

283. Skutnabb-Kangas, Tove (2012). Linguistic Human Rights. In Solan, Larry and Tiersma, Peter (eds). *Oxford Handbook on Language and Law*. Oxford: Oxford University Press, 235-247.
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1. Introduction: language rights as human rights

The history of language rights is probably almost as long as the history of humans as language-using animals, i.e. tens of thousands of years. As soon as people using different “languages” were in contact with each other, they had to negotiate how to communicate verbally. Many “negotiations” may initially have been physically violent, without much verbal language, oral or signed (just as they are now; bombing in Iraq or Afghanistan; Western soldiers not being able to communicate in Arabic, Kurdish, Pashtu; people being shot when not understanding English-language commands). The linguistic outcome of negotiations where people wanted to exchange goods and services, rather than, or in addition to conquest, were probably also determined by the amount of physical force and visible material resources that each group could muster. In most encounters it was probably only the stronger party that had any “language rights”: they needed to do much less accommodation than the weaker party, if any. The groups with “language rights” may have seen this practice (their “right” to use their own language(s) or the language(s) of their choice) as something self-evident, just as most speakers of dominant languages do now.

Genuine peaceful contact presupposes a mutual will to try to understand the other party’s signed or spoken signals and symbols, to accommodate, and to learn at least some of them (often using a pidgin, an auxiliary simplified language), or to learn a common *lingua franca*, foreign to both. For dominant groups, their own rights have often been, and are still, invisible: they take them for granted. Even today, this is one of the problems when discussing and trying to formulate linguistic/language rights (hereafter LRs). Dominant linguistic groups often feel a need to formally codify their LRs only when dominated groups, e.g. Indigenous/tribal peoples, or minorities of various kinds (hereafter ITMs) start demanding language rights for themselves. The moves in the USA to make English the official language in various states and federally is one exampleⁱ. The dominant group wants to safeguard their own languages *de jure* and/or *de facto* at present, for instance, in Denmark, Finland, Norway and Sweden.ⁱⁱ All other Nordic countries except Denmarkⁱⁱⁱ grant Indigenous and minority languages some rights and have thorough scholarly treatises as a background.

Several countries have more than one or two official languages and even fairly good protection of ITM’s language rights in their constitutions and other legal documents (e.g. South Africa, India), but so far implementation has been lacking in many countries. Positive steps are now being undertaken in parts of some countries, including India and Nepal and several Latin American and African countries, to safeguard educational language rights also in practice.

Most people connect language rights mainly to ITMs, and most LRs are found among special minority or indigenous rights rather than general HRs. Many states

around the world have had legally codified language rights for minorities for centuries (see, e.g., de Varennes 1996, 2008), but summaries of or comparative literature on these rights are still scarce. The literature is often (unconsciously?) Eurocentric: only rights in Europe or Europe's "main" settler countries (e.g. Aotearoa/ New Zealand, Australia, Canada, South Africa, the USA) count and described; and what has happened in these countries is labelled as "the *first* ever xx", even when other parts of the world have had similar debates, codifications or practices much earlier. Amartya Sen (2005), the economics Nobel laureate, described this bias in relation to peaceful debates and argumentation as ways of resolving conflicts; see also Spivak 2008. Scientific imperialism looms very large here.

Bilateral formally codified language rights started to appear in the West mainly in connection with religious minorities which also happened to be linguistic minorities (Capotorti 1979: 2). The first multilateral Western treaty that contained language-related rights was the *Final Act of the Congress of Vienna* in 1815 (see Skutnabb-Kangas, and Phillipson 1994 for a short history; typically, also this description is biased towards Western countries...).

The Peace Treaties that concluded the First "World" War, and major multilateral and international conventions under the League of Nations improved the LRs protection. After the Second World War, the rights formulated by the United Nations were supposed to protect minority persons as individuals, and collective minority rights were seen as unnecessary. Better protection of linguistic minorities only started to develop after Francesco Capotorti, as a UN Special Rapporteur on the Rights of Minorities, published his 1979 report. The protection is still far from satisfactory.

Some LRs started to be described as Linguistic *Human* Rights (hereafter LHRs) relatively late. When I used the concept on a course in Finland in 1969, I had never heard or seen it, but I had an intuitive feeling that some language rights were so important that they should be seen as inalienable human rights. Earlier, language rights and human rights were more unconnected. Both were the domain of lawyers, with few if any linguists involved. Both areas were driven by practical-political concerns, and the research was mainly descriptive, not analytical. Even today, there is a fairly tight separation.

