

HUMAN RIGHTS AND LANGUAGE POLICY IN EDUCATION

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Introduction

The United Nation's 2004 Human Development Report (<http://hdr.undp.org/reports/global/2004/>) links cultural liberty to language rights and human development and argues 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).

The press release about the UN report (see web address above) exemplifies the role of language as an exclusionary tool:

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.

One might expect that the report would suggest a positive solution, which not only respects human rights (HRs) but is also based on solid research. Sadly, this is not the case. The report suggests that

Multilingual countries often need a three-language formula:

- A national or official state language.
- A lingua franca to facilitate communications among different groups (in some cases the official language serves this purpose).
- Official recognition of the mother tongue or of indigenous languages *for those without full command of the official language or lingua franca* (ibid.; emphasis added).

The first two, enabling children through education to become fully competent in one or two languages of wider communication, is what a HRs oriented educational language policy should include. The third suggestion is clearly based on deficiency theories and either/or thinking, characteristic of much of language policy today in indigenous and minority education. Schools often see the mother tongues of minorities as necessary but negative temporary tools while the minority child is learning a dominant language. As soon as s/he is deemed in some way competent in the dominant language, the mother tongue can be left behind, and the child has no right to maintain it and develop it further in the educational system.

This can be seen as a serious HRs violation. It violates the right to education (see Magga et al., 2005; Tomaševski 2001 and http://www.right-to-education.org/content/primers/_rte03.pdf). It may result in linguistic genocide, according to two of the United Nations' definitions of genocide (Dunbar & Skutnabb-Kangas 2008).

Early developments

There have been many language rights for dominant language speakers for millennia, without anybody calling them language rights. Also several linguistic minorities have for centuries had some language rights, in some countries even legally formalised. Rights have been formulated pragmatically, and mostly by lawyers. The first bilateral agreements (between two countries), also old, were mostly about religious not linguistic minorities, but often the two coincided. The first multilateral agreement covering national minorities was the **Final Act of the Congress of Vienna 1815** (Capotorti, 1979, 2). During the 19th century, several national constitutions and some multilateral instruments safeguarded some national linguistic minorities (see the historical overview in Skutnabb-Kangas & Phillipson 1994). The Peace Treaties that concluded the First "World" War and major multilateral and international conventions under the League of Nations improved the protection. After the Second World War, the individual rights formulated by the United Nations were supposed to protect minority persons as individuals and collective minority rights were seen as unnecessary. A 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.

It was only in the early 1990s that the area of linguistic human rights (LHRs) started crystallising, as a multidisciplinary research area. Earlier, language rights and human rights were more separated from each other; 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 (some exceptions are Fernand de Varennes, e.g. 1996, Robert Dunbar, e.g. 2001, and James Fife, e.g. 2005) or education. Many of those sociolinguists, political scientists and educationists who are today writing about LHRs, know too little about international law (also here there are exceptions, e.g. May 2001; Tollefson & Tsui 2003). This is a fast growing area where major concept clarification and multidisciplinary teamwork is urgently needed. It should be clear, though that 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. The first multidisciplinary book about LHRs seems to be from mid-1990s (Skutnabb-Kangas & Phillipson, eds, 1994).

Major contributions

The world's spoken languages are disappearing fast: pessimistic but realistic estimates fear that 90-95% of them may be extinct or very seriously endangered by the year 2100. Transmission of languages from the parent generation to children is *the* most vital factor for the maintenance of both oral and sign languages. When more children gain access to formal education, much of their more formal language learning, which earlier occurred in the community, takes place in schools. If an alien language is used in schools, i.e. if children do not have the right to learn and use their language in schools (and, of course, later in their working life), the language is not going to survive. Thus educational LHRs, especially an unconditional right to mother tongue medium (MTM) education, are central for the maintenance of languages and for the prevention of linguistic and cultural genocide. "Modernisation" has accelerated the death/murder of languages, which without formal education had survived for centuries or millennia. It is clear, though, that neither LHRs nor schools alone can in any way guarantee the maintenance and further development of languages – they are both necessary but not sufficient for this purpose. There are no miracle cures or panaceas.

