

The Language Rights of Indigenous Peoples in International Law

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I hope my presentation will make a modest contribution to clarify what are the different types of languages rights in international law, and thus hopefully provide some indication of what is good practice in terms of respect of indigenous people, respect for their rights, and respect for international law.

I am here to identify, describe and explain what is the law, what is international law, and what are the rights of indigenous peoples in the area of language from a legal perspective.

I will do this in three steps: first by identifying the categories of language rights indigenous peoples have in international law.

Then, by describing what kind of language rights indigenous peoples have in these categories and then explain what these rights mean in practical terms.

1. Identify the categories of language rights for indigenous peoples in international law.
2. Describe the language rights in these categories.
3. Explain what these rights mean in practical terms when applied.

But first, allow me to begin with a story about why the law is so important when we talk about language rights, especially here in South America. This story goes back many years, in fact many centuries, and explains about why we find ourselves here today to talk about the language rights of indigenous peoples and why these rights have been ignored for so long.

The Real Colegio de Santa Cruz is the very first college, the first institution of higher education in the new world, established in the Americas almost 500 years ago in 1536.

One of the most interesting aspects of the **Real Colegio de Santa Cruz** in Mexico was that it was a college for indigenous peoples and priests, and it was trilingual: castillian, Nahuatl and Latin. It was very successful. For example the first grammar of Nahuatl, an indigenous

language, was written and published in 1547 by Andrés de Olmos from this indigenous college three years before the first grammar for the French language!

Maybe not all indigenous languages, but at least Nahuatl was not only taught, it was even officially used as a language of education at the Colegio and the quality of the work of the indigenous students continued until 50 years after the Spanish government stopped supporting this college in 1605, even though it had been in fact succeeded in creating well educated indigenous people fluent in Nahuatl, Castilian and Latin!

There is another side to this story which operates in parallel, and that's the role of law and its significance for indigenous languages in areas such as education and others.

Part of what occurred with the Real Colegio de Santa Cruz and the status and attitudes concerning indigenous languages which we have even today are the result of centuries of laws and efforts to impose the domination of Spanish authority, culture and institutions in this part of the world. It is not a natural phenomenon but something connected to legislation and official government policies.

Even though initially in Mexico in the 16th century education and conversion were done in indigenous languages, and in the case of the colegio this education was multilingual, by 1696 Charles II made a decree banning the use of any languages other than Spanish throughout the Spanish Empire.

This was the first law, but not the last law of consequence. As you know, the situation and status of quechua today, and of most indigenous languages in Central and South America, is not an accident or a consequence of nature: it is the result, the direct descendant of this now famous – or rather infamous – royal decree of 1770, the Cedula, which had the clear purpose of eliminating the indigenous languages in the colonies of the Spanish king.

It was almost but not completely successful because many indigenous languages still survive today, but the Cedula – a law - ended almost all the teaching of and writing in indigenous languages and began a policy of hispanization of indigenous peoples.

Real Cédula de Carlos III (10 de Mayo, 1770)

«Por quanto el Muy reverendo Arzobispo de México me ha representado, en Carta de veinte y cinco de Junio del año próximo pasado, que desde que en los vastos Dominios de la América se propago la Fe Catholica, todo mi desvelo, y el de los señores reyes, mis gloriosos predecesores, y de mi Consejo de las Indias, ha sido publicar Leyes, y dirigir

Reales Cédulas a los Virreyes, y Prelados diocesanos, a fin de que se instruya a los indios en los Dogmas de nuestra Religión en Castellano, y se les enseñe a leer, y escribir en este Idioma, que se debe estender, y hacer único, y universal en los mismos Dominios, por ser el propio de los Monarcas, y conquistadores

[...]

que cada uno en la parte que respectivamente le tocara, guarden, cumplan y executen, y hagan guardar, cumplir, y executar puntual, y efectivamente la enunciada mi real resolución, disponiendo, que desde luego se pongan en practica, y observen los medios, que van expresados, y ha propuesto el mencionado muy reverendo Arzobispo de México, para que de una vez se llegue a conseguir el que se extingan los diferentes idiomas, de que se usa en los mismos dominios, y solo se hable el Castellano como esta mandado por repetidas Leyes Reales Cédulas, y ordenes expedidas en el asunto, estando advertidos de que en los parages en que se hallen inconvenientes en su practica deberán representármelo con justificación, a fin de que en su inteligencia, resuelva lo que fuere de mi Real agrado, por ser assi mi voluntad. Fecha en Aranjuez a diez de Mayo de mil setecientos setenta

YO EL REY

Dup.do para que en los Reynos de las Indias, Islas adjacentes, y de

Philipinas, se pongan en practica, y observen los medios que se refieren, y ha propuesto el Arzobispo de Mexico, a fin de conseguir que se destierren los diferentes Idiomas que se usa en aquellos Dominios, y solo se hable el Castellano».