Few lawyers know much about language or education (some exceptions are Fernand de Varennes, e.g. 1996, 2000, Sandra del Valle, e.g. 2003, Robert Dunbar, e.g. 2001, Kristin Henrard, e.g. 2000, or Patrick Thornberry, e.g. Thornberry & Gibbons 1997). Many of those sociolinguists, political scientists or educationists who are today writing about LHRs, know too little about international law (also here there are exceptions, May, e.g. 2001; Phillipson, e.g. 2009; Tollefson & Tsui, e.g. 2003). Introducing LHRs "did not initially find a great deal of support among legal scholars" (de Varennes 2000:68), mainly because LHRs were seen as *collective* as opposed to *individual* rights. The first multidisciplinary book about LHRs seems to be from mid-1990s (Skutnabb-Kangas & Phillipson, eds, 1994). De Varennes (1996) and Thornberry's (1991, 2002) pioneering books contain much about LHRs even if they do not use the term. Today this is a fast growing area (as one can also see when googling the term "linguistic human rights"), but further concept clarification and multidisciplinary teamwork is urgently needed. The first concept in need of clarification is of course the main topic of this article: what are LHRs? This is very far from clear. I will present preliminary definitions of what could be seen as LHRs, and discuss a few basic distinctions that have been used to describe HRs, in relation to their relevance for LHRs.

2. Language rights versus linguistic human rights: A linguicide to linguistic human rights continuum

Are all language rights linguistic *human* rights? Hardly. A preliminary definition that has been used is: “(Some) language rights + human rights = linguistic human rights”. The question then is: which language rights should be included and which should be excluded?

Susanne Mancini and Bruno de Witte define

language rights as fundamental rights protecting language-related acts and values. The term ‘fundamental’ denotes the fact that these rights are entrenched in the constitution of a country, or in an international treaty binding on that country” (2008: 247).

I have for some decades defined LHRs as

only those language rights are linguistic HUMAN rights which are so basic for a dignified life that everybody has them because of being human; therefore, in principle no state (or individual) is allowed to violate them’ (e.g. 2008:109).

Mancini & de Witte’s legally oriented definition is more precise than my sociologically oriented one, even if they do not use the term linguistic *human* rights. It is broader than mine. Various constitutions are vague about language rights, stating that their precise formulations are given in separate laws or regulations. If these are also seen as belonging to “constitutions”, there would be many “language rights” in these specifications that in my view cannot be considered linguistic *human* rights. One example would be regulations about the size of lettering in each language on various labels; e.g. Canada, Latvia or Slovakia).

On the other hand, their definition is also narrower: it does not allow anything that has not yet been codified in any country, i.e. new suggestions are per definition not (yet?) language rights. Their “fundamental” is defined legally, whereas my “basic” is more a moral judgement. Mine is a very vague definition: even when various central human rights treaties and declarations enumerate fundamental rights, it depends on the definer’s ethics what one sees as basic or fundamental for a dignified life^{iv}. On the other hand, it opens possibilities for proposing as LHRs rights which have not yet been codified as such. One example would be an unconditional right to at least elementary education through the medium of one’s own language (or mother tongue – see Skutnabb-Kangas and McCarty 2008 for definitions).

I see LHRs, just as most other human rights, to some extent as relative. Even one of the most basic rights, the right to life (which should be much easier to define once and for all than concepts such as “freedom of expression”), is relative from a legal point of view. There are exceptions where taking somebody’s life is not totally prohibited; wars are the main example but also extreme cases of self-defence or euthanasia relativise the right to life. Death penalty is also against the

absolute right to life. In trying to define a concept, it is often useful to see what it is NOT, i.e. what its antithesis is.

“Full” or “maximal” LHRs (whatever they are) can be seen as one end of a continuum where the other end could be linguistic genocide (see the discussion on this in Skutnabb-Kangas & Dunbar, 2010). Many *language/linguistic* rights would come somewhere in the middle of the continuum: those rights that, even if they may be seen as important rights, do not belong in the realm of linguistic *human* rights. Mancini and de Witte also distinguish between *core rights* and *ancillary rights*:

The *core linguistic right* is the right to speak one’s language, or, more precisely, the language of one’s choice. The core right is, or can be, accompanied by a series of *ancillary rights* without which the right to speak a language becomes less valuable for its beneficiaries, such as: the right to be understood by others (for example, by public authorities), the right to a translation or an interpretation from other languages (for example, in the course of a meeting or trial at which those other languages are spoken), the right to compel others to speak one’s language, and *the right to learn the language* (2008: 247-8; emphasis added).

