LANGUAGE RIGHTS AND REVITALIZATION

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INTRODUCTION/DEFINITIONS

"*Revitalization* [is] commonly understood as giving new life and vigor to a language that has been decreasing in use (or has ceased to be used altogether)", the editors of this book wrote in their invitation letter to authors.

Language rights (LRs) are rights that in some way relate to languages. The concept of language rights is vague; firstly, because the meaning of both "language" and "rights" have been and are endlessly debated, and, secondly, because neither lawyers nor political scientists, philosophers and others who have discussed LRs agree on what they should be and what they are. In this article I will mainly discuss a more narrow concept, namely *Linguistic Human Rights* (LHRs). Only language rights which are so fundamental that every individual has them because that individual is a human being, so inalienable that no state is allowed to violate them, and which are necessary for individuals and groups to live a dignified life, are LHRs (see discussions and other definitions in Solan & Tiersma, eds, 2012). Other language rights may be enrichment-oriented (e.g. necessary for good jobs, mobility, etc). These are sometimes called instrumental language rights.

Why is revitalization needed? Individuals and groups in need of revitalization have not had Linguistic Human Rights (LHRs) or even language rights (LRs). In most cases those whose LHRs have been (and are) violated are *ITM*s: **I**ndigenous/**t**ribal peoples, linguistic **m**inorities, or **m**inoritized people. The last ones are people who are not necessarily numerical minorities but who have less power and fewer material and immaterial resources than a numerical power elite in their country, and who therefore lack rights, including LRs.

We can find LRs both in local, regional and national regulations (e.g. in constitutions), and regional and international Covenants and Charters and other binding legal documents that states have signed and ratified. There are also numerous Declarations and Recommendations that include LRs and even LHRs. These are not legally binding on the states even if some of the most important ones can be seen as morally binding if the states have accepted them. Two examples, probably the most important international documents relating to language endangerment (and thus the need for revitalization) are *The UN Declaration on the Rights of Indigenous Peoples* (http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf), and, for the Deaf, *The UN Convention on the Rights of Persons with Disabilities* ((http://www.un.org/disabilities/convention/conventionfull.shtml). Also *UNESCO's Convention for the Safeguarding of the Intangible Cultural Heritage* is important http://unesdoc.unesco.org/images/0013/001325/132540e.pdf).

*Individuals, collectivities, and language*s can "have" LHRs. LHRs can be *individual*, as in (Art. 30) in the *UN Convention on the Rights of* ***the Child*** or in the *UN Declaration on the Rights of* ***Person****s Belonging to National or Ethnic, Religious and Linguistic Minorities*[1]. LHRs can also be *collective*, as in the *UN Declaration on the Rights of Indigenous* ***People****s* (UNDRIP) and *Council of Europe's Framework Convention for the Protection of National* ***Minorities*** (even if both are constantly jumping between individual and collective levels). Finally, *languages themselves* (rather than speakers/signers) can also be granted rights, as in the *European Charter for Regional or Minority* ***Languages*** (all emphases added).

I am asking four questions in this chapter 1. What are the main causal factors behind the need for revitalization? 2. Are there binding or even non-binding language rights that would support ITM language maintenance, prevent language endangerment, and, especially, support revitalization of ITM languages? 3. If there are such rights, are they being implemented? If not, why? 4. Finally, what could be done? I discuss the first three questions under each of the subtitles. My last question is selectively answered under the final recommendations.

CRITICAL ISSUES: WHY IS REVITALIZATION NEEDED?

It should be clear by now that lack of human rights and especially LHRs can lead, has led and leads today to language endangerment. Granting LHRs can, in the best case, lead to revitalization, but most of today's revitalization work happens without the revitalizing groups of individuals having (been granted) any LRs. In order to understand the background for the need for revitalization, we need to look at the present definitions of one of the most critical causal factors, namely genocide. The *United Nations International Convention on the Prevention and Punishment of the Crime of Genocide* (E793, 1948; http://www.hrweb.org/legal/genocide.html) 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).

