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and indigenous peoples**

### **Indigenous children's education and indigenous languages**

#### **Expert paper prepared for the Permanent Forum on Indigenous Issues\*\***

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*Summary*

The present paper shows that educational models for indigenous and minority children which use mainly dominant languages as languages of instruction can and do have extremely negative consequences for the achievement of goals deduced from human rights instruments and thus for the right to education. We use arguments and research results from international law, education, applied linguistics, psychology and sociology. In discussing the legal basis for education, we argue, using the interpretations of the former UN Special Rapporteur on the right to education, Katarina Tomaševski, that this dominant language-medium education prevents access to education, due to the linguistic, pedagogical and psychological barriers it creates.

We show that this education has a range of serious harmful consequences which violate various aspects of their right to education and perpetuates poverty. Without binding educational linguistic human rights, especially a right to mainly mother tongue-medium (MTM) education in state schools, with good teaching of a dominant language as a second language, given by competent bilingual teachers, most indigenous peoples and minorities have to accept subtractive education through the medium of a dominant/majority language. They learn a dominant language at the cost of the mother tongue which is displaced, and later often replaced by the dominant language.

In this enforced language regime, the children undergoing subtractive education, or at least their children, are effectively transferred to the dominant group linguistically and culturally. This also contributes to the disappearance of the world's linguistic diversity, when a whole group changes language. Optimistic estimates of what is happening suggest that at least 50% of today's spoken languages may be extinct or very seriously endangered ("dead" or "moribund") around the year 2100. Pessimistic but still completely realistic estimates claim that as many as 90-95% of the spoken languages may be extinct or very seriously endangered during this century. Most of the disappearing languages will be indigenous languages, and most indigenous languages in the world would disappear according to these estimates.

Education is one of the most important direct causal factors in this disappearance - behind it are of course the world's political, economic, technological and social forces. Research conclusions on results of present-day indigenous and minority education show that the length of mother tongue-medium education is more important than any other factor (including socio-economic status) in predicting the educational success of bilingual students. The worst results, including high push-out rates, are with students in programmes where the students' mother tongues are not supported at all or where they are only taught as subjects. The report argues, with Amartya Sen, that poverty is not only about economic conditions and growth; expansion of human capabilities is a more basic locus of poverty and more basic objective of development. Dominant language-medium education for indigenous children curtails the development of their capabilities and perpetuates poverty.

We show that the present practices of educating indigenous children through the medium of dominant national/state languages are completely contrary to theories and research results about how best to achieve the goals for good education, and to the rights to education that indigenous children have in international law. In addition, present practices also violate the parents' right to intergenerational transmission of their values, including their languages. The report finishes with recommendations.

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## **I. Right to Education: The Educational Basis**

1. The Convention on the Rights of the Child (CRC) states in Art. 29 that the education of the child shall be directed to "The development of the child's personality, talents and mental and physical abilities to their fullest potential" and "The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin". According to ILO Convention No. 169, Art. 29, "The imparting of general knowledge and skills that will help children belonging to the peoples concerned to participate fully and on an equal footing in their own community and in the national community shall be the aim of education for these peoples". One of the implications is that indigenous children's right to education is not respected unless they become bilingual and bicultural through schooling.

2. A good educational programme leads to the following goals from a language(s), identity, labour market and life chances point of view:

- (1) high levels of multilingualism
- (2) a fair chance of achieving academically at school;
- (3) strong, positive multilingual and multicultural identity and positive attitudes towards self and others; and
- (4) a fair chance of awareness and competence building as prerequisites for working for a more equitable world, for oneself and one's own group as well as others, locally and globally (Skutnabb-Kangas 2004).

Of course the education of indigenous children also has to fulfill further demands that can be made on any good education (these include issues presented by the UN Special Rapporteur on the Right to Education in her reports, e.g. removing the barriers to access discussed below). First we concentrate mainly on the language of instruction. We give here a short overview, with examples, of how indigenous children have been and are being educated in various parts of the world and with what results.

3. As we will show, those educational models used in the education of indigenous and minority children which use mainly dominant languages as languages of instruction can and do have extremely negative consequences for the achievement of the four goals and thus the right to education. We also show that this education has a range of serious harmful consequences which violate various aspects of their right to education. Without binding educational linguistic human rights, especially a right to mainly mother tongue-medium (MTM) education in state schools, with good teaching of a dominant language as a second language, given by competent bilingual teachers, most indigenous peoples and minorities have to accept subtractive education through the medium of a dominant/majority language.