One might imagine that their “core rights” could be seen as LHRs, whereas the “ancillary rights” might be “only” language rights. Not so. The “right to learn the language” should obviously be a core LHR; this would follow from Mancini & de Witte’s own argumentation. If children are not allowed to learn their parents’ or ancestors’ language at a high level (which presupposes the right to use it as the main medium of education for the first many years), there will be nobody left to “speak one’s language” after a few generations. Of the world’s over 7,000 mainly spoken languages (7,106, the *Ethnologue*, 17th edition; see Lewis, Simons & Fennig 2014), at least some 4,500 are tribal/Indigenous (Oviedo & Maffi 2000; Terralingua, www.terralingua.org). Estimates claim that minimally half, maybe up to 90-95% of today’s spoken languages will be extinct or at least no longer be learned by children by the year 2100^v. Learning and knowing one’s language/mother tongue is a necessary prerequisite for being able to enjoy the right to speak it. Before looking at to what extent this right exist today in international or regional HR instruments, in the next section, we have to conclude that a more strict and principled definition of LHRs is urgently needed. It requires much analytical work, yet to be done.

3. LHRs in human rights instruments?

3.1. What happened to language in human rights instruments?

The core LHRs related to education are the right to learn one’s own language thoroughly, at highest possible level, and likewise to learn thoroughly a dominant or official language in the country where one is resident. The press release about United Nation’s 2004 Human Development Report (<http://hdr.undp.org/reports/global/2004/>) exemplifies how not having the core

educational LHRs excludes people not only from access to education but also from other areas of life:

Limitations on people's ability to use their native language—and limited facility in speaking the dominant or official national language—can exclude people from education, political life and access to justice. Sub-Saharan Africa has more than 2,500 languages, but the ability of many people to use their language in education and in dealing with the state is particularly limited. In more than 30 countries in the region, the official language is different from the one most commonly used. Only 13 percent of the children who receive primary education do so in their native language.

Today this is slowly changing: more and more countries in Africa, Asia, the Pacific, and Latin America, are starting MTM programmes and even legislating about them (see articles in Skutnabb-Kangas and Heugh, eds, 2011). But positive LHRs have still not been directly formulated in any binding international treaties (except the right of people in criminal proceedings to be informed of the charge against them in a language they understand^{vi}, i.e. not necessarily the mother tongue). On the other hand, many LHRs can be deduced from combining other binding treaties. Robert Dunbar and I have done that in relation to language and education (see Magga et al., 2005, Dunbar & Skutnabb-Kangas 2008, Skutnabb-Kangas & Dunbar, 2010). In a similar way, Mancini and de Witte (2008:247) show that even if language is not expressly legislated on, “restricting the use of a language is, then, not only a practical inconvenience for those who speak it, but also a potential threat to a person's cultural identity” – and there are many articles in various treaties protecting cultural identity and heritage.

But international and regional obligation-inducing Covenants, Conventions and Charters provide in fact very little support for LHRs in education. And language is accorded in them much poorer treatment than other central human characteristics such as "race"/ethnicity, gender and religion. Often language disappears completely in educational paragraphs. For instance, the (non-binding) *Universal Declaration of Human Rights*^{vii} (1948) paragraph on education (26) does not refer to language at all. Similarly, the UN *International Covenant on Economic, Social and Cultural Rights*^{viii}, having mentioned language on a par with race, colour, sex, religion, etc. in its general Article (2.2), explicitly refers to 'racial, ethnic or religious groups' in its educational Article (13), but omits reference to 'language' or 'linguistic groups'.

When 'language' is present in Articles on education, especially MTM education, the formulations are more vague and/or contain many more opt-outs, modifications and claw-backs than other Articles; these create obligations and contain demanding formulations, where the states are firm duty-holders and "shall" do something positive in order to ensure the rights. Many books and articles on LHRs show this^{ix}.

We can see these patterns of vague formulations, modifications and alternatives even in the latest minority or language specific international and regional instruments. Council of Europe's *European Charter for Regional or Minority Languages* (hereafter 'the European Charter')^x education Article, 8, includes a range of modifications, including 'as far as possible', 'relevant', 'appropriate', 'where necessary', 'pupils who so wish in a number considered sufficient', 'if the number of users of a regional or minority language justifies it', as well as a number of alternatives, as in 'to allow, encourage *or* provide teaching in *or* of the regional or minority language at all the appropriate stages of education' (emphases added).

Similar formulations abound in Council of Europe's *Framework Convention for the Protection of National Minorities* (1998, hereafter 'the Framework Convention')^{xi}. The Article covering medium of education is so heavily qualified that the minority is completely at the mercy of the state:

In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, *if there is sufficient demand*, the parties shall *endeavour* to ensure, *as far as possible* and *within the framework of their education systems*, that persons belonging to those minorities have *adequate* opportunities for being taught in the minority language *or* for receiving instruction in this language (emphases added for modifications).

Without implementation, monitoring and proper complaint procedures many of the possibilities in the new or emerging instruments are lost. The *European Charter* is supposed to be an inclusive, positive language rights instrument. Still, it excludes many more languages in Europe than it includes. It excludes explicitly immigrant languages and 'dialects' of languages. Covertly, it has also excluded all Sign languages, using completely false argumentation (see Krausneker 1998, Skutnabb-Kangas & Aikio-Puoskari 2003).