Historically the physical genocide of Indigenous and tribal peoples through direct killing (Art. 2(a) above) has caused and continues to cause many groups – and of course, with them their languages – to disappear, "wholly or in part". But the disappearing happens also through taking away their lands and resources. Even today, ITMs are prevented from susbsisting and reproducing themselves, through logging, mining, damming, extraction of oil (including through fracking, tar sands, oil pipes, etc), forced sterilizations, and so on, meaning genocide according to Art. 2(c) and 2(d) above. But here we are more interested in the role of education (and to some extent the media) in the cultural and linguistic genocide. I contend that the education of ITM children, historically and to a large extent also today, can, using definitions in Art 2(b) and 2(e), linguistically, educationally, sociologically, economically and psychologically be seen as genocide. This is the case when formal education is conducted using a dominant language as the (main) teaching language, in submersion (sink-or-swim) programmes, i.e. in a subtractive way where (some of) the dominant teaching language is learned at the cost of the children's mother tongue (see Skutnabb-Kangas and McCarty, 2008 for definitions). It is very clear that subtractive education

through the medium of a dominant language at the cost of ITM mother tongues has 'caused serious mental harm' to children, and often also physical harm, e.g. in boarding schools (e.g. Dunbar and Skutnabb-Kangas, 2008; Magga et al., 2005; Magga and Skutnabb-Kangas, 2001, 2003). This form of education has also tried and often succeeded in 'transferring children of the group to another group'. This has happened 'forcibly', because the children did not have any alternative (e.g. mother tongue-medium education did not exist).

What about the requirement of 'intent' in Article 2 of the Genocide Convention? For obvious reasons, no state or educational authority today can be expected to *openly* express an intention to 'destroy' a group or even to 'seriously harm' it, even if some politicians in strongly assimilationist countries such as Denmark (see Example 20 in Skutnabb-Kangas and Dunbar, 2010) express what can be seen as a wish to forcibly 'transfer its members to another group'. However, the intention can be inferred in other ways, by analysing those structural and ideological factors and those practices which cause the destruction, harm or transfer. Skutnabb-Kangas and Dunbar (2010) have done this in several ways, comparing current situations with older, more overt ways of forced assimilation (which often used more 'sticks' and/or 'carrots', in addition to 'ideas', than present-day more covert and structural methods). We can thus claim that if state school authorities continue to pursue an educational policy which uses a dominant language as the main medium of education for ITM children, even though the negative results of this policy have long been known both through earlier concrete empirical feedback (as shown in the examples above from Canada, the United States, and India) and through solid theoretical and empirical research evidence (as they have, at least since the early 1950s; see, e.g., UNESCO 1953), this refusal to change the policies constitutes, *from discourse-analytical, sociolinguistic, sociological, psychological, political science, and educational policy analysis perspectives*, strong evidence for an 'intention' as required in Article 2 above.

Structural and ideological factors have also started to appear in some lawyers' interpretations of, for instance, the concept of discrimination in education (see Gynther, 2003 for a short summary of the development from more sociologically oriented discussions) as well as more legally oriented clarifications, mainly from the USA and Canada; see also Gynther, 2007). Gynther pleads for cooperation between lawyers, sociologists and educationists and for a broadened analytical framework in clarifying some of

the basic concepts which are used when subjugated minorities are denied access to education. She traces a trend in academic discourses:

> from a concern with 'evil motive discrimination' (actions *intended* to have a harmful effect on minority group members) to 'effects' discrimination (actions have a harmful effect whatever their motivation) (Gynther, 2003: 48; emphasis added).

However, she also points to 'a trend from the deconstructive social criticism of the 1960s and 1970s to a watering down of the conceptual framework of systemic discrimination towards the 1990s' (Gynther, 2003: 48), and notes that when discrimination and racism [including linguicism]

> 'permeats society not only at the individual but also at the institutional level, covertly and overtly … racial control has become so well institutionalized that the individual generally does not have to exercise a choice to operate in a racist manner. Individuals merely have to conform to the operating norms of the organization, and *the institution will do the discrimination for them*' (Gynther, 2003: 47; emphasis added).