4. In subtractive language learning, dominant/majority's language is learned at the cost of the mother tongue which is displaced, leading to a diglossic situation and later often replacement by the dominant language. Subtractive teaching subtracts from the child's linguistic repertoire, instead of adding to it. In this enforced language regime, children undergoing subtractive education, or at least their children, are

effectively transferred to the dominant group linguistically and culturally. This also contributes to the disappearance of the world's linguistic diversity, when a whole group changes language. Optimistic estimates of what is happening suggest that at least 50% of today's spoken languages may be extinct or very seriously endangered ("dead" or "moribund") around the year 2100. This estimate, originating with Michael Krauss (1992) is also the one used by UNESCO (see <http://www.unesco.org/endangeredlanguages>, the Position paper Education in a Multilingual World (UNESCO 2003c) <http://unesdoc.unesco.org/images/0012/001297/129728e.pdf>). Pessimistic but still completely realistic estimates claim that as many as 90-95% of the spoken languages may be extinct or very seriously endangered during this century - this is Krauss' estimate today (Krauss 1995, 1996, 1997). UNESCO's Intangible Cultural Heritage Unit's Ad Hoc Expert Group on Endangered Languages (UNESCO 2003a; UNESCO 2003b, c) uses this more pessimistic figure in their report, Language Vitality and Endangerment ([http://portal.unesco.org/culture/en/file\\_download.php/1a41d53cf46e10710298d314450b97dfLanguage+Vitality.doc](http://portal.unesco.org/culture/en/file_download.php/1a41d53cf46e10710298d314450b97dfLanguage+Vitality.doc)). There are only 300-600 oral languages left as unthreatened languages, transmitted by the parent generation to children; these would probably be those languages that today have more than one million speakers, and a few others.

5. Most of the disappearing languages are indigenous languages, and most indigenous languages in the world would disappear according to these estimates. Education is one of the most important direct causal factors in this disappearance - behind it are of course the world's political, economic, techno-military and social forces. We will present some of the research conclusions about results of present-day indigenous and minority education. Two central large-scale studies (Ramirez, Thomas & Collier) and two small indigenous and immigrant minority studies (Saskia & Mohanty, Skutnabb-Kangas) will be summarised. Since indigenous peoples in most cases are demographically very small, there are few if any large-scale comparative studies where the role of the teaching language can be seen clearly. An extremely well controlled study is Saikia & Mohanty's (2004) study of indigenous/tribal Bodo children in Assam, India. After strong campaigning they have just managed to get MTM education going. Saikia and Mohanty compared three Grade 4 groups, with 45 children in each group, on a number of achievement measures in languages and mathematics. "The three groups were matched in respect of their socio-economic status, the quality of schooling and the ecological conditions of their villages". Group BB, Bodo children, taught through the medium of the Bodo language, performed significantly better on ALL tests than group BA, the indigenous Bodo children taught through the medium of Assamese. Group BA did the worst on all the tests. Group AA, Assamese mother tongue children taught through the medium of Assamese, performed best on two of the three mathematics measures. There was no difference between groups BB and AA in the language measures. "The findings are interpreted as showing the positive role of MTM schooling for the Bodo children."

6. There are hundreds of small-scale studies like this, from most continents, which show similar results,<sup>1</sup> and the results agree with research on (autochthonous and immigrant) minority children. A typical

<sup>1</sup> See summaries and references in, e.g., Baker 1993, Baker & Prys Jones 1998, references to Cummins in the bibliography, Dolson & Lindholm 1995, Huss 1999, Huss et al. 2002, Leontiev 1995, May & Hill 2003, May et al. 2003, Skutnabb-Kangas 2000, 2004, ed. 1995, and the 8-volume series **Encyclopedia of Language and Education**, especially Cummins & Corson, eds, 1997. See <http://www.terralingua.org/Bibliographies/MultilingLingHRBib.html>.

example of these is the small-scale study among Finnish working class immigrant minorities in metropolitan Stockholm in Sweden (Skutnabb-Kangas 1987). The students in this study were in Finnish-medium classes, and were compared with Swedish control groups in the parallel classes in the same schools. A difficult Swedish language test, of the type where normally middle-class children do better than working class children, measured their Swedish competence. After 9 years of mainly Finnish-medium education, and good teaching of Swedish as a second language, these working-class Finnish students got somewhat better results in the Swedish language than the Swedish mainly middle-class control groups (see table ). In addition, their Finnish was almost as good as the Finnish of Finnish control groups in Finland.

