


DIVERSITY AND INCLUSION IN SHARED GOVERNANCE

POLICY BRIEF

F. Leslie Seidle



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1. INTRODUCTION

In virtually every country, the diversity of the population has an impact on how governments function and on the laws and policies they adopt. Relevant dimensions of diversity include gender, race, language, religion and ethnocultural background. Any of these can be the basis for political mobilization and lead to pressures for stronger representation for those with salient characteristics and for their inclusion in the institutions and processes of governance. Opportunities to advance these objectives are often greater in countries where governance is shared, particularly those with a federal or devolved form of government. Moreover, such systems can allow for constitutional and institutional variation in response to the differing conditions and priorities of regions and communities.

There are numerous avenues to recognize diversity and promote inclusion. This note surveys some of the most significant means that governments have adopted, or could adopt, to further these objectives. In the following section, the following approaches are discussed:

- federalism and devolution
- constitutional recognition of key aspects of diversity
- protection of human rights and anti-discrimination measures
- recognition of official languages and service provision
- electoral system and process
- intercultural activities.

The survey of potential approaches begins with constitutional provisions and proceeds to less fundamental policy instruments such as ordinary laws and government programs. This note is a thought piece,¹ and it should not be seen as recommending any of the options reviewed below. Rather, the intent is to demonstrate that, when constitutional or government reform is being considered in diverse societies, a range of options is available for discussion and potential adaptation.

2. APPROACHES TO RECOGNIZING DIVERSITY AND PROMOTING INCLUSION

2.1. Federalism and Devolution

Federalism is not a single form of government but the label for a range of systems that combine shared rule with self-rule. Through a written constitution, government power is distributed between the federal and constituent unit governments (see Box 1). This is usually done through two lists of competences, most of which are intended to be exclusive to one of the two orders of government – thus providing each with the capacity for self-rule. Some federations (for example, Germany) have a considerable number of shared, or

¹ This note is a deliverable for the Forum of Federations project Supporting Decentralized and Inclusive Governance in the Philippines.

Box 1: Definitions

Federalism

Federalism refers to a range of systems in which, through a written constitution, responsibilities are distributed between a federal and constituent unit (states, provinces, etc.) governments. In most cases, the distribution of powers in a federation can only be changed with the consent of a certain proportion of the constituent units and/or a given level of support in a referendum.

Devolution

Devolution is the transfer of certain national government responsibilities to one or more subnational governments. Changes to the attribution of responsibilities, or even their revocation, can be made by the national legislature acting alone.

Distribution of powers

The distribution of powers in a federation refers to the attribution of responsibilities between the federal government and the governments of the constituent units (states, provinces, etc.).

Division of powers

The division of powers refers to the allocation of responsibilities, usually formalized under a written constitution, among the legislative, executive and judicial branches of a government (whether federal/national or constituent unit/subnational).

concurrent, powers. Even in federations with few concurrent powers, there is considerable interdependence between the two orders of government, particularly in complex policy fields where action is based on or affects other competences (for example, environmental regulation). In these and other fields, institutions and processes of intergovernmental relations play a vital role in fostering shared rule.

It is sometimes argued that federations are established because of the diversity of a given society. On this view, a federal society precedes a federal union. A main impetus for the formation of federations has thus often been to reconcile diversity with a desire on the part of different communities to live together.

In federations with more than one linguistic community, the boundaries and powers of certain constituent units are in fact recognitions of societal diversity. Quebec in Canada and Catalonia in Spain are two such examples. In federal countries where minorities are more dispersed, the latter may still make claims for recognition and involvement in decision making. In either case, matters that concern particular communities or regions are frequently assigned to the constituent units under the distribution of powers. A common

example is education: states or provinces often have the constitutional authority to set their own policies, including on the language of instruction; and these may vary somewhat across borders.

In older federations such as the United States, Canada and Australia, only the federal and constituent unit governments have constitutional status; local governments fall under the authority of the states/provinces. In some newer federations, including India, Brazil, South Africa and Nepal, the constitution recognizes local government and specifies its responsibilities. In light of the population size, economic power and diversity of many cities, the latter approach has considerable merit.

