

**ЧУЖДЕСТРАНЕН ОПИТ / FOREIGN EXPERIENCE****ЕЗИКОВИТЕ ПРАВА НА КОРЕННОТО НАСЕЛЕНИЕ***Мохаммед Санка***LINGUISTIC RIGHTS OF INDIGENOUS PEOPLES***Mohammed Sanka*

Abstract: Language plays an essential role in one's ability to access the life opportunities offered by a society through employment, healthcare, jurisprudence, voting, education, media, etc. Linguistic rights have been designed under international human rights law to address the right to choose the language or languages for communication while accessing such opportunities. Even so, the individually held linguistic right, which evolves from general individual human rights, such as the right to freedom of expression, to privacy, to a fair trial, etc., comes with less consequences as compared to the collective linguistic rights of groups. This paper, while exploring how international law deals with linguistic rights generally, shall focus on the linguistic rights of indigenous peoples. By so doing, the author discusses various international legal instruments which envisage collective linguistic rights of indigenous peoples, highlights the challenges faced by indigenous peoples with regards to such rights, and concludes by suggesting ways by which these challenges can be surmounted.

Keywords: Linguistic rights, indigenous peoples, International Covenant on Civil and Political Rights, UN Declaration on the Rights of Indigenous Peoples, Indigenous and Tribal Peoples Convention, European Charter for Regional or Minority Languages.

Human rights pertaining to the right to choose the language or languages for communication in private or in public domains are referred to as linguistic rights. Given that language is a constituent element of culture, international law mainly deals with linguistic rights in the broader framework of cultural rights rather than language rights *per se*. Such rights may include, but not limited to, the right to one's own language in legal, administrative and judicial procedures, language education, and media in a language understood and freely chosen by those concerned.¹

Language plays an essential role in one's ability to access the life opportunities offered by a society through employment, healthcare, jurisprudence, voting, education, media etc.² Considering that such services may be accessed in an individual or communal capacity, linguistic rights may, accordingly, be held individually or collectively. Individual linguistic rights evolve from general human rights and include right to private life (including the right to choose the language of communication in private life); right to a fair trial, which is generally recognized to involve the right

¹ Hult, F. M., Hornberger, N. H. Re-visiting orientations to language planning: problem, right, and resource. *Bilingual Review/La revista bilingue*, 2016, vol. 33 (3), pp. 30–49.

² Ruiz, R. Orientations in language planning. *NABE Journal*, 1984, vol. 8 (2), pp. 15–34.

to an interpreter if an individual does not understand the language used in court proceedings; the right to freedom of expression, including the right to choose any language as the medium of expression; the right of members of a linguistic minority to use their language with other members of their community, etc. As opposed to individual linguistic rights, collective linguistic rights are rights of a linguistic group or a state. They are held by a linguistic group “to ensure the survival of its language and to transmit the language to future generations.”³

This paper, while exploring how international law deals with linguistic rights generally, shall focus on the linguistic rights of indigenous peoples.

Indigenous peoples have been defined as peoples “that, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop, and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.”⁴ This definition was proposed by Mr. José R. Martínez-Cobo, Special Rapporteur on Discrimination against Indigenous Populations. It has attracted criticism because it applies mainly to pre-colonial populations, and would likely exclude other isolated or marginal societies of today. However, a detailed discussion of the shortcomings of this definition is beyond the scope of this paper. Instead we shall focus on the international legal instruments that envisage the linguistic rights of indigenous peoples as such. To this end, it is worth mentioning that legal theory differentiates between positive and negative linguistic rights, which sociolinguists have termed as “promotion-oriented and toler-

ance-oriented rights.”⁵ Positive linguistic rights are envisaged in legal instruments guaranteeing the possibility of the use of a group’s language in diverse domains of society. They may, for example, promote the status of minority languages by expanding the functions for which they can be used while also ensuring equality of access for their speakers. Negative linguistic rights, on the other hand, may be provided for in legal documents as a deterrent against non-discrimination based on language. Unlike positive rights, States are not required to take positive measures to advance negative linguistic rights, they are merely enjoined not to interfere in the enjoyment of such rights by their bearers. For example, article 27 of the International Covenant on Civil and Political Rights (hereinafter ICCPR) states:

“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 practise their own religion, or to use their own language.”

Thus, State-Parties to the ICCPR are under an obligation not to interfere in the enjoyment of the right to their own culture, religion and the use of their own language by members of minority groups. By their very nature, indigenous peoples are usually numerically smaller or, more accurately, non-dominant *vis-à-vis* other groups in a given state. They may, therefore, fall within the ambit of article 27. Moreover, while it is considered to envisage individual rights, aspects of this provision may consist in a way of life which is closely associated with territory and use of its resources, especially with regards to members of indigenous communities constituting a minority.⁶

Positive linguistic rights of indigenous peoples are provided for in the 1989 Indigenous and Tribal Peoples Convention (hereinafter C 169) in the areas of education and means of communication. Article 27 of this convention enjoins

³ **Chen, A. H. Y.** The Philosophy of Language Rights. *Language Sciences*, 1998, vol. 20 (1), pp. 45–54.

⁴ Study of the Problem of Discrimination Against Indigenous Populations, UN EASC, 30 July 1981, p. 10, para. 25.

⁵ **Kloss, H.** The language rights of immigrant groups. *International Migration Review*, 1971, vol. 5, pp. 250–268.

