, 1951).

<sup>679</sup> 臺灣省教育廳(四一)教四字第〇三一六號(1952) Department of Education, Taiwan Province Notice

	People could not speak Japanese in public except for diplomatic gatherings. <sup>680</sup>
1954	Churches were required to speak Mandarin during services. <sup>681</sup>
1956	Students were required to speak Mandarin off campus. <sup>682</sup>
1958	Japanese was banned in churches. <sup>683</sup>
1959	Bibles written in Romanized local languages were confiscated. <sup>684</sup>
1963	TV programs presented in any language other than Mandarin could not exceed 50% of all the programs. <sup>685</sup>
1964	Officials and teachers were required to speak Mandarin at home. <sup>686</sup>
1970	The government re-emphasized that “learning and speaking the national language were patriotic;” “speaking the national language is what a model national should do;” “speak the national language, please (in governmental offices).” <sup>687</sup>
	“Enforcement Points of the Enhancement Measures in Pursuance of the National Language” declared that radio and television programs using local languages and foreign languages should be reduced. <sup>688</sup>
	People were allowed to speak only the national language in organs of different levels, schools, offices, and in any other public places. Officials asked to be models of speaking the national language. <sup>689</sup>
1971	“Enforcement Plan in Pursuance of the National Language in Taiwan Province” started in order to “straighten the convulsions” of vernacular languages and other foreign languages (this term factually refers to Japanese). (original text: 方言外語甚熾，亟應予以糾正) <sup>690</sup>

(41) Jiaosi Zi No.03116 (Nov. 28, 1952).

<sup>680</sup> 行政院臺(四一)內字第一三三三號(1952) Administrative Yuan Notice Tai (41) Nei Zi No. 1383 (1952).

<sup>681</sup> 臺灣省警務處(四三)府警一字第九八五一一號(1954) Department of Police, Taiwan Province Notice (43) Fujingyi Zi No. 98511 (Nov. 17, 1954).

<sup>682</sup> 臺灣省教育廳(四五)教二字第〇一八〇二號(1956) No. 45-J2-01802, Department of Education, Taiwan Province Notice (45) Jiaoe Zi No.01802 (May 28, 1956).

<sup>683</sup> 臺灣省民政廳(四七)民一字第〇九五五五號(1958) Department of Civil Affairs, Taiwan Province Notice (47) Minyi Zi No. 109555 (Nov. 22, 1958).

<sup>684</sup> 臺灣省警務處(四八)二二〇府警行字第一〇四七一號(1959) Department of Police, Taiwan Province Notice (48) 220 Fujingxing Zi No.10471 (Feb. 20, 1959).

<sup>685</sup> 廣播及電視無線電台節目輔導準則第 3 條(1963) Guangbo Ji Dianshi Wuxiandaintai Jiemu Fudaozhunze [Guidelines on Programs of Radio and Wireless TV Stations] art. 3 (Oct. 19, 1963).

<sup>686</sup> 臺灣省政府(五三)九一一府教國字第六〇五九二號(1964) Government of Taiwan Province Notice (53) 911 Fujiaoguo Zi No.60592 (Sept. 11, 1964).

<sup>687</sup> 臺灣省各縣市推行社會國語教育實施要點，臺灣省教育廳(五九)教語字第〇〇三三二八號(1970) Taiwansheng Gexianshi Tuixing Guoyujiaoyu Shishiyadidian [Enforcement Points in Pursuance of Social Education of National Language in Every County and City in Taiwan Province], Department of Education, Taiwan Province Notice (59) Jiaoyu Zi No.003328 (Jul. 16, 1970).

<sup>688</sup> 加強國語推行辦法實施要點(1970) Jiaqiang Guoyu Tuixing Banfa Shishiyadidian [Enforcement Points of the Enhancement Measures in Pursuance of the National Language] (Nov. 26, 1970), 張博宇等，臺灣地區國語推行資料彙編(下) CHANG ET AL., *supra* note 583, at 831.

<sup>689</sup> 行政院(五九)人政參字第二八〇六九號令(1970) Administrative Yuan Order (59) Renzhengsan Zi No.28069 (Dec. 23, 1970).

<sup>690</sup> 臺灣省政府(六〇)府教語字第一一二九七五號令(1971) Taiwan Province Government Order (60) Fujiaoyu Zi No.112975 (Jul. 7, 1971).

	Improvement Points of the Enhancement Measures in Pursuance of the National Language in Every County and City of Taiwan Province. <sup>691</sup>
1973	Measures in Pursuance of the National Language. <sup>692</sup>
	Measures in Pursuance of the National Language in the Mountain Area Towns. <sup>693</sup>
1975	Speaking the national language was required when attending events in the public sphere. <sup>694</sup> TV Programs broadcasted in Min-nan (Holo) is restricted to 1 hour per day. <sup>695</sup>
1976	Speaking the national language was required when attending events in the public sphere. <sup>696</sup> “Radio and Television Act & the Enforcement Regulation of the Radio and Television Act” regulated that more than 55% of the programs on the radio and 70% on TV should be broadcast in the national language. Programs in vernacular languages should be reduced year by year. <sup>697</sup>
1977	Speaking the national language was required when attending events in the public sphere. <sup>698</sup>
1979	Candidates could not register for any election without national language proficiency. <sup>699</sup>

<sup>691</sup> 臺灣省各縣市加強推行社會國語教育改進要點(1971) Taiwansheng Gexianshi Jiaqiang Tuixing Shehui Guoyujiaoyu Gaijinyaodian [Improvement Points in Pursuance of Social Education of National Language in Every County and City in Taiwan Province] (1971). 臺灣省政府教育廳, 臺灣省社會教育法令有關資料彙編(1979) DEPARTMENT OF EDUCATION, TAIWAN PROVINCE GOVT. COLLECTION OF THE REGULATIONS OF SOCIAL EDUCATION IN TAIWAN PROVINCE 385-7 (1979).

<sup>692</sup> 國語推行辦法, 教育部(六二)臺參字第一九四六號令(1973) Guoyu Tuixing Banfa [Mandarin Promotion Measures], Ministry of Education Order (62) Taisan Zi No.1946, (Jan. 21, 1973) ) (*abolished* Feb. 12, 2003).

<sup>693</sup> 臺灣省山地鄉國語推行辦法, 臺灣省政府(六二)六二五府教五字第六七九四一號令(1973) Taiwansheng Shandixiang Guoyu Tuixing Banfa [Measures in Pursuance of the National Language in the Mountain Area Towns], Taiwan Province Government Order (62) 625 Fujiaowu Zi No. 67941 (June 25, 1973).

<sup>694</sup> 教育部臺(六四)社字第二〇〇五四號(1975) Ministry of Education Order Tai (64) She Zi No. 20054 (Aug. 7, 1975).

<sup>695</sup> 管仁健, 臺灣的霸權國語與悲情方言 Guan Ren-Jian, *Taiwan De Baquan Guoyu Yu Beicing Fangyan* [The Hegenmonic National Language and the Misery Dialects in Taiwan], *available at* <http://mypaper.pchome.com.tw/news/kuan0416/3/1281895814/20051231154803/> (last visited Feb 20, 2009).

<sup>696</sup> 臺灣省教育廳(六五)二六教五字第〇〇六九三號(1976) Department of Education, Taiwan Province Notice (65) 26 Jiao Zi No.00693 (Feb. 6, 1976); 臺灣省政府(六五)一三一六府教五字第九八三〇九號(1976) Taiwan Province Government Notice (65) 1216 Fujiaowu Zi No.98309 (Dec. 16, 1976).

<sup>697</sup> 廣播電視法第 20 條及廣播電視法施行細則第 19 條(1976) GUANGBO DIANSHI FA [Radio and Television Act] art. 20 (Jan. 8, 1976)& Guangbo Dianshi Fa Shixingxize [Enforcement Regulation of the Radio and Television Act] art. 19 (Jan. 8, 1976).

<sup>698</sup> 臺灣省教育廳(六六)教五字第〇二一一二號(1977) Department of Education, Taiwan Province Notice (66) Jiaowu Zi No.02112 (June 6, 1977); 臺灣省政府(六六)府教五字第一〇〇四三九號(1977) Taiwan Province Government Notice (66) Fujiaowu Zi No.100439 (Nov. 8, 1977).

<sup>699</sup> 教育部臺(六八)社字第三七六三號(1979) Ministry of Education Notice Tai (68) She Zi No. 3763 (Feb. 12, 1979).

1982	Speaking the national language was required when attending events in the public sphere. <sup>700</sup>
1983	Speaking the national language was required when attending events in the public sphere. <sup>701</sup>
1984	Speaking the national language was required when attending events in the public sphere. <sup>702</sup>
1985	The Ministry of Education proposed the Language Act Draft (never enforced). The draft suggested that people over two years old must speak the national language or would be warned or fined. <sup>703</sup>
1988	Chiang Ching-Kuo (蔣經國) died on January 13. Chiang's administration ended.
1992	The 1992 Additional Articles of the Constitution of the ROC, Article 18, proclaimed that " <i>The State shall accord to the aborigines in the free area legal protection of their status and the right to political participation. It shall also provide assistance and encouragement for their education, cultural preservation, social welfare and business undertakings.</i> " <sup>704</sup>
1993	The 20% time limit on the broadcast of other languages on radio and television was abolished. <sup>705</sup>
1997	The 1997 Additional Articles of the Constitution of the ROC, Article 10, stated that " <i>The State affirms cultural pluralism and shall actively preserve and foster the development of aboriginal languages and cultures.</i> " <sup>706</sup>
2000	Broadcast Languages Equality Protection of the Mass Rapid Transportation Instruments Law (Continuing) <sup>707</sup>

<sup>700</sup> 臺灣省教育廳(七一)教五字第○三八三九號(1982) Department of Education, Taiwan Province Notice (71) Jiaowu Zi No.03839 (May 12, 1982).

<sup>701</sup> 教育部臺(七二)社字第五一六六一號(1983) Ministry of Education Notice Tai (72) She Zi No.51661 (Dec. 12, 1983).

<sup>702</sup> 教育部臺(七三)社字第四二八二四號(1984) Ministry of Education Notice Tai (73) She Zi No.42824 (Oct. 20, 1984).