Federalism also creates, indeed officially sanctions, distinct spaces for the representation and participation of diverse communities. Both the federal government and constituent units can develop their own measures to encourage the representation of certain groups, including those that have been excluded historically. Examples include the choice of electoral system (discussed below) and quotas or targets for appointments to official bodies. In this context, frameworks can be adapted beyond the classic model of federalism (heavily influenced by the United States), which is centred on the distribution of powers between two orders of government. For example, in Belgium the linguistic communities' institutions, which have significant competences under the constitution, are superimposed on three geographic regions. The result is a dispersion of power that goes beyond the classic model.

Devolution is the transfer of certain national government responsibilities to one or more subnational governments. This is usually done through the passage of a quasi-constitutional statute by the national legislature – as was the case when the United Kingdom devolved significant powers to Scotland and Wales in 1978. In some cases, devolved units do not acquire the authority to legislate in a given policy field but instead become responsible for all or most aspects of administration and service provision. Devolved units do not usually have the authority to alter, on their own, the political institutions and other key governance arrangements established under the enabling statute; such changes must be authorized by the national government (usually the legislature). They nevertheless have considerable room to respond to the priorities and interests of diverse communities living within their borders. In so doing, the devolved units often contribute significantly to shared governance.

The statutes of autonomy (SA) of Spain's autonomous communities (ACs) are an interesting example of a quasi-constitutional instrument that codifies governance arrangements, can take account of shifts in regional political and other priorities, and is more easily amended than the constitution. Following adoption of the Spanish constitution in 1978, each AC developed a SA, in which (among other things) its government structure and powers are enumerated. Several of the SAs have since been reformed. As with the original SA, the changes required approval by the national parliament. For certain ACs, the SA is an important avenue for protecting key dimensions of diversity, including language (see the section on official languages below).

2.2. Constitutional Recognition of Key Aspects of Diversity

In addition to providing the authority for the different orders of government to take account of diversity in exercising their responsibilities, the constitutions of federal and devolved countries often enumerate certain of the country's fundamental characteristics – a way of acknowledging them in the highest law of the land. In some cases, the constitution provides that these characteristics are to guide public actions, including judicial interpretation. Below are some examples from constitutional statutes adopted since the Second World War:

- India. The 1949 constitution provides that “[a]ny section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.”
- Canada. The Constitution Act, 1982 provides that the Canadian Charter of Rights and Freedoms (enacted through that law) “shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.” The same statute includes this section: “The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.”
- South Africa. The preamble of the 1996 constitution of South Africa includes the following statement: “We the people of South Africa ... believe that South Africa belongs to all who live in it, united in our diversity.” In article 1, “non-racialism and non-sexism” are listed among a series of founding values of the republic.
- Nepal. The preamble to the 2015 constitution of the world's youngest federation includes a reference to “protecting and promoting unity in diversity, social and cultural solidarity, tolerance and harmony, by recognizing the multi-ethnic, multi-lingual, multi-religious, multi-cultural and geographically diverse characteristics.”

As an interpretation clause, the multiculturalism section of the Canadian Charter of Rights and Freedoms goes beyond recognizing one of the country's fundamental characteristics to provide an instruction to the courts. However, judicial interpretation must take account of other rights guarantees that are invoked (see next section). Preambular statements have less legal weight than interpretation clauses, but judges may nevertheless consider them. In societies undergoing a constitutional transition, preambles may express important political commitments. For example, the preamble to South Africa's constitution states that one of the purposes of its adoption is to “heal the divisions of the past.” Whatever the legal weight, inclusion can be encouraged by recognizing key aspects of diversity in a country's constitution and/or the framework statute of a constituent or devolved unit.

2.3. Protection of Human Rights and Anti-discrimination Measures

For more than 225 years, drafters of new constitutions or reforms have included measures to protect fundamental human rights. With its Bill of Rights of 1789, the United States was a pioneer in this regard. A more recent milestone, the Universal Declaration of Human Rights (UDHR), adopted by the United Nations in 1948, has a broader reach. From the perspective of diversity and inclusion, article 2 is notable because of the quite extensive list of grounds for non-discrimination (see Box 2). These include factors such as social origin and property, which are not usually included in human rights instruments inspired by

Box 2: Examples of Non-discrimination Clauses

UNITED NATIONS

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, 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.”

