Introduction: Short historical overview of language rights

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 and minoritized people of various kinds (hereafter ITMs) start demanding LRs for themselves. The moves in the USA to make English the official language in various states and federally is one example. The dominant linguistic group wants to safeguard their own languages de jure and/or de facto at present (e.g. in Denmark, Finland, Norway and Sweden). In many countries where “Europeans” are a numerical minority (in Asia, Africa, large parts of the Pacific), this minority, being economically and politically dominant, has succeeded, with the help of domestic elites, to grant (speakers of) their own languages most LRs. Here it is the linguistic majority (which often consists of many numerical minorities) that needs LRs. Their situation often resembles that of numerical minorities in Europe and Europeanised countries (Europe’s “main” settler countries; e.g. Aotearoa/ New Zealand, Australia, Canada, South Africa, the USA).

Most people connect LRs mainly to ITMs, and most LRs are found among special minority or indigenous rights rather than general human rights (HRs). Several countries have more than one or two official languages and even fairly good protection of ITM’s LRs 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 LRs also in practice.

Many states around the world have had legally codified rights for domestic minorities for centuries (see, e.g., de Varennes 1996 and later). But summaries of, or comparative literature on, these rights are still scarce. The literature is often (unconsciously?) Eurocentric: only rights in Europe or Europeanised countries count and are described; what has happened in these countries is labelled as “the first ever xx”, even when other parts of the world may have had similar debates, codifications or practices much earlier. Scientific imperialism looms very large here, as in many other areas.

Skutnabb-Kangas & Phillipson have divided the development of LRs in several phases/periods (1994: 72-79). These reflect firstly the scope of the rights (are they granted at a state level – this includes regional rights within the state – or higher; are they bilateral, between two states; are they multilateral, including covering a larger region, e.g. Europe or Africa or the Americas; or
are they international). Secondly, they reflect “characteristics” of right-holders (as opposed to the duty-holders which are mostly the states). Some examples: are the right-holders mainly linguistic (as opposed to other) minorities; are LRs only for aural (hearing) people or are the d/Deaf and Sign languages also included; are LRs individual as opposed to collective, for groups; are they personal (every person has them, regardless of where in a state they live) or territorial (an individual or group has the rights only within a specified territory).

In the first phase, pre-1815, LRs existed mainly for the linguistically dominant groups; several states (e.g. Spain in the late fifteenth century, France at the time of the French revolution) imposed (and exported worldwide, also to their colonies) a monolingual doctrine, adhering to the principle of “one state, one nation, one language.” On the other hand, many rulers were mostly interested in granting religious freedom to their own followers; this led to some bilateral treaties for religious (but not linguistic) minorities. As long as the “citizens” paid their taxes, they could often speak whatever languages they wanted.

The second phase, until the first World War, started with the Final Act of the Congress of Vienna 1815, signed by seven European major powers and granting LRs to several minorities. This was “the first important international instrument to contain clauses safeguarding national minorities, and not only religious minorities”, writes Francesco Capotorti (1979: 2), the United Nations Special Rapporteur on the Rights of National Minorities. However, with the exception of a few countries (e.g. Austria’s Constitutional Law of 1867, Article 19, see Skutnabb-Kangas & Phillipson 1994: 75 for the formulation), most constitutions were attempting to impose monolingualism on the citizens.

The third phase, between the two World Wars, saw both in the Peace Treaties and in the work of the League of Nations many multilateral and international conventions and national constitutions stipulating LRs for minorities, especially in eastern and central Europe. The signatories of the Peace Treaties, e.g. Britain, France, and the USA, did not grant similar rights to minorities in their own countries. Likewise, the Kurds in Turkey did not get any LRs. They have so far continued to struggle to get even basic LRs, such as the right to use Kurdish as a teaching language (see Sheyholislami et al., 2012). In many cases these rights worked; in others, they existed only on paper.

The fourth phase, from 1945 until the 1970s, includes the birth of major human rights instruments, Universal Declarations and Conventions (see below). The main goal was to protect the individual against arbitrary or unjust treatment. On the other hand, the concentration on individuals meant that many of the negotiators (e.g. Eleanor Roosevelt) claimed that since everybody was protected by these instruments, there was no need to single out minorities; minorities were seen as a “European problem”. The UN Charter on Human Rights does not, for example, mention minorities at all.