<sup>703</sup> Ministry of Education, Yuwenfa Caoan [Language Act Draft] (Oct. 1985). 洪固, 臺灣地區的方言與語言政策, 載於東師語文學刊 Hong Gu, *Taiwan Diqu De Fangyan Yu Yuyan Zhengce* [Dialects and Language Policies in Taiwan District], 9 TONGSHI YUWEN XUEKAN 83-4 (June 1996).

<sup>704</sup> 中華民國第二次憲法增修條文第 18 條(1992) ZHONGHUA MINGUO XIANFA DIERCI ZENGXIU TIAOWEN [The Second Revision of the Additional Articles of Constitution of the Republic of China] art. 18 (2<sup>nd</sup> Nat'l adopted May. 27, 1992, promulgated by the President May 28, 1992). English translation (Secretariat of the National Assembly trans. June 1992) is available at the Official Website of the Legislative Yuan <http://lis3.ly.gov.tw/nacgi/ttsweb?@0:0:1:dbini/nabook11db@@0.8022848832746419> (last visited Mar. 01, 2009).

<sup>705</sup> 總統(82)華總(一)義字第 3757 號令(1993) President Order (82) Huazong (1) Yin Zi No.3757 (Aug. 2, 1993).

<sup>706</sup> 中華民國第四次憲法增修條文第 10 條(1997) ZHONGHUA MINGUO XIANFA DISICI ZENGXIU TIAOWEN [The Fourth Revision of the Additional Articles of Constitution of the Republic of China] art. 10 (3<sup>rd</sup> Nat'l adopted Jul. 18, 1997, promulgated by the President Jul. 21, 1997). English translation (Secretariat of the National Assembly trans. Oct. 1997) is available at the Official Website of the Legislative Yuan <http://lis3.ly.gov.tw/nacgi/ttsweb?@0:0:1:dbini/nabook11db@@0.8022848832746419> (last visited Mar. 01, 2009).

<sup>707</sup> 大眾運輸工具播音語言平等保障法(2000) DAZHONG YUNSHU GONGJU BOYINYUYAN PINGDENG BAOZHANGFA [Broadcast Languages Equality Protection of the Mass Rapid Transportation Instruments Law] (Apr. 19, 2000); The Council of Hakka Affairs was also established in 2001. The MPC of the MOE

2000	The Mandarin Promotion Council was reorganized as the National Languages Committee (Continuing)
2001	Required Vernacular Language Classes in All Primary Schools based on Mandarin Plus (Continuing)
2001	New Language Curriculum of the 9-Year Integrated Curriculum (Continuing)
2003	Abolishment of the 1973 Mandarin Promotion Measures (Enforced)
2003	Language Equality Law Draft (Deferred sine die)
2003	National Language Development Law Draft (Deferred sine die)
2005	Hakka Language Development Law Draft (Deferred sine die)
2007	National Language Development Law Draft (Deferred sine die)

---

changed its name from the Mandarin Promotion Council to the National Languages Promotion Committee in the same year. The NLPC further expanded its organization to include Holo, Hakka, and indigenous languages. In the following years, different versions of the drafts of language laws were proposed by different departments in the government, including the Council of Hakka Affairs (2002), Institute of Linguistics, Academia Sinica (2002), the Council of Indigenous Peoples (2003). The Ministry of Education formulated a final draft of the Language Equality Law (2003). 語言公平法草案 Yuyan Gongpingfa Caoan [The Draft of the Language Equality Law] (2003), *available at* <http://mail.tku.edu.tw/cfshih/ln/enactment.htm>.

### **Appendix 3**

#### MAIN INTERNATIONAL TREATIES AND DOCUMENTS REGARDING LANGUAGE ISSUES

1. Universal Declaration of Human Rights of 1948
2. UNESCO Convention against Discrimination in Education of 1960
3. International Covenant on Civil and Political Rights of 1976
4. International Covenant on Economic, Social and cultural Rights of 1976
5. Convention on the Elimination of All Forms of Discrimination against Women of 1979
6. Declaration on the Human Rights of Individuals who are not Nationals of the Country in Which They Live of 1985
7. International Labor Organization convention No. 169 of 1989
8. The Convention on the Rights of the Child of 1989
9. International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families
10. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 1992
11. Vienna Declaration and Programme of Action adopted at the World Conference on Human Rights of 1993
12. THE UNIVERSAL DECLARATION OF LINGUISTIC RIGHTS (Barcelona: UNESCO Culture of Peace Programme 1996).

## Bibliography

Revised Oct. 1, 2011

### PRIMARY SOURCES

#### INTERNATIONAL LAW

##### CONVENTIONS AND TREATIES

1. The International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976.
2. The International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976.
3. The First Optional Protocol to the International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 302, entered into force March 23, 1976.
4. The Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at abolishing the death penalty, G.A. res. 44/128, annex, 44 U.N. GAOR Supp. (No. 49) at 207, U.N. Doc. A/44/49 (1989), entered into force July 11, 1991.
5. The Optional Protocol on the International Covenant on Economic, Social and Cultural Rights, G.A. res. 63/117 (Dec. 10, 2008).
6. Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 33 (Entered into force on Jan. 27, 1980) (Vienna, May 23, 1969).
7. The Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277 (Dec. 9, 1948).
8. U.N. Charter, June 26, 1945, 59 Stat. 1031, 1 U.N.T.S. XVI, entered into force Oct. 24, 1945.

##### DECLARATIONS

1. The Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).
2. The Universal Declaration of Linguistic Rights (Barcelona: UNESCO Culture of Peace Programme 1996), [www.linguistic-declaration.org/versions/angles.pdf](http://www.linguistic-declaration.org/versions/angles.pdf) (last visited Apr. 23, 2012). (not a U.N. official declaration)

WARTIME DOCUMENTS

Imperial General Headquarters, Supreme Commander for the Allied Powers General Order No.1, J.C.S. 1467/2 (Sept. 2, 1945), *approved by the President of the United States*, Aug. 17, 1945, CONGRESSIONAL RECORD (Sept. 6, 1945).

UNITED NATIONS HUMAN RIGHTS GENERAL COMMENTSHuman Rights Committee

1. Human Rights Committee General Comment 34, Article 19, (102nd session, Jul. 2011), CCPR/C/GC/34 (Sep. 12, 2011).
2. Human Rights Committee, General Comment 32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007).
3. Human Rights Committee, General Comment 25, The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25), (Fifty-seventh session, 1996), U.N. Doc. HRI/GEN/1/Rev.6 at 168 (2003).
4. Human Rights Committee, General Comment 23, Article 27 (Fiftieth session, 1994), U.N. Doc. CCPR/C/21/Rev.1/Add.5 (1994), U.N. Doc. HRI/GEN/1/Rev.6 at 158 (2003).
5. Human Rights Committee, General Comment 18, Non-discrimination (Thirty-seventh session, 1989), U.N. Doc. HRI/GEN/1/Rev.6 at 146 (2003).
6. Human Rights Committee, General Comment 3, Article 2 Implementation at the national level (Thirteenth session, 1981), U.N. Doc. HRI/GEN/1/Rev.6 at 125 (2003).

Committee on Economic, Social and Cultural Rights

1. UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment 21: The Right of Everyone to Take Part in Cultural Life (Sep. 2009), E/C.12/GC/21 (Dec. 21, 2009).
2. UN Committee on Economic, Social and Cultural Rights (CESCR), General comment 20: Non-discrimination in Economic, Social and Cultural Rights (art. 2, para. 2), E/C.12/GC/20 (Jul. 2, 2009).
3. UN Committee on Economic, Social and Cultural Rights, General Comment (CESCR) 18: The Right to Work (Art. 6 of the Covenant), E/C.12/GC/18 (Feb. 6, 2006).
4. UN Committee on Economic, Social and Cultural Rights (CESCR), General comment 15: The Right to Water (arts. 11&12 of the Covenant), E/C.12/2002/11 (Jan. 23, 2003).
5. UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment 13: The Right to Education (Art. 13 of the Covenant), E/C.12/1999/10 (Dec. 8, 1999).

## CONSTITUTIONAL LAW

### TAIWAN (R.O.C. PERIOD)

1. 中華民國憲法(1947) ZHONGHUA MINGUO XIANFA [The Constitution of the Republic of China (Taiwan)] (Nat'l Constituent Assembly adopted Dec. 25, 1946, Nat'l gov't promulgated Jan. 1, 1947, enacted Dec 25, 1947).
2. 中華民國憲法第二次增修條文(1992) ZHONGHUA MINGUO XIANFA DIERCI ZENGXIU TIAOWEN [The Second Additional Articles of the Constitution of the Republic of China] (May 28, 1992) (2nd Nat'l adopted May. 27, 1992, promulgated by the President May 28, 1992).
3. 中華民國第四次憲法增修條文(1997) ZHONGHUA MINGUO XIANFA DISICI ZENGXIU TIAOWEN [The Fourth Revision of the Additional Articles of Constitution of the Republic of China] (3rd Nat'l adopted Jul. 18, 1997, promulgated by the President Jul. 21, 1997).

## MAJOR STATUTES, ADMINISTRATIVE ORDERS, REGULATIONS AND RULES

### TAIWAN (R.O.C. PERIOD)

1. 公民與政治權利國際公約及經濟社會文化權利國際公約施行法(2009) GONGMIN YU ZHENGZHI QUANLI GONGYUE JI JINGJI SHEHUI WENHUA QUANLI GUOJIGONGYUE SHIXINGFA [Act to Implement the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights] (promulgated by the President, Apr. 22, 2009, effective Dec. 10, 2009).
2. 消除對婦女一切形式歧視公約施行法(2011) XIAOCHU TUI FUNU YIQIE XINGSHI QISHI GONGYUE SHIXINGFA [Act to Implement the Convention on the Elimination of All Forms of Discrimination against Women] (promulgated by the President, June 8, 2011, effective Jan. 1, 2012).
3. 大眾運輸工具播音語言平等保障法 DAZHONG YUNSHU GONGJU BOYINYUYAN PINGDENG BAOZHANGFA [Broadcast Languages Equality Protection of the Mass Rapid Transportation Instruments Law] (promulgated by President, Apr. 19, 2000, effective July 19, 2000).
4. 廣播電視法第 20 條(1976) GUANGBO DIANSHI FA [Radio and Television Act] art. 20& 廣播電視法施行細則第 19 條(1976) Guangbo Dianshi Fa Shixingzize [Enforcement Regulation of the Radio and Television Act] art. 19 (Jan. 8, 1976).
5. 教育部組織法第 1 條(1973) JIAOYUBU ZUZHIFA [Organization Law of the Ministry of Education] art. 1 (Jul. 25, 1973) (Taiwan).

