

ŁUKASZ SZOSZKIEWICZ

## Linguistic Human Rights in Education\*

### Introduction

Although there is general agreement among scholars of different disciplines (linguistics, law, anthropology, to name but a few) that language constitutes a crucial element in the process of one's identity formation, linguistic human rights are being neglected in terms of legal protection. Language gets much less coverage in human rights law than other important human attributes, such as race, gender or nationality.<sup>1</sup> The economic and political empowerment of linguistic minorities and their participation in policy-making, put this issue on the international agenda in the 1990s (e.g., the European Charter for Regional or Minority Languages adopted in 1992, or the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities). This study claims that linguistic human rights complement the existing human rights framework and there are solid reasons why states should protect them.

Linguistic human rights are a concept that encompasses the language-related elements of other human rights, e.g. right to fair trial (i.e. right to language assistance in criminal proceedings), cultural rights or the right to identity. Arguably, one of the most linguistically sensitive spheres is education – the empowerment of individuals and, in consequence, communities they belong to, ensures the survival and continued development of linguistic minorities. This study will focus on the linguistic elements of the right to education and aims to investigate their coverage in the UN human rights system – both in the texts of the treaties and in the practice of treaty-based bodies. As the right to education is a complex normative concept, which encompass a group of educational

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<sup>1</sup> T. Skutnabb-Kangas, *Linguistic genocide in education or worldwide diversity and human rights?*, New Delhi 2008, p. 482.

rights and freedoms (i.e. the right of everyone to receive education, the freedom of parents to choose schools for their children or the freedom of individuals and bodies to establish and direct educational institutions), those components related to language will be referred to as “linguistic human rights in education” (LHREs).

### **Linguistic human rights in education in the UN treaties and the practice of treaty-based bodies**

UN treaty-based bodies (hereafter Committees) constitute an important element of the international human rights system – their interpretation provided in general comments along with concluding observations under the monitoring mechanisms, although legally non-binding, serve as an important point of reference in clarifying particular human rights, as well as the nature and extent of states’ obligations. However, LHREs can be reconstructed solely on the basis of the International Covenant on Economic, Social and Cultural Rights of 1966<sup>2</sup> (hereafter ICESCR), while the work of the CESCR Committee, other UN treaties and monitoring bodies provide more detailed and precise normative input for interpretation. Moreover, different treaty-based bodies address various LHREs under the monitoring mechanism. In order to extract a “big picture,” this study is based mainly on the interpretation of the ICESCR, International Convention on the Rights of the Child of 1989<sup>3</sup> (hereafter CRC), International Convention on the Elimination of All Forms of Racial Discrimination of 1965<sup>4</sup> (hereafter CERD), UNESCO Convention against Discrimination in Education of 1960<sup>5</sup> (hereafter CADE) and ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries of 1989<sup>6</sup> (hereafter ILO Convention no. 169). The analysis is further complemented by references to the General Comments and concluding observations of the treaty-based bodies.

Interestingly, although the role of language in the construction of one’s identity has been fairly well studied, one may claim that its importance was not reflected enough in the abovementioned documents. While the CRC and the CADE contain specific provisions addressing language-related rights or freedoms in education, the ICESCR only

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2 UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

3 UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.

4 UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195.

5 UN Educational, Scientific and Cultural Organisation (UNESCO), Convention Against Discrimination in Education, 14 December 1960.

6 International Labour Organization (ILO), Indigenous and Tribal Peoples Convention, C169, 27 June 1989, C169.

mentions language in the non-discrimination clause, while the CERD merely makes a reference in the preamble. Among dozens of General Comments and recommendations issued by the treaty-based bodies, merely two elaborate in detail on the importance of language in education. Those are CERD General recommendation no. 23 on the rights of indigenous peoples (1997)<sup>7</sup> and CRC General Comment no. 11 on indigenous children and their rights under the Convention (2009).<sup>8</sup> The most complex regulation was included in ILO Convention no. 169, but the document refers only to indigenous peoples and remains outside the UN-established human rights machinery.

This lack of references to the language-related rights of communities other than indigenous peoples might be a consequence of controversies regarding minorities' status under international law. This state of affairs, however, is being challenged by the treaty-based bodies under the monitoring mechanism. The CRC and CESCR Committees, but most of all the CERD Committee, are devoting more and more attention to the LHREs of communities other than indigenous peoples. Moreover, the LHREs assigned to the latter group, as enshrined for instance in ILO Convention no. 169, are being interpreted directly from the ICESCR, CRC, CADE and CERD when addressing other communities. Committees mention LHREs in the context of "indigenous peoples," "linguistic minorities," "national minorities" or simply refer to them as to "minorities." Last but not least, there are an increasing number of concluding observations regarding migrants and children as particularly vulnerable groups. Hereafter, the terms "minority" and "linguistic minority" will be used alternatively in reference to all the communities whose language is not an official language of the state they live in.