The fifth phase, with a renewed interest in minorities and thus also their LRs, started with the publication of Capotorti’s 1979 report for the UN. There is a fairly strong wording with protection of some LRs in some constitutions, but it is often at such a general level that the vagueness may make it vacuous. There is less support in regional instruments (e.g. covering various continents), and even less in international ones. Furthermore, both regional and
international instruments have to be not only signed and ratified by states (and many are unwilling), but also implemented; this is a tough order. In many instruments language figures in the preface but disappears in educational clauses, or, if it is there, the formulation has more modifications, conditionalities or drawbacks than other clauses.

One could probably claim that we are now entering a sixth phase, where it is largely accepted that some LRs must be seen as linguistic human rights (LHRs), i.e. as part of the human rights system, with all that it implies (e.g. de Varennes 2000). Legally it means that the existing instruments (e.g. the UN Genocide Convention – see below) are being re-interpreted; the duty-holders are being specified more clearly, and the monitoring systems are becoming stronger; courts can be, and are, increasingly being used to clarify concepts in both constitutions and other legislative documents, and in international human rights law.

Language rights, linguistic human rights, and diversities: Some concept clarification

Are all language rights linguistic human rights? Definitely not. A preliminary definition that I have 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?

Lawyers 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 in the following way: “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. Skutnabb-Kangas 2008: 109).

Mancini & de Witte’s legally oriented definition is more precise than Skutnabb-Kangas’s sociologically oriented one, even if they do not use the term linguistic human rights. In other aspects, it can also be broader. 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”, these specifications could contain “LRs” 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. innovative proposals are by definition not (yet?) language rights. Their “fundamental” is defined legally, whereas Skutnabb-Kangas’s “basic” is more a moral judgement. 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 life¹. On the other hand, my definition opens up for LHRs which have not yet been codified as rights. 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 & 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”, also a LR) is relative from a legal point of view, because 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 linguicide, 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, meaning those rights that, even if they may be seen as important LRs, 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; emphases added).

One might imagine that their “core rights” could be seen as LHRs, whereas the “ancillary rights” might be “only” LRs. Not so. The “right to learn the language” should obviously be a core LHR; this would follow from Mancini & de Witte’s own argumentation. Learning and knowing one’s language/mother tongue is a necessary prerequisite for being able to enjoy the right to speak it. 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. 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.

Of the world’s about 7,000 mainly spoken languages (7,106; see the Ethnologue, 17th edition, www.ethnologue.org, for the estimated numbers of languages), 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. But would this loss, which obviously reduces the world’s linguistic diversity, be important?

“Respect for linguistic and cultural diversity” figures in many preambles of constitutions, declarations, and other documents. Often it is only vapid Eurospeak (Phillipson, 2011) or other pious rhetoric. In Europe, the maintenance of diversity is counteracted by the increasing dominance of English, in EU institutions, in EU schemes such as the Bologna process, and in many societal domains in member states. Global processes of linguistic capital dispossession
dovetail with the consolidation of US empire and push- and pull factors in the English worldwide (Phillipson, 2009). In most countries which receive refugees or immigrants, this added linguistic diversity is efficiently killed by the education system (e.g. Skutnabb-Kangas & Dunbar 2010). The linguistic capital dispossession is happening today faster than ever before in human history, and especially in the linguistically, culturally and biodiversity-wise richest parts of the world (in Asia, Africa, the Pacific, and partly also Latin America). The consequences for human life on earth can be devastating, because of the connections between biodiversity and linguistic and cultural diversity.

I shall problematise the ways many people look at linguistic diversity, with reference to a linguistic diversity continuum. At one end of this continuum one can place Minimal Linguistic Diversity: only one language is maintained and developed. It does not take much to guess which language might be chosen today as the “hypercentral” language. At the other end of the continuum, one might place Maximal Linguistic Diversity. For many people that could mean that all today’s languages are maintained and developed.