6. 國語推行辦法, 教育部(六二)臺參字第一九四六號令(1973) Guoyu Tuixing Banfa [Mandarin Promotion Measures], Ministry of Education Order (62) Taisan Zi No.1946, (Jan. 21, 1973) ) (*abolished* Feb. 12, 2003).
7. 廣播及電視無線電台節目輔導準則第 3 條(1963) Guangbo Ji Dianshi Wuxiandaintai Jiemu Fudaozhunze [Guidelines on Programs of Radio and Wireless TV Stations] art. 3 (Oct. 19, 1963).
8. 司法院(53)台函參字第 1450 號, 民事法令釋示彙編 Judicial Yuan (53) Taihansan Zhi No. 1450 (Mar. 2, 1964), *in* MINSHI FALING SHISHI HUIBIAN 2 (June 1983) (citing Judicial Yuan Order No. 459 (司法院令第 459 號)).
9. 民法第 1 條 MING FA [Civil Code] art. 1 (1929).

#### TAIWAN (JAPANESE RULING PERIOD)

1. 国民学校令(昭和 16 年勅令第 148 号) KOKUMINGAKKOREI [National School Order], No. 148 Imperial Order of the 16<sup>th</sup> Year of Shōwa (1941).
2. 台湾教育令(大正 11 年勅令第 20 号) TAIWAN KYŌIKUREI [Order of Taiwan Education], No. 20 Imperial Order of the 11<sup>th</sup> Year of Daishō (1922).
3. 県立語学校創設方法 Keiritsu Gogakko Sōsetsu Hōhō [Regulation on the Establishment of County Language Schools] (1895)
4. 明治 30 年府令 28 号 MEIJI SANJU□NEN FUREI NIJU□HACHIGO ]No. 28 Order of the Governor-General Office of the 30<sup>th</sup> Year of Meiji] (1897).
5. 明治 29 年府令 38 号 MEIJI NIJU□NANANEN FUREI SANJU□HACHIGO [No. 38 Order of the Governor-General Office of the 29<sup>th</sup> Year of Meiji] (1896)

#### **JUDICIAL DECISIONS**

##### TAIWAN

1. 司法院大法官會議解釋第 603 號(2005) SIFAYUAN DAFAGUAN HUIYI JIESHI [Interpretation of the Grand Justices, Justice Yuan] No.603 (Sep. 28, 2005).
2. 司法院大法官會議解釋 443 號(1997) SIFAYUAN DAFAGUAN HUIYI JIESHI [Interpretation of the Grand Justices, Justice Yuan] No. 443 (Dec. 26, 1997).
3. 司法院大法官會議解釋第 329 號(1993) SIFAYUAN DAFAGUAN HUIYI JIESHI [Interpretation of the Grand Justices, Justice Yuan] No. 329 (1993).
4. 最高法院 99 台上 7468 號判決 Zuigao Fayuan [Supreme Court] 99 Taishang No.7468 (Dec. 2, 2010).
5. 台北地方法院 96 年度國字第 25 號判決 Taipei Difang Fayuan [Taipei District Court], 96 Guo Zhi No.25 (Mar. 11, 2009).

U.S.A. (Not binding in Taiwan)

1. *Garcia v. Spun Steak Co.*, 998 F.2d 1480 (1993).
2. *Gutierrez v. Municipal Court*, 838 F.2d 1031 (1988).
3. *Jurado v. Eleven-Fifty Corporation*, 813 F.2d 1406 (9th Cir.1987).
4. *Garcia v. Gloor*, 618 F. 2d 264 (5th Cir. 1980).
5. *Saucedo v. Brothers Well Services, Inc.*, 464 F. Supp. 919 (S.D. Tex. 1979).

**SECONDARY SOURCES****LEGISLATIVE DRAFTS**

1. 文建會，國家語言發展法草案 Council for Cultural Affairs, Guojia Yuyan Fazhanfa Caoan [The Draft of the National Languages Development Law] (*promulgated by the Council of Cultural Affairs, 2003*) (Taiwan), *available at* <http://mail.tku.edu.tw/cfshih/seminar/20051231.htm> (last visited Apr. 17, 2012). The original governmental link [http://www.cca.gov.tw/elandapp/autocue/upload\\_techdoc/1170386245768/%B0%E A%AEa%BBY%A8%A5%B5o%AEi%AAk%AF%F3%AE%D7.doc](http://www.cca.gov.tw/elandapp/autocue/upload_techdoc/1170386245768/%B0%E A%AEa%BBY%A8%A5%B5o%AEi%AAk%AF%F3%AE%D7.doc) has been expired but Shih Cheng-Feng's website keeps the text.
2. 客家語言發展法草案 Kejia Yuyan Fazhanfa Caoan [The Draft of Hakka Language Development Law] (*promulgated by the Council of Hakka Affairs 2005*), *available at* <http://mail.tku.edu.tw/cfshih/seminar/20051231.htm>
3. 文建會，國家語言發展法草案 Guojia Yuyan Fazhanfa Caoan [The Draft of the National Languages Development Law] (*promulgated by the Council of Cultural Affairs 2003*), *available at* <http://mail.tku.edu.tw/cfshih/seminar/20051231.htm>
4. 語言公平法草案 Yuyan Gongpingfa Caoan [The Draft of the Language Equality Law] (2003) (Taiwan), *available at* <http://mail.tku.edu.tw/cfshih/ln/enactment.htm>. (last visited Apr. 15, 2012).
5. 語文法草案 The Ministry of Education, Yuwenfa Caoan [Language Act Draft] (Oct., 1985) (Taiwan). 洪固，臺灣地區的方言與語言政策，載於東師語文學刊 Hong Gu, *Taiwan Diqu De Fangyan Yu Yuyan Zhengce* [Dialects and Language Policies in Taiwan District], 9 TONGSHI YUWEN XUEKAN 83-4 (June 1996).

**GAZETTE OF THE LEGISLATIVE YUAN**

1. 立法院公報第 100 卷第 43 期 100:43 (3895) LIFAYUAN GONGBAO [Gazette of the Legislative Yuan] (Jun. 1, 2011).

2. 立法院公報第 94 卷第 29 期 94:29 (3411) LIFAYUAN GONGBAO [Gazette of the Legislative Yuan] (May 27, 2005).
3. 立法院公報第 96 卷第 10 期上冊 96:10(Shang) (3533) LIFAYUAN GONGBAO [Gazette of the Legislative Yuan] (Jan. 22, 2007).
4. 立法院公報第 94 卷第 6 期第 1 冊 94:6(1) (3388) LIFAYUAN GONGBAO [Gazette of the Legislative Yuan] (Jan. 24, 2005).
5. 立法院公報 64 卷 93 期 Statement of Mu Cao, 64:93 LIFAYUAN GONGBAO [Gazette of the Legislative Yuan] (Nov. 1975).
6. 立法院公報第 62 卷第 6 期 62:53 LIFAYUAN GONGBAO [Gazette of the Legislative Yuan] (Jul. 14, 1973).
7. 立法院公報 59 卷 56 期 Statement of Mu Cao, 59:56 LIFAYUAN GONGBAO [Gazette of the Legislative Yuan] (Jul 25, 1970).

### **BOOKS, DISSERTATIONS, SHORTER WORKS IN COLLECTION**

#### ENGLISH

1. RANDY I. BORN ET AL., EDUCATING ENGLISH LANGUAGE LEARNERS IN WASHINGTON STATE, 2009-10 (Jan. 2011).
2. BERTRAND G. RAMCHARAN, THE FUNDAMENTALS OF INTERNATIONAL HUMAN RIGHTS TREATY LAW (2011).
3. ANDREW VINCENT, THE POLITICS OF HUMAN RIGHTS (Oxford 2010).
4. KAMRANI DAVID HARRISON, WHEN LANGUAGE DIE- THE EXTINCTION OF THE WORLD'S LANGUAGES AND THE EROSION OF HUMAN KNOWLEDGE (Oxford Univ. Press 2007).
5. DAVID CRYSTAL, THE FIGHT FOR ENGLISH (Oxford Univ. Press 2007) (2006).
6. Thomas Ricento ed., AN INTRODUCTION TO LANGUAGE POLICY: THEORY AND METHOD (Blackwell 2006).  
     Thomas Ricento, *Theoretical Perspectives: An Overview*  
     Nancy H. Hornberger, *Frameworks and models in Language Policy and Planning*  
     Harold Schiffman, *Language Policy and Linguistic Culture*
7. DAVID CRYSTAL, HOW LANGUAGE WORKS (Avery 2005).
8. SAMUEL P. HUNTINGTON, WHO ARE WE: THE CHALLENGES TO AMERICA'S NATIONAL IDENTITY (Simon & Schuster 2004).
9. LINDA THOMAS, SHAN WAREING, ISHTLA SINGH, LANGUAGE, SOCIETY, AND POWER- AN INTRODUCTION (Oxen: Routledge, 2nd ed., 2004).
10. United Nations, FINAL CLAUSES OF MULTILATERAL TREATIES HANDBOOK (2003).
11. Will Kymlicka & Alan Patten eds., LANGUAGE RIGHTS AND POLITICAL THEORY (Oxford Univ. Press 2003).

