

45. Skutnabb-Kangas, Tove & Phillipson, Robert (1998). Language in human rights. **Gazette. The International Journal for Communication Studies**, Special volume on Human Rights, 60:1, 1998, ed. Cees Hamelink, 27-46.

Abstract

Languages are today being killed at a much faster pace than ever before in human history and linguistic diversity is disappearing faster than biological diversity. Still, linguistic diversity is as necessary for the existence of our planet as biodiversity, and the two are correlated. Linguistic human rights are a necessary (but not sufficient) prerequisite for the maintenance of linguistic diversity. Violations of linguistic human rights, especially in education, may lead to both ethnically articulated conflict and to reduction of linguistic and cultural diversity on our planet. The article analyses to what extent present linguistic human rights, especially in education, are sufficient to protect and maintain linguistic diversity and to function as the necessary corrective to the 'free' market.

KEYWORDS:

1. linguistic human rights
2. linguistic genocide
3. linguisticism
4. linguistic diversity
5. biodiversity

Globalization carries with it a danger of uniformity [...] Peace means diversity [...] it means multi-ethnic and multilingual societies. (from UNESCO's **The Human right to peace. Declaration by the Director-General**, 1997, 9)

Why linguistic human rights?

Human rights are about rectifying human wrongs. Language rights are needed to remedy language wrongs. Linguistic human rights are an essential dimension of human rights.

Linguistic diversity is as necessary for the existence of our planet as biodiversity, and the two are correlated. Mark Pagel points out that in North America

languages, like all biological species, get thicker on the

ground as you approach the equator (Pagel, as reported by Nicholas Ostler in **Iatiku: Newsletter of of the Foundation for Endangered Languages** 1, 1995, 6)

Reporting on the conference 'Endangered Languages, Endangered Knowledge, Endangered Environments' at the University of California, Berkeley (October 1996), Luisa Maffi, President of Terralinguaⁱ, also says that there are

'remarkable overlaps between global mappings of the world's areas of biological megadiversity and areas of high linguistic diversity', and likewise a 'correlation between low-diversity cultural systems and low biodiversity' (Maffi 1996).

According to Maffi, ethnobiologists, human-ecologists and others have proposed

'theories of "human-environment coevolution"', including the assumption that 'cultural diversity might enhance biodiversity or vice versa.' (ibid.).

In this perspective, the conference on endangered languages stressed 'the need to address the foreseeable consequences of massive disruption of such long-standing interactions'. The processes of language loss also

affect the maintenance of traditional environmental knowledge - from loss of biosystematic lexicon to loss of traditional stories (ibid.).

Schooling, in addition to migration, was explored as one of the important causal factors in language loss at the same conference.

The United Nations Environmental Program (UNEP), one of the organisations behind the 1992 Rio conference (which produced a massive book on global biodiversity assessment - Groombridge 1992 - that summarizes current knowledge about biodiversity), also acknowledges the connection between biological resources and human resources. It is in the process of producing a companion volume on **Cultural and Spiritual Values of Biodiversity** (Posey & Dutfield, (eds.), in press). The chapter on Language Diversity (Maffi, Skutnabb-Kangas & Andrianarivo, in press) argues that

the preservation of the world's linguistic diversity must be incorporated as an essential goal in any bioculturally-oriented diversity conservation program (from Executive Summary).

Languages are today being killed at a much faster pace than ever before in human history. Linguistic diversity is today disappearing much faster than biological diversity. Michael Krauss from Alaska, one of the linguists who has worked hard to make the world aware of the threat to languages (e.g. Krauss 1992) estimates (at a conference of the American Association for the Advancement of Science, reported in **The Philadelphia Inquirer** 19.2.1995, p. A15) that only around 600, less than 10 percent of today's around 7,000 oral languages, are assured of still being around in 2100. Already today, between 20 and 50 percent of the world's oral languages are no longer being learned by children, meaning they are 'beyond endangerment, they are living dead and will disappear in the next century' (ibid.). And this count does not consider sign languages (for important analyses of the invalidation of these, see Branson & Miller 1993, 1994).

Linguistic human rights are a necessary (but not sufficient) prerequisite for the maintenance of linguistic diversity on the planet, and educational language rights are at the core of this effort.

Another type of linking, in addition to the link between biodiversity and linguistic and cultural diversity, is that between linguistic human rights and other human rights.

An active agent in killing languages faster than ever is the development that has accelerated since the disintegration of the Soviet Union, namely the triumphalist proclamation of the 'free' market system as The Global System For Ever. (Of course it is everything but free - see e.g. Escobar 1995). The prohibition of slavery meant that **people** should not be treated as market commodities. ILO (The International Labour Organisation) has added that **labour** should not be treated as commodity. Human rights, especially economic and social rights, are, according to human rights lawyer Katarina Tomaševski (1996, 104), to act as **correctives to the free market**, overruling the law of supply and demand, meaning they should guarantee that the basics needed for survival and for the sustenance of a dignified life have no price-tags, are outside market forces.

These necessities for survival include not only basic food and housing, but also basic civil, political **and cultural** rights. Education, including basic educational linguistic rights, is one of the necessities from which price-tags should be removed. This means that it is the duty of each government to create conditions for people to provide these necessities for themselves. If they cannot do so (as many cannot, among other reasons because the right to work is not a fundamental individual human right, and neither is the right to fair trade

at a collective level), it is the duty of governments, according to human rights principles, to provide the necessities for those unable to do so themselves. If this really happened, we would not need to worry about the fate of the world's languages. But it does not.