### Swedish test results and subjects' own assessment of their Swedish competence

|                        | TEST RESULT<br>(1-13) |      | OWN<br>ASSESSMENT<br>(1-5) |      |
|------------------------|-----------------------|------|----------------------------|------|
|                        | M                     | sd   | M                          | sd   |
| Swedish control group  | 5.42                  | 2.23 | 4.83                       | 0.26 |
| Finnish co-researchers | 5.68                  | 1.86 | 4.50                       | 0.41 |

M = mean; sd = standard deviation

Finnish working class immigrant minority youngsters in Sweden, after 9 years of mainly Finnish-medium education; Swedish control group: mainly middle class youngsters in parallel classes in the same schools; Swedish test: decontextualised, CALP-type test where middle-class subjects can be expected to perform better (Skutnabb-Kangas 1987).

7. The Ramirez et al.'s 1991 study, with 2,352 students, compared three groups of Spanish-speaking minority students. The first group were taught through the medium of English only (but even these students had bilingual teachers and many were taught Spanish as a subject, something that is very unusual in submersion programmes); the second one, early-exit students, had one or two years of Spanish-medium education and were then transferred to English-medium, and the third group, late-exit students, had 4-6 years of Spanish-medium education before being transferred to English-medium. A common sense approach would suggest that the ones who started early and had most exposure to English, the English-only students, would have the best results in English, and in mathematics and in educational achievement in general, and that the late-exit students who started late with English-medium education and consequently had least exposure to English, would do worst in English, etc. In fact, the results were exactly the opposite. The late-exit students got the best results. In addition, they were the only ones who had a chance to achieve native levels of English later on, whereas the other two groups were, after an initial boost, falling progressively further behind, and were judged as probably never being able to catch up to native English-speaking peers in English or general school achievement.

8. Thomas & Collier's study (see bibliography under both names), is the largest longitudinal study in the world on the education of minority students, involving a total of more than

210,000 students, including in-depth studies in both urban and rural settings in the USA, and with many different types of educational models. Across all the models, those students who reached the highest levels of both bilingualism and school achievement were the ones where the children's mother tongue was the main medium of education for the most extended period of time. This length of education in the L1 (language 1, first language), was the strongest predictor of both the children's competence and gains in L2, English, and of their school achievement. Thomas & Collier state (2002: 7): "the strongest predictor of L2 student achievement is the amount of formal L1 schooling. The more L1 grade-level schooling, the higher L2 achievement."

9. The length of MTM education was in both Thomas & Collier's and in Ramirez et al.'s large study more important than any other factor (and many were included) in predicting the educational success of bilingual students. It was also much more important than socio-economic status. This is extremely vital when reflecting on the socio-economic status of many indigenous peoples. The worst results, including high percentages of push-outs<sup>2</sup>) in both studies were with students in regular submersion programmes where the students' mother tongues (L1s) were either not supported at all or where they only had some mother-tongue-as-a-subject instruction.

10. Next are some examples of the ways in which education causes more obvious forms of harm to children and effectively transfers them from their own group to the dominant group through the assimilationist practices in subtractive education. In many cases, the transfer to the dominant group has not only been linguistic, cultural and psychological but also physical. This has been the case in residential/boarding schools far away, where the speaking of the native language was forbidden, with sanctions varying from physical punishment to shame; orphanages for children who did have families; indentured child labour, etc. In all cases the transfer was and is linguistic and cultural. The children forgot or never learned their own languages and customs, or their linguistic skills in their own languages stayed at a very low level. Johannes Marainen, Swedish Saami, recognized this when he was trying to translate to his father a speech he had given in Swedish which his father had heard but had not understood much of. Ironically, the speech was about the Saami (he had, for the first time, discovered that there was something written in books about his people; knowledge that his Swedish school had never given him): "That was the first time since I grew up that I realized the negative sides of my becoming Swedish. I started to comprehend that the Swedish educational system had robbed me of something valuable, yes, perhaps the most valuable thing I had owned - my language. I could no longer talk to Father. This fact made me shiver. I became desperate, despondent. And then I became angry. I had imagined that I still knew the Saami language, but due to the broken contact with my Saami environment and culture, my language had not developed in a natural way. I realized that I stood on a level comparable with a seven-year-old's linguistic capabilities. I could still talk about certain matters in Saami, but I was not able to keep a conversation or a discussion going. (Marainen 1988: 183-184)".