Alan Patten & Will Kymlicka, *Context, Issues, and Approaches*  
 Ruth Rubio-Marín, *Exploring the Competing Rationales*  
 François Grin, *Linguistic Diversity*  
 Stephan May, *Misconceiving Minority Language Rights: Implications for  
 Liberal Political Theory*  
 David Laitin & Rob Reich, *A Liberal Democratic Approach*  
 Michael Blake, *Language Death and Liberal Politics*  
 Daniel Weinstock, *The Antinomy of Language Policy*  
 Philippe Van Parijs, *Linguistic Justice*  
 Jacob Levy, *Language Rights, Literacy, and the Modern State*  
 Allen Patten, *What Kind of Bilingualism?*  
 Idil Boran, *Diversity, Public Goods, and Fairness*  
 Denise Réaume, *Beyond Personality: the Territorial and Personal Principles of  
 Language Policy Reconsidered*  
 Thomas Pogge, *Accommodation Rights fro Hispanics in the United States*  
 Rainer Bauböck, *Cultural Citizenship, Minority Rights and Self-Government*

12. Michael E. Brown & Sumit Ganguly, eds., *FIGHTING WORDS- LANGUAGE POLICY AND ETHNIC RELATIONS IN ASIA* (MIT Press 2003).
13. UNITED NATIONS, *FINAL CLAUSES OF MULTILATERAL TREATIES HANDBOOK* (2003).
14. DAVID WEISSBRODT, JOAN FITZPATRICK & FRANK NEWMAN, *INTERNATIONAL HUMAN RIGHTS—LAW, POLICY, AND PROCESS* (3d ed. 2001).
15. Joshua A. Fishman ed., *LANGUAGE AND ETHNIC IDENTITY* (Oxford Univ. Press 2001).
16. LEO T.S. CHING, *BECOMING JAPANESE- COLONIAL TAIWAN AND THE POLITICS OF IDENTITY FORMATION 37-8* (Univ. of Cali. Press 2001).
17. DAVID CRYSTAL, *LANGUAGE DEATH* (Cambridge Univ. Press 2004) (2000).
18. DANIEL NETTLE & SUZANNE ROMAINE, *VANISHING VOICES- THE EXTINCTION OF THE WORLD'S LANGUAGES* (Oxford Univ. Press 2000).
19. JOSEPH CARENS, *CULTURE, CITIZENSHIP AND COMMUNITY: A CONTEXTUAL EXPLORATION OF JUSTICE AS EVENHANDEDNESS* (Oxford Univ. Press 2000).
20. TOVE SKUTNABB-KANGAS, *LINGUISTIC GENOCIDE IN EDUCATION OR WORLD DIVERSITY AND HUMAN RIGHTS* (Lawrence Erlbaum Publishers 2000).
21. TAY-SHENG WANG, *LEGAL REFORM IN TAIWAN UNDER JAPANESE COLONIAL RULE (1895-1945): THE RECEPTION OF WESTERN LAW* (Univ. of Wash. Press, 2000).
22. FERNAND DE VARENNES, *LANGUAGE, MINORITIES AND HUMAN RIGHTS* (Hague: Kluwer Law Internat'l, 1996).
23. WILL KYMLICA, *MULTICULTURAL CITIZENSHIP* (Oxford Univ. Press 1995).
24. TOVE SKUTNABB-KANGAS & ROBERT PHILLIPSON, *LINGUSITIC HUMAN RIGHTS: OVERCOMING LINGUISTIC DISCRIMINATION* (Berlin & New York: Mouton de Gruyter, 1994).

25. DAVID CRYSTAL, ENGLISH AS A GLOBAL LANGUAGE (Cambridge Univ. Press, 2d ed., 2003) (1997).
26. WILL KYMLICA, MULTICULTURAL CITIZENSHIP (Oxford Univ. Press 1995)
27. DEREK BICKERTON, LANGUAGE AND HUMAN BEHAVIOR (Univ. of Washington Press 1995).
28. James Crawford ed., LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY (James Crawford ed. 1992).  
     English Plus Information Clearinghouse, *The English Plus Alternative* (1987)  
     Mary Carol Combs, *English Plus: Responding to English Only*
29. MARY ANN GELNDON, RIGHTS TALK- THE IMPROVERISHMENT OF POLITICAL DISCOURSE (The Free Press 1991).
30. PATRICK L. COURTS, LITERACY AND EMPOWERMENT (Donaldo Macedo ed., New York: Bergin & Garvey 1991).
31. ROBERT L. COOPER, LANGUAGE PLANNING AND SOCIAL CHANGE (Cambridge Univ. Press 1989).
32. BENEDICT ANDERSON, IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM (Verso, rev. ed. 1991) (1983).
33. MALA TABORY, MULTILINGUALISM IN INTERNATIONAL LAW AND INSTITUTIONS (Alphen aan den Rijn: Sijthoff and Noordhoff 1980).
34. PATRICIA E. TSURUMI, JAPANESE COLONIAL EDUCATION IN TAIWAN (1895-1945) 243-4 (Harvard Univ. Press 1977).
35. MARC BLOCH, FRENCH RURAL HISTORY: AN ESSAY ON ITS BASIC CHARACTERISTICS (Janet Sondheimer trans., 1966)
36. JEREMY BENTHAM, OF LAWS IN GENERAL (H.L.A. Hart ed., London: Athlone Press 1970)(1782).

#### CHINESE

1. 客家事務委員會，九十九年至一百年全國客家人口基礎資料調查研究 COUNCIL OF HAKKA AFFAIRS, JIU SHI JIU NIAN ZHI YI BAI NIAN QUAN GUO KE JIA REN KOU JI ZHU ZI LIAO DIAO CHA YAN JIU [A Research Study of the Basic Data of the Population of the Hakka People in the 99<sup>th</sup> to 100<sup>th</sup> years (of the ROC)] 90 (2011).
2. 郭明正，真相巴萊 KUO MINGZHENG, TRUTH BALE (Yuan-Liou 2011).
3. 臺灣國際法學會，國際公約內國法化的實踐 TAIWANESE SOCIETY OF INTERNATIONAL LAW, GUOJIGONGYUE NEGUOFAHUA DE SHIJIAN [PRACTICE OF TRANSFORMING INTERNATIONAL LAW TO DOMESTIC LAW] (Taipei: Ministry of Justice, Oct. 29, 2009) (Taiwan).
4. 徐錦輝，臺灣客家族群「語言權」保障之研究—以國家語言發展法草案為例 Chin-Hui Hsu, Taiwan Kejia Zuqun “Yuyanquan” Baozhang Zhi Yanjiu- Yi Guojia Yuyan Fazhanfa Caoan Weili [Preservation of Taiwan Hakka “Linguistic Rights”: A

- research using the National Language Development Bill] (2008) (Master Thesis, Central Univ.) (on file with Central Univ.).
5. 國立臺灣師範大學，國音學 NATIONAL TAIWAN NORMAL UNIVERSITY, KUO YIN SHUE [Mandarin Chinese Phonetics] (8<sup>th</sup> ed., 2008).
  6. 陳培豐，同化之同床異夢- 日治時期臺灣的語言政策、近代化與認同 CHEN, PEI-FENG, THE DIFFERENT INTENTIONS BEHIND THE SEMBLANCE OF "DOUKA"- THE LANGUAGE POLICY, MODERNIZATION AND IDENTITY IN TAIWAN DURING THE JAPAN RULING PERIOD 145 (Rye Field 2006) (Taiwan).
  7. 吳庚，行政法之理論與實用 WU GENG, XINGZHENGFA ZHI LILUN YU SHIYONG [The Theory and Practice of Administrative Law] 165-6 (Sanmin 9<sup>th</sup> ed., 2006).
  8. 廖福特，國際人權法 FORT FU-TE LIAO, GUOJI RENQUANFA [International Human Rights Law] 35 (Taipei: Angle Publishing 2005) (Taiwan).
  9. 客家事務委員會，全國客家人口基礎資料調查研究 COUNCIL OF HAKKA AFFAIRS, QUAN GUO KE JIA REN KOU JI CHU ZI LIAO DIAO CHA YAN JIU [A Research Study of the Basic Information of the National Hakka Population] (2004).
  10. 客家事務委員會，九十三年度臺灣客家民眾客語使用狀況調查研究 COUNCIL OF HAKKA AFFAIRS, JIUSHISAN NIANDU TAIWAN KEJIA MINZHONG KEYU SHIYONG ZHUANGKUANG DIAOCHA YANJIU [A Research Study of the Usage Circumstances of the Hakka Language used by the Taiwanese Hakka People in the 93<sup>rd</sup> year (of the ROC)] (2004).
  11. 吳欣陽，臺灣近代型國家語言法令之形成與演變 Hsin-Yang Wu, The Formation and Evolution of the Language Laws and Regulations of the Modern States in Taiwan (June 2004) (unpublished LL.M. Thesis, Nat'l Taiwan Univ.)(on file with Law Library, Nat'l Taiwan Univ.).
  12. 周婉窈，海行兮的年代 ZHOU WAN-YAO, HAIXINGXI DE NIANDAI [The Age of Umiyukaba] (Yun Chen 2003).  
- 周婉窈，臺灣人第一次的「國語」經驗 ZHOU WAN-YAO, *Ta wanren diyici de "guoyu" jingyan* [The First Experience of the Taiwanese People with the "National Language"]
  13. 施正鋒編，各國語言政策-多元文化與族群平等 Shih Cheng-Feng ed., GEGUO YUYANZHENGCE- DUOYUANWENHUA YU ZUQUNPINGDENG [Language Policies in Different Countries- Multiculturalism and Ethnic Equality] (Avanguard 2002).  
林修澈，中國的語言政策與少數民族語言活力 Lim Siu-theh, *Zhongguo De Yuyanzhengce Yu Shaoshuminzu Yuyanhuoli* [Language Policy and Language Vitality of Minorities in China]  
蔡芬芳，德國語言政策- 以索勃人為例，載於各國語言政策- 多元文化與族群平等 Cai Fen-Fang, *Deguo Yuyan Zhengce- Yi Suoboren Weili* [Language Policy in Germany- Sorbish as an Example]  
胡慶山，日本語言政策的考察與展望，載於各國語言政策- 多元文化與族

群平等 Hu Ching-shan, *Riban Yuyanzhengce De Kaocha Yu Zhanwang* [A Study of the Language Policy in Japan]

14. 謝國平, 語言學概論 XIE GUO-PING, YUYANXUE GAILUN [An Introduction to Linguistics] (San Min 2002).
15. 黃昭元等, 兩國論與臺灣國家定位 HUANG ZHAO-YUAN ET AL., LIANG GUO LUN YU TAI WAN GUO JIA DING WEI [The Theory of Two States and the National Status of Taiwan] (Zhaoyuan Huang ed., Xue Lin 2001).
16. 葉寶奎, 明清官話音系 YE BAO-KUI, MINGQING GUANHUA YINXI [The Genealogy of Mandarin in the Ming and the Ching Dynasties] (Xia Men Univ. Press 2001).
17. 王泰升, 臺灣法律史概論 WANG TAY-SHENG, TAIWAN FALUSHI GAILUN [An Introduction to the Legal History of Taiwan] (Angle Publishing 2001).
18. 許佩賢, 臺灣近代學校的誕生-日本時代初等教育體系的成立(1895-1911) Hsu, Pei-Hsien, The Establishment of Taiwan "Modern School" in Japanese Period (1895-1945) 196-207 (Jan. 2001) (unpublished Ph.D. dissertation, Nat'l Taiwan Univ.) (on file with Main Library, Nat'l Taiwan Univ.).
19. 程紹剛, 荷蘭人在福爾摩莎 CHENG SHAO-GANG, DE VOC EN FORMOSA 1624-1662 [Dutch East India Company in Formosa 1624-1662] (Linking 2000).
20. 曹永和, 臺灣早期歷史研究續集 TSAO YUNG-HO, TAIWAN ZAOQI LISHI YANJIU XUJI [The Follow-up Collection of the Early Taiwan History Research] (Linking 2000).
 