I claim that this kind of demagogical diversity continuum can construct any support for linguistic diversity as extremism. Few people would argue in Realpolitik-terms for an approach where the world has one language only and all others have (been made to) disappear/ed. For some people this might be an ideal, but people who would in earnest work for killing all other languages would be considered extremists.

But is the maintenance of all or most of today’s languages extremism too? when KNOWING that diversity (also linguistic diversity) is positive, and homogenisation is negative, often disastrous? Many people claim in addition that this maintenance is not realistic.

On the contrary, I claim that this maintenance of all the worlds’ languages is both sensible and realistic (Skutnabb-Kangas 2000). What would a Diversity Continuum which normalises both diversity itself and work to maintain diversity (also through multilingual education, at all levels) look like? The other extreme end of the continuum could be actively creating as many new languages as possible: more or less every idiolect (and certainly every dialect, sociolect, genderlect) would have the same rights that (speakers of) some “big” languages have today.

The maintenance and development of today’s languages might be a sensible diversity-oriented compromise around the middle of the continuum. It would mean that all today’s “languages” (language is a contested and partially unclear concept…) are maintained and supported. For each point on the continuum, one can assess the relative benefits and costs of the position of supporting/not supporting diversity in terms of both quantifiable factors and qualitative, non-tangible factors (e.g. UNESCO’s concept “Intangible Heritage”). Approaches at various points on the continuum can result in more, or less, linguistic (and cultural) diversity (LCD). Today most educational approaches both for ITM children AND even for linguistic majority children result in less linguistic diversity.

Maintenance of diversities should be seen as something normal and healthy, as a guarantee for the survival of humankind and even the planet, also because LCD is correlationally and most probably also causally connected to biodiversity (again, see Terralingua). For diversities
maintenance, we need not only Language Rights but Linguistic Human Rights.

**Placing language rights on continua: Linguistic genocide and crimes against humanity in education, or “full” linguistic human rights**

LRs themselves can be placed on several continua, from the “worst” to the “best”. Building further on Figure 1 in Skutnabb-Kangas & Phillipson 1994: 80, I use two continua. The first covers the relative degree of rights granted, from assimilation-oriented negative “rights” such as prohibition and toleration of languages and non-discrimination prescription (people are not allowed to be discriminated against because of language), to positive rights, permission to use certain languages and promotion of them. The second continuum covers the relative overtness or coveryness of the rights – as mentioned above, many constitutions and international instruments are vague and covert on LRs.

What is likely to follow from a lack of LRs? At the negative end of the degree of rights (regardless of their degree of overtness), linguistic genocide and crimes against humanity in education may follow. Rights at the positive end may lead to maintenance and further development of languages, and thus linguistic diversity. Revitalisation of languages (which is often a result of earlier often “successful” attempts at linguistic genocide) also needs promotion of the languages. Skutnabb-Kangas & Phillipson 1994 placed LRs in selected countries and in covenants on the two continua.

Next I present some of the intricacies of the legal issues covering the most negative results of lack of LHRs, especially lacking the core right: education mainly through the medium of one’s mother tongue/first language. This can lead to linguistic genocide and crimes against humanity in education. When what became the UN International Convention on the Prevention and Punishment of the Crime of Genocide (E793, 1948, [http://www1.umn.edu/humanrts/instrree/x1cppcg.htm](http://www1.umn.edu/humanrts/instrree/x1cppcg.htm)) was being prepared after the Second World War, its final Draft had in Article III definitions of linguistic and cultural genocide; it also saw them as crimes against humanity. Article III was voted down by 16 states in the UN General Assembly in 1948, and is thus NOT part of the final Convention. But all states then members of the UN agreed about the definition of what should be considered linguistic genocide: “Prohibiting the use of the language of the group in daily intercourse or in schools, or the printing and circulation of publications in the language of the group”.