⁶ UN Human Rights Committee (HRC), CCPR General Comment No. 23: Article 27 (Rights of Minorities), CCPR/C/21/Rev.1/Add.5, 8 April 1994 [online]. <https://www.refworld.org/docid/453883fc0.html> [accessed 10 May 2020]

State-Parties to recognise the right of indigenous peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples. State-Parties are required to allocate appropriate resources for this purpose.⁷

Wherever practicable, State-Parties to C 169 commit to teach children belonging to indigenous peoples to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. In the event that this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective. Furthermore, measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned.⁸

Finally, in order to ensure that indigenous peoples are able to avail themselves of the rights envisaged in the convention, State-Parties are under an obligation to adopt measures appropriate to the traditions and cultures of the peoples concerned, to make known to them their rights and duties, especially in regard to labour, economic opportunities, education and health matters, social welfare and other rights by means of written translations and through the use of mass communications in the languages of these peoples.⁹

Another legal instrument that recognises collective linguistic rights of indigenous peoples is the United Nations Declaration on the Rights of Indigenous Peoples (hereinafter UNDRIP). Article 13 of this declaration explicitly states:

“Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.”

States also saw the need to take appropriate measures to ensure that these rights come to fru-

ition by committing to “[...] take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.”¹⁰ Apart from the foregoing, the UNDRIP provides that “indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning,” while States, as the addressees of the obligations emanating from this right, are enjoined to “in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.”¹¹

Furthermore, indigenous peoples are guaranteed “the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.”¹²

As a resolution of an international organization, the UNDRIP does not wield a binding force as such. However, having been adopted by a majority of 143 states in favour, 4 votes against (Australia, Canada, New Zealand and the United States) and 11 abstentions (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa and Ukraine), one can argue that the normative value of its provisions is highly rated by States. The four States who voted against its adoption have since reversed their position and now support the Declaration, enhancing further its acclaim as the most comprehensive international instrument on the rights of indigenous peoples currently.

A regional legal instrument relevant to the protection of linguistic rights of indigenous peoples worth a mention is the European Charter for

⁷ Indigenous and Tribal Peoples Convention, 1989 (No. 169), UNTS No. 1650, art. 27 (3).

⁸ Indigenous and Tribal Peoples Convention, 1989 (No. 169), UNTS No. 1650, art. 28.

⁹ Ibid, art. 30.

¹⁰ United Nations Declaration on the Rights of Indigenous Peoples, 2007, art. 13 [online]. <https://www.ohchr.org/EN/Issues/IPeoples/Pages/Declaration.aspx> [accessed 10 March 2020].

¹¹ Ibid, art. 14.

¹² Ibid, art. 16.

Regional or Minority Languages (hereinafter European Charter for Minority Languages). It was adopted on June 22 1992 by the Committee of Ministers of the Council of Europe. “Regional or minority languages,” pursuant to Article 1 of the European Charter for Minority Languages, are languages that are: traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State’s population; and different from the official language(s) of that State.” Languages (such as Romani, Lemko, Yiddish, etc.) not confined to a particular territory within a state but otherwise are used traditionally by linguistic minorities within the country as a whole or over a wide geographical area fall within the ambit of the Charter,¹³ as are official languages within provinces or federal units of a State (for example Catalan in Spain) which are not considered official languages of the State as a whole. Thus, the charter seeks to protect the linguistic and cultural identity of minority groups, including indigenous communities, by proposing a series of measures to promote the use, maintenance and development of regional or minority languages in diverse fields such as education, litigation, public services, the media, cultural facilities, economic and social life, as well as trans-frontier exchanges.¹⁴

Estimates have pointed out that approximately 10,000 spoken languages have existed. Today, about 3300 of these languages have gone into extinction, while many of the remaining (6700) ones are not being taught to children, which has led to fears that more than half of these languages are unlikely to survive the next century.¹⁵ Statistics have further shown that 96 per cent of the world’s approximately 6,700 languages are spoken by only 3 per cent of the world’s population. Although indigenous peoples constitute under 6% of the global population, they speak more than 4,000 of the world’s languages. Thus, with estimations that, at least, one indigenous language dies every 2 weeks, the majority of the languages

that are under threat of extinction are indigenous languages.

Taking into consideration the grim predictions mentioned above, revitalizing, maintaining and promoting indigenous languages has become ever so important. In this regard, some indigenous communities have initiated self-help initiatives to revamp their dying languages. Native Hawaiians, for example, have promoted Hawaiian language medium education, thus, public schools where the curriculum is entirely instructed in Hawaiian with the view to revitalizing their language, which was on the brink of extinction in the 1970s and was re-established as an official language of the State of Hawaii in 1978.¹⁶

It goes without saying that, cooperation between government and indigenous peoples themselves is critical in this effort. An example of such successful interplay is the case of the Itelmen language in Kamchatka, in the Russian Federation. On the basis of constitutional rights, authorities of the Kamchatka District have developed various native language programmes, including mass media broadcasts and cultural competitions in addition to indigenous language classes in school. Simultaneously, community-led initiatives have used new technological opportunities to disseminate indigenous language songs through online music channels and smartphone applications in Itelmen.¹⁷

The success stories stated above are far from the ideal results to aspire for. Even so, they are isolated positive scenarios from much more serious challenges faced by indigenous peoples across the globe. Chief among the reasons cited for inadequate actions is lack of funding. Funding is often provided only for the recording of languages, including transcribed, translated, and annotated audiovisual recordings, while none or only limited funds are allocated to language revitalization initiatives.

Considering the aforementioned, it is self-evident that states must demonstrate much

¹³ European Charter for Regional or Minority Languages, 5 November 1992, ETS No. 148, art. 1.

¹⁴ *Ibid.*, art. 7–14

¹⁵ **Davis, W.** Vanishing Cultures. National Geographic, 1999, vol. 196 (2), pp. 62-89.

¹⁶ <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/04/Indigenous-Languages.pdf>

¹⁷ *Ibid.*

more political will than what is currently witnessed if we are to make any headway.

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