曹永和, 明鄭時期以降之臺灣 TSAO YUNG-HO, *Mingzhengshiqi Yijiang Zhi Taiwan* [Taiwan before the Period of the Cheng Regime]

曹永和, 多族群的臺灣島史 TSAO YUNG-HO, *Duozuqun De Taiwandaoshi* [The Multi-ethnic History of Taiwan Island]
21. 楊彥杰, 荷據時代臺灣史 YANG YAN-JIE, HEJUSHIDAI TAIWANSHI [Taiwan History of the Dutch Occupation Period] 107 (Linking 2000).
22. 李壬癸, 臺灣原住民史語言篇 LI JEN-KUEI, TAIWAN YUANZHUMINSHI YUYANPIAN [The History of Formosan Aborigines: Linguistic] (Nantou: The Historical Research Commission of Taiwan Province, Aug. 1999).
23. 顏厥安, 法與實踐理性 YEN JUE-AN, FA YU SHIJIANLIXING [Law and Rational Practice] (Asian Culture 1998).
24. 中村孝志, 荷蘭時代臺灣史研究(上) NAKAMURA TAKASHI, HELANSHIDAI TAIWAN SHI YANJIU (SHANG) [Taiwan History Studies of the Dutch Period (First)] (Wu Mi-cha et. al trans., Nantian 1997).
25. 施正鋒編, 語言政治與政策 Shih, Cheng-Feng ed., YU YAN ZHENG ZHI YU ZHENG CE [Language Politics and Policy] (Avanguard 1996).
26. 黃宣範, 語言、社會與族群意識：臺灣語言社會學的研究 HUANG XUAN-FAN, YU YAN SHE HUI YU ZU QUN YI SHI: TAI WAN YU YAN SHE HUI XUE DE YAN JIU [Language,

- Society, and Ethnic Identity: A Study of Taiwanese Lingual Sociology] (Taipei:Crane 1995).
27. 張博宇等, 臺灣地區國語推行資料彙編(下) CHANG BO-YU ET AL., TAIWAN DIQU GUOYU TUIXING ZILIAO HUIBIAN (XIA) [Information and Materials of the National Language Movement in Taiwan (2nd half)] (Chang Bo-Yu ed., Taipei: Dept. of Educ., Taiwan Province Government 1989).
  28. 行政院研究發展考核委員會, 國語推行政策及措施之檢討與改進 RESEARCH, DEVELOPMENT, AND EVALUATION COMMISSION OF THE EXECUTIVE YUAN, GUO YU TUI XING ZHENG CE JI CUO SHI ZHI JIAN TAO YU GAI JIN [Review and Amendment of the National Language Popularization Policy and Measures] (1982).
  29. 吳新榮, 吳新榮全集六- 吳新榮日記(戰前) WU, HSIN-RONG, WU HSIN RONG QUAN JI LIU- WU HSIN RONG RI JI (ZHAN QIAN) [Collection of Writings (6)- Diary (Prewar)] 59 (Liang-Ze Zhang ed. 1981).
  30. 臺灣省政府教育廳, 臺灣省社會教育法令有關資料彙編(1979) DEPARTMENT OF EDUCATION, TAIWAN PROVINCE GOVT. COLLECTION OF THE REGULATIONS OF SOCIAL EDUCATION IN TAIWAN PROVINCE (1979).
  31. 立法院公報 59 卷 56 期 Official Gazette of the Legislative Yuan, No. 59/56 15-6 (Jul. 25, 1970).
  32. 張博宇, 臺灣地區國語運動史料 ZHANG BO-YU, TAIWAN DIQU GUOYUYUNDONG SHILIAO [The Historical Materials of the National Language Movement in Taiwan District] (Taiwan Shangwu Yinshuguan 1974).
  33. 方師鐸, 五十年來中國國語運動史 FANG SHI-DUO, WUSHINIANLAI ZHONGGUO GUOYU YUNDONGSHI [The History of the Chinese National Language Movement for 50 Years] 59-61 (Mandarin Daily News 1965).
  34. 臺灣行政長官公署教育處, 臺灣一年來之教育 EDUCATION OFFICE OF THE TAIWAN PROVINCIAL ADMINISTRATIVE EXECUTIVE OFFICE, TAIWAN YINIANLAI ZHI JIAOYU [Education in One Year in Taiwan] (1946) (Taiwan).
  35. 臺灣行政長官公署, 臺灣省五十一年來統計提要 TAIWAN PROVINCIAL ADMINISTRATIVE EXECUTIVE OFFICE, TAIWANSHENG WUSHIYINIANLAI TONGZI TIYAO [STATISTIC REPORT OF TAIWAN PROVINCE OF THE FIFTY-ONE YEARS] (Taipei: Executive Office of the Government of Taiwan Province, 1946).
  36. 臺灣省行政長官公署, 臺灣省行政長官公署施政報告-臺灣省參議會第一屆第二次大會 TAIWAN PROVINCIAL ADMINISTRATIVE EXECUTIVE OFFICE, TAIWANSHENG XINGZHENGZHANGGUAN GONGSHU SHIZHENG BAOGAO- TAIWANSHENG CANYIHUI DIYIJIE DIERCI DAHUI [Administration Report of the Taiwan Administrative Office-The 2<sup>nd</sup> Meeting, 1st Term, Senate of Taiwan Province] (Taipei, 1946).
  37. 王世杰、錢端升 比較憲法 WANG SHI-JIE AND QIAN DUAN-SHENG, BIJIAO XIANFA [Comparative Constitution] (China University of Political Science and Law Press, 1997) (1925, 1936).

JAPANESE

1. 藤井久美子, 近現代中国における言語政策 FUJI'I KUMIKO, KINGENDAI CHŪGOKU NI OKERU GENGOSEISAKU [Language Policy of Modern China] (Sangensha 2003).
2. 臺灣總督府, 昭和二十年台湾統治概要 TAIWAN SŌTOKUFU [Taiwan Governor-General Office], SHŌWA NIJU-NEN TAIWAN TŌJIGAIYŌ [Summary of the Rule of Taiwan in the 20<sup>th</sup> Year of Shōwa] (1945).
3. 佐藤源治, 臺灣教育の進展 SATŌ GENJI, TAIWAN KYŌIKU NO SHINTEN [The Development of Education in Taiwan] (Taiwan Shubban Bunka Kabushikigaisha 1943).
4. 驚巢敦哉, 臺灣保甲皇民化讀本 WASHIZU ATSUYA, TAIWAN HOKŌKŌMINKA TOKUHON [Textbook of Taiwan Hokō System (an administrative system organized on the basis of households) and the Movement of Imperial Subjective] (Taiwan Keisatsu Kyōkai [Taiwan Policemen Association] 1941) (Taiwan, Japan).
5. 臺灣教育研究會, 臺灣學事年鑑(昭和十五年) TAIWAN KYŌIKU KENKYU-KAI [Taiwan Education Research Association], TAIWAN GAKUJI NENKAN (SHŌWA JU-GO NEN) [Taiwan Education Yearbook: the 15th Year of Shōwa] (1940) (Taiwan, Japan).
6. 臺灣教育會, 臺灣教育沿革誌 TAIWAN KYŌIKUKAI [Taiwan Education Association], TAIWAN KYŌIKU ENKA KUSHI [The Education History of Taiwan] (Nan Tian 1995) (1939) (Taiwan, Japan).
7. 臺灣總督府警務局, 臺灣總督府警察沿革誌 TAIWAN SŌTOKUFU KEIMUKYOKU [The Bureau of Police Affairs of the Taiwan Governor-General Office], TAIWAN SŌTOKUFU KEISATSU ENKAKUSHI [A History of the Police of the Government-General of Taiwan] (Nan Tian 1995) (1933) (Taiwan, Japan).
8. 吉野秀公, 台湾教育史 YOSHINO HIDEKIMI, TAIWAN KYŌIKUSHI [An Educational History of Taiwan] (1927) (Taiwan, Japan).