At a time when the whole international community must respect human rights and international law, we have entered a period of recognition of language rights.

Language rights in international law – like languages themselves – are not all the same, so we first need to identify what are the three categories of language rights that actually exist in international law which I describe briefly here:

1. Legal protection for endangered languages.
2. Legal recognition of rights or obligations for the protection or promotion of linguistic diversity.

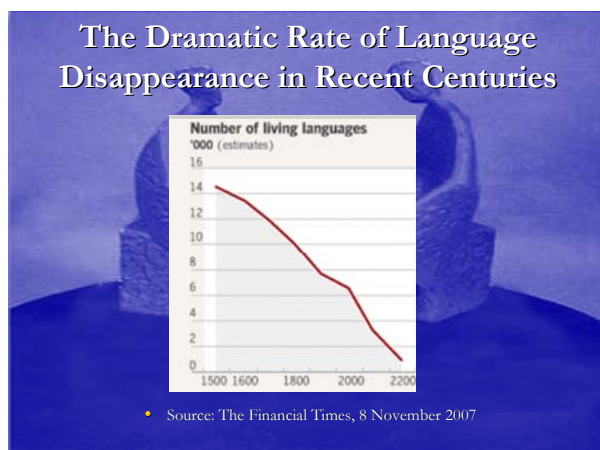
3. Legal protection of human rights having a linguistic impact.

Las tres categorías de derechos lingüísticos o de protección en el derecho internacional

International law involves treaties made by governments for different reasons over time, and because of this language issues have appeared for different reasons in different treaties.

These categories of documents that touch upon language need to be described more before we can really explain what they mean in practice. One point that needs to be made clear is why there are three different types of approaches, and three different categories of legal obligations, in international.

The 6,000 or so languages in the world are extremely different, some only spoken by a few people, and other spoken of course by hundreds of millions. The rate of

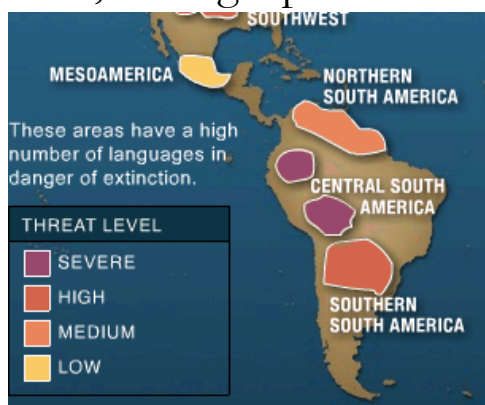


language extinction has increased dramatically in the last few hundred years. It seems that at least one language disappears every two

weeks, and that more than half of the world's languages will probably be lost within 4 generations.

Not all of these languages can or should be treated identically. You cannot treat a language only spoken by 10 people the same as one used by 10 million. That is impossible for governments to do, and international law recognises this. What is occurring is that international law is beginning – please remember that these are still quite recent developments – to describe the different types of actions that governments should take to reflect the very different situation of all of these languages.

First, the legal protection of endangered languages. Many



of you may have seen this before: many of the world's minority or indigenous languages are threatened, especially perhaps in this region.

There are a few treaties such as the two here that are part of the rather timid response in international law to the extinction of so many languages.

Convención para la salvaguardia del patrimonio cultural inmaterial. Ratificado por el Perú el 23 de septiembre de 2005.

Convenio de Diversidad Biológica. Ratificado por el Perú el 23 de abril de 1993.

For example, UNESCO has the Convention for the safeguard of intangible cultural heritage under which it has just approved a project last year to safeguard the cultural heritage of the Aymara communities of Bolivia, Chile and Peru.

The proposed sub-regional project aims at developing safeguarding measures to ensure the viability of the oral expressions, music and traditional knowledge (textile art and agricultural technologies) of the Aymara communities of Bolivia, Chile and Peru (Tacna-Puno-Moquegua). The activities for the five-year project, are: (i) identifying and inventorying the traditional knowledge and oral traditions of Aymara communities in the selected areas, (ii) strengthening language as a vehicle for transmission of the intangible cultural heritage through formal and non-formal education, (iii) promoting and disseminating Aymara oral and musical expressions and (iv) reinforcing traditional knowledge related to the production of textile arts and traditional agricultural techniques.