But there are strong reasons why states should in fact **support** linguistic and cultural diversity and linguistic rights, for **egoistic** reasons (in the interest of their own elites), not only for human rights reasons. Linguistic and cultural identity are at the core of the cultures of most ethnic groups (Smolicz 1979). Threats towards these identities can have a very strong potential to mobilize groups. Still, as Asbjørn Eide (1995, 29-30) of the UN Human Rights Commission, points out, cultural rights have lacked importance and received little attention both in human rights theory and in practice, despite the fact that today 'ethnic conflict' and 'ethnic tension' are, according to Eide, seen as the most important potential causes of unrest, conflict and violence in the world. Just as the absence of economic and social rights in the period between the 'world' wars promoted the emergence of totalitarian regimes, absence or denial of linguistic and cultural rights are today effective ways of **promoting** conflict and violence, which, despite multiple causes, all too easily can take ethnically and linguistically defined or articulated forms.

This has been acknowledged by many researchers from several fields. For instance Jurek Smolicz, Australia, formulates it as follows:

... attempts to artificially suppress minority languages through policies of assimilation, devaluation, reduction to a state of illiteracy, expulsion or genocide are not only degrading of human dignity and morally unacceptable, but they are also an invitation to separatism and an incitement to fragmentation into mini-states (Smolicz 1986, 96).

It has also been acknowledged by politicians, for instance in creating in the OSCE (Organisation for Security and Cooperation in Europe) the position of a High Commissioner on National Minorities 'as an instrument of conflict prevention in situations of ethnic tension' (Rothenberger 1997, 3). The High Commissioner, Max van der Stoep (1997, 153) stated when launching the Hague Recommendations Regarding the Education Rights of National Minorities (see below) that

...in the course of my work, it had become more and more obvious to me that education is an extremely important element for the preservation and the deepening of the identity of persons

belonging to a national minority. It is of course also clear that education in the language of the minority is of vital importance for such a minority.

Granting linguistic and cultural human rights would be a step towards **avoiding** 'ethnic' conflict, avoiding disintegration of (some) states and avoiding anarchy, where the rights of even the elites will be severely curtailed because of increasingly civil war-like conditions, especially in inner cities. But is this done? And is the link between language rights and other human rights, including economic and social rights on the one hand and civil and political rights on the other hand, acknowledged? In global **human rights policies** there is a conspicuous silence about economic and social (or welfare) rights, coupled with very vocal anti-welfare approaches. In global and European **economic policies** human rights are hardly mentioned, except when legitimating capitalist benefits for the industrialised countries by alleged (and often real) human rights violations in underdeveloped countries. Also, in renegotiating **political, military and economic alliances**, Western countries skilfully play the card of alleged human rights violationsⁱⁱ. Tomaševski states (1996, 100) that

the ideology of the free market has exempted economy from public control (sometimes even influence) and thus eliminated the basis for human rights, when these are understood as an exercise of political rights to achieve economic, social and cultural rights.

Whether humanity has a moral obligation to prevent linguisticide, or whether this would be interference in an inevitable process in which only the fittest survive, has been debated at several levels, some partly inspired by primordial romanticism (as in many revitalisation movements), some by instrumentalist 'modernism' (as in old and modern colonial situations, including the possible neocolonisation of central and eastern Europe by the United States and Western Europe). An attachment to one's language or mother tongue as a central cultural core value seems, like ethnicity, to combine: draw on primordial, ascribed sources but to be shaped and actualised by (achieved) economic-political concerns (Fishman 1989, Smolicz 1979). This also means that language shift **can** be 'voluntary' at an individual level: a result of more benefits accruing to the individual who agrees to shift than to someone who maintains her mother tongue. But in most cases of language shift it seems that either sticks, punishment, or carrots, economic or other benefits, have been at work - or, increasingly, ideological

persuasion, hegemonic mind-mastering, meaning linguistic (Skutnabb-Kangas 1988) agents. Likewise, the choice of which languages are granted support, and of what kind, in the education system as mother tongues and foreign or second languages often follows linguistic 'free' market principles, with more benefits accruing to those who support the killer languages as both media of education and as first foreign languages in education.

To sum up, then: if people are forced to shift their languages in order to gain economic benefits of the kind which in fact are bare necessities for basic survival, this is a violation of not only their economic human rights but also their linguistic human rights. Violations of linguistic human rights, especially in education, may lead and have led to both ethnically articulated conflict and to reduction of linguistic and cultural diversity on our planet.

The rest of this article will discuss some of the causal factors behind the unequal access to language rights. Then it will proceed to a presentation of some of the language rights accorded (or not accorded) to different groups. Finally it will analyse to what extent present linguistic human rights, especially in education, are sufficient to protect and maintain linguistic diversity and to function as the necessary corrective to the 'free' market.

Linguicide, language death and monolingual reductionism

State policies towards indigenous and minority languages

Given the growing importance of language for power and control, resistance to reproduction of smaller languages is to be expected. This section introduces some of the concepts important for analysing the ideological background for why this is happening.

The division of power and resources in the world partially follows linguistic lines, where more accrues to (native) speakers of 'big' languages. Their speakers can and do use their languages for many or most official purposes. If they learn other languages, this happens additively, in addition to their own languages. Speakers of smaller languages are often forced to learn the big languages subtractively, at the cost of their own languages, precisely because the smaller languages are not used for official purposes, including education. This is what leads to reduction of linguistic diversity.

Difference between linguisticide and language death

In analysing causal factors, it is useful to compare the concept of **linguicide** (=linguistic genocide) with that of **language death**. The concept 'language death', which is well established in sociolinguistics, does not necessarily imply a causal agent. Language death is seen as occurring because of circumstances beyond the control of any agents. The effects, for instance language death as a result of 'modernization', are often regarded as inevitable concomitants of social change. Language death is seen as comparable to the evolution of natural organisms which develop, bloom and wither away. When some liberal economists (e.g. Friedrich List, 1885, 174ff.) a century ago considered that nations had to be of a 'sufficient size' to be viable, it followed that smaller nationalities **and languages** were doomed to disappear, as collective victims of 'the law of progress'. Their speakers were advised to reconcile themselves to 'the loss of what could not be adapted to the modern age' (Hobsbawm 1991, 29--39). Several Western European liberal ideologists and Soviet language planners in the early part of this century held that nations (each with their own language) were but one phase in a development towards a unified world with a world language, coexisting with national languages which would be 'reduced to the domestic and sentimental role of dialects' (ibid., 38).