**PERIODICAL MATERIALS, ARTICLES, AND SPEECHES**ENGLISH

1. Social Security Administration, *Social Security Administration's Plan for Providing Access to Benefits and Services for Persons with Limited English Proficiency (LEP)* (Feb. 2010), <http://www.ssa.gov/multilanguage/LEPPlan2.htm> (last visited Oct. 1, 2010).
2. *The Right to Communicate in the Information Society, Communication – An Essential Human Need*, <http://www.crisinfo.org/> (last visited Oct. 3, 2010).
3. Chang Peng-Chun's Biography, at <http://ccnmtl.columbia.edu/projects/mmt/udhr/biographies/217.html> (last visited Feb. 20, 2009).
4. Oliver C Ruppel, *Third-Generation Human Rights and the Protection of the*

- Environment in Namibia*, available at Konrad-Adenauer Stiftung Website, <http://www.kas.de/wf/en/> (Mar. 29, 2008) (last visited Jul. 5, 2010).
5. Derek G. Evans, *Human Rights: Four Generations of Practice and Development*, in EDUCATING FOR HUMAN RIGHTS AND GLOBAL CITIZENSHIP 3 (A. Abdi & L. Shultz eds., Albany: State University of New York Press 2007).
  6. Mandy Scott & Hak-khiam Tiun, *Mandarin-Only to Mandarin-Plus*, 6 LANGUAGE POL'Y at 53 (Spring 2007).
  7. Gunes Serkan and Yilmaz Gülsen, *Human Rights and the Urban Ecology*, available at SEAGA Home Page, <http://www.seaga.co.nr/> (Singapore: NIE-SEAGA Conference 2006 Paper, Nov., 2006) (last visited Jul.15, 2010).
  8. Government Information Office, Republic of China (Taiwan), *Taiwan's Educational Development and Present Situation*, available at <http://www.gio.gov.tw/info/taiwan-story/education/eframe/frame3.htm> (last visited Apr. 15, 2006).
  9. Editorial, *Taiwan Parents Want English as Official 2nd Language*, CHINA POST, Jan. 12, 2006, (Taiwan) <http://www.chinapost.com.tw/taiwan/2006/01/12/75184/Taiwan-parents.htm> (last visited May 19, 2008).
  10. Peter. L Patrick, *Linguistic Human Rights: A Sociolinguistic Introduction* (Nov. 2, 2005), <http://privatewww.essex.ac.uk/~patrickp/lhr/lhrengonlywork.htm> (last visited Nov. 2, 2010).
  11. Larry DeWitt, *Moynihan, Welfare Reform, and the Myth of "Benign Neglect"*, <http://www.larrydewitt.net/Essays/Moynihan.htm> (Oct. 2005) (last visited June 3, 2010).
  12. Jennifer M. Wei, *Language Choice in Taiwanese Political Discourse*, 14 NTU STUDIES IN LANGUAGE AND LITERATURE (Sep. 2005) (Taiwan).
  13. Thomas Ricento, *Problems with the 'Language-as-Resource' Discourse in the Promotion of Heritage Languages in the U.S.A.*, 9 No.3 J. SOCIOLINGUISTICS (Aug. 2005).
  14. *Languages of Taiwan*, in ETHNOLOGUE: LANGUAGES OF THE WORLD (Raymond G. Gordon, Jr. ed., Summer Inst. of Linguistics Int'l, 15<sup>th</sup> ed. 2005), [http://www.ethnologue.com/show\\_country.asp?name=TW](http://www.ethnologue.com/show_country.asp?name=TW) (last visited Feb. 16, 2009).
  15. L. S. Harms, *Some Essential of the Right to Communicate*, available at the Center of Communication Rights Website, <http://www.righttocommunicate.org/> (2002) (last visited Jul. 15, 2010).
  16. James Crawford, *Language Legislation in the U.S.A.* (Feb. 1, 2012), <http://www.languagepolicy.net/archives/langleg.htm#State> (last visited Apr. 10, 2012).
  17. Alan Patten, *Political Theory and Language Policy*, 29:5 POLITICAL THEORY (Oct. 2001).

18. Florian Coulmas, *The Far East*, in HANDBOOK OF LANGUAGE AND ETHNIC IDENTITY 404 (Joshua A. Fishman ed., Oxford Univ. Press 2001).
19. Chen Ping, *Standard Language as a Source of Conflict in Taiwan*, in LANGUAGE PLANNING AND LANGUAGE POLICY- EAST ASIAN PERSPECTIVES 106 (Nanette Gottlieb & Chen Ping eds., Curzon Press, 2001).
20. Terence G. Wiley, *Assessing Language Rights in Education: A Brief History of the U.S. Context*, in LANGUAGE POLICIES IN EDUCATION: CRITICAL ISSUES (J.W. Tollefson ed., Portsmouth: Lawrence Erlbaum Associates 2002).
21. Fernand De Varennes, *Language Rights as an Integral Part of Human Rights*, 3:1 INTERNATI'L J. ON MULTICULTURAL SOCIETIES (2001).
22. Ingrid Piller, *Naturalization Language Testing and its Basis in Ideologies of National Identity and Citizenship*, 5 INT'L JOURNAL OF BILINGUAL 259-277 (Sep. 2001).
23. Lauri Malksoo, *Language Rights in International Law: Why the Phoenix is still in the Ashes*, 12 FLA. J. INT'L L. 431 (Spring, 2000).
24. Stephen May, *Uncommon Languages: the Challenges and Possibilities of Minority Language Rights*, 21:5 JOURNAL OF MULTILINGUAL AND MULTICULTURAL DEVELOPMENT (2000).
25. Denise Réaume, *Official-Language Rights: Intrinsic Value and the Protection of Difference*, in CITIZENSHIP IN DIVERSE SOCIETIES (Will Kymlicka & Wayne Norman eds., Oxford Univ. Press, 2000).
26. Todor Dzunov, *Succession of States in respect of Citizenship: the Case of the Former SFRY*, in SUCCESSION OF STATE (Mojmir Mrak ed., Kluwer Law Int'l 1999).
27. James Crawford, *Issues in U.S. Language Policy- English Plus*, at <http://ourworld.compuserve.com/homepages/JWCRAWFORD/engplus.htm> (1997) (last visited May 20, 2008).
28. Rainer Enrique Hamel, *Introduction: Linguistic Human Rights in a Sociolinguistic Perspective*, in 127 INT'L J. SOC. LANG. (1997).
29. John Edwards, *Language, Prestige, and Stigma*, in CONTACT LINGUISTICS (Hans Goebel et al eds., Walter de Gruyter 1996).
30. Tove Skutnabb-Kangas & Robert Phillipson, *Linguistic Human Rights, Past and Present*, in LINGUISTIC HUMAN RIGHTS: OVERCOMING LINGUISTIC DISCRIMINATION (Tove Skutnabb-Kangas & Robert Phillipson eds., Berlin: Bouton de Gruyter 1995).
31. Michael Clyne, R. B. Baldauf, Jr. & D. E. Ingram, *Language Planning*, in INTERNATIONAL ENCYCLOPEDIA OF LINGUISTICS (William J. Frawley ed., Oxford Univ. Press 1992, 2003), <http://www.oxford-linguistics.com/entry?entry=t202.e0581.s0001> (last visited Jan. 2, 2009).
32. Charles Taylor, *The Politics of Recognition*, in MULTICULTURALISM AND THE POLITICS OF RECOGNITION (Amy Gutmann ed., Princeton Univ. Press 1992).
33. Richard Ruiz, *Orientations in Language Planning*, in LANGUAGE DIVERSITY:

PROBLEM OR RESOURCE? (S. McKay & S. Wong ed., Newbury House 1988).

34. Einar Haugen, *The Implementation of Corpus Planning: Theory and Practice*, in PROGRESS IN LANGUAGE PLANNING: INTERNATIONAL PERSPECTIVES (J. Cobarrubias and J. A. Fishman eds., Berlin: Mouton. 1983).
35. Vladimir Kartashkin, *Economic, Social and Cultural Rights*, in THE INTERNATIONAL DIMENSIONS OF HUMAN RIGHTS (Karel Vasak & Philip Alston et al eds, UNESCO 1982).
36. Frank C. Newman and Karel Vasak, *Civil and Political Rights*, in THE INTERNATIONAL DIMENSIONS OF HUMAN RIGHTS (Westport: Greenwood Press, 1982).
37. Imre Szabo, *Historical Foundations of Human Rights*, in THE INTERNATIONAL DIMENSIONS OF HUMAN RIGHTS (Westport: Greenwood Press, 1982).
38. Karel Vasak, *Human Rights: A Thirty-Year Struggle: the Sustained Efforts to Give Force of Law to the Universal Declaration of Human Rights*, 30:11 UNESCO COURIER 29 (Paris: United Nations Educational, Scientific, and Cultural Organization, 1977).
39. Bjorn H. Jernudd, *Agency Man*, in LANGUAGE PLANNING PROCESSES (Joan Rubin ed., Mouton De Gruyter 1977).
40. Charles A. Ferguson, *Language Development*, in SOCIOLINGUISTIC PERSPECTIVES: PAPERS ON LANGUAGE IN SOCIETY, 1959-1994 (Charles A. Ferguson & Thom Huebner eds., Oxford Univ. Press 1996) (1968).
41. Heinz Kloss, *Notes concerning a language-nation typology*, in LANGUAGE PROBLEMS OF DEVELOPING NATIONS (Joshua Fishman, Charles Ferguson & Jyotirindra Das. Gupta eds., John Wiley and Sons 1968).
42. William Stewart, *Sociolinguistic Typology of Multilingualism*, in READINGS IN THE SOCIOLOGY OF LANGUAGE (Joshua Fishman ed., Hague: Mouton Publishers 1968).
43. Eigar Haugen, *Language Conflict and Language Planning*, in THE CASE OF MODERN NORWEGIAN (Harvard Univ. Press 1966).
44. J. G. Starke, *Monism and Dualism in the Theory of International Law*, 17 BRIT. Y.B. INT'L L. 66 (1936).
45. Theodore Roosevelt, *Letter to the President of the American Defense Society* (Jan. 3, 1919).
46. Theodore Roosevelt, *The Children of the Crucible*, 14 ANNALS OF AMERICA (Chicago: Encyclopedia Britannica 1968) (1917).

