

Tove Skutnabb-Kangas

LANGUAGE RIGHTS AND BILINGUAL EDUCATION

In Volume 5, **Bilingual Education**, eds Jim Cummins & Nancy Hornberger.

Encyclopedia of Language and Education, 2nd edition. New York: Springer, 117-131.

Introduction

To what extent are indigenous and minority children guaranteed a right to learn both their own languages and at least a/the dominant language in the country where they live, up to a high formal level, through bilingual education of various kinds, most importantly including a right to mother tongue medium (MTM) maintenance education (see McCarty & Skutnabb-Kangas, in this volume, for definitions)? Do all children have the right to access high quality education, regardless of what their mother tongue is? Do schools support indigenous/minority communities' right to reproduce themselves as indigenous peoples/minorities (hereafter LMs, Linguistic Minorities), through enabling and encouraging intergenerational transfer of their languages? In other words, do indigenous and minority children enjoy linguistic human rights (LHRs) in education?

The chapter attempts to answer the questions by analysing how bilingual education intersects with issues of language rights, by presenting some of the important international and regional legal provisions and discussing their implications. The entry HUMAN RIGHTS AND LANGUAGE POLICY IN EDUCATION in Volume 1 of this Encyclopedia gives a general presentation of educational Language Rights (LRs). The reader is encouraged to read the two articles as complementary – overlaps have been eliminated as much as possible. Neither models of bilingual education nor Deaf education will be discussed here since they are elaborated in other articles in this volume. There is some unfortunate western bias in the instruments and examples presented; however, the comments on indigenous peoples have global coverage.

Research on educational performance indicates that LM children taught through the medium of a dominant language in submersion programmes often perform considerably less well than native dominant language speaking children in the same class, in general and on tests of both (dominant) language and school achievement. They suffer from higher levels of push-out rates, stay in school fewer years, have higher unemployment and, for some groups, drugs use, criminality and suicide figures, and so forth. There would appear to be a strong argument that such children do not benefit from the right to education to the same extent as children whose mother tongue is the teaching language of the school, and that this distinction is based on language.

Given what we know about the educational benefits of MTM education and, as importantly, the educational harm, with resulting impact on employment prospects, mental and physical health, and life chances generally, of education of LM children mainly through another language, it can be forcefully argued that only MTM education, at least in primary school, is consistent with the provisions of several human rights documents (see Magga et al., 2005, for an elaboration). No other form of education seems to guarantee the full development of the human personality and the sense of its dignity, nor does it enable children who are subject to non-MTM education to participate as effectively in society. Those research findings are thus taken for granted in this article which state that maintenance-oriented MTM education (with good teaching of a

dominant language as a second language, with bilingual teachers) is often the best way to enhance LM children's high-level bilingualism, school achievement, a positive development of identity and self-confidence.

Early Developments

Particularly in the case of higher formal education, instruction has for millennia been in languages other than the students' mother tongues, often in classical languages used for religious purposes (e.g. Sanskrit or Latin), but both the teachers and the students were usually multilingual. The "rules" for the diglossic/multiglossic division of labour between languages were in practice flexible. The learning of both languages and content was often life-long, for instance in monasteries, east and west. The education could be called bi- or multilingual in the sense that several languages were used in instructional situations, at least orally.

In contrast to deciding the religion ("*cuius regio, eius religio*"), feudal landlords globally were in most cases not interested in what languages their underlings spoke, as long as their labour could be exploited ("exchanged for protection"). Whatever education there was, was in most cases informal and through the medium of the various mother tongues. This was also the case with indigenous peoples worldwide before colonisation, even if many learned neighbouring and other languages through peaceful contacts or sometimes conflict.