<sup>2</sup> These are called "drop-outs" in deficiency-based theories which blame the students, their characteristics, their parents and their culture for lack of school achievement.

11. The mental harm caused by the subtractive education can be expressed in spiritual terms, as in the three quotes below: Native American Psychologist Eduardo Duran who suggests that the colonial oppression suffered by indigenous people inevitably wounds the soul. There is no doubt in my mind that Māori continue to bear the scars of colonisation (Mikaere 2004).

12. When indigenous peoples lose their land, they *lose their language*, their complex social and political systems, and their knowledge. At a deeper level traditions are eroded with their sacred beliefs. Although some may integrate and recover meaning to their lives, the *removal of first peoples from their land can be likened to genocide in slow motion* (Burger 1990: 122; emphasis added). Many Aboriginal peoples are suffering not simply from specific diseases and social problems, but also from a depression of spirit resulting from 200 or more years of *damage to their cultures, languages*, identities and self-respect (Royal Commission on Aboriginal Peoples 1996: 109; emphasis added).

13. The harm caused by subtractive education can also be seen in figures showing consequences for indigenous children and adults. Since most educational data has not been disaggregated, we do not have any global hard data overviews of how indigenous children are doing in the educational system. However, on the basis of many studies from various countries, the general picture is fairly clear. Indigenous children are over-represented all over the world on the negative side in studies and statistics amongst those children who never attend school and those who are pushed out early. Since most of them are educated through the medium of a language foreign to them and many do not, at least during the first years, understand this language, their school achievement levels are low, they are hugely over-represented in "special" classes and schools (where these exist), and they seldom continue their education after the obligatory school. (Many African and other children whose education is through the medium of the old colonial language share the same characteristics). They are over-represented in statistics on youth and adult criminality, alcoholism and drugs use, suicides, unemployment, negative health and housing conditions, etc. Obviously societal racism and discrimination also play an important role in these symptoms of unequal societies, but the use of the wrong teaching languages (and lack of indigenous content, methods and ethos in schools) is one of the most important factors, possibly the most decisive factor (see below).

14. The UN Special Rapporteur on the Right to Education, in her discussion about the purpose of education, asks if it is reinforcing or eliminating inequality. She states (Tomaševski 2004, paras 29-30) that it is easy, with hindsight, "to highlight the main features of collapsed models of schooling". The first feature she mentions is the use of the official language of the country as the language of instruction in primary school. Instead of this type of subtractive education which, as we shall in this paper, actually violates children's right to education, it is perfectly possible to follow a both/and/and path. If indigenous and minority children are taught additively, with their own language as the main teaching language during minimally the first 6-8 years, while they also receive good teaching in a dominant language as a second language (preferably given by bilingual teachers), they have a very good chance of becoming high level bilinguals (or multilingual, if other languages are added later). Additive teaching adds to children's linguistic repertoire: they learn both their own language(s) and other languages well.