3.2. LHRs for linguistic majorities and minorities

Dominant linguistic majorities usually have all rights that can be seen as LHRs; they can, i.e., use their languages orally and in writing in all situations in their countries. Still, some of them feel the need to strengthen their LRs, as stated in the introduction – the Slovak Language Law (July 2009) is an example^{xii}.

Dominated majorities are groups in former colonies where one language group is a demographic majority, or where there is no group that would be demographically over 50% of the population and where all groups are "minorities". They are in a different situation. Often a former colonial language, spoken by a very small elite in the country, is an or the official language, used for most prestige functions, including parliament, courts, higher education, etc. Local languages are used in homes, on the market, for local politics, etc.; a typical diglossic situation with a functional differentiation between the High and Low languages.

Dominated majorities are legally in a tricky situation since binding international instruments specifically for demographic or even dominant majorities have not been developed. Many of them do not want to proclaim themselves minorities; the speakers of the oppressing language are demographically a minority. During the colonial era many of the colonised also internalised the colonisers' views of "local" languages as backward, primitive, not worth anything, and these images are still lingering strongly. Ngũgĩ, wa Thiong'o, a strong advocate of rights to African and other mother tongues^{xiii}, captured the challenges in his 1987 book *Decolonising the mind*.

Linguist-philosopher Sándor Szilágyi (1994) has presented a suggestion for a 'Bill on the Rights Concerning Ethnic and Linguistic Identity, and the Fair and Harmonious Coexistence of Ethnic and Linguistic Communities'. In principle, it is a non-discrimination bill, but it defines *rights for both majorities and minorities*. Minorities are defined demographically, as consisting of minimally 8% of the population of a local administrative district. His definition on "equality of chances"

below means that a minority must, for instance, have the same chance as the majority to use its own language in administration, as a teaching language in school and at university, etc., without needing to bear extra costs for this. Otherwise they are forced finance majority-language-medium services for the majority through their taxes, without getting the same services for themselves – the most common situation today. This would specify majority LRs and make minority LRs equal to them. Miklós Kontra has developed Szilágyi's ideas further (e.g. Kontra 2009).

Equality of chances is defined as the provision of chances whereby, based on equal material, mental, intellectual and personal conditions, all citizens can reach the same results through the same amount of material, mental and intellectual investment, and no citizens can have advantages or disadvantages due to their ethnic/linguistic identity (from Kontra 2009).

Linguistic minorities have some HRs support for various aspects of using their languages in areas such as public administration, courts, the media, etc. (Frowein, Hofmann & Oeter's edited books about minority rights in European states 1993 and 1994 give excellent overviews of Europe). Many of these rights are in various constitutions or special minority rights bills; some of these are extremely detailed (e.g. Canada, Latvia).

Some regional instruments grant LRs to minorities – these loom large in the two fairly recent European ones, the *European Charter* and the *Framework Convention for the Protection of National Minorities*. In the Charter (1998), a state can choose which paragraphs or subparagraphs it wishes to apply (a minimum of 35 is required) and the languages it wants to apply them to. Especially the Framework Convention has been criticised by politicians and international lawyers, who are normally very careful in their comments. Law professor Patrick Thornberry's general assessment is:

In case any of this [provisions in the Convention] should threaten the delicate sensibilities of States, the Explanatory Report makes it clear that they are under no obligation to conclude 'agreements'... Despite the presumed good intentions, the provision represents a low point in drafting a minority right; there is just enough substance in the formulation to prevent it becoming completely vacuous (Thornberry, 1997:356-357).

4. The most important collective LHRs: the right for Indigenous/ tribal/ minority groups to (continue to) exist, and to transfer their language to the next generation

One of the main legal obstacles to accepting some LRs as LHRs can be placed within the still ongoing debates about the various generations of human rights where only individual rights (“the first generation”) have been recognised by some as “proper” human rights. Any linguistic rights “seem to imply some kind of a collective nature” (de Varennes 2000:68), and collective rights in legally binding international treaties have been shunned for political reasons (see Capotorti's discussion about this, 1979). Languages are of course only meaningfully used with other people, either privately, or officially, in public. Legislating about individual inner speech is impossible.

Linguicide, language rights, and LHRs are all phenomena at both *individual* and *collective/group* levels. For instance, the *UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* supposedly provides rights to individuals, whereas both the *UN Declaration on the Rights of Indigenous Peoples* and Council of Europe's *Framework Convention for the Protection of National Minorities* are about collectives (even if both constantly jump between individual and collective levels). Linguicide also involves both individuals and groups/peoples (see Churchill 1997, last chapter, for a discussion). In addition to humans having LHRs, some instruments also treat *languages themselves* (as parts of the intangible human heritage) as right-holders, e.g. the *European Charter for Regional or Minority Languages*.