Civil servants are also starting to take structural discrimination into account. The Minority Ombud in Finland, Johanna Suurpää, states that Saami children's access to services through the medium of Saami, especially in day-care, is vital for the maintenance of Saami languages and culture (2010: 115). In deciding whether children get the services that Finnish laws grant them, she emphasises the relevance of structural discrimination. Suurpää (2010) relates several cases where decisions by the Commission on Discrimination have stated that Saami children have been discriminated against on the basis of their ethnicity because relevant Saami-medium day-care has not been made available. Reasons such as non-availability of Saami-speaking staff, or municipal lack of financial resources are not acceptable in a legal discourse – the laws on children's rights to mother tongue-medium day-care have to be respected (Suurpää, 2010: 116). Thus even if the intention of the relevant municipalities has not been discriminatory, the structural organisation of the services has resulted in discrimination. These decisions will go to higher courts (Suurpää, 2010: 115). The same kind of reasoning needs to be tried in court in relation to the interpretation of 'intent' in the Genocide Convention.

As we explain, especially in Skutnabb-Kangas & Dunbar (2010), submersion education, mainly through the medium of a dominant language, violates the right to education, and is organized against all that we know from solid research about how ITM education should be organized. It can lead to genocide and conflict. It can also be seen as a crime against humanity (see the final section of this chapter).

LHRs are a necessary (but NOT sufficient) prerequisite for preventing language endangerment and genocide

CRITICAL ISSUES AND TOPICS: TODAY'S CONTINUITY OF HISTORICAL SUBMERSION EDUCATION

All of the negative consequences of subtractive education, both practical and research-based, are and have been well-known for a long time, not only by the ITMs themselves but also by researchers, governments, NGOs, churches, and international organisations. Some of the main causes of educational failure in multilingual societies were correctly diagnosed by Indigenous people themselves long ago as being linked to submersion in dominant languages. For instance, Handsome Lake, a Seneca from the USA born in 1735, knew the devastating results of submersion programmes, as quoted in Thomas (1994):

> [Handsome Lake] 'created a code to strengthen his people against the effects of white society. The code helped to unify the Iroquoian community'. Chief Jacob Thomas's (1994) *Teachings from the Longhouse* contains "The Code of Handsome Lake" ("The Good Message"). 'We feel that the white race will take away the culture, traditions, and language of the red race. *When your people's children become educated in the way of white people, they will no longer speak their own language and will not understand their own culture.* Your people will suffer great misery and not be able to understand their elders anymore…. *the chiefs discovered that the education received from the white race robbed their children of their language and culture*. They realized the importance of educating their own children. (Handsome Lake, in Thomas, 1994; emphases added).

Churches and educational authorities also knew that subtractive education was cruel and inhuman and had negative consequences (see e.g. Milloy, 1999 regarding Canada; there are many descriptions and references from the

Nordic countries in e.g. Skutnabb-Kangas and Phillipson, 1989). The following describes attitudes in Canada according to Milloy:

> In Canada, 'for most of the school system's life, though the truth was known to it', the Department of Indian Affairs, 'after nearly a century of contrary evidence in its own files', still 'maintained the fiction of care' and 'contended that the schools were "operated for the welfare and education of Indian children"' (Milloy, 1999: xiii–xiv). These schools represented 'a system of persistent neglect and debilitating abuse', 'violent in its intention to "kill the Indian" in the child for the sake of Christian civilization' (Milloy, 1999: xiv; xv). Finally closed down in 1986, the Department and the churches were 'fully aware of the fact' that the schools 'unfitted many children, abused or not, for life in either Aboriginal or non-Aboriginal communities. The schools produced thousands of individuals incapable of leading healthy lives or contributing positively to their communities' (Milloy, 1999: xvii) (Skutnabb-Kangas and Dunbar, 2010: 66).

State and educational authorities in the USA (including churches) also had knowledge about the negative results of subtractive teaching and positive results of mother tongue medium teaching, at least since the end of the 1800s:

> The American Board of Indian Commissioners wrote [1880:77]: '…first teaching the children to read and write in their own language enables them to master English with more ease when they take up that study…a child beginning a four years' course with the study of Dakota would be further advanced in English at the end of the term than one who had not been instructed in Dakota. … it is true that by beginning in the Indian tongue and then putting the students into English studies our missionaries say that after three or four years their English is better than it would have been if they had begun entirely with English' (quoted from Francis and Reyhner, 2002: 45–6, 77, 98).