Colonisation and creation of state borders had a decisive role in formally minorizing certain languages and, correspondingly, majorizing others. Religion has played a major role in denying LMs educational LRs. Indigenous peoples were to be "civilized" through assimilation into the colonisers' "superior" cultures and languages (see, e.g. Churchill, 1997; Crawford, 1995; Del Valle, 2003; Fesl, 1993; Milloy, 1999; Richardson, 1993, Skutnabb-Kangas, 2000). But some missionary work has ironically also "saved" some forms of indigenous languages (in Africa, Australia, Canada, Latin America, the USA, etc) because missionaries learned and wrote down (some of) these languages, to be more efficient in capturing the souls of the "pagans". Initially, indigenous peoples had the land and their own religions; when they woke up, they had the bible but the states that the missionaries came from had the land. Often missionaries not only used distorted and reduced versions of indigenous languages in their "bilingual education"; they created new "languages" and divisions between "languages", thereby further minorizing them. In colonies, several different models of language regimes coexisted in education, with colonial languages and local languages used as languages of instruction. The patterns and motivations varied hugely; they have still not been properly clarified globally (see, e.g. Phillipson, 1992, Pennycook, 1998), and are being vigorously debated.

In general, multilingualism and to a large extent MTM education have been accepted and normalised phenomena among citizens outside the western world; colonisation was mainly responsible for the new negative linguistic inequalities. But even in the west, until the mid-1800s attitudes towards multilingualism and multilingual education were more relaxed or at least more indifferent and even tolerant than during the last 150 years. This was true more for national and sometimes immigrant minorities (who could be majorities in their own regions) than indigenous peoples. Some "national" or "traditional" minorities (see McCarty & Skutnabb-Kangas, this volume, for definitions) did and still do have some language rights in Europe (see EBLUL's publications at www.eblul.org).

These rights were also recognised in education already in the late 1800s, in both constitutions and in bi- and multilateral treaties, even if in many cases they were granted because the LMs were religious minorities, i.e. a religion different from the dominant one often coincided with speaking another language. Laws were published in German and English in Ohio and Pennsylvania, in Spanish and English in California and New Mexico, and in French and English in Louisiana, while children had a right to minority language medium or bilingual education as a self-evident part of the system (Del Valle, 2003: 10-17). But even some indigenous peoples controlled their own education, e.g. the Cherokee, Cree, Choctaw, Chickasaw and Seminole between 1830 and 1898 in the USA (ibid., 282).

During the last decades of the 1800s, with the labour and disciplining needs of industrialization, more children started to come into the realm of formal education, concurrently with the spread of nation-state ideologies (one nation – one state – one language). In the western world, “pernicious” boarding schools for indigenous children arose “whose overt purpose was cultural genocide, including most prominently the eradication of Indian languages use”, writes James Fife about the USA (2005: 365, quoting Allison Dussias 1999). These residential schools have been “arguably, the most damaging of the many elements of Canada’s colonization of this land’s original peoples and, as their consequences still affect the lives of Aboriginal people today, they remain so” (Milloy, 1999: xiv).

Indigenous peoples often knew themselves the disastrous consequences of the “white” education from very early on. Handsome Lake, a Seneca born in 1735, a Confederacy Chief of Six Nations, “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 book contains *The Code of Handsome Lake* (“The Good Message”). According to Thomas (1994, 41-42), Handsome Lake told his people:

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. We feel that when they become educated, not a single child will come back and stand at your side because they will no longer speak your language or have any knowledge of their culture.

Chief Thomas noted that the actual results of education imposed by the “white race” were as destructive as Handsome Lake had predicted:

Two children were selected from each tribe to receive the white race’s education. The chiefs at the time believed that this education might benefit the native people. By following the Good Message, 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.

States and educational authorities (including churches) in many parts of the world (including the Nordic countries) have also at the latest since the end of the 1800s had the

knowledge about the negative results of submersion education and the superior results of even transitional bilingual education. For instance, the USA Board of Indian Commissioners wrote in their 1880 report (quoted in Francis & Reyhner, 2002):

... 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 (p. 77). [...] 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 (p. 98).

The earliest formal descriptions of various LRs (or, in many cases, lack of them), even in education, were mainly written by lawyers, often for administrative purposes. The time after the First World War produced, often inspired directly or indirectly by the League of Nations, a large number of language rights documents and research and other accounts about them. The LRs situation in Europe was then on paper better than it is internationally today: in the Minorities Treaties concluded with the Peace Treaties in Paris, many minorities were granted LRs in education. The problem then – as to a large extent today too - was lack of implementation and enforcement.