This liberal ideology of development is still alive and well. When discussing 'small ethnic groups and languages', we are warned not to 'be idealistic and feel blind pity for everything which *in its natural course* is transformed, becomes outdated or even extinct', (Šatava 1992, 80; emphasis added). The concept of language death can be associated with this type of liberal ideology, whether in Eastern Europe, North America (the 'English Only' movement), or in aid policies worldwide, these invariably supporting dominant languages. At the individual level, language death would within this paradigm be seen as a result of a voluntary language shift by each speaker.

Linguicide, by contrast, implies that there are **agents** involved in **causing** the death of languages. The agents can be **active** ('**attempting** to kill a language') or **passive** ('**letting** a language die', or 'unsupported coexistence', also often leading to the death of minority languages - the three quotes are part of Juan Cobarrubias' taxonomy of policies which a state can adopt towards indigenous or minority languages). In liberal ideology, only an **active** agent with the **intention** to kill languages would cause linguisticide, whereas the other two would fall within the domain of language death. The **causes** of linguisticide and linguisticism have to be analyzed from

both **structural** and **ideological** angles, covering the struggle for structural power and material resources, and the legitimation, effectuation and reproduction of the unequal division of power and resources between groups based on language. The **agents** of linguicide/linguicism can also be **structural** (a state, e.g. Turkey vis-a-vis Kurds; an institution, e.g. schools; laws and regulations, e.g. those covering linguistic rights or the position of different languages on time-tables in schools; budgets, e.g. for teacher training or materials in certain languages) or **ideological** (norms and values ascribed to different languages and their speakers). There is thus nothing 'natural' in language death. Languages cannot be treated in an anthropomorphic way, as organisms with a natural life-span. Language death has causes, which can be identified and analysed.

UN definition of linguistic genocide (1948)

When the United Nations did preparatory work for what later became the International Convention for the Prevention and Punishment of the Crime of Genocide (E 793, 1948), linguistic and cultural genocide were discussed alongside physical genocide, and were seen as serious crimes against humanity (see Capotorti 1979). When the Convention was accepted, Article 3 covering linguistic and cultural genocide was voted down and it was thus not included in the final Convention of 1948. What remains, however, is a definition of linguistic genocide, which most states then in the UN were prepared to accept. Linguistic genocide is defined (in Art. 3, 1) as

Prohibiting the use of the language of the group in daily intercourse or in schools, or the printing and circulation of publications in the language of the group.

Linguistic genocide as defined by the UN is practised throughout the world. The use of an indigenous or minority language can be prohibited overtly and directly, through laws, imprisonment, torture, killings and threats (as in Turkey today vis-a-vis the Kurds, according to human rights organisations; e.g. Human Rights in Kurdistan 1989; Helsinki Watch Update 1990; see also Skutnabb-Kangas & Bucak 1994 and references in it). The use of a small language can also be prohibited covertly, more indirectly, via ideological and structural means, as in the educational systems of most European and North American countries. Every time there are indigenous or minority children in day-care centres and schools with no bilingual teachers

authorized to use the languages of the children as the regular teaching and child care media, this is tantamount to prohibiting the use of minority languages 'in daily intercourse or in schools'. This is the situation for most immigrant and refugee minority children in all Western European countries and in the US, Canada and Australia, as well for most indigenous first nations, both earlier and, for many, still today (see e.g. Hamel 1994; Jordan 1988, Fettes, in press).

Linguicism (Skutnabb-Kangas 1988) is a major factor in determining whether speakers of particular languages are allowed to enjoy their linguistic human rights. Lack of these rights, for instance the absence of these languages from school timetables, makes indigenous and minority languages invisible. Alternatively, minority mother tongues are constructed and presented as non-resources, as handicaps which are constructed as 'preventing' indigenous or minority children from acquiring the majority language (= the only valued linguistic resource), so that minority children should get rid of them in their own interest. At the same time, many minorities, especially minority children, are in fact prevented from fully acquiring majority resources, and especially majority languages, by disabling educational structures in which instruction is organised through the medium of the majority languages in ways which contradict most scientific evidence on how education for bilingualism should be organised (see e.g. Cummins 1996; Pattanayak 1981; Ramirez et al 1991; Skutnabb-Kangas 1984, 1990, forthcoming).

Monolingual reductionism and disintegration of 'nation-states'

The linguistic wrongs which are an important causal factor in reducing the linguistic and cultural diversity in the world are partly symptoms of the ideology of monolingual reductionism which builds on several myths. Among them are the beliefs in that monolingualism, at both individual and societal levels, is **normal**; that it is **unavoidable** ('it is a pity but you cannot make people cling to little languages which are not useful; they want to shift'); that it is **sufficient** to know a 'big' language, especially English ('everything important is in English, or, if it is important enough and has been written in another language, it will be translated into English'; 'it is the same things that are being said in all languages so why bother?') and **desirable** ('you learn more if you can use all your energies on one language instead of needing to learn many'; 'monolingual countries are richer and more developed'; 'it is cheaper and more efficient to have just one language'). In fact all these myths can be easily refuted - they are rather fallacies (see

Skutnabb-Kangas 1996a,b).