[Universal Declaration of Human Rights, 1948, article 2]

CANADA

“Every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national origin, colour, religion, sex, age or mental or physical disability.”

[Constitution Act, 1982, section 15(1)]

SOUTH AFRICA

“The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.”

[Constitution of the Republic of South Africa 1996, section 9(3)]

NEPAL

“There shall be no discrimination in the application of general laws on the grounds of origin, religion, race, caste, tribe, sex, physical conditions, disability, health condition, matrimonial status, pregnancy, economic condition, language or geographical region, or ideology or any other such grounds.”

[Constitution of Nepal (adopted 2015), section 18(2)]

traditional liberal values. The UDHR has been a model for many national constitutions, laws and policies intended to safeguard human rights. The thrust of article 2 is reflected, for example, in the anti-discrimination provisions of the South African and Nepali constitutions (see Box 2), both of which go further by including grounds such as marital status and pregnancy.

With a constitutionalized bill/charter of rights, judges have the final word on claims from any citizen that a fundamental freedom has not been respected. A constituent or devolved unit may choose to supplement protections through a human rights or anti-discrimination statute (the unit could even take such a step in the absence of a national bill/charter of rights). Such measures apply to the respective government’s public agencies and are usually administered by an independent commission or similar body.

Various other measures to combat discrimination have been adopted, including:

- **a commission for race relations or racial equality** to promote tolerance and, in some cases, to receive complaints from citizens;
- **employment equity legislation** that includes quotas or targets for employment from designated groups by government agencies (Canada's federal legislation, which has targets, not quotas, covers women, racial minorities, Indigenous people and the disabled);
- **public education** carried out by public and quasi-public agencies (e.g. schools) and/or civil society organizations funded by government.

The measures discussed above, which are not exhaustive, share the fundamental objective of protecting the dignity of every person. Although other factors (including political commitment) also play a role, to a greater or lesser degree such actions have considerable potential to promote inclusion in diverse societies. .

2.4. Recognition of Official Languages and Service Provision

Several federal countries have designated more than one official (or national) language in their constitution and/or legislation. In some cases, the constituent units have the power to accord a similar status to one or more languages. Such designations are not merely symbolic: they usually require that many government documents and other communications, as well as key services, must be provided in the official language(s). In nonfederal states where more than one language is spoken, a measure of authority over language policy has sometimes been devolved to regional governments (or the equivalent).

Language rules, including for service provision, are frequently an important dimension of policy sectors that are exclusively or largely the responsibility of constituent unit governments. One such sector is education. In various countries, there are calls for teaching to be given not only in officially recognized languages but also in others that are spoken by minorities – some of which are fearful about the future of their language. Many Indigenous peoples in particular have concerns about the viability of their languages, which often have a long history of suppression.

The following examples illustrate some of the ways in which official languages are recognized in the constitution or through other means.

- **India.** Hindi is the official language of the Indian Union. English has quasi-official status as the medium of communication between the central government and the states in which Hindi is not spoken; it is widely used in government, educational and cultural spheres. The Eighth Schedule of the Indian constitution lists 22 languages that are widely perceived as official languages of India. However, only a few states and union territories have taken measures to recognize languages on that list.
- **Spain.** Spanish (Castilian) is the official language of Spain. In three ACs, another language is co-official throughout the AC: Catalan in Catalonia, Galician in Galicia and Basque in the Basque Country. In Catalonia, Aranese, a variant of the Occitan language, obtained co-official status in the Vall d'Aran (inhabited by some 6,000

people) in the 2006 reform of Catalonia's SA. Measures to advance Catalan, in some sectors to the exclusion of Castilian, have been contested politically and before the courts.