#### CHINESE

1. 內政部統計處, 內政統計通報一〇一年第五週 Department of Statistics, Ministry of Interior, *Neizheng Tongji Tongbao Yilingyinian Diwuzhou* [Interior Statistics Weekly- The Fifth Week of the 101th Year of the R.O.C.] (Feb. 4, 2012).
2. 九年一貫課程實施要點 Ministry of Education, *Jiunianyiguan Kecheng Shishi Yaodian* [The Enforcement Guideline of the Integrated Curriculum Outlines] (2011),

- [http://www.edu.tw/eje/content.aspx?site\\_content\\_sn=15326](http://www.edu.tw/eje/content.aspx?site_content_sn=15326) (last visited May 5, 2012).
3. 管仁健, 走過那我不說方言的荒謬時代 Kuan Ren-Jian, *Zouguo Na Wobushuo Fangyan De Huangmiu Shidai* [Experiencing the absurd era of 'I don't speak dialect'], available at <http://mypaper.pchome.com.tw/kuan0416/post/1322128051> (last visited May 2, 2011).
  4. 臺灣語文測驗中心新聞稿 (2010) Center for Taiwanese Languages Testing (CTLT) Press Release, *Taiwanyuwen Ceyanzhongxin Jiepai* [the Opening Ceremony of the Center for Taiwanese Languages Testing] (Apr. 17, 2010), <http://ctlt.twl.ncku.edu.tw/Chuliau/press/20100417singlip.doc> (last visited May 5, 2010)
  5. 中央社, 台語認證成大台語文測驗中心揭牌, *Central News Agency, Taiyurenzheng Chengda Taiyuwen Ceyanzhongxin Jiepai* [the Opening Ceremony of the Center for Taiwanese Languages Testing] (Apr. 17, 2010), <http://www.cna.com.tw/ShowNews/Detail.aspx?pNewsID=201004170047> (last visited May 5, 2010).
  6. 李震山, 論憲改與基本權保障 Lee Zheng-shan, *Lun Xiangai Yu Jibanquan Baozhang* [Constitution Amendment and Foundation Rights Protection], [www.rdec.gov.tw/public/Attachment/512016524071.pdf](http://www.rdec.gov.tw/public/Attachment/512016524071.pdf) (last visited Mar. 15, 2010).
  7. 臺北縣政府教育局, 活化課程實驗方案業務說明 Bureau of Education, Taipei County Government, *Huohua Kecheng Shiyang Fangan Yewu Shuoming* [Business Presentation the Experimental Plan of the Active Curriculum], [www.tpc.gov.tw/web66/\\_file/2052/ABdownload/1272860880425file.ppt](http://www.tpc.gov.tw/web66/_file/2052/ABdownload/1272860880425file.ppt) (2010) (last visited May 5, 2010)
  8. 中央社, 國小英語時數 北市擬加開 Central News Agency, *Guoxiao Yingyu Shishu Beshi Nijiakai* [Taipei City Plans to Increase English Class Hours], <http://www.gov.tw/NewsCenter/Pages/detail.aspx?page=20100427cfp0261.aspx> (Apr. 27, 2010)(last visited May 5, 2010)
  9. 行政院研究發展考核委員會, 提升國人英語力建設計畫 (2009) The Research, Development and Evaluation Commission (RDEC) of the Executive Yuan, *Tisheng Guoren Yingyuli Jianshe Jihua* [Plan for Enhancing National English Proficiency] (Sept. 23, 2009), <http://www.rdec.gov.tw/ct.asp?xItem=4160289&ctNode=12232&mp=100> (last visited May 5, 2012).
  10. 九十九年度中央政府教育部單位預算書 *Jiaoyubu Danwei* [The Budget Project of the Ministry of Education], in *JISHIJIU NIANDU ZHONGYANGZHENGFU YUSUANSHU* [the General Budget Project of the Central Government of the 99<sup>th</sup> Year of the Republic of China (Taiwan)] 102-254 (Taipei: Directorate General of Budget, Accounting and Statistics, Executive Yuan 2009) (Taiwan).
  11. 管仁健, 臺灣的霸權國語與悲情方言 Guan Ren-Jian, *Taiwan De Baquan Guoyu Yu Beicing Fangyan* [The Hegemonic National Language and the Misery Dialects in

- Taiwan], *available at* <http://mypaper.pchome.com.tw/news/kuan0416/3/1281895814/20051231154803/> (last visited Feb 20, 2009).
12. 陳依玲，語言教育政策促進族群融合之可能性探討 Chen Yi-Ling, *Yuyan Jiayu Zhengce Cujin Qunronghe Zhi Kenengxing Tangtao* [The Possibility of Implementing New Policy of Language Education to Reconcile and Unify Different Ethnic Groups in Taiwan], 4:3 JOURNAL OF EDUCATIONAL RESEARCH AND DEVELOPMENT 230 (Sep. 2008).
  13. 內政部戶政司，戶籍人口歷年統計表表一 Department of Household Registration, Ministry of Interior, *Huji Renkou Linian Tongjibiao Biaoyi* [Yearly Population Statistics Report, Table One] (Taiwan), *available at* <http://www.ris.gov.tw/gateway/stpeqr01.cgi> (last visited Feb. 5, 2008).
  14. 出入國及移民署，大陸地區、港澳居民、無戶籍國民〈來臺人數〉統計表 National Immigration Agency, *Daludiqu, Gangao Jumin, Wuhuji Guomin (Laitai Renshu) Tongjibiao* [Statistics of the Residents from Mainland China, Hong Kong, or Macau and those Nationals Without Household Registration (Number of the People Arrived in Taiwan)] (Jan. 31, 2008), *at* <http://www.immigration.gov.tw/DO/DownloadController.Attach.asp?xpath=public/Attachment/073082151.doc> (last visited May 29, 2012).
  15. 出入國及移民署，各縣市外籍配偶人數按國籍分與大陸(含港澳)配偶人數 National Immigration Agency, *Gexianshi Waiji Peiou Renshu An Guojifen Yu Dalu (Han Gangao) Peiou Renshu* [The Number of Foreign and Mainland (Including Hongkong and Macau) Spouses in Each County and City Formulated by Nationality] (Jan. 31, 2008), *at* <http://www.immigration.gov.tw/DO/DownloadController.Attach.asp?xpath=public/Attachment/073085924.doc> (last visited May 29, 2012).
  16. 原住民族委員會，原住民族 14 族語 43 個方言別分布參考表 Council of the Indigenous Affairs, *Yuanzhuminzu 14 Zu Yu 43 Ge Fangyanbie Fenbu Cankaobiao* [Table on the Language Distribution the 14 Indigenous Languages and The 43 Dialects of the Indigenous Peoples], *available at* [http://www.apc.gov.tw/chinese/docDetail/detail\\_TCA.jsp?docid=PA000000001872](http://www.apc.gov.tw/chinese/docDetail/detail_TCA.jsp?docid=PA000000001872) (last visited Jul. 25, 2008).
  17. 主計處，歷次普查項目比較 Directorate General of Budget, Accounting and Statistics, Executive Yuan, *Lici Pucha Xiangmu Bijiao* [A Comparison of the Items of Every Census], *available at* <http://www.stat.gov.tw/ct.asp?xItem=556&ctNode=547> (last visited Feb. 5, 2008).
  18. 內政部戶政司，現住原住民人口數 Dept. of Household Registration Affairs, *MOI, xianzhu yuanzhumin renkoushu* [The Current Indigenous Residents], *available at* <http://www.dgbas.gov.tw/ct.asp?xItem=15408&CtNode=4594> (last visited Feb. 26, 2008).
  19. 國家統計局，三國兩晉南北朝統計史 National Bureau of Statistics of China (P.R.C.), *Sanguo Liangjin Nanbeichao Tongjishi* [The History of Statistics in the San

- Guo, Liang Jin, and the Nan-Bei Period] (P.R.C.), *available at* [http://www.stats.gov.cn:82/50znjn/t20020617\\_22678.htm](http://www.stats.gov.cn:82/50znjn/t20020617_22678.htm) (last visited Jan. 22, 2010).
20. 陳志柔、陳柏甫，大陸及外籍配偶，載於臺灣社會變遷全記錄 Chen Chih-Jou & Chen Po-Fu, *Daluji Ji Waiji Peiou* [Spouses from Mainland China and Foreign Countries], in TAIWAN SHEHUI BIANQIAN QUANZILU [Reports on the Social Changes of Taiwanese Society] (Institute of Sociology, Academia Sinica Website) (Taiwan), *available at* <http://www.ios.sinica.edu.tw/TSCpedia/index.php> (last visited May 19, 2008).
  21. 張學謙 從單數到複數的國語:多元化的臺灣國語政策, 於從「國語政策」到「多元文化政策」學術研討會 Chang,Hsueh-Chien, *Cong Danshu Dao Fushu De Guoyu: Duoyuanhua De Taiwan Guoyu Zhengce* [National Language from Monolism to Pluralism: Pluralistic National Language Policy of Taiwan], in CONG 「GUOYU ZHENGCE」 DAO 「DUOYUAN WENHUA ZHENGCE」 XUESHU YANTAOHUI [The 2007 Academic Symposium of "from National Language Policy to Multicultural Policy"] 2 (Apr. 28, 2007).
  22. 陳隆志，由國際人權法談人權立國 Chen Lung-Chu, *You Kuozi Renquanfa Tan Renquanlikuo* [Discussion about Human Rights State from the Perspective of International Human Rights], 34 NEW CENTURY THINK TANK FORUM (New Century Institute Press Jun. 30, 2006).
  23. 吳勇正，戰後臺灣戶政變革之研究- 從接收復員到清鄉戒嚴(1945-1949) WU, YONGJHENG, A STUDY OF TAIWAN HOUSEHOLD REGISTRATION AFFAIRS: FROM "RECOVERY AND REHABILITATION" TO "SOCIETY CLEANSING AND MARTIAL LAW", Master Thesis of the History Institute, Nat'l Chengkong Univ. (2006).
  24. 施正鋒，研訂客家語言發展法草案 Shih Cheng-Feng, *Yanding Kejia Yuyan Fazhanfa Caoan* [Redacting the draft of Hakka Language Development Law], in The Personal Website of Cheng-Feng Shih, Ph.D. (Dec. 31, 2005), <http://mail.tku.edu.tw/cfshih/seminar/20051231.htm> (last visited Apr. 17, 2012)..
  25. 王甫昌，由中國省籍到臺灣族群: 戶口普查籍別類屬轉變之分析 Wang Fu-chang, *Yiu Zhongguoshengji Dao Taiwan Zuqun: Hukoupucha Jibie Leshu Zhuanbian Zhi Fenxi* [From Chinese Original Domicile to Taiwanese Ethnicity: An Analysis of Census Category Transformation in Taiwan], 9 TAIWANESE SOCIOLOGY (Inst. of Sociology, Academia Sinica & Department of Sociology, Nat'l Taiwan Univ., Jun. 2005).
  26. 施正鋒，語言與多元文化政策 Shih, Cheng-Feng, *Yuyan Yu Duoyuanwenhua Zhengce* [Language and Multiculturalism Policy], [www.ihakka.net/hakka2003/Big5/word/09.doc](http://www.ihakka.net/hakka2003/Big5/word/09.doc) (last visited Feb 25, 2009).
  27. 許嘉文，臺灣鄉土教育發展史 Hsu, Chia-Wen, *tai wan xiang tu jiao yu fa zhan shi* [The Development and History of the Taiwanese Vernacular Education], in 45 E-SOC J. (Mar. 15, 2005), *available at* <http://mail.nhu.edu.tw/~society/e-j/45/45-16.htm> (last visited Apr. 15, 2008).
  28. 黃秀仍，荷據時代臺灣原住民語言政策及教育，載於遠東學報第二十二卷第一期