The final Genocide Convention has five definitions of genocide in its Article 2:

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
(a) Killing members of the group;
(b) Causing serious bodily or mental harm to members of the group;
(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
(d) Imposing measures intended to prevent births within the group;
(e) Forcibly transferring children of the group to another group (emphases added).
Articles 2(b) and 2(e) are highly relevant for ITM education; possibly also (c) and, especially (d), at least for many Indigenous and tribal peoples (in connection with depossessing them of land rights, destruction of forests, seas, meaning lack of the right of Indigenous peoples’ “prior informed consent”, as this is formulated in the United Nations Declaration on the Rights of Indigenous People (UNDRIP). There is massive literature on these violations – the website of the UN Permanent Forum on Indigenous Issues, UNPFII (http://social.un.org/index/IndigenousPeoples.aspx) is a good starting point. Human rights lawyer Robert Dunbar and I have explored the questions of genocide and crimes against humanity in education in several publications. Our first Expert report for UNPFII (Magga et al. 2005) contains sociological and legal argumentation showing that to educate ITM children through a dominant language in a submersion (or even early-exit transitional) programme prevents access to education, because of the linguistic, pedagogical and psychological barriers it creates. Thus it violates the human right to education which is encoded in several International HRs instruments, also in the UN Convention on the Rights of the Child of 1989, CRC, Article 29 (see below). This education can also have harmful effects socially, psychologically, economically, politically. This includes very serious mental harm: social dislocation, psychological, cognitive, linguistic and educational harm, and, partially through this, also economic, social and political marginalization. It also often causes serious physical harm, e.g. in residential schools, and as a long-term result of marginalization - e.g. alcoholism, suicides, incest, violence. Indigenous peoples are overrepresented on all (there are countless examples in, e.g., Skutnabb-Kangas 2000 and Skutnabb-Kangas & Dunbar 2010). ITM education in most countries is organized against solid research evidence about how best to reach high levels of bilingualism or multilingualism and how to enable ITM children to achieve academically in school. Dominant-language-only submersion programmes “are widely attested as the least effective educationally for minority language students” (May & Hill 2003: 14, a study commissioned by the Māori Section of the Aotearoa/New Zealand Ministry of Education; http://www.minedu.govt.nz/).

Kathleen Heugh (e.g. 2010) states on the basis of a number of large-scale studies that early transition [i.e. early-exit transitional programmes] to English and other ex-colonial languages in Africa (see articles in McIlwraith, 2012, on the present situation) is accompanied by poor literacy in L1 and L2, poor numeracy/mathematics & science, high failure and drop-out rates, and high costs/wastage of expenditure. Heugh also states that if learners switch from an African MT to FL/L2 medium, they may seem to do well until half way through grade/year 4. After this, progress slows down and the gap between L1 and L2 learner achievement steadily widens. We now know from comprehensive studies in Second Language Acquisition on most continents that it takes 6-8 years to learn enough of a second or foreign language to be able to learn through this L2. Heugh and I follow this up in our 2010 book. Thomas & Collier’s very large-scale studies (summarised 2012) show this convincingly too. In both Dunbar & Skutnabb-Kangas 2008, Skutnabb-Kangas & Dunbar 2010 we conclude that when states persist in subtractive educational policies (as most states today do), implemented in the full knowledge of their devastating effects on ITM children, this can, from an educational, linguistic, psychological and sociological point of view be described as a form of linguistic and cultural genocide. However, to claim also legally that this education is genocide, some more court cases are needed to ascertain the precise interpretations of some concepts (e.g. “intent”) in the Genocide Convention’s definitions.

But there are several recent examples already where lawyers conclude that the “intent” need not
be expressed directly and openly. (No state says: we intend to harm children). Instead, it can be deduced from the results, i.e. if the state organizes educational structures which are known to lead to negative results, this can be seen as “intent” in the sense of Art. 2. Ringelheim (2013: 104-105), for instance, discusses a landmark judgment where the European Court of Human Rights

makes clear that no intention to discriminate is required for the discrimination to exist: the sole fact that a measure has a disparate impact on a minority is sufficient to establish the existence of differential treatment – whatever the intent behind the policy. This opens the possibility of addressing structural or systemic forms of discrimination.