Major Contributions

During the first three decades after the Second “World” War, various United Nations bodies, Non-Governmental Organisations (NGOs) and academic institutions engaged in lively discussions on the lack of language rights in (monolingual and bilingual) education. A variety of historical descriptions and analyses were written by sociolinguists, educationists and lawyers. New demands started to come forward, and there were many court cases with direct or indirect bearing on language rights in education, especially in the United States (see Del Valle, 2003).

The UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities did suggest some positive measures, especially in a 1967 report (see Gromacki 1992: 544). But it was not until the UN Special Rapporteur on the Rights of Minorities, Francesco Capotorti, published his 1979 report that international and regional (human rights) law in the area of language rights and education started to develop. And despite some early discussions (e.g. Tabory, 1980), it is only during the last 10-15 years that some language rights have started to be accepted as linguistic human rights (see Skutnabb-Kangas & Phillipson, eds, 1994; de Varennes, 1996; 2000). There are many useful overview articles about LRs that include education (see, e.g., Dunbar, 2001; references to Thornberry and de Varennes), also on the web (e.g. Higgins 2003, or de Varennes at www.eumap.org/journal/features/2004/minority_education/edminlang/).

Indigenous peoples and minorities are provided with some general protections under various United Nations and regional charters and conventions. The **UN Convention on the Rights of the Child** of 1989 (CRC) has been ratified by more countries than any other United Nations human rights document – the only two countries that have failed to ratify it are Somalia and the USA. But while Art. 17, para 1 of the **African Charter on Human and Peoples' Rights** of 1981 provides that every individual shall have the right

to education, the USA Constitution does not grant such a right. Para 1(c) of Art. 29 in CRC provides that the education of the child shall be directed “to the development of respect for the child’s parents, *his or her own cultural identity, language and values*, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own.” Art. 13, para 1 of the **International Covenant on Economic, Social and Cultural Rights (ICESCR)** of 1966 (in force 1976) provides that the States Party to the Convention recognise the right of *everyone to education*. Similarly, Art. 28, para 1 of the CRC provides that States Parties recognize the right of *the child to education* and specifies that States Parties shall “take measures to encourage regular attendance at schools and the reduction of drop-out rates” (subpara (e)). Given what we know about the effects of enforced dominant language medium educational policies, which tend to result not only in considerably poorer performance results but also higher levels of non-completion, etc., the pursuit of such policies could be said to be contrary to subpara 1(e) of Art. 28. Combined with the comments made with respect to Art. 13, para 1 of the ICESCR, it would seem clear that an education in a language other than the child’s mother tongue and which contains no recognition of that mother tongue is unlikely to contribute to respect for the child’s own cultural identity, language and values.

Art. 30 of the **Convention on the Rights of the Child** provides that “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 group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.” This provision echoes Art. 27 of the **International Covenant on Civil and Political Rights** of 1966 (in force, 1976). The precise implications of both provisions are, however, far from clear. The Human Rights Committee has noted in its General Comment No. 23 of 1994 on Art. 27 of the ICCPR that, although phrased in the negative, the Article requires States to take positive measures in support of minorities. Unfortunately, the Human Rights Committee has not spelled out what those measures are, or whether they include measures relating to MTM education.

LMs are also protected by specific language rights regulations in some countries and regions. In contrast, other countries (e.g. Denmark, France) are even contemplating violations of parents’ right to speak their own languages to their infants in their own homes.

The provisions which more specifically address minority language education rights - both the teaching of and through the medium of one’s mother tongue - are generally most developed in certain minority instruments. Binding treaty commitments have been established in two Council of Europe instruments to which only members of the Council have thus far become party, the **Framework Convention for the Protection of National Minorities**, and the **European Charter for Regional or Minority Languages**. Other very influential non-treaty standards have been set within the Organization for Security and Co-operation in Europe (OSCE), the most significant of which is the 1990 **Document of the Copenhagen Meeting on the Human Dimension**. Influential principles have been developed through the office of the OSCE High Commissioner on National Minorities, the most relevant of which in the context of education is **The Hague Recommendations Regarding the Education Rights of National Minorities** of

October, 1996, www.osce.org/hcnm/documents/recommendations/hague/index.php. More particular guidance is provided in minorities-specific instruments. All of these standards apply mainly in Europe (loosely defined; Canada and the USA are also members of the OSCE).