A fifth myth claims that the granting of linguistic and cultural human rights inevitably leads to the disintegration of present states. Monolingual reductionism can then be characterized as an ideology which is used to rationalize the linguistic genocide (especially in education) committed by states which believe the existence of (unassimilated) linguistic minorities to be a threat leading to the potential disintegration of (what they claim are) nation-states. The arguments used by U.S. English in suggesting laws and amendments to make English the official language in the United States, to the exclusion of other languages, typically play on this fearⁱⁱⁱ. The most dramatic way of reducing the number of (potential) nations is physical genocide. Another way of reducing the number of possible nation-states is to commit linguistic genocide, 'killing a language' (without killing its speakers) or (through passivity) 'letting a language die'.

The principle of **the territorial integrity and political sovereignty of contemporary states** is often presented as being in conflict with another human rights principle, that of **self-determination** (see Clark & Williamson (eds.) 1996), both of which are important principles in international law. One of the political reasons for the denial of linguistic human rights is thus to try to 'resolve' this conflict. Minorities with (educational) linguistic rights, reproducing themselves as minorities, are seen as a threat because they are expected to demand first autonomy, internal self-determination, and then independent status, external self-determination. Therefore, many states strive towards eradicating distinct groups which could demand self-determination. By denying them linguistic human rights and by committing linguistic and cultural genocide in education and otherwise, the states seem to 'hope' that there will eventually be no groups left to demand self-determination. The states will be homogenized as a result of the forced assimilation. The gulf between the good intentions expressed in preambles to human rights documents and the de facto dearth of linguistic human rights in the West (see below) can be understood as symptomatic of the tension created by the myth of threat.

A covert way of making languages disappear at the same time as the state retains its legitimacy in the eyes of (most of) its citizens and the international community seems thus to be for a state to observe (or to be seen as observing) several of the basic human rights for all its citizens, including minorities, but to deny minorities those human rights which are most central for reproducing a minority group as a distinctive group, namely linguistic and cultural human rights, and especially educational

language rights.

Covert linguistic violence of the type that most Western states use in their educational systems appears to be extremely effective when compared with the overt version practised in, for instance, Turkey). Within two to four generations, there are fewer speakers of most minority languages in these countries than in more openly linguicidal countries. Kurds still speak Kurdish and resist linguistic oppression, whereas many former Spanish-speakers in the USA and Finnish- and Sámi-speakers in Sweden have assimilated. It is often more difficult to struggle against covert violence, against the colonization of the mind, where short-term 'benefits' may obscure longer-term losses.

An alternative to linguistic genocide is the granting of linguistic human rights (see Phillipson, Rannut & Skutnabb-Kangas 1994). To sum up, granting linguistic and cultural human rights to minorities reduces the potential for 'ethnic' conflict instead of creating it, prevents the disintegration of (some) states and may avoid anarchy in which the rights of even the elites will be severely curtailed by conditions that increasingly resemble civil war, especially in inner cities. If states demand rights but refuse to deliver the corresponding goods and to do their duties to indigenous peoples and minorities, they in any case lose their legitimacy. Linguicide as a 'strategy' for preventing the disintegration of present day states is ineffective and outmoded. 'Preservation of the linguistic and cultural heritage of humankind' (one of UNESCO's declared goals) presupposes preventing linguistic violence. Linguistic diversity at local levels is not only a necessary counterweight to the hegemony of a few 'international' languages but represents a recognition of the fact that all individuals and groups have basic linguistic human rights and is a necessity for the survival of the planet, in a similar way to biodiversity. The perpetuation of linguistic diversity is a necessary component of any discourse on and strategy for the maintenance of diversity on the planet, meaning that biodiversity and linguistic and cultural diversity need to be seen as an integrated whole.

Linguistic human rights in education

Groups whose languages are not the primary official language in the state where they live have different degrees of protection in international human rights law (see Human Rights Fact Sheets from the UN Centre for Human Rights in Geneva). **Traditional/ territorial/ autochthonous/ national minorities** have more language rights than other groups; most human rights

instruments, both old and new, pertain to them. The **Draft Universal Declaration of Linguistic Rights** (see below), a UNESCO concern since May 1996, also accords them most of the rights. **Immigrant/guest worker/refugee minorities** have practically no language rights in education in relation to their own language, and only few in relation to learning the official language. **The UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**, of December 1990, but not yet in force because of lack of signatories, in its assimilation-oriented educational language Article (45) accords minimal rights to the mother tongues and is even more vague than the instruments analysed below. **Indigenous peoples** have on paper some language rights (mainly in the in ILO conventions) and more are suggested in the **UN Draft Universal Declaration on Rights of Indigenous Peoples** - but see below.

Language - important, but fewer binding rights than other human characteristics

In many international, regional and multilateral human rights instruments language is mentioned in the preamble and general clauses (e.g. both Art. 2, Universal Declaration of Human Rights, and Art. 2.1, International Covenant on Civil and Political Rights (ICCPR, 1966, in force since 1976), as one of the characteristics on the basis of which discrimination is forbidden, together with

race, colour, sex, religion, political or other opinion, national or social origin, property, birth or other status...

The four original basic characteristics cited in Art.13 of the United Nations Charter are '**race, sex, language, or religion**', with signatories committing themselves to promote

... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

This suggests that language has been seen as one of the most important characteristics of humans in terms of human rights issues in the key documents that have pioneered the post-1945 UN effort.

Even so, the most important linguistic human rights are still absent from human rights instruments. Despite fine declarations of the intent to promote diversity, including linguistic diversity, binding international law on human rights still

denies linguistic human rights, especially in education. This is not only in contrast to the spirit of the human rights instruments in general and in their preambles, but is also in contrast to how several other human attributes fare in human rights law. A special, negative treatment is given to language: language gets much poorer treatment in human rights instruments than other important human attributes, like gender, 'race' or religion.