## II. Right to Education and Poverty

15. Not surprisingly, the submersion form of education, just described, to which indigenous children are generally subjected also has profound consequences for their life chances. Economist François Grin states that "...nothing, in economic theory, mandates a restriction to material or financial resources, and that intangibles like social networks and interpersonal affection are, from the perspective of economic analysis, perfectly relevant resources (Grin 2003: 7). We need to relate educational rights and the economics of poverty to intangible resources such as language and cognitive capabilities. This clarifies the role of dominant languages and indigenous mother tongues in formal education in a context of social mobility and class/caste/gender at a global level. We use economics Nobel Prize laureate Amartya Sen's conceptualisation of poverty as "capability deprivation" (1982, 1985, Dreze and Sen 1996). "Capability" refers to the alternative combinations of functionings from which a person can choose ... freedom - the range of options a person has in deciding what kind of life to lead. Poverty ... lies not merely in the impoverished state in which the person actually lives, but also in the lack of real opportunity - given by social constraints as well as personal circumstances - to choose other types of living. Even the relevance of low incomes, meagre possessions, and other aspects of what are standardly seen as economic poverty relates ultimately to their role in curtailing capabilities (that is, their role in severely restricting the choices people have... Poverty is, thus, ultimately a matter of 'capability deprivation'. (Dreze & Sen 1996: 10-11, quoted from Misra & Mohanty 2000a: 262-263). Misra and Mohanty (eds., 2000) sum up the insights from theoretical and empirical economic, social and psychological studies and evaluations of poverty interventions in the following way: "poverty is no longer to be viewed simply in terms of generating economic growth; expansion of human capabilities can be viewed as a more basic objective of development" (ibid., 2000a: 263). The loci of poverty, and of intervention, are in Amartya Sen's view, economic, social and psychological and measures have to be taken in each of these areas. "Psychological processes, such as cognition, motivation, values and other characteristics of the poor and the disadvantaged are to be viewed both as consequences as well as antecedent conditions which are ultimately related to human capabilities" (Misra & Mohanty 2000a: 264). The central question in reducing poverty is, in their view: "What is the most critical (and cost effective) input to change the conditions of poverty, or rather, to expand human capabilities?" There is "a general consensus among the economists, psychologists and other social scientists that education is perhaps the most crucial input" (ibid., 265). If poverty is understood as "both a set of contextual conditions as well as certain processes which together give rise to typical performance of the poor and the disadvantaged" in school, and if of "all different aspects of such performance, cognitive and intellectual functions have been held in high priority as these happen to be closely associated with upward socio-economic mobility of the poor" (Misra & Mohanty 2000b: 135-136), it should look for the type of division of labour between languages in education that guarantees the best possible development of these "cognitive and intellectual functions" which enhance children's "human capabilities", rather than curtailing them and depriving children of the choices and freedom that are, according to Sen and others, associated with the necessary capabilities.

16. What is the role of using a dominant language, e.g., English, rather than the children's mother tongue, as the main language of instruction? Many parents in parts of Asia and Africa, want to send their children to English-medium schools, because they see this as a way out of poverty and towards good English competence, a prerequisite for upward mobility. For the large majority of the children, English-medium education does not lead to the promised outcomes, as countless research results show. MTM education would in most cases be a better way to reach the goals and achieve real capability building, in Sen's sense. It has, unfortunately, been the "dominant tendency of researchers ... to explain the lower level of achievement of the deprived ones on the basis of internal psychological characteristics rather than the contextual factors which constitute the phenomena of deprivation and poverty" (Misra & Mohanty 2000b: 148). Solutions which amount to wanting to grant access to English at the cost of mother tongues seem completely misguided. Tomaševski (2004: para 17) notes that "a rights-based analysis of poverty is crucial to identify where poverty results from denial and violations of human rights". Misra & Mohanty's analysis, based on economics of poverty, shows that not using the indigenous or minority mother tongue as the main medium of education violates the human right to education and perpetuates poverty.

17. In a report on the rights of indigenous children launched in 2004, UNICEF states that "Illiteracy is a direct result of educational exclusion" and makes reference to an ILO report that documents that "in the H'mong community of Viet Nam, one of the most marginalized of the country's indigenous groups, 83 per cent of males and 97 per cent of females are illiterate" (UNICEF/Innocenti Research Center 2004: 11). UNICEF's estimation is that in "developing countries 20% of the children of primary school age do not attend school, and another 30% drop out by grade 4. In India, the drop-out rate among disadvantaged groups is estimated at 80%. Less than 1% of the Scheduled Tribe children have education through the medium of their own language" (Mohanty & Misra 2000: 28). Mohanty (2000: 109) asks: "Is mother tongue maintenance a barrier to socioeconomic and educational mobility of the linguistic minorities such as the tribes in Orissa? Does loss of minority languages through their assimilation into the dominant contact languages resulting in a loss of diversity, lead to social integration as is commonly believed?" His longitudinal studies of Kui-speaking tribal Kond children give a firm negative answer. The Kui-Oriya bilingual children in their later grades (i.e. the high school grades) were found to perform in Oriya language tasks at the same level as the Oriya-only monolingual children (ibid.: 110). Mohanty also concludes in a sociolinguistic survey of 25-50-year old adult Kond tribals and non-tribal (i.e. dominant group) rural villagers from the same areas that "the tribals were found to be displaying integrative orientation by a positive evaluation of the maintenance of their own language (Kui) and culture, and by viewing favourably the language (Oriya) and culture of the non-tribals" (ibid., 112). And in both the tribal and the non-tribal groups, the bilinguals displayed greater integrative tendency ... and were less segregation oriented compared to the monolinguals" (ibid.). One of Mohanty's conclusions is "that there are considerable advantages of mother tongue maintenance for socio-economic mobility through psychoeducational development and for social integration of linguistic minorities" (ibid.: 113).