Work in Progress

There are still relatively few binding **positive** rights to MTM education or bilingual education in present international law, including case law. Today most language-related human rights are **negative** rights, only prohibiting discrimination on the basis of language, as a prerequisite for the promotion of equality. Both various explanations and interpretations of human rights law and many court cases (see, e.g., de Varennes 1996, Dunbar 2001, Higgins, 2003, references to Thornberry, Leitch 2004) have made it clear that treating citizens *de jure* equally, i.e. identically (for instance, using an official language as the only medium of education for *all* children, regardless of their linguistic background and competencies), does not lead to *de facto* equality, and may often constitute discrimination. Identical treatment is not always equal treatment; therefore, “positive discrimination” or “affirmative action” is necessary for substantive *de facto* equality. Substantive equality also includes a positive obligation on the state to protect conditions, which enable a LM to maintain their special features, including their languages. Still, many court cases and UN Human Rights Committee’s General Comments and Communications have been satisfied with formal equality, even if there are also positive exceptions (most of the legal references above detail these), both in relation to LRs in general and also educational LHRs. At this point there are still many contradictions in and confusion about how to handle educational LRs legally and *de facto*. Today’s “free market” approach has also many really negative consequences for these rights (e.g. Devidal 2004).

UNESCO is mapping today’s situation in relation to which LMs do in fact have MTM education. Africa and Europe have been “finished” so far (see Languages of instruction at http://portal.unesco.org/education/en/ev.php-URL_ID=13143&URL_DO=DO_TOPIC&URL_SECTION=201.html). The very real threats to endangered mostly indigenous languages have also alerted many people, NGOs and international organizations like UNESCO (see UNESCO’s portal on endangered languages, http://portal.unesco.org/culture/en/ev.php-URL_ID=8270&URL_DO=DO_TOPIC&URL_SECTION=201.html and their Expert Group Report on these languages http://portal.unesco.org/culture/en/file_download.php/947ee963052abf0293b22e0bfba319cclanguagevitalityendangerment.pdf). In contrast to earlier, there seems today to be more understanding, on paper, for the demands of indigenous peoples educational LRs – presumably because most of them are numerically so small that **their** educational LRs (as opposed to those of minorities) do not seem to threaten the states - whereas their land rights demands do.

One example of the language used about indigenous peoples versus “national” linguistic minorities follows. The **Committee on the Rights of the Child** recommended at their 34th Session 2003 (see E/C.19/2004/5/Add.11, Annex, p. 10) "that States parties ensure access for indigenous children to appropriate and high quality education".

Interpreting this access, they ask States parties, “with the active participation of indigenous communities and children”, to

- b) implement indigenous children's right to be taught to read and write in their own indigenous language 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;
- c) undertake measures to effectively address the comparatively higher drop out rates among indigenous youth and ensure that indigenous children are adequately prepared for higher education, vocational training and their further economic, social and cultural aspirations;

Recommendation b) clearly indicates that if the States are to “ensure access for indigenous children to *appropriate* and high quality education” (emphasis added), bilingual education systems should be created by States.

Aspects of these recommendations bear some similarity to the educational provisions of the United Nations General Assembly **Declaration of the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities** of 1992 (UNGA Minorities Resolution). Art. 4, para 3 of it provides that “States *should take appropriate* measures so that, *wherever possible*, persons belonging to minorities have *adequate* opportunities to learn their mother tongue *or* to have instruction in their mother tongue.” (emphases added).

Despite the positive tone of these recommendations, opt-outs and claw-backs in educational minority provisions are significant, as detailed in the next section.