Opt-outs, modifications and alternatives in educational clauses

This section specifically concentrates on educational rights. For the maintenance of linguistic and cultural diversity on our planet and the development of languages, educational language rights are not merely vital but the most important linguistic human rights. Language rights in education are important because intergenerational transmission of languages is the most vital factor for their maintenance. If children are not granted the opportunity to learn their parents' idiom^{iv} fully and properly so that they become (at least) as proficient as the parents, the language is not going to survive. When more and more children gain access to formal education, much of the more formal language learning which earlier happened in the community must happen in schools. But after the lofty non-duty-inducing phrases in the preambles of the human rights instruments, moving to the real business, namely the binding clauses, and especially to the educational clauses, there is a change of position. All or most of the **non-linguistic** human characteristics (race, sex, religion, etc) are still there and get positive rights accorded to them: the clauses or articles about them create obligations and contain demanding formulations, where the states are firm dutyholders and are obliged to ('shall') act in order to ensure the specified rights (i.e. positive rather than negative rights). Here modifications, opt-out clauses and sliding-scale alternatives are rare.

In binding educational clauses, however, one of two things can often be noted. Either language disappears completely, as, for instance, in the **Universal Declaration of Human Rights** (1948) where the paragraph on education (26) does not refer to language at all. Similarly, the **International Covenant on Economic, Social and Cultural Rights** (adopted in 1966 and in force since 1976), having mentioned language on a par with race, colour, sex, religion, etc. in its general Article (2.2), does explicitly refer to 'racial, ethnic or religious groups' in its educational Article (13). However, it omits here reference to language or linguistic groups:

... education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups...

Alternatively, **if** language-related rights are specified, the Article dealing with these rights, in contrast to the demanding formulations and the few opt-outs and alternatives in the articles dealing with other characteristics, is typically so weak and unsatisfactory that it is virtually meaningless. For example, in the **UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities**, adopted by the General Assembly in December 1992, most of the Articles use the obligating formulation 'shall' and have few let-out modifications or alternatives - except where linguistic rights in education are concerned. Compare, for example, the unconditional formulation in Article 1 with the education Article 4.3:

1.1. States *shall protect* the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories, and *shall encourage* conditions for the *promotion* of that identity.

1.2. States *shall* adopt **appropriate** legislative and other measures to achieve those ends.

4.3. 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, '*obligating*' in italics, '**opt-outs**' in bold).

Clearly the formulation in Art. 4.3 raises many questions. What constitutes 'appropriate measures', or 'adequate opportunities', and who is to decide what is 'possible'? Does 'instruction in their mother tongue' mean through the medium of the mother tongue or does it only mean instruction in the mother tongue as a subject?

Similarly, in the **European Charter for Regional or Minority Languages** (22 June 1992), a state can choose which paragraphs or subparagraphs it wants to apply. Again, the formulations include 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' (emphasis added). While the Charter demonstrates the unquestionably real problems of writing binding formulations which are sensitive to local conditions, just as in the UN Declaration above, its opt-outs and alternatives permit 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. A new Council of Europe **Framework Convention for the Protection of National Minorities** was adopted by the Committee of Ministers of the Council of Europe on 10 November 1994. We again find that the Article covering medium of education is much more heavily qualified than any other. Thus the situation is not improving despite new instruments in which language rights are mentioned, or even treated in detail.

Draft Universal Declaration of Linguistic Rights

Introduction

This section analyses some aspects of the **Draft Universal Declaration of Linguistic Rights**, handed over to UNESCO in June 1996, in particular educational language rights. The Declaration is the first attempt at formulating a universal document about language rights exclusively, and it relates to all the groups mentioned above - although not sign language users. It is a vast document which has already gone through 12 drafts^v. Its 52 Articles are wide-ranging and specify many linguistic rights. The Declaration grants rights to three different entities: **individuals** (= 'everyone'), **language groups**, and **language communities**. When the beneficiary is 'everyone' unconditionally, the rights are **individual** ('inalienable personal rights', Art. 3.1). When the beneficiary is the language group or community, the rights are **collective**. And when the beneficiary is **a member of** a linguistic group or community, the rights are in most cases individual but conditional. Even in this Declaration, it is clear already in Article 3.1 that educational language rights, in contrast to cultural rights, are not seen as inalienable:

This Declaration considers the following to be inalienable personal rights which may be exercised in any situation:
- the right to the use of one's language both in private and in public;...

- the right to maintain and develop one's own culture;...

These individual rights (including the rest of Art. 3.1) are the only ones which apply to all without any conditions.

Collective rights in the Declaration apply to a (historical) language community (which includes both traditional national minorities^{vi} and also all numerically small peoples, such as indigenous peoples, in addition to dominant linguistic majorities) or to a language group, which is

any group of persons sharing the same language which is established in the territorial space of another language community but which does not possess historical antecedents equivalent to those of that community. Examples of such groups are immigrants, refugees, deported persons and members of diasporas (Art. 1.5).

Rights of language communities and language groups

Communities have more rights in the Declaration than the other two categories. For communities, Article 8.2 says that

All language communities are entitled to have at their disposal whatever means are necessary to ensure the transmission and continuity of their language.

This could be interpreted to mean that all language communities are entitled to receive from the state the funds needed to organise mother tongue medium education from kindergarten to university. But when we read Article 8.2 alongside the other Articles in the same section, we see that it belongs to the category of pious preamble which everybody can applaud but which carries no legal obligations. No dutyholders are specified for granting the 'means' mentioned in Article 8.2 above or the 'equal rights' or 'necessary steps' mentioned in Articles 10.1 and 10.3 below:

All language communities have equal rights (Art. 10.1).

All necessary steps must be taken in order to implement this principle of equality and to render it real and effective (Art. 10.3).

And when we come to the Articles dealing with education, the same piety prevails, while no dutyholder is specified:

All language communities are entitled to have at their disposal all the human and material resources necessary to ensure that their language is present to the extent they desire at all levels of education within their territory: properly trained teachers, appropriate teaching methods, text books, finance, buildings and equipment, traditional and innovative technology. (Art. 25).