18. Children in regional language medium schools in India outperform children in English-medium schools on many cognitive and language-related tasks, especially when socio-economic conditions are kept constant. Mother-tongue based bilingual programmes enhance the human capabilities which are necessary for people's choices in addressing their poverty and discrimination against them. In addition, they give children access to power languages, including English. English-medium (or other dominant language medium) education for children of non-dominant non-English-mother-tongue children is, regardless of teachers' good intentions, not the best (or even a good) way towards enhancing these children's "cognitive and intellectual functioning", which is an important precondition for poverty reduction. "Denial of rights of the speakers of minority mother tongues and 'nonstandard' varieties to use their languages often leads to educational failure and lack of social mobility" (Mohanty & Misra 2000: 34).

### III. Right to Education: The Legal Basis

19. The right to education is recognised in a number of international instruments. Some of the relevant instruments create binding legal obligations, and others do not. With regard to the right to education, at least two major United Nations instruments create binding obligations, the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, (in force 1976), and the Convention on the Rights of the Child (CRC) of 1989.<sup>3</sup> Art. 13, para 1 of the ICESCR provides that the States Party to the Convention recognise the right of *everyone* to education. Art. 28, para 1 of the CRC provides that States Parties recognize the right of *the child* to education; significantly, the paragraph proceeds to specify that States Parties shall, in particular, "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.

20. Given the very serious educational problems faced by students from minority language communities who are not fluent in the teaching language in schools in which the medium of instruction is wholly or mainly the majority or dominant language, could such education amount to a complete denial of the very substance of the right to education under Art. 13, para 1 of the ICESCR and Art. 28, para 1 of the CRC? In the 1968 *Belgian Linguistic Case*,<sup>4</sup> the European Court of Human Rights found that Belgium had not violated the right to education contained in Art. 2 of the First Protocol to the ECHR when it denied French-speaking parents living in a Flemish-speaking part of Belgium the ability to have their children educated through the medium of French; the court ruled that

<sup>3</sup> Regional human rights instruments should also be considered. In particular, Art. 2 of the First Protocol to the **Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms**, of 1950 (the "European Convention on Human Rights", or ECHR) provides that no person shall be denied the right to education and that, in the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions. Art. 17, para 1 of the **African Charter on Human and Peoples' Rights** (ACHPR) of 1981 provides that every individual shall have the right to education. The right is not further particularised.

<sup>4</sup> *Case Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium*, 23 July 1968, European Court of Human Rights, Series A, Vol. 6, p. 31.

this right to education did not include a right to be taught in the language of parents' choice. However, it is not clear that the court would rule in the same way today. Take, for example, the court's decision in the *Cyprus v. Turkey*<sup>5</sup> case of 2001. One of the complaints brought against Turkey involved the closure of the only secondary school in Turkish-controlled Cyprus which offered education through the medium of Greek. Greek-medium education continued to be available at primary level. The Court found that the discontinuance of Greek-medium education at secondary level in these circumstances amounted to a denial of the substance of the right to education. The principle in this decision could be extended to situations in which children from linguistic minority homes not yet having a sufficient command of the dominant language are forced into dominant language medium education. Given what specialists in early childhood education know about the adverse effects of forced majority language medium education on children from such backgrounds, there is a strong argument that such education constitutes a violation of Art. 2 of Protocol One, and similar provisions in other human rights treaties, in those circumstances.

21. With regard to the consistency of such forms of education with the basic right to education, the work of Dr. Katarina Tomaševski,<sup>6</sup> must also be considered. She illustrates how the State obligations in Art. 13, para 1 of the ICESCR and in Art. 28, para 1 of the CRC contain four elements, namely *availability, accessibility, acceptability and adaptability* (see also Wilson 2004<sup>7</sup>). She states that "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). Here we discuss only those aspects that are most relevant for the right to use indigenous languages as teaching languages. "Language of instruction" has been discussed by Tomaševski under "*Acceptability*" (2001: 12-15, 29-30) where respect for the parents' choice of language of instruction is seen as similar to respect of parents' religious convictions in education. The *Belgian Linguistic Case*, already referred to, in which parents' rights to state-financed education in a language of their choice was denied, is quoted; likewise, the affirmed right of minorities to establish, manage and control their own schools in minority languages at their own expense is mentioned (2001: 30).