Skutnabb-Kangas & Dunbar (2010) also consider the extent to which the various forms of submersion education could be considered to give rise to international criminal responsibility. The term ‘crime against humanity’, first used in the modern context in respect of the massacres of Ottoman Turkey’s Armenians of 1915, was translated into international legal principle in 1945. The most complete description of what constitute “crimes against humanity” is now set out in the Rome Statute of the International Criminal Court of 17 July, 1998 (the “International Criminal Court Statute” (ICC)) (http://untreaty.un.org/cod/icc/statute/romefra.htm). Although long associated with armed conflict, it is now accepted that they can also be perpetrated in times of peace; this can now be seen as part of customary international law. We look at four common features that apply to both war-time and peace-time crimes against humanity, using Cassese’s definitions and interpretations (2008, 98-101), and conclude that today’s ITM education may, when legal interpretations become clearer through court cases, also lead to criminal responsibility in terms of being crimes against humanity.

L(H)Rs in education – what are they and where can one find them?

The core education-related LHRs are the right to learn one’s own language thoroughly, at the 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”.

To what extent do these core LHRs exist today in international or regional HR instruments? Here I summarise some of the most important current LHRs in education from these instruments, mainly in relation to education. A much more thorough presentation can be read online in Chapter 2 of Skutnabb-Kangas and Dunbar (2010), the main source of this part of the article. It is clear that those ITM children who have been taught in a dominant foreign language which they, at least initially, did not understand, have NOT had access to education, even if it should have been their basic human right. The result of this foreign or dominant-language medium education has in most cases been that they have not learned to read or write their own language; often their competence in the dominant language has not reached the level that dominant-language peers
have; their school achievement at least at a group level has been low, and many have been ashamed of their language and culture, and have therefore not taught it to their own children, in the (wrong) belief that this would help the children. This vicious circle has also in most cases been the main reason for the present need for language revitalisation. Those children who have succeeded as a group have done it despite the way their formal education has been organised, not because of it.

Below I present the general right to education, followed by the right to learn and be taught through the medium of one’s mother tongue is summarised:

- Paragraph 1 of Article 26 of the Universal Declaration of Human Rights (http://www.un.org/en/documents/udhr/, adopted on 10 December 1948 by the United Nations General Assembly), guarantees the right of everyone to education. Paragraph 2 provides that such education shall be directed to the full development of the human personality, and shall promote understanding, tolerance and friendship among all nations, racial and religious groups.

- The International Covenant on Economic, Social and Cultural Rights (the ‘ICESCR’) of 1966 (http://www2.ohchr.org/english/law/cescr.htm), paragraphs 1, 2 and 3 of Article 13 recognise the right of everyone to education; refer to the sense of the dignity of the human personality, and add ‘ethnic groups’ to the list in the Universal Declaration (above) amongst which understanding shall be promoted. It also notes that education shall enable all persons to participate effectively in a free society.

- The 1960 Convention Against Discrimination in Education (http://www.unesco.org/education/pdf/DISCRE_E.PDF), Article 5, subparagraph 1 (a) provides that Education shall be directed to, amongst other things, the full development of the human personality.

- The United Nations’ Convention on the Rights of the Child of 1989 is important (the ‘CRC’, http://www.hrweb.org/legal/child.html; see also http://www.unhchr.ch/tbs/doc.nsf/%28symbol%29/CRC.GC.2001.1.En?OpenDocument, Article 17, para 4, Article 28, paragraph 1, Article 29, para 3, and Article 30, para 2). The basic right to education is set out in Article 28, paragraph 1, in which the States parties to the CRC recognise the right of the child to education. The paragraph also provides that with a view to achieving this right progressively and on the basis of equal opportunity, States will take a range of steps, including, in subparagraph (e), measures to encourage regular attendance at schools and the reduction of drop-out rates. Article 29, subparagraph (a) stipulates that education shall be directed to the development of the child’s personality, talents and mental and physical abilities to their fullest potential. Article 29, subparagraph (d) stipulates that education should be directed to the development of respect for the child’s parents, his or her own cultural identity, language and values. Article 30 provides: In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her own group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language (emphasis added).

- The International Covenant on Civil and Political Rights (the ‘ICCPR’) of 1966 (http://www2.ohchr.org/english/law/ccpr.htm), Article 27, has the same famous
‘minorities provision’, except the CRC has added ‘or is indigenous’ and ‘he or she’.