The most complex regulation on education in the UN treaties was included in Article 13 of the ICESCR. Nevertheless, there is neither direct reference to minority education rights nor to LHREs. Klaus D. Beiter, however, notes that "once it is accepted that minority education rights are part of the right to education, it must also be held that their protection is embedded in article 13."<sup>9</sup> It seems that the interpretation of Article 13 in the context of the anti-discrimination clause contained in Article 2(2) gives a legal justification to the idea of the LHREs of linguistic minorities. Moreover, in General Comment no. 13 on the right to education, the CESCR Committee provided the most detailed interpretation of the right to education among all the treaty-based bodies. Last but not least, the CESCR Committee indicated the CRC, the CADE, the CERD and ILO Convention no. 169 as important points of reference when interpreting the normative

7 CERD Committee, General recommendation no. 23 on the rights of indigenous peoples (1997), A/52/18, annex V.

8 CRC Committee, General Comment no. 11: Indigenous children and their rights under the Convention (2009), CRC/C/GC/11.

9 K. D. Beiter, *The Protection of the Right to Education by International Law. Including a Systematic Analysis of Article 13 of the International Covenant on Economic, Social and Cultural Rights*, Leiden 2006, p. 430.

content of Article 13. Thus, Article 13 and the related General Comment provide a clear and delineated framework for further considerations.<sup>10</sup>

### **The right to receive education in the mother tongue**

The CESCR Committee identified the development of the human personality as being perhaps the most fundamental objective of education.<sup>11</sup> Although this term may seem vague, the historical context will help to shed light on its meaning. The catalogue of objectives included in Article 13(1) of the ICESCR was drafted at a time when the emotional wounds of the Second World War were still fresh and education was seen as an instrument that could prevent totalitarianism in the future. Thus, the educational system was supposed to serve to liberate the individual and to develop their abilities to the highest extent, rather than to subordinate people's desires to the good of the state.<sup>12</sup> Adding the centrality of human dignity invoked in Article 13(1) – the concept which affirms Kant's theory of individual autonomy and the right of everyone to choose his/her destiny<sup>13</sup> – there is little doubt concerning the basic meaning of the "full development of human personality". Such a clarification, however, does not exhaust either the semantic or normative content, and thus encourages broader interpretation.

Associating one's personality and dignity with individual autonomy, the right of everyone to receive education in his/her mother tongue, is justified and rational, at least from the moral point of view. One may claim that the guarantee regarding language should be formulated as a freedom, not a right and thus imposing on a state merely an obligation of non-interference, rather than an obligation to provide education in a specific language. Nevertheless, analysis of the ICESCR's *travaux préparatoires* indicates the negotiators' awareness in operating with the concepts of 'right' and 'freedom' when drafting Article 13. Moreover, the anti-discrimination clause included in Article 2(2) guarantees that all the rights established in the ICESCR – including the right to education – will be exercised without discrimination of any kind as to, *inter alia*, language. Lastly, the interpretation of Article 13(1) in conjunction with Article 13(2) allows one to conclude that members of linguistic minorities have the right to receive education aimed at the full development of their personality and sense of dignity. One may ask if language

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10 CESCR Committee, General Comment no. 13 on the right to education (Article 13), E/C.12/1999/10, 2 December 1999, § 31.

11 *Ibidem*, § 4.

12 K. D. Beiter, *op. cit.*, pp. 463–464.

13 Ch. McCrudden, *Human Dignity and Judicial Interpretation of Human Rights*, "The European Journal of International Law" 2008, vol. 19, no. 4 pp. 659–660.

affects the process of intellectual and social development, and if so, how? Answering this requires a sociolinguistic perspective to be taken.<sup>14</sup>

As numerous studies have shown, the length of time that the mother tongue is used<sup>15</sup> as a medium in education is the most important factor in predicting the educational success of bilingual students.<sup>16</sup> Language appears to be a far more influential factor than the parents' education or economic status. Moreover, education provided to linguistic minority students only in the dominant language is "widely attested as the least effective educationally."<sup>17</sup> Research conducted in former colonies in Africa, where numerous populations were forced to make an early transition from their mother tongue into English has shown their poor literacy in both the mother tongue and the dominant language, poor mathematics and science knowledge, and high drop-out rates.<sup>18</sup> As T. Skutnabb-Kangas claims, "it takes 6–8 years to learn enough of a second language to be able to learn through it."<sup>19</sup> Regardless of the precise timeframe, the importance of language in achieving the full development of intellectual skills is widely recognized and well proven. Thus, everyone's right to receive education in his or her mother tongue is justified in the context of Article 13(1) of the ICESCR. This right, however, shall be interpreted in accordance with the principle of the progressive realization of the ESC rights (as enshrined in Article 2(1) of the ICESCR), which obliges states to take steps to the maximum of their available resources.