Colonial educational authorities (including churches) also had this knowledge, and some even suggested remedies consistent with today's research; however, these were not followed. A government resolution was formulated in (colonial British) India in 1904 when Lord Curzon was the Viceroy (Governor General). This resolution expressed serious

dissatisfaction with the organisation of education in India, and blamed Macaulay for the neglect of Indian languages:

> It is equally important that when the teaching of English has begun, it should not be prematurely employed as the medium of instruction in other subjects. Much of the practice, too prevalent in Indian schools, of committing to memory ill-understood phrases and extracts from text-books or notes, may be traced to the scholars' having received instruction through the medium of English before their knowledge of the language was sufficient for them to understand what they were taught. As a general rule the child should not be allowed to learn English as a language [i.e. as a subject] until he has made some progress in the primary stages of instruction and has received a thorough grounding in his mother-tongue. […] The line of division between the use of the vernacular and of English as a medium of instruction should, broadly speaking, be drawn at a minimum age of 13. (Curzon, quoted from Evans, 2002: 277).

This historical knowledge about the disastrous effects of submersion education, and the knowledge about what should be done, has since the beginning of the 1900s, and especially since the 1960s, been added to by even more substantial research of various kinds. There is very strong research evidence, including theoretical explanations, large- and small-scale hard-core and more anthropologically oriented empirical studies, and descriptions in fiction (which often complement other types of research, giving important insights) and agreement among solid researchers on how ITM education should be organised.[2] Still, submersion continues in all parts of the world. Past genocide in education is the main reason why revitalisation and regenesis of languages are needed. Today, in addition to education, the public media also play an important role in killing ITM languages. They do this through manufacturing consent on how useless these languages are, how ITMs benefit by language shift, and on how using dominant languages as the (main) teaching languages is the best/only way of learning them. All these claims are of course completely false. Media could also (and some do) play a role in supporting revitalizing efforts, by reporting on the struggles of countering genocide, on success stories in revitalization, and on arguments for maintaining linguistic diversity (along with biodiversity).

ARE THERE BINDING INTERNATIONAL LANGUAGE RIGHTS (IN EDUCATION) THAT SUPPORT ITM LANGUAGE

MAINTENANCE AND REVITALIZATION? IF THEY EXIST, ARE THEY BEING IMPLEMENTED? IF NOT, WHY?

The short answer to the first two questions is a fairly simple and resounding NO. There are some binding LRs (few in educational Articles) where a sympathetic reading could be used to support language maintenance, but often they are too vague to be of much use; there are also some vague but non-binding LRs in education that can support language maintenance.[3] There are no binding or even non-binding LRs in international law that support revitalization of ITM languages in education. Revitalization is a non-concept in international law.

Even when national constitutions or regional agreements support or even mandate the use of ITM mother tongues in education, extremely little implementation on a large scale is happening. A review of achievements in Africa concludes '[W]e are not making any progress at all' (Alexander 2006: 9); 'these propositions had been enunciated in one conference after another since the early 1980s' (2006: 11); 'since the adoption of the OAU [Organisation for African Unity] Charter in 1963, every major conference of African cultural experts and political leaders had solemnly intoned the commitment of the political leadership of the continent to the development and powerful use of the African languages without any serious attempt at implementing the relevant resolutions' (2006: 11). This has led to 'the palpable failure of virtually all post-colonial educational systems on the continent' (2006: 16). An excellent analysis of this is Rassool 2007. *The Asmara Declaration on African Languages and Literatures* from 2000 (https://www0.sun.ac.za/taalsentrum/assets/files/Asmara%20Declaration.pdf) is one example of the impressive African declarations of intent. Even more optimistic plans are contained in *The Language Plan of Action for Africa* (http://www.acalan.org/eng/textesreferenciels/pala.php), one of the results from ACALAN's (The African Academy of Languages, www.acalan.org) conference in Bamako, Mali, January 2009. Similar pronouncements exist on other continents but are less impressive.

Still, ITM education is today organised counter to solid scientific evidence of how it should be organised. We need implementation of the existing good laws and intentions (there are many), but the political will for that is mostly lacking. Neville Alexander's analysis of reasons for it (2006: 16) states:

> The problem of generating the essential political will to translate these insights into implementable policy … needs to be addressed in realistic terms. Language planners have to realize that costing of policy interventions is an essential aspect of the planning process itself and that no political leadership will be content to consider favourably a plan that amounts to no more than a wish list, even if it is based on the most accurate quantitative and qualitative research evidence.