Problems and Difficulties

There are many positive recommendations, draft declarations and initiatives of various kinds, by international organizations, NGOs, LM communities and researchers. LMs are themselves, also through web-based information and networking, much more aware of the lack of LRs and their consequences than at any earlier time. But basic problems persist. In order for children to have human rights in education, they must in the first place have a **right to free compulsory education**. This right is far from guaranteed in all countries to all children. Not even primary education is free in 91 countries (Tomaševski, 2004: 23; see the list of these countries in *ibid.*, para 23 and at <http://www.right-to-education.org/home/index.html>), and immigrant or refugee children face threats of exclusion from schools in many countries (see the Texas court case, *In Re Alien Children Education Litigation* in Del Valle, 2003: 331; see also the list of European countries where children whose residence status is “irregular” may be excluded, in Eurydice 2004: 33-34).

Secondly, however, as Katarina Tomaševski, the former UN Special Rapporteur on the Right to Education, states, “mere access to educational institutions, difficult as it may be to achieve in practice, does not amount to the right to education” (Tomaševski, 2004: para 57). Educational State obligations in international law contain four elements, *availability, accessibility, acceptability and adaptability* (Tomaševski, 2001; also at www.right-to-education.org/content/primers/rte03.pdf). Her 4-A model has also been adopted by the UN Committee on Economic, Social and Cultural Rights, in General Comment No. 13 (Wilson, 2004: 165). Tomaševski discusses “language of instruction”

under “*acceptability*” (2001: 12-15, 29-30), mentioning the *Belgian Linguistic Case* (see Skutnabb-Kangas, Volume 5), in which parents’ rights to state-financed education in a language of their choice was denied. We also discuss language of instruction under “*accessibility*” (see Magga et al. 2005 for details), where one of the points is Tomaševski’s (2001: 12) “identification and elimination of discriminatory denials of access”. Barriers to “access” can be interpreted as **physical** (e.g. distance to school), **financial** (e.g. school fees, already mentioned, or the labour of girls being needed at home), **administrative** (e.g. requirements of birth registration or residence certificate for school enrolment, *ibid.* para 4b; or, e.g. school schedules, 2001: 12); or **legal**. If the educational model chosen for a school (legally or administratively) does not mandate or even allow indigenous or minority children to be educated mainly through the medium of a language that the child understands, then the child is effectively being denied access to education. If the teaching language is foreign to the child and the teacher is not properly trained to make input comprehensible in the foreign language, the child does not have access to education. The U.S. Supreme Court acknowledged this in 1974 in the *Lau v. Nichols* case (414 US 563). Likewise, if the language of instruction is neither the mother tongue/first language or minimally an extremely well known second language of the child and the teaching is planned and directed towards children who have the language of instruction as their mother tongue (i.e. the norm is a child who knows the teaching language), the LM child does not have equal access to education. We see this as a combination of **linguistic, pedagogical and psychological** barriers to “access” to education.

Under the subtitle “Schooling can be deadly”, Katarina Tomaševski claims that translating what rights-based education means from vision to reality “requires the identification and abolition of contrary practices” (Tomaševski, 2004: para 50). This is rendered difficult by two assumptions: “One important reason is the assumption that getting children into schools is the end rather than a means of education, and an even more dangerous assumption that any schooling is good for children”.

The present practices of educating LM children through the medium of dominant national/state languages are completely contrary to solid theories and research results about how best to achieve the goals for good education. In addition, they also violate the parents’ right to intergenerational transmission of their values, including their languages. In Tomaševski’s views (2004: para 5), the impact of a rights-based education should be “assessed by the contribution it makes to the enjoyment of all human rights. International human rights law demands substitution of the previous requirement upon children to adapt themselves to whatever education was available by adapting education to the best interests of each child” (Tomaševski 2004: para 54; see also Tomaševski 2006 for a brilliant critical summary of the right to education). The human right to use one’s own language is made impossible if the children lose it during the educational process.

Future Directions

Comparing the various developments in how human rights instruments, courts, and various regulations have handled educational LHRs during the last many decades, there seems to be a constant tension in how the place, function and future of LMs (seen as Other) has been envisaged. States seem to strive towards some kind of unity, wholeness,

integration, but ideas about how this can be achieved vary. Segregation versus integration, and bilingual versus monolingual are some of the main polarities here.

