

The Law of Language and the Language of Law: An Argument for the Constitutional Protection for Indigenous Languages

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Good afternoon! Bonjour! Je remercie professeur Stephane Beaulac et l'Observatoire national en matière de droits linguistiques pour l'invitation. Je suis ici pour partager avec vous des aspects généraux des droits linguistiques des autochtones au Brésil. C'est une mission vraiment défiante! Premièrement, j'ai juste 15 minutes pour parler sur cela, un vrai exercice de synthèse! Mais, c'est aussi un défi parce que je suis une chercheuse non-autochtone qui a des expériences de travail à côté des peuples autochtones du Nord-Est du Brésil où vivent 80 peuples autochtones ou 27% de la population autochtone brésilienne. Dans cette région-là juste un peuple autochtone parle ça propre langue jusqu'à aujourd'hui: Les Fulni-ô. Et ces aspects nous conduisent à la première parte de ma présentation, que je vais faire en anglais.

It is estimated that there were 1300 Indigenous languages in the beginning of European colonization in Brazil. Even in the first centuries of colonization, people used to speak Nheengatu in the Amazon area, and General Language in São Paulo, two languages created from the meeting between indigenous and non-indigenous cultures. In 1757, one law turned the Portuguese the one and only official language in Brazil. It was followed by years of policies of violence, repression, and assimilation that tried to forge by force and fire a national imaginary of a mono-linguistic Brazilian society. For example, in Brazil, the religious and public residential schools also forced indigenous children to speak only Portuguese through moral, physical and sexual abuses, even until the 1980's decades. Well, according to this

imaginary, indigenous languages were going to be “just” part of the Brazilian Portuguese language as many names of animals and plants. And, by the end, they thought, the indigenous would be past story and Portuguese would remain as the only mother tongue.

However, I am not here today to talk about absences or fictional-colonial narratives of indigenous assimilation. But to talk about presences, multilingualism, interculturality, and how the Brazilian law has managed to accommodate them (or not). According to linguistic experts there are 180 indigenous languages in Brazil. And according to the last national demographic census from 2010 based on the self-declaration of indigenous people, there are 274 indigenous languages. In that same demographic census, it was found 30 languages from immigration as the Pomerana language originated in Germany. Also, in Brazil, the Brazilian signs for deaf people is recognized as a language. And it is under discussion the existence of afro-origin and other “criolo” languages.

The situation of the indigenous languages is diverse. Considering indigenous people from age 5 and older:

- ✓ 37% of the total of the indigenous population speak at least one indigenous language. 17% do not speak Portuguese. If it considers the people who live in an indigenous land 57% of them speak one or more indigenous languages, but if it considers the population who lives out of the indigenous lands, then just 12% of them speak an indigenous language.
- ✓ Considering all this diversity, just 25 Indigenous Peoples have more than 5000 Indigenous-speaking individuals. For this reason, it is estimated that the majority of indigenous languages are endangered.
- ✓ The majority of indigenous people who speak one or more indigenous languages live in the North of Brazil (Amazon area). The minority lives in the Northeast of Brazil, where I came from. But, even in this region memories of the indigenous languages are still alive, in indigenous songs, salutation sentences, and even in their dreams, cultures, and in their relation with the nature, the spirituality, and their ancestors, as some of them have taught to the following generations.

To understand how the indigenous languages relate to law in Brazil, we need to look first to the Brazilian Federal Constitution from 1988. This constitution broke with assimilationist legal paradigms, and recognized the Right to Difference of Indigenous Peoples and the right to their own way of life, cultures, traditions, and social organizations. Moreover, the indigenous

social movement in Brazil is one of the main supporters of that constitutional act because they believe it was the result of national indigenous claims and political articulations that had happened since the beginning of 1980s. For example, National indigenous leaders representing Peoples and indigenous alliances took part of the discussions and audiences of the National Constitutional Assembly in 1987-1988. In one of these audiences, the indigenous professor Pedro Kaigang described the importance of the indigenous languages. He said, “I am a bilingual professor, I speak the language called Cairés, I teach my language and I write in my language, I felt emotive when I listened to my fellow Yanomani (another indigenous leader) speaking in their language (during the audiences). This impressed me because my language is quite different, I would like to understand what he spoke about, and I am sure that he also would like to understand my language.”

At that time, the bilingual (or plurilingual) education in Brazil was neither officially recognized by the State, nor officially supported by the federal government. The federal constitution represented a potential way of changing this reality. Based on the constitution, federal laws recognized the right of indigenous to bilingual and intercultural education, and their right to maintain and develop their languages. In 2009, a new federal law stated that the indigenous education should be organized with the participation of indigenous people, observing their diversity and specificities.

We could ask if the Federal Constitution (officially) left behind the mono-lingualism in Brazil and adopted the plurilingualism. This discussion has emerged since 2002, when São Gabriel das Cachoeiras, a city located in the estate of Amazon, turned official by law the adoption of three indigenous languages besides the Portuguese. By now this law is still in effect, and since then 3 other cities have co-officialised indigenous languages, while 10 other cities have co-officialised languages from immigration. But, the constitution declares the Portuguese as the official national language, for this reason some scholars have theoretically questioned the constitutionality of those municipal laws. Others have understood that these laws are constitutional because the constitution does not mention that the Portuguese should be the only official language in the provinces and municipalities. We'll see.

Besides the constitution, Brazil has signed international legal declarations regarding this subject, as the Universal Declaration of Linguistic Rights, and the United Nations Declaration

of the Rights of Indigenous Peoples. And even though there is not a law which may regulate specifically the language rights of indigenous peoples, it seems to become more consensus the legal understanding of the language rights of indigenous peoples as a fundamental right which should be respected in any context and situation. In a research of legal precedents, it was located decisions of Federal Courts recognizing that:

- ✓ The professor of an indigenous school must speak also the indigenous mother tongue besides Portuguese (2016);
- ✓ The impacts of development projects in indigenous land affect not only the environment, but also the culture and indigenous languages (2006);
- ✓ The necessity of translation in legal procedures when the indigenous person does not speak Portuguese. It is under discussion if the indigenous could express in his/her own language when he/she speaks Portuguese;

Finally, it may ask if is it possible to understand the linguistic rights separated from other indigenous rights. The language may be a powerful key to access indigenous cultures and cosmologies, but without the guarantee of indigenous lands, territories, ways of life, cultures and education it may be more difficult to attend the language rights of indigenous peoples.

The public policies have implemented the bilingual and intercultural indigenous education. It involves the obligation of promoting higher education to trainee indigenous professors, the production of bilingual schoolbooks, discussions on how the indigenous language should be taught as the first language and the Portuguese as the second language etc. This policy has been essential to revitalize, value, and promote the language rights of indigenous peoples in Brazil. However, the discussions of indigenous languages are so far beyond Brazil or only one country.

The UN Declaration, as the result of international indigenous articulations, recognizes that indigenous peoples from the North and the South share contexts, challenges and rights violations, even considering their diversity. In this sense, as Boaventura de Sousa Santos says, North and South have also geopolitical meanings. If we, indigenous and non-indigenous, learn from each other strategies to resist and re-exist, then we may also learn ways to build inter-societal and intercultural conceptions and practices of policies and law with the South and the North.