Dominant and/or majority language speakers in many cases have most of those rights that can be seen as LHRs, also in education, and most of them seem to take their existence for granted. Indigenous peoples and minorities are the ones, whose LHRs need strengthening. The Office of the United Nations High Commissioner for Human Rights website www.unhchr.ch is a good place to start finding out what educational LHRs exist today in international or regional HRs instruments - see <http://www.ohchr.org/english/law/index.htm> for texts of the HRs instruments themselves and <http://www.unhchr.ch/tbs/doc.nsf> for States parties to the treaties; Mercator Linguistic Rights and Legislation website is also useful: http://www.ciemen.org/mercator/Menu_nou/index.cfm?!g=gb.

Minorities have some HRs support for other 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). But international and European binding 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", gender and religion. Often language disappears completely in educational paragraphs. For instance, the (non-binding) **Universal Declaration of Human Rights** (1948) paragraph on education (26) does not refer to language at all. Similarly, the UN **International Covenant on Economic, Social and Cultural Rights**, 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. 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).

We can see these patterns of vague formulations, modifications and alternatives even in the latest minority or language specific international and regional instruments. In Council of Europe's **European Charter for Regional or Minority Languages** (1998), a state can choose which paragraphs or subparagraphs it wishes to apply (a minimum of 35 is required). The 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). 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).

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).

Of course the balance between binding formulations and sensitivity to local conditions is a difficult one. The Charter permits a reluctant state to meet the requirements in a minimalist way, which it can legitimate by claiming that a provision was not 'possible' or 'appropriate', or that numbers were not 'sufficient' or did not 'justify' a provision, or that it 'allowed' the minority to organise teaching of their language as a subject, at their own cost. Both the European Charter and the Framework Convention (for the latest news about both, see , <http://conventions.coe.int/Treaty/EN/v3News.asp>; their treaty numbers are 148 and 157) have monitoring bodies which seem to be doing a good job in trying to stretch the states' willingness to follow more than minimalist requirements – but, again, when it comes to MTM education, these bodies seem to be somewhat ignorant about language-in-education issues (see Wilson 2004 and Skutnabb-Kangas 2004). The (non-binding) UN **Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities** (http://www.unhcr.ch/html/menu3/b/d_minori.htm) suffers from similar vague formulations.

A recent NGO-attempt to promote language rights, a **draft Universal Declaration of Linguistic Rights**, handed over to UNESCO in Barcelona in June 1996; see <http://www.linguistic-declaration.org/index-gb.htm>; from the index one can go to the Declaration itself), also suffers from similar shortcomings, even if it for several beneficiaries ('language communities' and, to some extent, 'language groups') represents great progress in relation to the other instruments described. Still, indirectly its education section forces all others except those defined as members of language communities (which roughly correspond to national territorially based minorities) to assimilate. Despite hard work by Catalans (who, together with the Basques, have been extremely active in getting LHRs on a global agenda), the draft Declaration is not going to be accepted by UNESCO member states in its present form.

Work in progress

New interpretations (Article 27 below) or enlargement of the scope (linguistic genocide) of older instruments, new instruments under negotiation (e.g. indigenous instruments – see McCarty - or LHRs for the Deaf – see Branson & Miller), and the development of non-binding Declarations or Recommendations (e.g. the **Hague Recommendations**) in a more binding direction may in time improve the situation.

Article 27 of the **International Covenant on Civil and Political Rights** (ICCPR) 1966, in force since 1976) still contains the most far-reaching binding protection for LHRs for minority languages. It declares:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

Earlier interpretations of this Article did not grant much support to LHRs. It was seen as only granting negative non-discrimination rights and not place any obligations on states. The linguistic protection of national minorities rests according to van der Stoep on two HRs pillars,

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).