The Other has often been feared, despised, marginalised and excluded, and a separate physically segregated development has been seen as necessary and preferable. At the same time the Other has been strictly controlled and disciplined. South African (SA) apartheid Bantu education or U.S. (especially South) black and white schools are examples. The only positive aspect of this kind of education in SA was that LMs often had MTM education. But the quality and financing of the education in both SA and USA, including buildings, materials, teacher training, etc, were mostly dismal and the content often racist. Legally mandated (the *Brown v. Board of Education* 1953 case in the USA) or allowed (SA 1990s Constitution and education regulations) desegregation brought the Other into schools which were earlier reserved only for Self, the “whites”. Physically it may have meant permission for integration, but housing patterns interacting with class ensure that “race” turned “ethnicity” still keep most quality education for children of Self. And medium of education interacts with it; Kathleen Heugh’s (2000) countrywide longitudinal statistical study of final exam results for “Black” students in South Africa showed that the percentage of “Black” students who passed their exams went down every time the number of years spent through the medium of their mother tongues decreased.

In the other polarity, a reproduction of minorities through MTM or proper bilingual education has been seen as a threat towards the unity of a state. Linguistic reproduction of minority mother tongues has been seen as a beginning of a conflict where states have feared that the existence of minorities can lead to a disintegration of the state. The Turkish oppression of Kurds is perhaps the worst example of this today but in Europe both France and Greece violate LHRs for similar reasons, and the same reason has been frequently invoked in the USA, pointing at the possibility of Quebec separation from the rest of Canada as a threatening example. Many Asian and African conflicts also have elements of state elites connecting LMs to disintegration threats and therefore denying them basic language rights. This seems to be one of the main reasons in state resistance against proper bilingual education in many countries. Even if the scientific evidence for bilingual education is compelling, assimilationist mainstreaming mostly wins because MTM maintenance-oriented education can reproduce minorities as minorities. Likewise, content in bilingual education is seen as possibly ideologically threatening because it cannot (for linguistic reasons) be completely controlled by the dominant group.

All this can lead to interesting contradictions – and their solution is a major future challenge. Just two examples:

In San Francisco, USA, Chinese-American students wanted to retain their already existing bilingual programmes. The court noted: “Bilingual classes are not proscribed. They may be provided in any manner which does not create, maintain or foster segregation” (*Guey Heung Lee v. Johnson*, 404 US 1215, 1971; <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=404&invol=1215>). How do you do it?

Each State which has ratified Council of Europe’s **Framework Convention of the Protection of National Minorities** has to report every three years how they have fulfilled their obligations. In several opinions, the Advisory Committee scrutinising the reports urges the state to place the minority in “regular” (meaning dominant-language-medium) classes where they are “integrated” with (i.e. physically integrated with but

often psychologically segregated from) dominant group children. But at the same time, the Committee urges the State to “ensure [that] adequate opportunities exist to be taught the [minority] language or to receive instruction in this language” (e.g. opinions on Romania, Croatia and Slovakia); they also see “separate classes” as risky for integration (e.g. in the opinion on Sweden) (see Wilson 2004 and Skutnabb-Kangas 2004).

But one cannot teach LM children through the medium of a minority language in an “integrated” classroom where children from the linguistic majority are also present - unless these are also to become bilingual (as in two-way programmes), and there is no indication of this in the Committee’s opinions, or in the USA court case.

Majority/dominant group children do not have any right to become high level bi- or multilingual through education either (even if many states are in practice organising programmes for them to achieve this goal, e.g. immersion or CLIL – content and language integrated learning – programmes).

Thus, accepting temporary physical segregation as a means for achieving educational, psychological, societal and political integration of minorities and majorities later on is an absolute necessity for a human-rights-oriented education.