All language communities are entitled to an education which will enable their members to acquire a full command of their own language, including the different abilities relating to all the usual spheres of use, as well as the most extensive possible command of any other language they may wish to know (Art. 26).

The language and culture of all language communities must be the subject of study and research at university level (Art. 30).

In many ways these 'rights' sound like a dream - and probably that is what they will remain. They are at present completely unrealistic for any except, maybe, a few hundred of the world's language communities, most of them dominant linguistic majorities.

Groups have fewer rights than communities. Article 3.2 spells out collective rights for groups:

This Declaration considers that the collective rights of language groups **may** include... the right for their own language and culture to be taught (emphasis added).

For groups, collective rights to one's own language are thus not seen as inalienable. In addition, Article 3.2 says nothing about where the language should be taught (whether only in private schools, or after school, or in state-financed schools) and for how long. Again, no duty-holder is specified.

Does 'everyone' have language rights?

Only education in the language of the territory is a **positive** right for 'everyone'. There is no mention of bilingual or multilingual territories in the Declaration. Every territory seems to have only one 'language specific to the territory', i.e. territories are seen as monolingual. This means that for those who speak a language other than the language of the territory, education in their own language is not a positive right. In addition, the Declaration grants members of language

communities the right to 'the most extensive possible command' of any **foreign** language in the world, whereas the rights granted to 'everyone' include only the (negative - 'does **not exclude**') right to 'oral and written knowledge' of one's **own** language. This is clear if one compares the formulations at the end of Article 26 on language communities with Article 29, which spells out the (negative) right of 'everyone':

All language communities are entitled to an education which will enable their members to acquire a full command of their own language, including the different abilities relating to all the usual spheres of use, as well as **the most extensive possible command of any other language** they may wish to know (Art. 26 on rights of language communities).

1. Everyone is entitled to receive an education **in the language specific to the territory where s/he resides.**
2. This right does not exclude the right to acquire **oral and written knowledge of any language** which may be of use to him/her as an instrument of communication with other **language communities.** (Art. 29 on rights of 'everyone', emphases added).

Besides, Art. 29.2 is formulated so as to suggest that 'everyone's' own language can be learned only if it is a useful instrument when communicating with other language communities. This means that it could in principle be excluded if it is not known by any entity defined as a language community, or if it is not used as a **lingua franca** between people where some represent language communities. If it is 'only' known and/or used by language groups or by individuals representing 'everybody' it can be excluded from any provision in Article 26. This is extremely important when considering the fact (section 2) that most threatened languages are used in one country only. It is likely that language policies following the principles in the education section, with its lack of rights, will force all those not defined as members of language communities to assimilate. This interpretation of indirect assimilation through education is strengthened when noting the reservations in Articles which otherwise might grant 'everyone' more language rights. According to Art. 23.4, '... everyone has the right to learn any language'. 'Any language' could also be interpreted as the mother tongue of those who otherwise are not granted positive mother tongue learning rights - except that this right prevails only 'within the context of the foregoing principles' (Art. 23.4) and these support only the languages and self-expression of language communities, i.e. not the languages of 'groups' or 'everyone':

1. Education must help to foster the capacity for linguistic and cultural self-expression **of the language community of the territory where it is provided.**
2. Education must help to maintain and develop **the language spoken by the language community of the territory where it is provided.**
3. Education must always be at the service of linguistic and cultural diversity and of harmonious relations **between different language communities** throughout the world.
4. Within the context of the foregoing principles, everyone has the right to learn any language. (Article 23; our emphases).

The Declaration thus clearly gives language communities very extensive rights but leaves 'everyone' with very few rights. This makes the Declaration vulnerable in several respects. As we know, there are many states which claim that they do not have minority language communities, and which do not want to grant these communities any language rights. Self-determination is not an unconditional right in international law, neither internally, in terms of autonomy of some kind, nor externally (see contributions to Clark & Williamson (eds.) 1996). This means that a Declaration which grants most of the rights to linguistic communities, without specifying firm dutyholders, makes these communities completely dependent on the acceptance of their existence by states, an acceptance that many states are not willing to grant. 'Language groups' are in a still weaker position - these may by many states be seen as individuals only, not representatives of any 'group'. And those individuals who are not members of any language communities or groups even according to the fairly vague definitions of these entities in the Declaration are in the weakest position. It is for these reasons that the existence of firm individual rights is enormously important, and would be a logical continuation of the tradition of human rights being individual. But such rights are the weakest part of the Declaration.

The new Draft Universal Declaration thus does not give any positive educational language rights to every individual, regardless of which category s/he belongs to - and this is exactly what individual human rights are supposed to do. An individual human right is, by definition, an unconditional, fundamental right which every individual in the world has simply because that individual is a human being. It is a right which no state is allowed to take away. The Declaration suggests a monitoring body to be set up by the United Nations, and suggests sanctions against states that interfere with their citizens' rights. At present the text is only a draft recommendation that

has no immediate prospect of being approved.

In addition, even the educational language rights for language communities are formulated in such a way that the whole Declaration runs the risk of being seen as full of pious, unrealistic wishes which cannot be taken seriously. For most African, Asian and Latin American countries, the rights in the Declaration are at present practically, economically and even politically impossible to realise, as was clearly expressed at the first UNESCO meeting where the Declaration was discussed. It therefore seems extremely unlikely that it will be accepted in its present form^{vii}. This will probably also be the fate of the UN **Draft Universal Declaration on Rights of Indigenous Peoples**, according to its chair, Erica Irene Daes (1995). Despite careful negotiations over a decade, several countries, most importantly the United States, are probably going to demand substantial changes which undermine the progress achieved in the Declaration (Morris 1995). This Draft Declaration formulates language rights strongly, especially in education. If these rights were to be granted in their present form, some 60 to 80 percent of the world's oral languages would have decent legal support. Implementation is, of course, a completely different matter. The **Draft Universal Declaration of Linguistic Rights**, clearly less than ideal in its present form, represents the first attempt at formulating language rights at a universal level which has reached a stage that permits serious international discussion to start. From the point of view of maintaining the planet's linguistic diversity, the immediate fate of the UN **Draft Universal Declaration on Rights of Indigenous Peoples** is probably more important, though, because it has at least some chance of being accepted, signed and ratified, even if in a form which reduces the rights granted in the present Draft.