In 1994, the UN Human Rights Committee published a General Comment on UN International Covenant on Civil and Political Rights, Article 27 (4 April 1996, UN Doc. CCPR/C/21/Rev.1/Add.5). It interpreted Article 27 as protecting all individuals on the state's territory or under its jurisdiction (i.e., also immigrants and refugees), irrespective of whether they belong to the minorities specified in the article or not. It 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 deny having linguistic minorities – France, Greece, Turkey...). It recognized the existence of a 'right', and imposed positive obligations on the states. The revised Human Rights Fact Sheet on ICCPR from the Committee (2005) sustains this interpretation.

When the United Nations did preparatory work for what became the **International Convention for the Prevention and Punishment of the Crime of Genocide** (E 793, 1948), linguistic genocide as a central aspect of cultural genocide was discussed alongside physical genocide as a serious crime against humanity (see Capotorti, 1979, 37).

When the UN General Assembly finally accepted the Convention, Article III covering linguistic and cultural genocide was voted down by 16 states (see Official Records of the General Assembly, Third Session, Part I, Sixth Committee, 83rd meeting). It is thus not included in the final Convention of 1948. Denmark, USA and UK were among those who opposed the prohibition of cultural genocide and UK wanted the Convention to be defined in the strict sense to the physical extermination of human groups. The Soviet bloc countries, China, Pakistan and Venezuela, among others, wanted to keep Article 3 in.

The present Convention has five definitions of genocide. Two of them fit most indigenous and minority education today:

II(e), '*forcibly transferring children of the group to another group*'; and

II(b), '*causing serious bodily **or mental** harm to members of the group*'; (emphasis added).

Assimilationist submersion education where indigenous and minority children are forced to accept teaching through the medium of dominant languages, can cause serious mental harm and often leads to the students using the dominant language with their own children later on, i.e. over a generation or two the children are linguistically and often in other ways too forcibly transferred to a dominant group. This happens to millions of speakers of threatened languages all over the world. There are no schools or classes teaching the children through the medium of the threatened indigenous or minority languages. The transfer to the majority language speaking group is not voluntary: alternatives do not exist, and parents do not have enough reliable information about the long-term consequences of the various choices. Because of this, disappearance of languages cannot be labelled 'language suicide', even if it might at first seem like the speakers are themselves abandoning their languages.

Most children obviously want in their own interest to learn the official language of their country. This is also one of the important LHRs and implies the right to become high-level bilingual. Most children also want to learn English if it is not one of the official languages. But learning new languages, including the dominant languages, should not happen subtractively, but additively, in addition to their own languages. Subtractive formal education, which teaches children (something of) a dominant language at the cost of their first language, is genocidal. This dominant language can be official (e.g. French in France) or semi-official (e.g. English in the USA); it can be the language of a numerical majority (as in France or the USA); often it is an old colonial language, spoken only by a small but powerful numerical minority (e.g. many African countries). A false educational philosophy claims that minority children learn the dominant language best if they have most of their education through the medium of it. Many studies have shown that the longer the mother tongue remains the main medium of education, the better minority children learn the dominant language and other subjects (see, e.g., Thomas & Collier, at http://www.crede.ucsc.edu/research/llaa/1.1_final.html, May, Hill & Tiaikiwai, at <http://www.minedu.govt.nz/index.cfm?layout=document&documentid=9712&data=1>, and other articles in this Volume and in Volume 5).

Some lawyers claim that the deliberate intention required by the Convention is not there. If minority education has been and is organised against what massive research evidence proposes, while the authorities (including churches) have (and have had for at least one and a half centuries) solid information about how it should be organised, the prohibition, the mental harm caused, and the forcible transfer must be seen as deliberate and intentional acts on behalf of states (see Dunbar et al., forthcoming, Magga et al. 2005).