El proyecto subregional propuesto tiene por objeto desarrollar medidas de salvaguardia para garantizar la viabilidad de las expresiones orales, música y los conocimientos tradicionales (arte textil y tecnologías agrícolas) de las comunidades aymaras de Bolivia, Chile y Perú (Tacna-Puno-Moquegua). Las actividades para el proyecto de cinco años, son: (i) identificación e inventario de los conocimientos tradicionales y las tradiciones orales de las comunidades aymara en las zonas seleccionadas, (ii) el fortalecimiento de la lengua como un vehículo para la transmisión del patrimonio cultural inmaterial mediante la educación formal y no la educación formal, (iii) la promoción y difusión de las expresiones orales y musicales aymaras y (iv) el fortalecimiento de los conocimientos tradicionales relacionados con la producción de las artes textiles y técnicas agrícolas tradicionales.

But this treaty is really only to support short term projects and specific aspects of heritage of international interest,

and only those proposed by governments occasionally. In other words, it does not create any rights to use indigenous languages, it is left to the discretion of national governments to submit occasionally some kind of proposal for specific action which can then be supported – usually financially – by the UNESCO Fund for this purpose.

It is something good, it can help in some small way to keep a least some kind of record of a few endangered languages, but really it is almost nothing in the grand scheme of things when one considers the massive difficulties and danger faced by thousands of languages around the world. It also means that in most cases, for most languages, this treaty has absolutely no significance – it will not affect or help most of them.

The Convention on Biological Diversity also only covers the endangerment of linguistic diversity when connected to the biological diversity and not as directly for most languages. It has no really impact or consequence to some languages from extinction.

The second category of treaties where you can find some kind of language protection in international law is more

general and in a sense applies to almost all languages, and these are treaties that aim to protect and promote linguistic diversity, not only those that are endangered. This kind of treaty does not create any individual rights for persons who speak an indigenous or minority language, but it does create obligations for governments that have ratified the treaties to take steps in favour of languages.

Carta Europea de las Lenguas Minoritarias o Regionales

This is very well developed in Europe, with this treaty, the European Charter for Regional or Minority Languages which I identify here because it is very detailed and can serve as a useful model. It explains that each language should be treated in terms of its use by a government, in a way that reflects the situation of each language: in other words essentially following the principle of proportionality. But of course it does not apply to Peru, only to European countries.

There is however one treaty that is applicable to you that also covers linguistic diversity generally, and that is the UNESCO Convention on the Protection and promotion of the diversity of cultural expressions.

Convención sobre la protección y la promoción de la diversidad de las expresiones culturales

But it is very different from the treaty in Europe, and really is not useful for most languages: whereas the European Charter can be used to guarantee some degree of education in minority languages, the UNESCO Convention here cannot. Like the treaty on intangible heritage, it creates some obligations on states to protect and promote linguistic diversity, encourage translations and permits UNESCO to be involved in many activities to promote linguistic diversity, such as the International Mother Language Day, and other activities, but the most that can be done is described here. Frankly, it is minimal and is of no consequence for most indigenous languages in Peru and the rest of the world in practical terms.

Artículo 7 - Medidas para promover las expresiones culturales

1. Las Partes procurarán crear en su territorio un entorno que incite a las personas y a los grupos a:

a) crear, producir, difundir y distribuir sus propias expresiones culturales, y tener acceso a ellas, prestando la debida atención a las circunstancias y necesidades especiales de las mujeres y de distintos grupos sociales, comprendidas las personas pertenecientes a minorías y los pueblos autóctonos;

b) tener acceso a las diversas expresiones culturales procedentes de su territorio y de los demás países del mundo.

2. Las Partes procurarán también que se reconozca la importante contribución de los artistas, de todas las personas que participan en el proceso creativo, de las comunidades culturales y de las organizaciones que los apoyan en su trabajo, así como el papel fundamental que desempeñan, que es alimentar la diversidad de las expresiones culturales.

Artículo 8 - Medidas para proteger las expresiones culturales

1. Sin perjuicio de lo dispuesto en los Artículos 5 y 6, una Parte podrá determinar si hay situaciones especiales en que las expresiones culturales en su territorio corren riesgo de extinción, o son objeto de una grave amenaza o requieren algún tipo de medida urgente de salvaguardia.

2. Las Partes podrán adoptar cuantas medidas consideren necesarias para proteger y preservar las expresiones culturales en las situaciones a las que se hace referencia en el párrafo 1, de conformidad con las disposiciones de la presente Convención.

3. Las Partes informarán al Comité Intergubernamental mencionado en el Artículo 23 de todas las medidas adoptadas para enfrentarse con la situación, y el Comité podrá formular las recomendaciones que convenga.

Again, this is a good development, and we must congratulate Peru for ratifying this treaty, but it is still very, very weak and cannot be used in order to claim any strong language rights by indigenous peoples and individuals as you can see.

This brings us finally to the third category, and the treaties that recognise in international law certain language rights.

There are in fact many: there are human rights treaties which through freedom of expression or non-

discrimination can be used by individuals in areas of language choice and usage.