• **ILO Convention No.169 on Indigenous and Tribal Peoples**
  ([http://www.ilo.org/public/english/region/ampro/mdtsanjose/indigenous/derecho.htm](http://www.ilo.org/public/english/region/ampro/mdtsanjose/indigenous/derecho.htm)) Art. 28, para 1, asks states to implement indigenous children’s right to be taught to read and write in their own indigenous language, wherever practicable, or in the language most commonly used by the group to which they belong, as well as the national language(s) of the country in which they live.

• **UNDRIP, the United Nations Declaration on the Rights of Indigenous Peoples**
  (Resolution A/61/L.67, September 13, 2007)
  ([http://www.docip.org/declaration_last/finaladopted_UNDRIP.pdf](http://www.docip.org/declaration_last/finaladopted_UNDRIP.pdf)) provides in Articles 13 and 14:

  13.1. 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.
  13.2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.
  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.
  14.2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
  14.3. 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.

  The first two articles imply that the child has the right to learn the mother tongue. Since most forms and levels of the “education of the State” (14.2) use the “State” languages as a medium, the child cannot have access to this education without knowing the State language. These quotes together might imply that high levels of at least bilingualism must be a goal in the education of an Indigenous child. But since state education through the medium of the dominant state language is “free” (even if there are school fees even in elementary education in many countries where Indigenous peoples live), most Indigenous children are forced to “choose” the “state education.” Their parents are “free” to establish and control their own educational systems, with their own languages as teaching languages – but at their own cost. How many Indigenous and tribal peoples can afford this? There is nothing about the State having to allocate public resources to Indigenous-language-medium education.

• **The Council of Europe’s European Charter for Regional or Minority Languages** (the “Minority Languages Charter”)
both came into force in 1998, and fit well with the “when possible” drawback in Article 14.3 of the United Nations Declaration on the Rights of Indigenous Peoples (see above). The Minority Languages Charter’s 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). The Article in the Framework Convention, 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).

There are thus so far very few binding and unconditional rights, with financial support, to mother tongue medium education. The situation is even worse for any right to revitalisation programmes.

In Europe and Europeanised countries, the more overt the rights are, the more implementation often follows, especially where both a monitoring system and sanctions are in place. On the other hand, especially in Europeanised countries there are few LRs, especially in education; the USA has not (05 January 2015) even ratified the UN Convention on the Rights of the Child (CRC) (https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en; the only other UN member countries that have not ratified it are Somalia and South Sudan). CRC has, together with article 27 of the International Covenant on Civil and Political Rights (see above) the best LHRs protection so far. In the case of Africa and Asia, where there often are several fairly overt but general LRs in constitutions etc., implementation is often largely lacking. Short examples from Kenya, Malawi and India follow.

Some examples: Kenya, Malawi and India

Kenya’s 2010 Constitution (Chapter 2, article 7, clauses 3a and 3b) “clearly articulates the government’s commitment to ‘promote and protect the diversity of languages of the people of Kenya [and to] promote the development and use on indigenous languages, Kenyan sign language, Braille…’.”Articles 35, 44, 50, 54 and 56 in Chapter 4, the bill of rights of the Constitution “establish the linguistic rights of the people of Kenya such as the right to use a language of a person’s choice”; this includes free interpretation. The government also commits itself to “put in place affirmative action programmes designed to ensure that minorities and marginalised groups develop their cultural values, languages and practices” (all quoted in Kioko 2013: 119). Despite this protection of LRs, there is next to no implementation; Kioko 2013 has a sharp analysis of the reasons.