The difficulty in formulating some kind of a collective right while keeping them within the language of individual rights is beautifully (and, for non-lawyers, almost pitifully ridiculously) illustrated by the still most far-reaching *general* article in international law that creates obligations for states about the right to use one's own language, namely Article 27 of the *International Covenant on Civil and Political Rights* (ICCPR)^{xiv}. It provides that

in those States in which ethnic, religious or linguistic minorities exist, *a child belonging to such a minority* shall not be denied the right, *in community with other members of his group*, to enjoy his own culture, to profess and practise his own religion, or to use his own language (emphases added).

This provision is echoed literally in Art. 30 of the *Convention on the Rights of the Child* (CRC)^{xv}, except "or persons of indigenous origin" and "who is indigenous" have been added in the first and second lines, and "or she", "or her" have also been added. Female and Indigenous children have gained humanity as legal language-using subjects, except in the only two countries which have not ratified the CRC, South Sudan and the USA.

Article 27 was earlier seen in a much more narrow way, as only granting some protection from discrimination. However, the UN Human Rights Committee has noted in its General Comment No. 23 of 1994 on Art. 27 of the ICCPR^{xvi}) that, although phrased in the negative, the Article requires States to take positive measures in support of minorities, but unfortunately, the Human Rights Committee has not spelled out what those measures are, or whether they include measures relating to MTM education. Likewise, the HRC stated that the existence of a minority does not depend on a decision by the state but requires to be established by objective criteria (important in relation to countries which have denied having (certain) linguistic minorities – France, Greece, Turkey...). The revised *Human Rights Fact Sheet* on ICCPR from the Committee (2005) sustains these interpretations.

The most important collective LHRs are the right for an Indigenous /tribal people and a linguistic minority group to exist as such, without being forced to assimilate, and to be allowed and enabled to transfer their language to the next generation, if they so wish. These rights are included and their contents are spelled out in several HRs instruments. In the *UN Declaration on the Rights of Indigenous Peoples* (hereafter UNDRIP)^{xvii}, Paragraph 1 of Article 8 provides that indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture. And Article 13, para 1 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.

Art. 13, para 2, continues by obliging the states: “States shall take effective measures to ensure that this right is protected.” The *Framework Convention* provides in Paragraph 1, Article 5, that the Parties to the treaty will promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve essential elements of their identity, including their religion, language, traditions and cultural heritage, and Paragraph 2 of Article 5 requires that Parties refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will.

These rights have also been questioned, mainly by political scientists. Researchers debate what kind of language rights can be justified on what bases, i.e. which *demands* justify what kinds of *supply*. The main issue is whether all or only some (and in that case which ones) of those inequalities that are due to characteristics (in the individual or in society) that are not chosen by the individual should be "compensated for" or "rectified" by the state. Being born to parents who speak a language that is not the dominant language in the society where the person lives, and suffering injustice if this language has low status, could be seen as facts where individuals could justifiably demand "compensation", i.e. the state should offer more supplies (e.g. mother tongue medium – MTM – education). Most (neo)liberal political scientists do not see, though, that states should support the maintenance of the existence of minority groups beyond present generations. This seems partly to be due to the fact that they see speaking a minority language as some kind of a handicap to be compensated for (as in educational deficiency theories where ITM children, their parents, communities and cultures – rather than the organisation of the schools - are blamed when children do not succeed academically). With this view, obviously this "handicap" should not be carried on to the following generations. If parents choose to do it, it is *their* responsibility; they have had a choice. The neoliberal view concentrates on individual rights. Therefore minority groups as groups do not according to many political scientists of this kind have justifiable demands to continue their existence as minority groups. They are given the choice either to assimilate on an individual basis, or to continue *without* a justified claim to support for collective rights, for instance the right to transfer their languages to the next generation through state education. Thus they deny the validity of what in this article is considered as two basic LHRs.

Many lawyers, educationists and sociolinguists have a different analysis. The linguistic protection of national minorities rests according to the former OSCE High Commissioner on the Rights of National Minorities, Max van der Stoel, on two HRs pillars. These have also been called “*negative*” and “*positive*” rights, or *non-discrimination rights* and *affirmative rights*. As we can see, Mancini & de Witte’s examples above on core and ancillary rights cut across these distinctions:

the right to non-discrimination in the enjoyment of human rights; and the *right to the maintenance and development of identity* through the freedom to practice or use those special and unique aspects of their minority life - typically culture, religion, and language. The first protection ... ensures that minorities receive all of the other protections without regard to their ethnic, national, or religious

status; they thus enjoy a number of linguistic rights that all persons in the state enjoy, such as freedom of expression and the right in criminal proceedings to be informed of the charge against them in a language they understand, if necessary through an interpreter provided free of charge.