22. In our view, language of instruction belongs mainly under "*Accessibility*", where one of the points is "identification and elimination of discriminatory denials of access" (2001: 12).<sup>8</sup> Barriers to "access" can be interpreted as physical<sup>9</sup> (e.g. distance to school), financial (e.g. school fees - not even primary education is free in 91 countries, Tomaševski 2004: 23; see also the list of these countries in

<sup>5</sup> *Cyprus v. Turkey*, judgement of the European Court of Human Rights of 10 May, 2001, application no. 25781/94.

<sup>6</sup> See Tomaševski 2001; also at [http://www.right-to-education.org/content/primers/\\_rte03.pdf](http://www.right-to-education.org/content/primers/_rte03.pdf). The 4-A model was "adopted by the [UN] Committee on Economic, Social and Cultural Rights in General Comment No. 13" (Wilson 2004: 165). See also Tomaševski's Reports to the UN, E/CN.4/1999/49, paras 51-74; E/CN.4/2000/6, paras 32-65; E/CN.4/2001/52, paras 64-65.

<sup>7</sup> Duncan Wilson(2004) has applied this 4-A model in a detailed critical evaluation of the monitoring of the **Framework Convention for the Protection of National Minorities** ("Framework Convention") on the issue of minority rights in, to and through education..

<sup>8</sup> Tomaševski (2004:para 10) warns, though, that "access to education blurs the difference between education that is free and education accessible only after the payment of a fee". In our discussion, "accessible" refers to demands in addition to education being free.

<sup>9</sup> These are our labels.

ibid., para 23; or the labour of girls being needed in the 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.<sup>10</sup> 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 minority child does not have equal access to education. Here we then have a combination of linguistic, pedagogical and psychological barriers to "access" to education.

23. The Committee on the Rights of the Child held at their 34<sup>th</sup> Session (15 September - 3 October 2003) a Day of General Discussion on the Rights of Indigenous Children. Their Recommendations on Education (see E/C.19/2004/5/Add.11, Annex, p. 10) recommend "that States parties ensure access for indigenous children to appropriate and high quality education". Interpreting this access, they have the following to say: The Committee recommends that States parties, with the active participation of indigenous communities and children [...] 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,<sup>11</sup> 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; d) take effective measures to increase the number of teachers from indigenous communities or who speak indigenous languages, provide them with appropriate training, and ensure that they are not discriminated against in relation to other teachers; e) allocate sufficient financial, material and human resources to implement these programmes and policies effectively.

24. Recommendation b) clearly indicates that bilingual education systems should be created by States working with indigenous communities, if the States are to "ensure access for indigenous children to *appropriate* and high quality education." (emphasis added). As we have demonstrated elsewhere in this paper, this is a necessary prerequisite for high levels of bilingualism and for preparing the children for higher education, (c). Aspects of these recommendations bear some similarity to the educational provisions of the United Nations General Assembly Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 1992 (UNGA Minorities Resolution), Art. 4, para 3 of which 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).

<sup>10</sup> The U.S. Supreme Court acknowledged this in 1974 in the *Lau v. Nichols* case (414 US 563).

<sup>11</sup> This recommendation comes from ILO 169, Art. 28, para 1 which, however, has the addition "wherever practicable".

25. It is also important to consider the interaction of the basic right to education together with the principle of non-discrimination contained in both the ICESCR and the CRC. In particular, Art. 2, para 2 of the ICESCR provides that the States Parties “undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Art. 2, para 1 of the CRC contains a similar provision.<sup>12</sup> Research on educational performance described elsewhere in this submission indicates that children from minority linguistic backgrounds taught through the medium of a dominant language in submersion programmes perform considerably less well than native dominant language speaking children in the same class; that they suffer from higher levels of push-out rates, and so forth. There would therefore 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 language of the school, and that this distinction is based on language. In this regard, the case of *Lau v. Nichols* is illustrative. The case involved Chinese-speaking children of Chinese immigrants who were placed in English-medium education, with effectively no provision for any teaching through the medium of Chinese. The court agreed with the parents’ contention that this violated the children’s right to equal protection of the law, and stated that “there is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education.” In asserting that “there is no greater inequality than the equal treatment of unequals”, the Court mandated that various kinds of affirmative steps are required to provide non-English speaking students access to the education they are entitled to.