In Malawi, the 1994 revised Constitution includes a bill of rights; one of the rights is “the right for citizens to use the language of their choice” (Mtenje 2013: 96). In 1996 “the ministry responsible for education produced a circular which permitted primary school teachers to use
local languages to explain difficult concepts wherever necessary” (ibid., 96). The government asked the Center for Language Studies (CLS) of the University of Malawi to do a study of the acceptability of the new language policy; the sociolinguistic surveys showed, in contradiction to criticism presented earlier, that “the majority of respondents supported the use of local languages in education provided that English would continue to be taught as a subject and also be used as a medium of instruction at a later stage of primary education” (ibid., 97). In 1999 a first multilingual education policy draft was produced, suggesting that “local languages will be used as media of instruction from Grades 1-4 and thereafter English [which is taught as a compulsory subject from Grade 1] takes over up to tertiary level” (ibid., 97). Local languages shall be permitted as optional subjects from Grade 4 onwards where circumstances permit this. Likewise, Chichewa, the largest language which is spoken and understood by over 70 per cent of the population of nearly 14 million (ibid., 95), “shall continue to be taught as a subject from Grade 1 up to the secondary level” (ibid., 98).

However, “despite numerous efforts by the CLS and other stakeholders to get the policy approved, this, unfortunately, has not happened since 1999 and there is almost no indication of its being implemented in the foreseeable future” (ibid. 98). Mtenje (2013) lists strengths in Malawi which would make the policy perfectly applicable, and analyses the reasons why it has not happened; the lack of the political will among the (English-knowing) elites seems to be the main reason. This echoes the situation in many, if not most, African and also Asian countries.

India’s Constitution has the following to say:

Para 350A (“Facilities for instruction in mother-tongue at primary stage”).

It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities.

Para 350 B (“Special Officer for linguistic minorities”)

(1) There shall be a Special Officer for linguistic minorities to be appointed by the President.

(2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under this Constitution and report to the President upon those matters at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament, and sent to the Governments of the States concerned (http://lawmin.nic.in/olwing/coi/coi-english/Const.Pock%202Pg.Rom8Fsss(23).pdf)

According to Ajit Mohanty (personal email 11 April 2013), there have been no Presidential directives for enforcement of 350A. Under 350B there is a National Commission for Linguistic Minorities. It has looked into specific issues or complaints from linguistic minorities in different parts of India and has come up with some status reports on linguistic minorities but nothing on protection and vitalization of languages. The commission has become a body for dealing with grievances of the linguistic minority groups but has not taken up the question of protection and promotion of minority languages as such (see Panda & Mohanty 2013 for details of policy; see also Mohanty & Skutnabb-Kangas 2013 for projects on mother-tongue-based multilingual
education in India and Nepal).

In neither Kenya nor Malawi is there a regular monitoring mechanism, and no sanctions follow when the state does not do what it has promised. In India, the monitoring body has little power.

Still, if one is optimistic, one might see a trend today for rights to develop from negative towards positive rights, and from tolerance-oriented to promotion-oriented rights.

Some challenges

There are many “practical” challenges in achieving LHRs, especially in education. Some are more real than others. Economic constraints in developing small languages so that they can be used in formal education, especially in higher grades, materials development and the cost-benefit arguments in publishing in small languages, training of teachers who have had their (often inadequate) initial training through the medium of a dominant language; if basic education is to be “fixed”, higher education needs to be reformed too. All these challenges have to be tackled. On the other hand, the incredible waste when children learn very little in a foreign-language-medium classroom, and the country then has a labour force with few high-level qualifications, has serious economic drawbacks. But there are also completely misplaced linguistic fears and attitudes that could be changed through information and practical examples of how mother-tongue-based multilingual education works, and how countries with more LHRs can manage extremely well. These fears also play on discriminatory attitudes based on both ethnicity- and class-related hierarchies.

Some of the basic theoretical and methodological issues and challenges have to do with monodisciplinary views: sociolinguists and educationists often do not relate their work on rights to power relations, or economics, or philosophical underpinnings of various kinds of rights, in the way some political scientists, language economists, or philosophy of science scholars may do. In addition, most other scholars know too little about how lawyers, especially human rights lawyers, see language rights. Many do not know the difference between recommendations, declarations, conventions, covenants, etc., and they often do not know their contents, or how lawyers interpret them. Sociolinguists may treat instruments which are drafts only (e.g. the Draft Universal Declaration of Linguistic Rights; it was never accepted by UNESCO) as binding documents; they may see instruments that have been signed but not ratified by states as binding for the state, and may refer to instruments which are not in force because of too few signatories (e.g. the UN Declaration in the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, http://www.unesco.org/most/lntlaw7.htm) as valid. When (some) researchers and educational administrators in the USA wanted to get rid of stigmatising negative terminology used about immigrant minority students (such as LEP – Limited English Proficiency – or NEP – No English Proficiency), legal advice might have been useful. The present term ELLs, English Language Learners, even if positive in some ways (despite still making students’ mother tongues and bilingualism invisible) does not grant these students any rights in international law, the way “linguistic minority” might have done. Using “populations” or “groups” about Indigenous peoples may deprive them the right to self-determination in a legal sense – this is something that only “a people”, plural “peoples” can have.
Similarly, few lawyers know how scholars from other disciplines use concepts central to language rights in education, including “language”, and lawyers seldom problematise sociolinguistic or educational concepts relating to LRs.