- South Africa. The national constitution recognizes 11 official languages. Provinces may use any of those languages but must use at least two official languages. Most provinces use English and Afrikaans as their two 'base languages' but have not explicitly granted them official status. The Western Cape is the only province with its own constitution; it stipulates that the province's official languages are Afrikaans, English and isiXhosa.
- Nepal. The constitution requires that the national government pursue a multilingual policy. A province may designate one or more official languages, in addition to Nepali. In 2021 the Nepal Language Commission recommended that a language spoken by a majority of the residents of a province be designated as an official language throughout the province. Accordingly, it recommended a total of 11 official languages (in addition to Nepali) among the seven provinces. Four non-Nepali languages would have official status in two of the seven provinces; seven others would have that status in only one province. The commission also recommended that languages spoken by more than one percent of a province's population be given official status for a defined territory and designated functions – for example, education. None of these proposals has yet been implemented.

Whatever the means used to authorize them, official languages measures are a significant way to recognize different cultural backgrounds and identities within diverse societies. Among other advantages, they allow citizens to be served in their own language and, in the case of education, help equip young people for life in a multilingual environment.

2.5. Electoral System and Process

Theories of representation sometimes distinguish between representation as "standing for" and representation as "acting for." Regarding political institutions, the former refers to the degree of similarity between an elected body and those who voted for its members (the electorate). "Acting for" refers to the process of making the electorate's views heard, ideally to make a difference, in decision-making and other processes. (It is widely acknowledged that the composition of a decision-making body usually has an impact on outcomes.) The link between the two concepts explains in part why policy makers and researchers in diverse societies often pay particular attention to the choice of electoral system and other aspects of the electoral process, particularly election finance and candidate nomination rules.

Among the dimensions of inclusion, gender equality has become an increasingly important priority for many governments. Indeed, goal 5 of the United Nations 2030 Agenda for Sustainable Development is to "achieve gender equality and empower all women and girls." One of the targets that are part of goal 5 is a commitment to "ensure women's full and effective participation at all levels of decision-making in political, economic and public life." In this regard, research has shown that federal systems provide more opportunities for women to enter public life by creating additional public office positions at subnational levels, some of which may serve as a steppingstone to election

at the national level. Devolution, which usually includes the creation of a subnational legislature, may have similar impacts.

Proportional representation (PR) electoral systems can encourage the election of women and minority groups. However, this depends on how strongly such groups are represented on the parties' candidate lists. Representing the diversity of the electorate can be encouraged by placing candidates from under-represented groups high on the lists. This is facilitated most effectively if the lists are 'blocked': voters are not allowed to express preferences among the party's candidates. Some proportional systems function this way, while others allow voters to endorse certain candidates on a party's list.

Rather than relying on the decisions of those who prepare the lists, some political parties have instituted quotas. Scandinavian countries have been pioneers in this regard. In Sweden, the Green party adopted a quota provision in 1981 requiring a minimum of 40 percent of either sex on electoral lists. Most of the other parties later followed suit. An alternative is what is called a 'zipper quota': the names of men and women must be alternated on the party's list. Although a small number of European countries have included quotas for women in their electoral legislation, in most cases this is left to the parties. In mixed systems – those that combine PR with seats elected by a simple plurality – zipper or other forms of quota could be instituted for the party lists that are used for the PR seats.

An alternative approach is to reserve seats in the national and/or constituent unit legislatures for designated groups. In India, for example, seats are reserved in both houses of parliament, state assemblies and local government bodies for what the constitution refers to as Scheduled Castes and Scheduled Tribes, better known as Dalits and Adivasis respectively. Candidates from these groups are elected by the general electorate. Reserved seats for the two groups constitute together 24% of the 540 constituencies for the Lok Sabha (first house of the Indian parliament). In Pakistan, 60 of the 342 National Assembly seats are reserved for women and 10 for non-Muslims.

Legislatures with designated seats for Indigenous people are rare. A notable exception is New Zealand, where seven parliamentary constituencies – known as the Māori electorates – are reserved for representatives of the Māori people. Māori electorates were introduced in 1867. Māori may be registered in a Māori electorate or on the general roll, but not both.