Recent positive developments

There might be some hope for some groups, though, in two promising recent developments. The UN ICCPR Article 27 still grants the best legally binding protection to languages:

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 other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

In the customary reading of Art. 27, rights were only granted to individuals, not collectivities. And 'persons belonging to ...

minorities' only had these rights in states which accepted their existence. This has not helped immigrant minorities because they have not been seen as minorities in the legal sense by the states in which they live. More recently (6 April 1994), the **UN Human Rights Committee** adopted a **General Comment on Article 27** which interprets it in a substantially broader and more positive way than earlier. The Committee sees the Article 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;

- stating that the existence of a minority does not depend on a decision by the State but requires to be established by objective criteria;

- recognizing the existence of a 'right', and

- imposing positive obligations on the States.

The second positive development is the new educational guidelines issued by The Foundation on Inter-Ethnic Relations for the OSCE (= Organisation for Security and Cooperation in Europe) High Commissioner on National Minorities, Max van der Stoel, **The Hague Recommendations Regarding the Education Rights of National Minorities & Explanatory Note** (October 1996). These guidelines were worked out by a small group of experts on human rights and education (including one of the authors of this article). 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. 2). In the section on 'Minority education at primary and secondary levels', mother tongue medium education is recommended at all levels, including bilingual teachers of the dominant language as a second language (Articles 11--13). Teacher training is made a duty of the state (Art. 14). Finally, the Explanatory Note states that

[S]ubmersion-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).

This means that the children that the Recommendations apply to might be granted some of the central educational linguistic human rights. The questions now are to what extent the 57 OSCE countries will apply the Recommendations and how they will interpret their scope (see the Special Issue volume 4:2, 1996/1997 of **International Journal on Minority and Group Rights**

which is about the Hague Recommendations). The Recommendations could in principle apply to all minorities, even the 'everyone' with very few rights in the **Draft Universal Declaration on Linguistic Rights** discussed above (and since indigenous peoples are supposed to have at least all the rights that minorities have, they might peruse the Recommendations too while waiting for their own Declaration).

At present, though, while we can hope that these two positive developments might have some effect, overall there is not much cause for optimism. Our conclusion is that we still have to work for education through the medium of the mother tongue to be recognized as a human right. And if this right is not granted, and implemented, it seems likely that the present pessimistic prognoses of some 90% of the world's oral languages not being around anymore in the year 2100, err on the side of optimism. Our guess is that languages which are not used as main media of instruction will cease to be passed on to children at the latest when we reach the fourth generation of groups where everybody goes to school - and many languages may be killed much earlier.

References:

Andrýsek, O. (1989) **Report on the definition of minorities**. Utrecht: Netherlands Institute of Human Rights, Studie- en Informatiecentrum Mensenrechten (SIM), SIM Special No 8.

Branson, J. E. & D. B. Miller (1993) 'Sign Language, the Deaf and the Epistemic Violence of Mainstreaming', **Language and Education** 7(1): 21--41.

Branson, J. E. & D. B. Miller (1994). 'Sign Language and the Discursive Construction of Power over the Deaf through Education', in D. Corson (ed) **Discourse and Power in Educational Settings**. New Jersey: Hampton Press.

Capotorti, F. (1979) **Study of the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities**. New York: United Nations.

Clark, D. & R. Williamson (eds) (1996) **Self-Determination: International Perspectives**. London: The Macmillan Press.

Cobarrubias, J. (1983) 'Ethical issues in status planning', pp. 41--85 in J. Cobarrubias & J. A. Fishman (eds) **Progress in language planning: international perspectives**. Berlin: Mouton.

Cummins, J. (1996) **Negotiating Identities: Education for Empowerment in a Diverse Society**. Ontario, California: California Association for Bilingual Education.

Daes, E.-I. (1995) 'Redressing the Balance: The Struggle to be Heard'. Paper to the Global Cultural Diversity Conference, Sydney, 26-28 April 1995.

Eide, A. (1995) 'Economic, social and cultural rights as human rights', pp. 21--40 in A. Eide, C. Krause & A. Rosas (eds) **Economic, Social and Cultural Rights. A Textbook**. Dordrecht, Boston & London: Martinus Nijhoff Publishers.

Escobar, A. (1995) **Encountering Development. The Making and Unmaking of the Third World**. Princeton Studies in Culture/Power/History. Princeton, NJ.: Princeton University Press.

Fettes, M. (in press) 'Life of the Edge: Canada's Aboriginal Languages Under Official Bilingualism', in T. Ricento & B. Burnaby (eds) **Language and Politics in the United States and Canada: Myths and realities**. Mahwah, N.J.: Lawrence Erlbaum.

Fishman, J. A. (1989) **Language & Ethnicity in Minority Sociolinguistic Perspective**. Clevedon & Philadelphia: Multilingual Matters.

Groombridge, B. (ed) 1992 **Global Biodiversity: Status of the Earth's Living Resources**. London: World Conservation Monitoring Centre & Chapman & Hall.

Hamel, R.E. (1994) 'Indigenous education in Latin America: policies and legal frameworks', pp. 271--287 in T. Skutnabb-Kangas & R. Phillipson (eds) **Linguistic Human Rights. Overcoming linguistic discrimination**. Berlin and New York: Mouton de Gruyter.