The (non-binding) **Hague Recommendations Regarding the Education Rights of National Minorities** http://www.osce.org/documents/html/pdf/html/2700_en.pdf.html from OSCE's High Commissioner on National Minorities were worked out by a small group of experts on HRs and education. They represent an authoritative interpretation and concretisation of the minimum in present HRs standards. In the section 'The spirit of international instruments', bilingualism is seen as a right and responsibility for persons belonging to national minorities (Art. 1), and states are reminded not to interpret their obligations in a restrictive manner (Art. 3). In the section on "Minority education at primary and secondary levels", MTM education is recommended at all levels, including bilingual teachers in the dominant language as a second language (Articles 11-13). Teacher training is made a duty on the state (Art. 14). Finally, the Explanatory Note states that "submersion-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" (p. 5). UNESCO's 2003 Position paper 'Education in a Multilingual World' (<http://unesdoc.unesco.org/images/0012/001297/129728e.pdf>) follows the Hague Recommendations fairly closely.

Problems, difficulties, and future directions

One problem has been that even if minorities have been granted the right to found private schools with their own language as the main medium of education, the state has not had any obligation to participate in the costs. This was made clear in a landmark case in Belgium (the Belgian Linguistic Case, <http://www.arts.uwaterloo.ca/MINELRES/coe/court/Belglin.htm>). Few minorities can bear the full cost of primary education while contributing through their taxes to dominant-language-medium education. If the Human Rights Committee's reinterpretation of Article 27 starts having some effect (and new litigation would be needed to test this), the economic hurdles might be solved. After all, it hardly costs the state more to change the language in minority schools, as compared to using the dominant language. This is also pointed out in **The Asmara Declaration on African**

Languages and Literatures, from a conference 17 Jan. 2000

(<http://www.outreach.psu.edu/C&I/AllOdds/declaration.html>) when demanding MTM education.

The **Draft United Nations Declaration on the Rights of Indigenous Peoples** (contained in the 1994 Sub-Commission annual report, document E/CN.4/Sub.2/1994/56, annexed to resolution number 45; go to it through <http://www.ohchr.org/english/issues/indigenous/declaration.htm>) was, after a decade of careful work, handed over to the UN in 1994, has been under negotiation ever since. The USA, Canada and Australia seem to among the countries delaying its acceptance most. In an interview in PFII's Quarterly Newsletter *Message Stick* 3:2; (<http://www.un.org/esa/socdev/unpfii/en/newsletter.html>; choose Message Stick Vol. 4, number 2), PFII's (UN Permanent Forum on Indigenous Issues) first Chair, professor Ole Henrik Magga sums up the connections between the concepts in the title of this entry: human rights, language, language policy and education. He sees LHRs in education as a necessary prerequisite for the maintenance of indigenous languages and traditional knowledges. See also e.g. Hamel, 1994, Hamel (ed.), 1997; May (ed.), 1999; McCarty (ed.), 2005; Magga et al., 2005, for some assessments of the situation.

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.

The often appalling ignorance about basic language matters is a serious gap, and it should be the ethical responsibility of researchers to remedy it. 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 when decisions are made about education. 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 researchers also suffer from ethnocentricity, and lack of knowledge of the languages and cultures of others (see, e.g., Hountondji 2002, Kontra 2000, 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 HRs lawyer Katarina Tomaševski (1996, 104), to act as correctives to the free market. She claims (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. The message from both sociologists like Zygmunt Bauman and HRs lawyers like Katarina Tomaševski and many others is 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 see, falsely, monolingualism 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; and
- inevitable: modernisation leads to linguistic homogenisation and only romantics regret it; however, linguistic diversity and multilingualism enhance creativity and are necessary in information societies where the main products are diverse ideas and diverse knowledges.

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.

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List of cross-references

My entry 'Language rights and bilingual education' in Volume 5 of this Encyclopedia analyses how bilingual education intersects with issues of language rights. The reader is encouraged to read the

two articles as complementary – I have tried to eliminate overlaps as much as possible. This chapter gives a general presentation of educational language rights from a sociological-legal point of view. It should be read together with Fernand de Varennes' highly informative legal chapter in this volume.

Keywords 5

Human rights

Language rights

Language and education

Linguistic genocide

Mother tongues