Comparative research has shown that other elements of the electoral process can have a major impact on the diversity of elected representation. Election finance measures can help diminish the advantage of candidates who are well off financially and/or can rely on networks of generous donors (in most countries, men are better situated on both counts). Statutory election spending limits have a long history in certain countries (and are resisted in some others). It is also possible, as in Canada's federal election law, to limit the spending of those seeking nomination. Public funding measures, such as the reimbursement of part of candidates' election expenses and free broadcasting time, can complement spending limits by lowering the share of their budget that has to be obtained from private sources.

The preceding survey, though brief, illustrates that a range of measures can be considered to improve the degree to which a legislature or other elected body faithfully represents the electorate. Making significant progress in this regard requires not only explicit measures but also a political commitment to the spirit of the rules.

2.6. Intercultural Activities

The principle of interculturalism, which aims to encourage inclusion in diverse societies, is sometimes linked to the contact hypothesis in social psychology. There is evidence (dating from the 1950s) that, under certain conditions, contact between people of different backgrounds can reduce bias. According to the Council of Europe, interculturalism explicitly recognizes the value of diversity while actively encouraging activities that promote increased interaction, mixing and hybridization between cultural communities. In April 2022, the Council of Europe Committee of Ministers adopted by consensus a recommendation that, in the context of migration, governments of member states “take legislative and other measures to apply and implement the intercultural integration approach.”

Interculturalism has been strongly promoted by the Council of Europe through its flagship program, Intercultural Cities. Following acceptance to the network, which now numbers 156, member cities set up an intercultural support group and begin reviewing their policies from an intercultural perspective. The cities then revise their policies and programs and integrate them into a comprehensive strategy. Intercultural programs usually target and involve the departments and agencies of the city’s governments. Such programs also often provide financial grants or project funding to civil society organizations that, directly or indirectly, promote interculturalism in their activities. In contrast to some of the measures discussed above, the local government locus allows considerable flexibility. Moreover, innovative ideas may be translated into action relatively quickly and emulated elsewhere – as occurred with the Anti-Rumour Strategy developed by the City of Barcelona in the early 2010s. Intercultural activities can of course be sponsored by any order of government and tailored to specific diversity contexts.

3. CONCLUSION

The avenues to recognize diversity and promote inclusion discussed in this note are not mutually exclusive; rather, they can be complementary. Understandably, proponents of such changes must factor in the historical, demographic and political contexts. Moreover, during a period of transition or reform, it is very important to allow citizens to have their say. Consultation processes will rarely be linear. Rather, they will bring to the fore tensions within the society and may become messy. The process must nevertheless be genuine, not simply window dressing. The ensuing design of a governance framework is ultimately a political decision that must take account of potential benefits as well as risks.

Constitutional measures have strong legal weight and are not easily overturned when another political party assumes power. However, they usually need to be ratified by a set

proportion of elected representatives or legislatures, and/or citizens themselves. Particularly if certain divisions within the population are heavily politicized, constitutional change may be an arduous process that can exacerbate an already tense climate. Governments may therefore need to consider resorting to less fundamental measures, including programs that may be introduced, or reformed, under existing legislative authorities.

Societies everywhere, especially those that are highly diverse, are in flux. Even if it has been possible to effect major reforms, perhaps during a period of transition, further changes will almost certainly be required to take account of problems that emerge and to reflect shifts in demographic and political contexts (among others). As adaptation continues, governments need to bear in mind that commitment, participation and responsiveness are important factors in building more inclusive societies. So is the willingness to learn from others – including partners in shared governance.

ABOUT THE FORUM OF FEDERATIONS

The Forum of Federations is the world's premier network for expertise on federalism and multilevel governance. It develops and shares comparative expertise on the practice of federal and decentralized governance through a global network. The mission of the Forum is to strengthen inclusive and responsive governance, including pluralism and gender equality, in federal, decentralized, and transitioning countries.

As a learning network, the Forum builds and shares knowledge about governance challenges in multilevel democracies. Its mandate is straightforward and practical: "Learning from one another" – sharing experiences, challenges and lessons learned among partners -- federal countries, those undergoing devolution and their subnational units. This is significant as it offers peer exchange and understanding to help improve the laws, policies and programs each nation provides its citizens.

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