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COLLECTIVE LINGUISTIC RIGHTS, ENDANGERED LANGUAGES AND INDIGENOUS PEOPLES: AN INTERNATIONAL LEGAL PERSPECTIVE

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Abstract

International Law envisages collective linguistic rights. Such rights are held by linguistic groups in order to ensure the survival of their languages and to transmit these languages to future generations. While the survival of dominant languages such as English, French, Spanish, German, Portuguese etc., is not under threat, the same cannot be said of countless lesser known languages of non-dominant groups. For the latter languages, merely recognizing the collective right of non-dominant groups to their use in diverse domains is not enough for their survival, nor are the positive measures accompanied by "escape clauses" to be taken by States under relevant international instruments. Focusing on indigenous peoples, this paper examines the current international legal regime for the protection of collective linguistic rights of non-dominant groups. With the precarious situation in which indigenous languages find themselves in mind, the author makes an attempt to answer why the current international regime is failing and proposes possible ways to make the regime more effective.

Keywords: Linguistic rights, indigenous peoples, United Nations Declaration on the Rights of Indigenous Peoples, European Charter for Regional or Minority Languages, Indigenous and Tribal Peoples Convention,

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1. Introduction

Hult and Hornberger (2016) described linguistic rights to encompass the right to freely choose the language in which to communicate "in legal, administrative, and judicial procedures, language education, and media" (pp. 30–49). In other words, they are rights which allow an individual or a group to choose their preferred language(s) for informal or formal communication. Endangered languages are languages that are at the brink of extinction because their speakers are either dying out or prefer to speak other languages. Language loss occurs when there are no more native speakers of a given language. A language becomes extinct if it cannot be spoken by at least one living person. Such a language is still considered dead even if its documented forms are studied provided that it no longer has fluent speakers (Crystal, 2002).

One's ability to access life's opportunities offered through employment, healthcare, jurisprudence, voting, education, media, etc. is greatly impacted by language (Ruiz, 1984). Given that such services as enumerated above are accessed individually or collectively, linguistic rights may, accordingly, be held in an individual or collective capacity. Individual linguistic rights include the right to private life (including the right to choose the language of communication in private life); right to an interpreter in criminal court proceedings; right to use one's language with other members of one's linguistic group, etc. Collective linguistic rights, on the other hand, are rights of a linguistic group or a state. Linguistic groups hold these rights with the view to not only ensuring that their languages survive but to also pass them down to their descendants (Chen, 1998). While languages such as English, French, Spanish, German etc., are not under any threat of extinction, the same cannot be said of countless lesser known languages of non-dominant groups. Thus, forming an essential element of broader cultural rights, collective linguistic rights are crucial to the survival and maintenance of the cultures of non-dominant groups.

This paper deals with how International law treats collective linguistic rights of indigenous peoples.

2. Problem Statement

It has been estimated that a total of at least 10,000 spoken languages have existed. About 3300 of these languages are no longer in existence, while a vast number of the remaining (6700) ones are not being taught to children. This has led to concerns that a majority of these languages will not survive the next century (Davis, 1999). Despite constituting about 5% of the current world population, indigenous peoples speak more than 4,000 of the world's languages. However, given that an indigenous language is said to die every 2 weeks, indigenous languages constitute a majority of endangered languages worldwide (https://news.un.org/en/story/2019/12/1053711). Thus, it can be concluded that the worst victims of language loss are indigenous peoples.

3. Research Questions

Considering the alarming statistics on the dying indigenous languages given above, one might wonder if there are any international legal efforts in place to address this problem. The answer is that International Law does envisage the collective linguistic rights of such vulnerable groups either through broader cultural rights or, on very rare occasions, specific linguistic rights. But how can such groups enjoy the right to use their languages when these languages are allowed to die in the first place? To what end are

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collective linguistic rights of vulnerable groups guaranteed under international law? Is the current international approach effective enough for the survival of endangered languages? While the statistics above prove that the current international approach has failed, what then is the way forward?

4. Purpose of the Study

This article seeks to examine the current international legal regime for the protection of collective linguistic rights of indigenous peoples. The paper makes an attempt to answer why the said regime is failing, and to propose possible ways to make the regime more effective.

5. Research Methods

The method of normative analysis was used. Thus, focusing on legal instruments on the protection of indigenous peoples' rights, methods peculiar to international law, such as textual, systematic (or contextual), teleological (purposive) and historical interpretations of norms which protect linguistic rights of non-dominant groups were utilised.

6. Findings

Alongside ethnic, religious and linguistic minorities, indigenous peoples are recognized as non-dominant groups under international law due to their fewer numbers and lesser political or other influence as compared to other groups within a given territory. However, a discussion of the definitions of these terms is beyond the ambit of this paper. Instead we shall focus on how international law envisages the linguistic rights of indigenous peoples, the shortcomings of the current approach and the ways to improve on the status-quo.

Legal theorists differentiate between positive and negative linguistic rights, which sociolinguists on their part have termed as promotion-oriented and tolerance-oriented rights (Kloss, 1971). Positive linguistic rights in legal instruments guarantee the possibility of the use of a group's language in diverse domains of society. They usually aim to promote the status of minority languages by expanding the functions for which they can be used while also addressing equality of access for their speakers. Negative linguistic rights, on the other hand, often serve 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 under an obligation of non-interference in their enjoyment. The approach under Article 27 of the International Covenant on Civil and Political Rights (ICCPR) is an example of how negative linguistic rights are envisaged as it enjoins States to not interfere in the enjoyment of the right to the use of their own language by members of minority groups (International Covenant on Civil and Political Rights, 1996). Since indigenous peoples are usually numerically smaller or, more accurately, non-dominant *vis-à-vis* other groups in a given state, they may fall within the scope of article 27. Despite that it is considered to envisage individual rights, this article relates to certain collective rights of indigenous minorities (UN HRC, 1994).