The second pillar, encompassing affirmative obligations beyond non-discrimination. ... It includes a number of rights pertinent to minorities simply by virtue of their minority status, such as the right to use their language. This pillar is necessary because a pure non-discrimination norm could have the effect of forcing people belonging to minorities to adhere to a majority language, effectively denying them their rights to identity. (OSCE – Organisation for Security and Co-operation in Europe - High Commissioner on National Minorities 1999:8-9; emphases added).

In a similar vein, Ruth Rubio-Marín (Professor of Constitutional Law in Seville, Spain) distinguishes two kinds of interest in language rights. One is "the expressive interest in language as a marker of identity", the other an "instrumental interest in language as a means of communication" (Rubio-Marín 2003:56). The *expressive* (or non-instrumental) language claims

aim at ensuring a person's capacity to enjoy a secure linguistic environment in her/his mother tongue and a linguistic group's fair chance of *cultural self-reproduction* (Rubio-Marín 2003:56; emphasis added).

It is only these expressive rights (that correspond to van der Stoels second pillar) that Rubio-Marín calls "language rights in a strict sense" (2003:56), i.e. these could be seen as linguistic *human* rights (LHRs). This formulation beautifully integrates individual rights with collective rights, in the sense I suggest below.

The *instrumental* language claims (van der Stoel's first pillar) on the other hand

aim at ensuring that language is not an obstacle to the effective enjoyment of rights with a linguistic dimension, to the meaningful participation in public institutions and democratic process, and to the enjoyment of social and economic opportunities that require linguistic skills" (ibid.).

Negative debates ensue when some instrumentalists falsely claim that those interested in the expressive aspects exclude the more instrumental communication-oriented aspects (for instance unequal class- or gender-based access to formal language or to international languages). Most ITM groups are mostly interested in both types of rights, expressive and instrumental, and often one is a prerequisite for the other, with both being alternately causal AND dependent variables. Many of us work with both aspects, and see them as complementary, not mutually exclusive. Individual and collective LHRs presuppose and support each other – either/or does not work.

5. Individual positive LHRs in relation to education

Individual LHRs may relate to a right to

1. identify with languages (identity rights)

2. learn languages (mother tongue, second/official language, foreign languages) through formal education (educational rights)
3. use languages in various situations and for various purposes (functional rights)
4. change/shift languages voluntarily, or not (protection-against-forced-assimilation rights).

All of them are in several ways linked and intertwined, and mostly presuppose each other. They cut across the earlier distinctions: identity rights belong to the second pillar and expressive rights, functional rights to the first pillar and instrumental rights, and educational rights and protection-against-forced-assimilation to all of them. I will restrict the rest of the presentation to the most important LHRs as outlined in Section 4.

If an individual (or a group) wants to assimilate into a dominant language group, at the cost of learning, using, and identifying with their own language(s), it should be their right to do so. But very often this kind of assimilation is not voluntary. Many people (are made to) believe that they have to choose: either the mother tongue (and a strong identity, knowledge of their ancestors and cultural heritage), *or* a dominant language (and better life prospects in relation to jobs etc). In addition to the promises about a better future often being false anyway, there is no need to choose. It is perfectly possible to learn several languages, including the mother tongue, well, succeed in school, and to have a multilingual, multicultural identity. Not having access to mainly mother-tongue-medium education mostly leads to linguistic and other assimilation, even against the wishes of people.

United Nation's 2004 Human Development Report

(<http://hdr.undp.org/reports/global/2004/>) linked cultural liberty to language rights and human development and argued that there is

... no more powerful means of 'encouraging' individuals to assimilate to a dominant culture than having the economic, social and political returns stacked against their mother tongue. Such assimilation is not freely chosen if the choice is between one's mother tongue and one's future. (p. 33).

Thus not needing to assimilate linguistically should be a basic individual (and collective) LHR. Two prerequisites for this are, first, that parents have enough solid research-based information about the consequences of their choices. Most ITM parents all over the world do not have this today. Secondly, alternatives need to exist in the educational system. Influential, though non-legally binding principles for this have been developed through the office of the OSCE High Commissioner on National Minorities, in *The Hague Recommendations Regarding the Education Rights of National Minorities* of October, 1996, (http://www.osce.org/documents/hcnm/1996/10/2700_en.pdf). In this document, MTM education is recommended at all levels, including secondary education, and this includes bilingual teachers in the dominant language as a second language (Art. 11-13). In its Explanatory Note, the following comment is made about subtractive^{xviii} education:

[S]ubmersion-type approaches whereby the curriculum is taught exclusively through the medium of the State language and minority children are entirely

integrated into classes with children of the majority are not in line with international standards (para. 5)

The submersion education through the medium of a dominant language that most Indigenous/tribal peoples in the world and many minorities undergo today, is not only contrary to recommendations based on solid research which shows that the more years ITM children study mainly through the medium of their own languages, the better their results in all subjects and also in the dominant language. The submersion education violates the right to education. It can also sociologically, psychologically, educationally and economically be seen as genocidal, within the meaning of Articles II(b) and II(e) of the United Nations' 1948 *Convention on the Prevention and Punishment of the Crime of Genocide*^{xix}. Likewise, forms of this education may legally come within the definitions of a crime against humanity in international law (see Skutnabb-Kangas & Dunbar, 2010).

6. Why LHRs – the role of Indigenous peoples

The often appalling ignorance among decision makers at various levels about basic language matters is a serious gap, and it should be the ethical responsibility of researchers to remedy it. When decisions are made about education, false information or lack of information about both research results and details in HRs instruments that the various countries have signed and ratified are also more the rule than an exception. Important language status planning decisions are often based on false information, even in situations where the correct information is easily available and has in fact been offered to the decision makers. More transdisciplinary co-operation between HRs lawyers, sociolinguists and educationists is urgently needed (see the Introduction in Kontra et al. 1999 and May 1999, 2001). Often Western research also suffer from ethnocentricity, and lack of knowledge of the languages and cultures of others (see, e.g., Hountondji 2002, Smith Tuhiwai 1999).

But lack of LHRs is not only an information problem. The political will of states to grant LHRs is the main problem. HRs, especially economic and social rights, are, according to Tomaševski (1996:104), to act as correctives to the free market. She states (ibid., 104) that

the purpose of international human rights law is [...] to overrule the law of supply and demand and remove price-tags from people and from necessities for their survival.

These necessities for survival include not only basic food and housing (which would come under economic and social rights), but also basics for the sustenance of a dignified life, including basic civil, political and cultural rights - and LHRs are a part of cultural rights. Tomaševski and many others also write that unless there is a redistribution of resources for implementing HRs, progress will be limited. It is probably not even of any use to spread knowledge of HRs as a basis for self-directed human development, unless the resources for implementation follow, and that can only happen through a radical redistribution of the world's material resources.

Why have states not granted LHRs to indigenous peoples and most minorities? The general attitudes behind state policies leading towards diminishing numbers of

languages are plagued by monolingual reductionism, seeing, falsely, monolingualism (in a state or dominant language) as something

- *normal and natural*; however, most countries are multilingual;
- *desirable* (more efficient and economical); however, if citizens do not understand the language they are governed in and if huge talent is wasted because children do not profit and are even harmed by formal education, this is inefficient and wasteful^{xx};
- *sufficient*: everything important exists in “big” languages, especially English; this is nonsense;
- *inevitable*: only romantics regret the disappearance of languages and linguistic homogenisation; however, linguistic diversity and multilingualism enhance creativity and are necessary in information societies where the main products are diverse ideas and diverse knowledges (Skutnabb-Kangas 2000).

In addition, states seem to see granting of LHRs as divisive. The rationale is that they result in minorities reproducing themselves as minorities. These minorities then supposedly follow the old nation-state thinking and want cultural autonomy, economic autonomy and, in the end, political autonomy: their own state. Thus MTM education for minorities is ultimately seen as leading to the disintegration of “nation states”. These erroneous beliefs are an important causal factor in linguistic genocide and lack of LHRs in education.

One reason for maintaining all the world’s languages, partly through binding LHRs, is as follows: Linguistic diversity and biodiversity are correlationally and causally related. Most of the world’s megabiodiversity is in areas under the management or guardianship of Indigenous peoples. Much of the knowledge about how to maintain biodiversity (especially in biodiversity hotspots) is encoded in the small languages of Indigenous and local peoples. This knowledge is often more accurate and detailed than the knowledge that scientists have, according to *The International Council of Science* (www.icsu.org) and it does not transfer to other languages if ITMs shift to a dominant language. Through killing ITM languages or letting them die we kill the prerequisites for maintaining biodiversity (see Skutnabb-Kangas 2000, and www.terralingua.org for details). UNDRIP’s provision on MTM education does not prevent this: education in the dominant (state) language is “free”^{xxi} for ITMs in the same way as for dominant group children, whereas MTM education is dependent on whether they have the financial resources to “establish” it:

Article 14

1. 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.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, 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.

People who lose their linguistic and cultural identity may lose an essential element in a social process that commonly teaches respect for nature and understanding of the natural environment and its processes. Forcing this cultural and linguistic conversion on Indigenous and other traditional peoples not only violates their human rights, but also undermines the health of the world's ecosystems and the goals of nature conservation (www.terralingua.org).