Too few researchers relate their intellectual activities to ongoing struggles for rights (Phillipson 2012, Phillipson & Skutnabb-Kangas 2012). Many scholars in the field are working together with the Indigenous/tribal/minority and minoritised peoples and groups who are most directly concerned, because they lack language rights in education. Still, there is too much theoretical-only ivory-tower work that does not support or that may even harm those who lack basic language rights. Some of the work “deconstructing language” represents neoliberalism-supporting intellectual games.

Historically, ITM parents have not “chosen” for the children to learn the dominant languages at the cost of the mother tongues. The languages have disappeared as a result of linguicism (linguistically argued racism) and linguistic genocide. Subtractive education continues today all over the world, including the USA. But this IS possible to change, both on a large scale, and for very few. The 2014 MLE Policy and Implementation Guidelines for Odisha, India, is extending mother-tongue-based multilingual education (MLE) to all tribal children, with their mother tongues as the teaching languages for at least the first five years, and subjects thereafter. Odia, the official language is a subject from grade 2, and English from grade 4. Teacher training, materials, monitoring, research and development, etc, will soon be in place. Tribal communities, with 72 languages, make up over 22% of Odisha’s population. Over 14,000 primary schools have more than 50% tribal children; of these over 6,800 have more than 90%. In comparison, Indigenous Aanaar Saami in Finland have fewer than 400 speakers. They have three language nests, and their primary education is in Aanaar Saami.

There are today many examples of not only experimental, but even large-scale programmes where ITM children have mother-tongue-based multilingual education that is starting to ensure their basic LHRs (in the Saami country, the Basque country, Wales, Thailand, Ethiopia, Bolivia, Nepal, India, Peru, and many other countries; see, e.g. Skutnabb-Kangas et al. 2009, Skutnabb-Kangas & Heugh 2011, Walter 2010, Walter & Benson 2012 and references in them). Likewise, many small revitalisation programmes are being implemented (e.g. Hinton 2012, Olthuis et al. 2013). There are several organisations working to support endangered languages (see UNESCO on Endangered languages). ITM parents who demand and choose mother-tongue-based multilingual education (MLE) rather than dominant-language medium education are in fact promoting their children’s social mobility even economically, a conclusion using theories by Amartya Sen, economics Nobel laureate. More transdisciplinary work is needed, to make this possible. Good analysis and activist research/ers, cooperating with ITMs and their organisations, is a precondition for LRs and LHRs to be implemented.

References


Walter, Stephen L. 2010. “Mother tongue-based education in developing countries: some


**Endnotes**
1 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).
2 All references to web-pages were checked for accuracy when the article went to print; therefore no dates for accessing them are given.
3 The figures come from various writings by Michael Krauss from Alaska; UNESCO uses both 50% and 90-95%.

**Biography**

Dr. Tove Skutnabb-Kangas (retired) has authored or edited some 50 books and over 400 articles and book chapters in almost 50 languages (see [www.tove-skutnabb-kangas.org](http://www.tove-skutnabb-kangas.org)). She is actively involved with struggles for language rights since five decades. Research interests: linguistic human rights, mother-tongue-based multilingual education of Indigenous/tribal/minority and minoritised children.

**Keywords**

Language rights
Linguistic human rights
Linguistic genocide
Crimes against humanity
Mother-tongue-based multilingual education
Indigenous peoples
Endangered languages

8,509 words

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