26. Under Art. 13, para 1 of the ICESCR, States Parties also agree that education shall be directed to *the full development of the human personality and the sense of its dignity*, and shall strengthen the respect for human rights and fundamental freedoms.<sup>13</sup> Para 1(a) of Art. 29 of the CRC contains a similar provision: the education of the child shall be directed to *the development of the child’s personality, talents and mental and physical abilities to their fullest potential*. 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 children from minority linguistic homes mainly through another language, it could be forcefully argued that only MTM education, at least in primary school, is consistent with the provisions of para 1, because any other form of education tends not 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 effectively in society.

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<sup>12</sup> It should be noted that the regional instruments referred to in respect of the right to education also contain non-discrimination provisions. Article 14 of the ECHR provides that the enjoyment of the rights and freedoms set forth in the ECHR shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. Article 2 of the ACHPR also contains a non-discrimination of similar effect to Article 14 of the ECHR.

<sup>13</sup> Under Article 13, paragraph 1 of the ICESCR, States Parties further agree that 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, and further the activities of the United Nations for the maintenance of peace. It should be noted that linguistic groups are not mentioned, although they may implicitly be covered to the extent that they constitute ethnic groups.

27. Para 3 of Art. 13 of the ICESCR provides that States Parties undertake to have respect for the liberty of parents to choose for their children schools other than those established by the public authorities which conform to such minimum educational standards that be laid down or approved by the State. More significantly, States Parties also undertake to have respect for the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions. The ICESCR does not create a quasi-judicial mechanism, and therefore the extent to which the phrase “religious and moral education” extends to matters relating to language is not clear. However, it should be noted that the European Court of Human Rights has made clear that the similar provision in the right to education contained in the First Protocol to the European Convention on Human Rights does not extend to the choice of the language through which education is conducted.

28. Para 1(c) of Art. 29 of the 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.” 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 an education that is unlikely to contribute to respect for the child’s own cultural identity, language and values.

29. 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.

30. 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, <http://www.osce.org/hcnm/documents/recommendations/hague/index.php>. More

particular guidance is provided in minorities-specific instruments. As all of these standards apply mainly in Europe, they are of limited relevance for those indigenous peoples residing elsewhere, and for this reason, we shall not comment further in this paper.

31. To summarise, reference can be made to the work of Katarina Tomaševski. Under the subtitle “Schooling can be deadly”, she 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”. We have shown that the present practices of educating indigenous children through the medium of dominant national/state languages are completely contrary to solid theories and research results about how best to achieving the four goals for good education outlined in the first part of this paper. In addition, they also violate the parents’ right to intergenerational transmission of their values, including their languages. In Tomaševski's views, 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). The right to use one’s own language is made impossible if the children lose it during the educational process.

#### **IV. Recommendations**

**32. The United Nations Permanent Forum on Indigenous Issues recalling its previous recommendations on education, in particular the recommendations from its third session in May 2004, recommends to governments that all education programmes for indigenous children and youth be based on the insights from solid research over many years that mainly mother tongue medium (MTM) bilingual education is superior to all other forms of education practices in order to achieve literacy and generally effective learning, including "the development of the child's personality, talents and mental and physical abilities to their fullest potential" (CRC, Art. 29).**

**33. That the United Nations Permanent Forum on Indigenous Issues convene an expert seminar to assess data relating to mother tongue medium (MTM) education and complete information on educational programs which may serve as prototype models for expanding MTM education of indigenous children and communities. The seminar should include, but not be limited to, UNESCO, UNICEF, the Inter-Agency Support Group, the Special Rapporteur on Education, indigenous MTM educators, members of the Committee on the Rights of the Child, OHCHR, and the Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous peoples, States, research and teaching institutions and persons with expertise in the field. . This seminar should be seen as a first step in developing a global monitoring system for multilingual and multicultural education programmes for indigenous peoples.**



**34. That UNDP, as the UN Agency with oversight of the Millennium Development Goals (MDGs), UNESCO and UNICEF undertake an effort to inform and educate states & UN Agencies Specialized Bodies about (i) the very serious negative consequences that result from forced instruction of children from indigenous and minority language homes in dominant language medium education, which are particularly severe where such children do not yet fully master the dominant language; (ii) MTM education and the significant positive outcomes of such education in addressing poverty, capacity building, strengthening education and eliminating inequality and social marginalization, in order to further the achievement of the MDGs in these respective areas; and (iii) the relevant human rights standards in this area, and how dominant language medium education can result in serious violations of state obligations.**

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