Despite many peace researchers having shown that it is often precisely lack of language rights that leads to conflict, and that LHRs, also in education, may be part of the solution, most states continue the schizophrenic and counterproductive policies of denying indigenous, and national and immigrant minority children basic linguistic human rights, including proper maintenance-oriented bilingual education. States can also expect to have to pay huge reparations if this is continued – the first court cases have already been won by LMs. One example comes from Australia where the Federal Court of Australia ruled in 2005 that the Queensland government discriminated against a 12-year old boy by not providing him with a sign language interpreter at school. The boy was awarded \$64,000 in compensation for future economic losses as a result of his inadequate education. According to Deaf Children Australia, his academic skills were at the level of a six-year old. This decision establishes firmly deaf children’s right to an AUSLAN [Australian Sign Language] interpreter in school and has implications beyond the Australian context (see Gibson, Small, and Mason, this volume, for discussion of the struggle for deaf children’s linguistic rights in Ontario, Canada).

References

- Capotorti, F.: 1979, *Study of the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, United Nations, New York.
- Churchill, W.: 1997, *A Little Matter of Genocide. Holocaust and the Denial in the Americas 1492 to the Present*, City Lights Books, San Francisco.
- Crawford, J.: 1995, *Bilingual Education: History, Politics, Theory and Practice*, Bilingual Educational Services, Los Angeles. [1989, Crane Publishing Company, Trenton, N.J.].
- Del Valle, S.: 2003, *Language Rights and the Law in the United States. Finding Our Voices*, Multilingual Matters, Clevedon.
- Devidal, P.: 2004, Trading Away Human Rights? The GATS and the Right to Education: a legal perspective, *Journal for Critical Education Policy Studies* 2:2,

- www.jceps.com/?pageID=article&articleID=28
- Dunbar, R.: 2001, Minority Language Rights in International Law, *International and Comparative Law Quarterly* 50, 90-120.
- Eurydice (The information network on education in Europe): 2004, *Integrating Immigrant Children into Schools in Europe. Survey*. Brussels: European Commission, Directorate-General for Education and Culture. www.eurydice.org.
- Fesl, E. M. D.: 1993, *Conned! A Koorie perspective*, University of Queensland Press, St Lucian, Queensland.
- Fife, J.: 2005, The Legal Framework for Indigenous Language Rights in the United States, *Willamette Law Review* 41(2), 325-371. Available online on the New Mexico State Bar Indian Law Section website:
http://www.nmbar.org/Content/NavigationMenu/Divisions_Sections_Committees/Sections/Indian_Law/Highlights_of_Section_Activities/2004_Student_Writing_Competition/2004_Student_Writing_Competition.htm
- Francis, N. & Reyhner, J.: 2002, *Language and Literacy Teaching for Indigenous Education. A Bilingual Approach*, Multilingual Matters, Clevedon, UK.
- Gromacki, Joseph P.: (1992), The Protection of Language Rights in International Human Rights Law: A Proposed Draft Declaration of Linguistic Rights, *Virginia Journal of International Law* 32:471, 515-579.
- Heugh, K.: 2000, *The Case against Bilingual and Multilingual Education in South Africa*. PRAESA Occasional Papers No.6, University of Cape Town, Cape Town.
- Higgins, N.: 2003, The Right to Equality and Non-Discrimination With Regard to Language, *E LAW, Murdoch University Electronic Journal of Law*, 10:1 (March 2003).
http://www.murdoch.edu.au/elaw/issues/v10n1/higgins101_text.html#Linguistic%20Minority%20Rights%20in%20other%20Universal%20and%20European%20Community%20Documents_T
- Leitch, D.: 2005, *Canada's Native Languages: Wrongs from the Past, Rights for the Future*, Paper given at the conference First Nations, First Thoughts, University of Edinburgh, Centre of Canadian Studies, 5-6 May 2005. Available at www.cst.edu.ac.uk/2005conference/archiveA-M.html
- Lind Meløy, L.: 1980, *Internatliv i Finnmark. Skolepolitikk 1900-1940* (Boarding school life in Finnmark. School policy 1900-1940), Det Norske Samlaget, Oslo.
- Lundemark, E.: 1980, *Arbetsstugorna* (The Workhouses), Tornedalica 30, Luleå.
- Magga, O. H., Nicolaisen, I., Trask, M., Dunbar, R. and Skutnabb-Kangas, T.: 2005, *Indigenous Children's Education and Indigenous Languages*. Expert paper written for the United Nations Permanent Forum on Indigenous Issues, United Nations, New York. [can be downloaded from <http://www.tove-skutnabb-kangas.org/en/index-en.html>].
- Milloy, J. S.: 1999, "A National Crime". *The Canadian Government and the Residential School System, 1879 to 1986*, The University of Manitoba Press, Winnipeg, Manitoba.
- Pennycook, A.: 1998, *English and the discourses of Colonialism*, Routledge, London & New York.
- Phillipson, R.: 1992, *Linguistic imperialism*, Oxford University Press, Oxford.
- Richardson, B.: 1993, *People of Terra nullius. Betrayal and Rebirth in Aboriginal*