What Alexander advocates, namely that the costs of organising – or not organising – MTM (mother-tongue-based multilingual education) are made explicit in economic terms, necessitates the type of multidisciplinary approach that minimally includes sociolinguists, educators, lawyers - the combination that we have in this book - and economists. Without that, it seems impossible to even start convincing states of rational policies that would in the end be really beneficial not only for ITMs but for the states themselves. François Grin has in his many projects shown that the costs for supporting minority languages would be minimal.[4] Ajit Mohanty and I have shown, building on his and Misra's 2000 book on poverty, and using economics Nobel laureate Amartya Sen's theories of "capability development" as more important for poverty eradication than material possessions of the poor, that properly organized MLE works towards poverty eradication.[5]

FUTURE DIRECTIONS: RECOMMENDATIONS FOR THEORY AND PRACTICE

Thus the first recommendation is that ITM education should be organized so that it follows and implements firm research recommendations of minimally 6-8 years of mainly mother-tongue-based multilingual education for ITMs, with good teaching of other languages, given by bi- or multilingual well-trained teachers. It is extremely clear that the remaining (fewer and fewer) counterarguments against strong models of mother tongue-based multilingual education are political/ideological, not scientific. Economic arguments against MLE are also in most cases completely invalid (see François Grin's articles, Note 4).

Even when there are laws, Conventions, and Charters which make states duty-holders, the words on paper mean little if implementation does not follow. UNESCO's 1953 publication *The use of the vernacular languages in*

education included firm recommendations, written by experts, on how multilingual education could best be organised, but these recommendations were not often followed. Similar informed consultations went into drafting UNESCO's Education position paper in 2003*, Education in a multilingual world*.

Secondly, some of the remaining definitional hurdles must be clarified, if necessary, through court cases. It is difficult but necessary to start court cases about present-day and earlier linguistic and cultural genocide,[6] and compensations for them, as long as some of the basic concepts in both the Genocide Convention (such as "intent") and Indigenous and minority Conventions (such as who is a "minority" and who is "Indigenous", at both individual and collective levels) have not been clarified. Indigenous peoples have in principle the rights to define themselves who is Indigenous, but this right is constantly violated. Rights to land and water, rights to compensations of various kinds, rights to education and language, all these are necessarily dependent on who has the right to define who the rights-holders are. These issues are hotly debated all over the world (does one, for instance, necessarily need to speak the Indigenous language to be Indigenous – many studies are discussing this and there is no agreement). Indigenous organizations, including the UN Permanent Forum on Indigenous Issues need to raise these questions all the time, including in courts – and they do. Likewise, court cases are needed to clarify how the latest formulation of what constitute "crimes against humanity" is interpreted and what it means for ITM education and the need for revitalization. The most complete description of these crimes (in the *Rome Statute of the International Criminal Court* of 17 July, 1998 (the "ICC Statute") (http://untreaty.un.org/cod/icc/statute/romefra.htm) include crimes committed not only in wars but also in peace times. Article 7, paragraph 1 of the ICC Statute defines "crime against humanity", but peace-time crimes have not yet been tried in courts.

Without these clarifications it is not easy to even start formulating the questions of what (language) rights ITMs have to revitalization. Today, sadly, no direct and *binding* LHRs or educational rights relating to revitalization exist in international law. What rights they *should* have we DO know.

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FURTHER READING

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[1] Links to all legal documents mentioned in the article can be found in Skutnabb-Kangas & Dunbar 2010. Many language rights texts have been reproduced in Skutnabb-Kangas & Phillipson, eds, 2016.

[2] The literature about this is massive. The reader is advised to consult my Big Bib, a 420-page bibliography on mostly the issues discussed in this chapter: http://www.tove-skutnabb-kangas.org/en/Tove-Skutnabb-Kangas-Bibliography.html.

[3] Skutnabb-Kangas & Dunbar 2010 has a detailed description of what exists and I don't have space to repeat it here.

[4] See Grin's publications in my Big Bib.

[5] See Mohanty's publications in my Big Bib.

[6] See, for example, Truth and Reconciliation Commission of Canada (2015). *Honouring the Truth. Reconciling for the Future. Summary of the Final Report of the Truth and Reconciliation Commission of Canada*. Ottawa: The Truth and Reconciliation Commission of Canada. http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Exec_Summary_2015_05_31_web_o.pdf. Similar initiatives have been suggested in several countries.