International Covenant on Civil and Political Rights

International Covenant on Economic, Social or Cultural Rights

ILO Convention 169 on Indigenous and Tribal Peoples

UNESCO Convention against Discrimination in Education

Pacto Internacional de Derechos Civiles y Políticos

Pacto Internacional de Derechos Económicos, Sociales y Culturales

Convenio 169 sobre Pueblos Indígenas y Tribales

Convención de la UNESCO contra la Discriminación en la Educación

These documents are quite different from the other treaties of international law I just mentioned. They do not deal with languages at all: they give rights to individuals, including individuals who are members of minorities or indigenous peoples that sometimes, often indirectly, have a linguistic dimension. To summarise the language rights you have in these treaties that apply here also in Peru are these:

- Right to use any indigenous language in one's private activities: social, artistic, economic, etc. (freedom of expression)
- Right to a person's name or surname in an indigenous language (right to private life)
- Right to learn to write and read in an indigenous language where possible
- For large indigenous languages, it is possible that they also have a right to government services, such as public education, public health and social services, even government departments using indigenous languages where this is

reasonable and justified (non-discrimination – see *Diergaardt v. Namibia*, UN Human Rights Committee)

These types of language rights from these human rights treaties are not well established: they are still developing and being clarified, but as you can see from these new documents, they are the way of the future, the way Peru's international legal obligations should be seen and understood, and the way all governments in the world should respond to the reality of the languages used by their populations.

- Draft American Declaration on the Rights of Indigenous Peoples
- UN Declaration on the Rights of Indigenous Peoples

How these rights that affect language preferences operate I think are much more clearly developed here in these new documents which will in the future have a significant impact:

These documents suggest that indigenous peoples must have, where this is possible, not only a right to learn their own language, but a right to be educated by teachers who will teach in their language, and with school materials and books written in their language to the extent that this is practicable.

But in addition to the use of the country's majority language, governments must also hire people as civil servants and offer the services of government in indigenous languages where you have sufficiently substantial numbers and concentrations of speakers of indigenous languages.

This addresses an important aspect of society involving the power relations often found between languages. As long as indigenous languages do not have significant prestige, power and opportunities associated with their use – by the government and civil service among others – especially in terms of opportunities outside of their home, the right to a degree of education in their own language will not address the deeper reasons for the underprivileged positions of many indigenous groups around the world because the basic relationship of power and prestige for their languages have not been changed.

A language with no prestige or power is a language which many parents will not see as important for the success and future of their children, and so they may turn their back on education in their own language if they see it as powerless or rather useless outside of the private or family sphere.

Let me make one further point. It is not always easy for a government to know exactly what it must do in difficult

conditions if they have large numbers of languages on their territory. But all languages must not and cannot be treated the same in every respect. What you have emerging from documents such as Draft American Declaration on the Rights of Indigenous Peoples and the UN Declaration on the Rights of Indigenous Peoples, and from recent cases from the UN Human Rights Committee and other international decisions around the right of non-discrimination on the ground of language is that where you have substantial enough numbers and where it is reasonable and justified, government officials must use these languages in a way that reflects their situation and is appropriate in what can be described as applying the principle of proportionality which is a well established principle of international law.

In relation to the appropriate treatment of language use in a country, governments should follow the principle of proportionality.

The right of non-discrimination and the new documents on the rights of indigenous peoples suggest more must be done in many countries around the world. You should have university training courses for teachers of the main indigenous languages, but also training for nurses and other government employees who should be hired for the

purpose of serving the population in languages such as quechua or aymara, as has occurred with the indigenous peoples of New Zealand.

For the Maori, their language is not only a language of education, but also a language of employment, opportunity and power because it is used by many government services, mainly in the northern part of the country which you see here. The Maori are by the way a much smaller community than the quechua or aymara of Peru. They are mainly concentrated in the north of the country, they were less than 700.000 in total in 2009.

We could say, perhaps especially today, that language is the companion of power – but it is a power that advantages some or excludes and disadvantages others.



... siempre la lengua fue compañera del imperio...

Antonio de Nebrija (1441-1522)

Prólogo a la Gramática de la lengua castellana

This is not because some languages are naturally superior to others, but because governments have the power to exclude or disadvantage individuals through their language policies, and all governments almost automatically do it by having one or more official or 'favoured' languages.

This is what you need to face in this country, though it is a challenge that many other countries also face. International law and other new developments can provide some guidance on how this challenge can be addressed.

In conclusion: you have a challenge, but you also have a wonderful opportunity in Peru. You are blessed with ancient cultures and monuments, some ancient, some present and alive, all significant parts of your society. Make the most of these; cherish them; nurture them; promote them. The indigenous languages and cultures, of course, are unique national treasures you should not waste, but try to invest and make stronger for the future generations of the country and the whole world.