Helsinki Watch (1990) **Destroying ethnic identity. The Kurds of Turkey. An update**, September 1990. New York & Washington, D.C.: Helsinki Watch.

Hobsbawm, E.J. (1991) **Nations and nationalism since 1780. Programme, myth, reality**. Cambridge: Cambridge University Press.

Human Rights in Kurdistan (1989) **Documentation of the international conference on human rights in Kurdistan**, 14-16

April, Hochschule Bremen. Bremen: The Initiative for Human Rights in Kurdistan.

Human Rights in Kurdistan (1990) **Silence is killing them.** Bremen: The Initiative for Human Rights in Kurdistan.

Jordan, D. (1988) 'Rights and claims of indigenous people. Education and the reclaiming of identity: the case of the Canadian natives, the Sami and Australian Aborigines', pp. 189--222, in T. Skutnabb-Kangas & J. Cummins (eds) **Minority Education. From Shame to Struggle.** Clevedon, UK: Multilingual Matters.

Krauss, M. (1992) 'The world's languages in crisis'. **Language** 68: 4--10.

Krauss, M. (1995) Paper at a conference of the American Association for the Advancement of Science, reported in **The Philadelphia Inquirer** 19.2.1995, p. A15.

List, F. (1885) **The National System of Political Economy.** London.

Maffi, L. (1996) 'Language, Knowledge and the Environment: Threats to the World's Biocultural Diversity'. **Terralingua Newsletter** 2, December 1996.

Maffi, L., T. Skutnabb-Kangas & J. Andrianarivo (in press), 'Language diversity', in D. Posey and G. Dutfield (eds) **Cultural and Spiritual Values of Biodiversity.** New York: United Nations Environmental Programme & Cambridge: Cambridge University Press.

Morris, G. T. (1995) '12th Session of UN Working Group on Indigenous Peoples. The Declaration Passes and the US Assumes a New Role'. **Fourth World Bulletin. Issues in Indigenous Law and Politics.** University of Colorado at Denver. 4(1--2): 1ff.

Nunberg, G. (1997) 'Lingo Jingo. English-Only and the New Nativism'. **The American Prospect. A Journal for the Liberal Imagination.** 33, July-August 1997: 40--47.

Pagel, M. (1995) (as reported by N. Ostler in **Iatiku: Newsletter of the Foundation for Endangered Languages** 1: 6).

Pattanayak, D.P. (1981) **Multilingualism and Mother-Tongue Education.** Delhi: Oxford University Press.

Phillipson, R., M. Rannut & T. Skutnabb-Kangas 1994

'Introduction', pp. 1--22 in T. Skutnabb-Kangas & R. Phillipson, R. (eds, in collaboration with M. Rannut) **Linguistic Human Rights. Overcoming Linguistic Discrimination**. Contributions to the Sociology of Language 67. Berlin & New York: Mouton de Gruyter.

Posey, D. and G. Dutfield (eds) (in press). **Cultural and Spiritual Values of Biodiversity**. New York: United Nations Environmental Programme & Cambridge: Cambridge.

Ramirez, J.D., S.D. Yuen & D.R.Ramey (1991) **Executive Summary: Final report: Longitudinal study of structured English immersion strategy, early-exit and late-exit transitional bilingual education programs for language-minority children, Submitted to the U.S.Department of Education**. San Mateo: Aguirre International.

Šatava, L. (1992) 'Problems of national minorities', pp. 78--81 in J. Plichtová (ed) **Minorities in Politics - Cultural and Languages Rights**, The Bratislava Symposium II/1991. Bratislava: Czechoslovak Committee of the European Cultural Foundation.

Skutnabb-Kangas, T. (1988) 'Multilingualism and the Education of Minority Children', pp. 9--44 in T. Skutnabb-Kangas & J.Cummins (eds) **Minority education: from shame to struggle**. Clevedon: Multilingual Matters.

Skutnabb-Kangas, T. (1990). **Language, Literacy and Minorities**. London: The Minority Rights Group.

Skutnabb-Kangas, T. 1996a 'Educational language choice - multilingual diversity or monolingual reductionism?', pp. 175--204 in M. Hellinger & U. Ammon (eds) **Contrastive Sociolinguistics**. Berlin & New York: Mouton de Gruyter.

Skutnabb-Kangas, T. 1996b 'Promotion of Linguistic Tolerance and

i Terralingua is a nonprofit international organisation devoted to preserving the world's linguistic diversity and to investigating links between biological and cultural diversity (President: Luisa Maffi; Web-site: <http://cougar.ucdavis.edu/nas/terralin/home.html>).

ii The concept "human rights" is often used in international relations arbitrarily and selectively by "donor" governments so as to attempt to trigger "democratic" elections or to sanction states that commit gross human rights abuses; in effect it is used as a political tool rather than a rigorous concept rooted

in international law (Tomaševski 1997).

iii For refuting this, see, e.g., Nunberg 1997.

iv Using the term 'idiom' (rather than 'language') signals that it really means 'what the parents speak (or sign)', regardless of whether this is called a language, a dialect, a sociolect, a vernacular, or whatever - it does NOT need to be the standard or official language of the area/country or the return in census, or be written.

v The Declaration was the result of an initiative undertaken by The International Pen Club (Committee for Translation and Linguistic Rights), and CIEMEN (Mercator Programme, Linguistic Rights and Law).

vi 'Minority' is a notoriously difficult concept to define - see Andryšek 1989, and Skutnabb-Kangas & Phillipson 1994, note 2 and references in it, for an overview of the criteria used in different definitions. See also Capotorti 1979; Thornberry 1991; de Varennes 1996, for some of the most thorough treatises on the legal problems that minorities face.

vii There is a small Follow-up Committee, trying to raise support for the Declaration, and a Scientific Council (which TSK is member of) which is supposed to advise UNESCO on a revision.