Cultural diversity is closely linked to biodiversity. Humanity's collective knowledge of biodiversity and its use and management rests in cultural diversity; conversely conserving biodiversity often helps strengthen cultural integrity and values (World Resources Institute, World Conservation Union, and United Nations Environment Programme, 1992:21).

Linguistic human rights are a necessary but NOT sufficient tool in the struggle for social justice.

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Notes:

ⁱ See, e.g., Jim Crawford's website

<http://www.languagepolicy.net/archives/home.htm> for literature.

ⁱⁱ See, respectively, <http://www.kum.dk/sw6576.asp>,

<http://scripta.kotus.fi/www/verkkojulkaisut/julk7/>,

<http://www.regjeringen.no/nb/dep/kkd/dok/regpubl/stmeld/2007-2008/stmeld-nr-35-2007-2008-.html?id=519923>; <http://www.sprakradet.se/4819>); there is also a Nordic Declaration on Language Policy at <http://www.sprakradet.se/2012> ("Nordic" includes the countries above and Iceland).

ⁱⁱⁱ The only exception in Denmark is the German border minority; the Germans grant reciprocal rights to the Danish minority.

^{iv} Katarina Tomaševski, the former UN Special Rapporteur on the Right to Education, has discussed "a dignified life" in several publications. "Dignity" is mentioned in many international human rights instruments (e.g. Article 43 in UNDRIP).

^v The figures come from various writings by Michael Krauss from Alaska; UNESCO uses both 50% and 90-95%.

^{vi} ICCPR, Article 14.3: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him".

<http://www2.ohchr.org/english/law/ccpr.htm>

^{vii} <http://www.un.org/en/documents/udhr/>

^{viii} <http://www2.ohchr.org/english/law/cescr.htm>

^{ix} For some books on language rights, see Guillorel/Koubi (red.) 1999; Kibbee (ed.) 1998; Kontra et al. (eds) 1999; May 2001; Phillipson (ed.) 2000; Skutnabb-Kangas 2000; Skutnabb-Kangas & Phillipson (eds) 1994); there are many more. See <http://www.tove-skutnabb-kangas.org/en/Tove-Skutnabb-Kangas-Bibliography.html> for these and more literature on LHRs.

^x <http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=1&CL=ENG&NT=&NU=148>.

^{xi} <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=157&CM=1&DF=2/17/2007&CL=ENG>; for news about it, see <http://conventions.coe.int/Treaty/EN/v3News.asp>

^{xii} See, e.g. Schöpflin, György (2009). "The Slovak language law is discriminatory and restrictive." <http://euobserver.com/9/28440>

^{xiii} See the Asmara Declaration,

<http://www.outreach.psu.edu/programs/allodds/declaration.html>

^{xiv} 1966, in force from 1976, <http://www2.ohchr.org/english/law/ccpr.htm>

^{xv} 1989, http://www.coe.int/t/dg4/education/minlang/textcharter/default_en.asp

^{xvi} 4 April 1996, UN Doc. CCPR/C/21/Rev.1/Add.5. See

<http://www2.ohchr.org/english/bodies/hrc/comments.htm>

^{xvii} See, e.g. <http://www.un.org/esa/socdev/unpfii/en/declaration.html>

^{xviii} Subtractive education, through the medium of a dominant language for ITM children, subtracts from their linguistic repertoire: they learn (some of) the new language at the cost of their own language. Instead, teaching should be additive – they should learn the dominant language at a native or near-native level, in addition to developing their mother tongues to a very high level through education. This is perfectly possible through mother-tongue-based multilingual

education. For the theoretical background and many examples, see, e.g., Skutnabb-Kangas 1984, 2000, García, Skutnabb-Kangas & Torrez-Guzmán (eds) 2006, Skutnabb-Kangas, Phillipson, Mohanty & Panda (eds) 2009, Skutnabb-Kangas & Dunbar (2010), Heugh & Skutnabb-Kangas (eds) (2010).

^{xix} E793, 1948; 78 U.N.T.S. 277, entered into force Jan. 12, 1951; for the full text, see <http://www1.umn.edu/humanrts/instree/x1cppcg.htm>

^{xx} See Grin 2008; Mohanty 2000 for this; Iboudo & Nikiema (2010) show that bilingual education in Burkina Faso gets better results, on shorter time, and costs less, than French-medium education. Likewise, Walter & Benson (2012) show in a very large comparative study that Mayan-medium education in Guatemala costs less per pupil promoted to grade 6 than Spanish-medium, and these pupils persist better into secondary education (pp. 296-298).

^{xxi} There are school fees in over 100 countries, see Tomaševski 2000.