- Canada, Douglas & McIntyre, Vancouver/Toronto.
- Skutnabb-Kangas, T.: 2000, *Linguistic genocide in education - or worldwide diversity and human rights?* Lawrence Erlbaum Associates, Mahwah, NJ & London, UK. [slightly revised version, 2008, Delhi: Orient Blackswan, <http://www.orientblackswan.com/display.asp?isbn=978-81-250-3461-2>].
- Skutnabb-Kangas, T.: 2004, "How (unnecessary) political tension leads to confusion, controversies, inconsistencies and, ultimately, lack of linguistic human rights in education. [Title changed in the book by Council of Europe, without permission, from the title of the original presentation, to "The status of minority languages in the education process"]. In *Filling the Frame. Five years of monitoring the Framework Convention for the Protection of National Minorities*. Proceedings of the conference held in Strasbourg, 30-31 October 2003. Strasbourg: Council of Europe Publishing, 234-254.
- Tabory, M.: 1980, Language Rights as Human Rights, *Israel Yearbook on Human Rights* 10, 167-223.
- Thomas, J., Chief: 1994, *Teachings from the Longhouse*, Stoddart, Toronto.
- Thornberry, P.: 1995, The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities: Background, Analysis and an Update, in A. Rosas and A. Phillips (eds), *Universal Minority Rights*, Åbo Akademi University Institute, Åbo & The Minority Rights Group, London, 13-76.
- Thornberry, P.: 1997, Minority Rights, in Academy of European Law (ed.), *Collected Courses of the Academy of European Law*. Volume VI, Book 2, Kluwer Law International, The Netherlands, 307-390.
- Thornberry, P.: 2002, *Indigenous peoples and human rights*, Manchester University Press, Manchester.
- Thornberry, P. and Gibbons, D.: 1997, Education and Minority Rights: A Short Survey of International Standards, *International Journal on Minority and Group Rights*. Special Issue on the Education Rights of National Minorities 4:2, 1996/1997, 115-152.
- Tomaševski, K.: 2001, *Human rights obligations: making education available, accessible, acceptable and adaptable*. Right to Education Primers 3, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, Lund & Sida (Swedish International Development Cooperation Agency), Stockholm.
- Tomaševski, K.: 2004, *Economic, social and cultural rights. The right to education*, Report submitted by the Special Rapporteur Katarina Tomaševski. Economic and Social Council, Commission on Human Rights, Sixtieth session Item 10 on the provisional agenda. E/CN.4/2004/45. 26 December 2003.
- Tomaševski, K.: 2006, *Human rights obligations in education. The 4-A Scheme*, Wold Legal Publishers, Nijmegen.
- de Varennes, F.: 1996, *Language, Minorities and Human Rights*, Martinus Nijhoff, The Hague.
- de Varennes, F.: 2000, Tolerance and Inclusion: The Convergence of Human Rights and the Work of Tove Skutnabb-Kangas, in R. Phillipson (ed.), *Rights to language. Equity, power and education*, Lawrence Erlbaum Associates, Mahwah, NJ & London, 67- 71.
- Wilson, D.: 2004, Report: A critical evaluation of the first results of the monitoring of the Framework Convention on the issue of minority rights in, to and through education

(1998-2003). In *Filling the Frame. Five years of monitoring the Framework Convention for the Protection of National Minorities*. Proceedings of the conference held in Strasbourg, 30-31 October 2003, Council of Europe Publishing, Strasbourg, 163-233.

Keywords:

Mother tongue medium education

Bilingual education

Linguistic human rights

International law

Indigenous peoples

Minorities