

## HUMAN RIGHTS AND MINORITY LANGUAGE EDUCATION

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A long-standing problem with regard to minority language education is that the major international human rights treaties of relevance do not create a clear and unambiguous right to education through the medium of the minority language. In a European context, and following on from the famous *Belgian Linguistics* case, the right to education guaranteed by Article 2 of Protocol 1 to the ECHR has generally been understood as not containing a right to minority language education, although more recent case law may have opened the door just a little towards a more expansive interpretation. Neither the United Nations' *International Convention on Economic, Social and Cultural Rights* (ICESCR) nor the UN's *Convention on the Rights of the Child* (CRC) explicitly recognises the right to minority language education, although I will come back to both of these treaties in a moment.

With regard to minorities instruments, Article 14, paragraph 2 of the *Framework Convention for the Protection of National Minorities* does create such a right, but it is hedged with conditions and does not necessarily guarantee education through the medium of the minority language, as opposed to the teaching of the minority language. Article 8 of the *European Charter for Regional or Minority Languages* also creates considerable space for States to exercise some discretion, and, of course, the Languages Charter has not been as broadly ratified as the Framework Convention.

However, the law is not static, and with what I would describe as a more 'teleological' approach to understanding and interpreting international legal obligations—one which takes more seriously the policy goals at which the treaties themselves and particular treaty provisions are aimed—and an approach which also takes more cognisance of scientific research, in particular of developments in our understanding of cognitive and emotional development, a new and much more supportive legal regime may emerge even from existing

treaty provisions. To illustrate what I mean, I would like to return to the ICESCR and the CRC, as they do create obligations which, when approached in the way I am suggesting, may require the provision of minority language education..

Article 13, paragraph 1 of the ICESCR provides that States Parties recognize the right of everyone to education, and that education “shall be directed to the full development of the human personality and the sense of its dignity”. I have no doubt that some of our speakers—Tove Skutnabb-Kangas and Robert Phillipson, for example—will tell us, if they get the chance, that there is now a massive amount of evidence that mother tongue education for minority and indigenous children is absolutely essential for the ‘full development of the human personality and its sense of dignity’. The Committee on Economic, Social and Cultural Rights as already noted in its 1999 General Comment Number 13 on Education that States must facilitate the acceptability of education “by taking positive measures to ensure that education is culturally appropriate for minorities and indigenous peoples”. Again, there is now a great deal of evidence that education of minority and indigenous children that is not through the medium of the mother tongue, particularly in the early years, is culturally inappropriate, as it tends to alienate such children from their culture.

Let us then look briefly at the CRC. Article 29, subparagraph 1(a) requires that the education of the child must be directed to the development of the child’s personality, talents and mental and physical abilities to their fullest potential, and subparagraph 1(c) requires that such education must be directed and to the development of respect for the child’s own cultural identity, language and values, among other things. Again, educational research on the cognitive, emotional and other benefits of mother tongue education now makes clear the need for minority language education if the minority or indigenous child is to develop his or her personality, talents and mental abilities to their ‘fullest potential’; such education is also necessary for inculcating respect for the child’s own cultural identity and language; indeed,

failure to provide such education has repeatedly resulted in erosion of respect for that identity and language. Although the Committee on the Rights of the Child has not yet made a general comment on minority children, it has on indigenous children, and as the references in the treaty to indigenous children generally appear in provisions in which reference is also made to minority children, it would be surprising if similar considerations did not apply. As regards indigenous children, the Committee has said in its general comment that specific references to indigenous children in the Convention are indicative of the recognition that they require special measures in order to fully enjoy their rights. Minority children similarly require special measures in order to fully enjoy their rights. A teleological approach to understanding these treaty obligations would require a much more sympathetic approach to be taken to minority language education.

The same may be said for education provisions in treaties like the Framework Convention and the Languages Charter. As many of you may know, Article 8 of the Languages Charter contains detailed obligations with respect to minority language education, although the State has considerable flexibility in terms of the more precise nature of the obligations it undertakes. However, Article 7, in Part II of the Languages Charter, creates obligations of a more general nature which States must observe in relation to all of the regional or minority languages protected by the charter. As is noted in both the its preamble and in its explanatory report, the characteristic shared by all languages protected by the Languages Charter is a greater or lesser degree of precariousness. They are all a threatened aspect of Europe's cultural heritage, and therefore the Languages Charter is aimed at protecting and promoting them. Article 7, paragraph 1 (c), for example, requires States to base their policies, legislation and practice on the need for resolute action to promote regional or minority languages in order to safeguard them. I would argue that this requires an examination of not only whether States are adhering to the particular obligations they

undertake under Article 8, but of whether those measures themselves are sufficient to ensure the protection and promotion of these languages, whether those measures amount to ‘resolute action’ in the promotion of such languages. Once again, there is increasing evidence that immersion education, beginning in early years and continuing through secondary, is a necessary if not, by itself, a sufficient condition for minority language preservation and promotion. The adequacy of state practice should ultimately be judged not on the basis of whether it is formally complying with its obligations, but whether state practice is actually accomplishing or can reasonably be expected to accomplish the goals for which the relevant minority treaty was created to advance.

A teleological approach is also important in the application of the so-called ‘sliding scale’ approach to the provision of minority language education and minority services more generally. This approach is implied by the various conditions which are attached to the obligations of the Framework Convention and the Languages Charter in relation to minority language education—the requirement that demand be sufficient, that the obligation only exists in areas in which there are significant numbers and concentrations of speakers, and so forth. On the one hand, the sliding scale recognises that there are a variety of practical considerations which may limit the ability of the state to deliver minority language education. On the other hand, there is a danger that the state can minimise its obligations; frequently, of course, the practical obstacles to the provision of minority language education are ones over which states themselves have control, such as budgets, teacher training, school facilities and materials, and so forth. A teleological one would require that the state obligation be interpreted in light of the ultimate objectives of the treaty—in the case of a minorities instrument, the maintenance and promotion of the minority language is generally one such objective—and a maximally generous interpretation of the state’s obligation would be required.

I would also like to conclude with a few words about non-discrimination, a fundamental principle in a wide range of relevant treaties, as the UN Special Rapporteur for Minority Issues has pointed out in the excellent ‘Language Rights of Linguistic Minorities: A Practical Guide for Implementation’. Substantive equality, rather than formal equality, requires a consideration of the ultimate impact of particular policies such as educational policies on the individual. Once again, there is increasing amounts of evidence that the failure to provide mother tongue education, particularly in the early primary school years, to minority and indigenous children tends to result in educational and broader social and economic disadvantage. In such circumstances, it is difficult to argue that education which does not provide minority and indigenous children with education through their mother tongue is one which provides them with an education of equal quality to that enjoyed by children who are educated through their mother tongue. It should be noted that this is a principle which applies not only in relation to children of autochthonous minorities, but also children who belong to minorities of more recent standing. If the focus is on the wellbeing of the child—something which is required by the CRC, for example—then there can be no reason for failing to respond to the language education needs of children of so-called ‘new minorities’. Thank you.