The 1989 Indigenous and Tribal Peoples Convention (C 169) lays certain explicit obligations on State-Parties in relation to linguistic rights. Article 27 not only obligates State-Parties to recognise the right

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of indigenous peoples "to establish their own educational institutions and facilities" but to also allocate appropriate resources for this purpose (Indigenous and Tribal Peoples Convention, 1989, Art. 27).

State-Parties to C 169 undertake to teach children belonging to indigenous peoples to read and write in their native language wherever this is possible (Indigenous and Tribal Peoples Convention, 1989, Art. 28). If this is not possible, consultations are to be conducted with these peoples in order to adopt measures geared towards achieving this goal. Moreover, general steps are to be taken for the preservation and promotion of the development and practice of indigenous languages (Indigenous and Tribal Peoples Convention, 1989, Art. 28).

Another universal instrument which recognises collective linguistic rights of indigenous peoples is the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Article 13 of the UNDRIP recognizes the right of indigenous peoples to the use, development, revitalization and transmission of their languages, traditions, literatures, etc. to "future generations" (Declaration on the Rights of Indigenous Peoples, 2007, Art. 13). The UNDRIP further enshrined the right of indigenous peoples to the establishment and control of their educational institutions where the curriculum is instructed in their languages, whereas States are enjoined to collaborate with indigenous peoples in taking steps to provide education in their own culture and language to members of such groups living away from their tribes (Declaration on the Rights of Indigenous Peoples, 2007, Art. 14).

A legal instrument specifically adopted for the promotion of non-dominant languages is the European Charter for Regional or Minority Languages (ECRML). The ECRML defines regional or minority languages as languages "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" (European Charter for Regional or Minority Languages, 1992, Art. 1). The charter's scope covers languages not confined to a particular territory within a state (for example, Romani, Lemko, Yiddish, etc.) but otherwise are used traditionally by linguistic minorities within the country as a whole or over a wide geographical area and provincial languages (such as Catalan in Spain) of a State which are not the official languages of that State (European Charter for Regional or Minority Languages, 1992, Art. 1). Thus, its goal is to protect and maintain threatened elements of Europe's cultural heritage through the recognition, protection and promotion of the use of non-dominant languages in "education", "public services", "media", "cultural activities", "economic and social life", "trans-frontier exchanges", etc. (European Charter for Regional or Minority Languages, 1992, Part III).

7. Conclusion

The preceding discussion is enough testimony that linguistic rights of indigenous groups are not ignored under international law. However, a few points on why the current approach has failed have to be made. Firstly, international law mainly deals with linguistic rights in the broader framework of cultural rights rather than language rights *per se*. This is evidenced by the context within which such rights are addressed in legal instruments and by the fact that there is no single treaty at the universal level specifically adopted for the protection of languages of non-dominant groups. Secondly, provisions addressing linguistic rights of indigenous peoples in legal instruments often do so with "qualifying phrases" such as "where applicable", "when possible", "wherever practicable", "provided that", "where appropriate," "a real need,"

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"as far as possible" etc. The insertion of these phrases is not a coincidence either. Much like the case with similar rights under international law (International Covenant on Economic, Social and Cultural Rights, 1996, Art. 2), these phrases are escape clauses meant to afford states some sort of flexibility in terms of non-compliance even after their consent to be bound by these legal instruments discussed above has been expressed. However, while some states may be justified in their failure to fulfil their obligations under these instruments due to the non-availability of resources, there is a general lack of political will with regards to the implementation of these instruments. This situation has compelled some indigenous peoples to initiate self-help programmes geared towards resuscitating their dying languages. Generally, these initiatives are bearing fruits as evidenced by the revival efforts of the Hawaiian language and the Itelmen language in Kamchatka, in the Russian Federation. Nonetheless, insufficient funding has limited the impact of such initiatives.

Beyond self-help initiatives, collaborative efforts have been made by international organizations, States, non-dominant groups, NGOs and other non-state actors to save and stabilize identified endangered languages (Austin & Sallabank, 2011). Such efforts are usually based on a three-step method. The first step is documenting in writing or other means various aspects of the endangered language. The second step is language revitalization, which involves efforts aimed at increasing the number of active speakers of the language in question using avenues such as politics, education and community interactions. The final step involves assistance offered by influential outsiders capable of affecting the number of speakers of a dying language. This step is called language maintenance (Austin & Sallabank, 2011). UNESCO (2020) has been active in this drive through the promotion and provision of support to endangered languages in areas that fall within its mandate.

The efforts towards the revival of dying languages elaborated above are, of course, non-legal in nature. They are reactive measures necessitated by the ineffective international legal protection of collective linguistic rights of non-dominant groups. Simply put, the current international approach is like a building with a weak foundation, destined to crumble. It provides for the collective linguistic rights of non-dominant groups, but fails, through deliberate technicalities, to guarantee the survival of the languages with respect to which these rights will be exercised. For a more effective international legal framework, there is the need to counterbalance the vague "qualifying phrases" discussed supra by establishing minimal guarantees for the survival of non-dominant languages. To achieve this, states must demonstrate much more political will than what is currently witnessed. A starting point for the international community will be the adoption of a universal legal instrument for the protection of non-dominant languages in which minimal guarantees are set to serve as a balance between "the availability of resources factor" and the urgent need for non-dominant languages to survive. If the EU could adopt the European Charter for Minority Languages, why can't the international community adopt a similar instrument at the universal level?

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