- Huang, Xiu-Reng, Formosa Aboriginal Language Policy and Education Under the Dutch, in vol. 1, 22 JOURNAL OF FAR EAST COLLEGE 53 (Mar. 2005).
29. 吳學燕, 我國移民政策與輔導之探討 Wu Shyun-Yann, *Wo guo yi min zheng ce yu fu dao zhi tan tao* [Review of Domestic Immigration Policy and Guidance], in PAMPHLET ON CHINESE ASSOCIATION FOR RELIEF AND ENSUING SERVICES SOCIAL WELFARE SYMPOSIUM 66-67 (Chinese Assn' for Relief and Ensuing Serv., Dec. 26, 2004).
30. 李雄揮, 臺灣歷史各時期語言政策之分析比較 Li Xiong-hui, *Taiwan Lishigeshiqi Yuyan Zhengce Zhi Fenxi Bijiao* [Analysis and Comparison of the Language Policies of Different Periods in Taiwan], available at <http://203.64.42.21/giankiu/GTH/2004/LanguageRights/> (Dec. 18, 2004).
31. 林昌華, 甘為霖牧師:一位十七世紀臺灣教會史的研究者, 載於臺灣風物 Lin Chang-Hua, *Ganweling Mushi: Yiwei Shiqi Shiji Taiwan Jiaohuishi De Yanjiuzhe* [Presbyter William Campbell: A Researcher of the History of the 17th Century Taiwanese Churches], 54:1 THE TAIWAN FOLKSWAY (Mar. 2004),
32. 駱明慶, 高普考分省區定額錄取與特種考試的省籍篩選效果 Luo Ming-Ching, *Gaopukao Fenshengqu Dingerluqu Yu Tezhongkaoshi De Shengzi Shaixuang Xiaoguo* [The Filtering Result by the Provincial Difference of Domicile in the Fixed-quota Higher and General Ranking Examinations and the Special Examinations], 31:1 TAIWAN ECONOMIC REVIEW 90 (2003).
33. 周婉窈, 陳第-東番記-十七世紀初臺灣西南地區的實地調查報告, 故宮文物月刊第 241 期 Chou Wan-Yao, *Chen Di- Dong Fan Ji- Shiqishiji Chu Taiwan Xinan Diqu De Shidi Diaocha Baogao* [Chen Di- Dong Fan Ji- A Field Research Report on the Southwest Area of Taiwan in the Early 17<sup>th</sup> Century], 241 THE NAT'L PALACE MUSEUM MONTHLY OF CHINESE ART (Apr. 2003).
34. 王麒銘, 臺灣日治時期國勢調查的學術意涵 WANG QIMING, *tai wan ri zhi shi qi guo shi diao cha de xue shu yi han* [The academic significance of the population censuses in the Japanese ruling period], in 臺灣教育史研究會通訊 TAIWAN JIAOYUSHI YANJIUHUI TONGXUN [NEWSLETTER OF THE ASSOCIATION ON. RESEARCH OF THE HISTORY OF EDUCATION IN TAIWAN], no 34 (Taipei: the Association on. Research of the History of Education in Taiwan, Sept., 2002).
35. 張茂桂, 臺灣是多元文化國家?! Chang Mau-kuei, *Taiwan Shi Duoyuan Wenhua Guojia?!* [Taiwan is a multicultural state?!], in CULTURAL STUDIES MONTHLY (Mar. 15, 2002), [http://www.ncu.edu.tw/~eng/csa/journal/journal\\_park86.htm](http://www.ncu.edu.tw/~eng/csa/journal/journal_park86.htm) (last visited Apr. 2, 2012).
36. 林國樑, 編審教科用書的故事-以小學國語科為例, 載於國立編譯館通訊 Lin Guo-Liang, *Bianshen Jiaoke Yongshu De Gushi: Yi Xiaoxue Guoyuke Weli* [The Story of Compilation and Review of Textbooks: Elementary School Mandarin Course as An Example], 14:3 NATIONAL INSTITUTE FOR COMPILATION AND TRANSLATION NEWS BULLETIN (Jul. 2001).
37. 陳木城, 臺灣地區教科書發展的回顧與前瞻 Chen Mu-Cheng, *Taiwan Diqu*

- jiaokeshu Fazhan De Huigu Yu Qianzhan* [Review and Envision of the Development of Textbooks in Taiwan District] (2000), available at <http://www.trd.org.tw/> (last visited May 5, 2010).
38. 洪固，臺灣地區的方言與語言政策，載於東師語文學刊 Hong, Gu, *Taiwan Diqu De Fangyan Yu Yuyan Zhengce* [Dialects and Language Policies in Taiwan District], 9 TONGSHI YUWEN XUEKAN 83-4 (Jun. 1996).
  39. 李西勤，臺灣光復初期推行國語運動情形，載於臺灣文獻 46 卷 3 期 Li Xiqin, *Taiwan Guangfu Chuqi Tuixing Guoyuyundong Qingxing* [The Situation of the National Language Promotion Movement in the Early Period of Taiwan Restoration], 46:3 TAIWAN WENXIAN (1995).
  40. 洪惟仁，日據時代的台語教育 Hong Wei-Ren, *Rijushidai De Taiyu Jiaoyu* [The Taiwanese Language Education in the Period of Japanese Occupation], 42:3 THE TAIWAN FOLKWAYS (1992).
  41. 許雪姬，臺灣光復初期的語文問題，載於思與言 29 卷 4 期 Hsu, Hsueh-Chi, *Taiwan Guangfu Chuqi De Yuwenwenti* [Language Problems in the Early Period of Taiwan Restoration], 29:4 THOUGHT AND WORDS (Dec. 1991).
  42. 吳文星，日據時代臺灣書房之研究，載於思與言第 16 卷第 3 期 Wu Wen-Hsing, *Rijushidai Taiwan Shufang Zhi Yanjiu* [Taiwan Private Chinese Schools in the Japanese Colonial Period], 16:3 THOUGHT AND WORDS (Sept. 1978).
  43. 芮逸夫，中華國族解，載中國民族及其文化論稿(上) Ruyi Yih-fu, *Zhonghua Guozujie* [Analysis of the Chinese Nation], in ZHOUGUO MINZU JIQI WENHUA LUNGAO (SHANG) [Analysis of Chinese Ethnic Nation and its Culture (First Half)] (Taipei, Yiwen yinshuguan, 1972).
  44. 蔣介石，對中國語文學會成立二十年大會訓詞，載於蔣總統集 Chiang Kai-Shek, *Due Zhongkuo yuwenxuehui Chengli Ershinian Dahui Xunci* [Address on the 20<sup>th</sup> Anniversary of the Chinese Language Society] (Oct. 21, 1973), in JIANGZONGTONG JI [Corpora of President Chiang] (Xiaoyi Qin et al ed., Zhonghua Dadian Bianyinhui, 4<sup>th</sup> ed. 1974).
  45. 臺灣省戶口普查處，中華民國戶口普查報告書，第一卷臺閩地區戶口普查記述及統計提要 HOUSEHOLD CENSUS OFFICE OF THE GOVERNMENT OF TAIWAN PROVINCE, REPORT ON THE CENSUS OF POPULATION OF THE REPUBLIC OF CHINA, VOLUME 1: HOUSEHOLD OF TAIWAN AND FUJIAN DISTRICT (Household Census Office of the Government of Taiwan Province, 1959).
  46. 劉南溟，為什麼要舉辦戶口普查，載於中國內政 Liu Nan-ming, *Weisheme yao juban hukoupucha* [Why is the census of population held], 12:3 ZHONGGUO NEIZHENG [CHINESE INTERIOR AFFAIRS] (1956).
  47. 孫文 民族主義第一講 SUN WEN, MINZUZHUYI DIYIJIANG [The First Speech of Nationalism] (Jan. 27, 1924) (R.O.C.).

### Japanese

1. 張良澤, 臺灣に生き残つた日本語- 國語教育より論ずる Zhang Liang-ze, *Taiwan Ni Ikinokotta Nihongo- Gokugo Kyōiku Yori Ronzuru* [Japanese Language and its Survival in Taiwan: from the National Language Education], 22 CHŪGOKUGO KENKYŪ [Chinese Language Research] 17 (Jun., 1983) (Japan).
2. 小川尚義, 漢民族移住の沿革, 臺灣在籍漢民族郷貫別調査 Ogawa Naoyoshi, *Kanminzoku Ijū No Enkaku* [The Migration History of Han People], in TAIWAN ZAISEKI KANMINZOKU KYŌKANBETSU CHŌSA [Investigation on the Original Regions of the Taiwanese Han People] (Taipei: Taiwan So-toku Kanbo-cho-saka, 1928) (Taiwan, Japan).

## WEBSITE

1. ENCYCLOPAEDIA BRITANNICA (11th ed. 1911),  
<http://www.britannica.com/> (last visited Jun. 2008)
2. GREEK-ENGLISH LEXICON (Oxford: Clarendon Press 1940),  
<http://www.perseus.tufts.edu/> (last visited Jul. 2, 2010).
3. INTERNATIONAL ENCYCLOPEDIA OF LINGUISTICS (William J. Frawley ed., Oxford Univ. Press 1992, 2003),  
<http://www.oxford-linguistics.com/> (last visited Jan. 2, 2009).
4. Icelandic Human Rights Centre,  
<http://www.humanrights.is/the-human-rights-project/> (last visited Mar. 26, 2010).
5. The National Languages Promotion Committee (NLPC) Website,  
<http://www.edu.tw/mandr/> (last visited May 5, 2010)
6. Office of the High Commissioner for Human Rights, *The International Bill of Human Rights*, in the International Human Rights Law Webpage,  
<http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf> (last visited Jan. 2010).
7. The Principality of Sealand Home Page,  
<http://www.sealandgov.org/> (last visited May 2, 2010).
8. OXFORD REFERENCE ONLINE,  
<http://www.oxfordreference.com> (Oxford Univ. Press 2009) (last visited Jun. 2, 2010)
9. STANFORD ENCYCLOPEDIA OF PHILOSOPHY,  
<http://plato.stanford.edu/> (last visited Feb. 21, 2009).
10. United Nations Treaty Collection Website,  
<http://treaties.un.org/> (last visited Jul. 2, 2011).