The importance of the mother tongue in education was reflected in other international documents. The UN Declaration on the Rights of Indigenous Peoples,<sup>20</sup> although not legally binding, stresses that the states shall take effective measures in order to ensure indigenous peoples' (particularly children's) access to, when possible, an education in their own culture and provided in their own language [Article 14(3)]. Similarly, Article 4(3) of the UN Declaration on the Rights of Persons belonging to National or Ethnic,

14 T. Skutnabb-Kangas, *Language Rights*, [in] W. E. Wright, S. Boun, O. García, *The Handbook of Bilingual and Multilingual Education*, Malden – Oxford – Chichester 2015, p. 199.

15 T. Skutnabb-Kangas indicates that the "mother tongue" can be defined as follows: 1) the language one learned first; 2) the language one identifies with (external dimension); 3) the language one is identified as a native speaker by others (external dimension); 4) the language one knows best' the language one uses most. T. Skutnabb-Kangas, *Bilingualism or Not – The Education of Minorities*, Clevedon 1984, p. 18.

16 UN Permanent Forum on Indigenous Issues, *Indigenous Children's Education and Indigenous Languages – Expert Paper* (2005), E/C.19/2005/7, § 9.

17 S. May, R. Hill, *Bilingual/immersion education: Indicators of good practice. (Milestone Report 2)*, Hamilton 2003, p. 14

18 K. Heugh, *Into the cauldron: Interplay of indigenous and globalised notions of literacy and language education in Ethiopia and South African*, "Language Matters" 2010, vol. 40, no. 2, pp. 166–189.

19 T. Skutnabb-Kangas, *Language Rights*, *op. cit.*, p. 199

20 UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, adopted on 2 October 2007, A/RES/61/295.

Religious and Linguistic Minorities<sup>21</sup> indicates that the states “should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.” The most complex binding regulation is provided by ILO Convention no. 169, which refers, however, only to indigenous peoples. Its Article 28(1) establishes a “principle of mother tongue preference” in education by indicating *expressis verbis* that children belonging to indigenous peoples shall, wherever practicable, 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.

The right to education in the mother tongue, along with other LHREs, can be exercised either individually or collectively. The latter dimension was emphasized by the CRC and CERD<sup>22</sup> Committees under the reporting mechanism. For instance, the CERD Committee pointed out that the lack of recognition of minority languages impedes such groups from preserving and expressing their cultural and linguistic identity.<sup>23</sup> The CRC Committee, in turn, called for strengthening efforts to protect and promote the identity and rights of children belonging to minorities, including by allocating adequate human and financial resources for teaching the mother tongue in schools.<sup>24</sup>

Language definitely goes beyond its communicative function and remains a vehicle for ethnic<sup>25</sup> and/or national identity. Nevertheless, language is the source of *linguistic identity*, not necessarily entailing other social identities (e.g. ethnic, national), many studies show that it remains the main source for sustaining collective identity.<sup>26</sup> The relationship between language and ethnic identity is particularly evident with indigenous peoples. For instance, in Australia the main feature of tribal adherence is language and in the great majority of cases the tribal name is the language name.<sup>27</sup> The loss of indigenous languages signifies not only the loss of cultural diversity (including linguistic), but

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21 UN General Assembly, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 3 February 1992, A/RES/47/135.

22 CERD Committee, General Recommendation no. 23.

23 CERD Committee, Concluding Observations: Libyan Arab Jamahiriya (2004), CERD/C/64/CO/4, § 15.

24 CRC Committee, Concluding Observations: Algeria (2005), CRC/C/15/Add.269, § 84.

25 Ethnicity refers to belonging to a social and cultural group, based on common regional origins and cultural traditions. For definition v. R. Hampton, M. Toombs, *Indigenous Australians and Health*, Oxford 2013, p. 5.

26 C. Lapresta, A. Huguet, *A model of relationship between collective identity and language in pluricultural and plurilingual settings: Influence on intercultural relations*, “International Journal of Intercultural Relations” 2008, no. 32, pp. 260–281.

27 Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), Federation of Aboriginal and Torres Strait Islander Languages and Culture (FATSILC) *National Indigenous Languages Survey*, 2005, pp. 20–21.

also the loss of traditional knowledge which is usually passed down from generation to generation only (or mainly) orally.

The state's obligation to fulfil<sup>28</sup> the collective dimension of the LHREs requires authorities to take steps aimed at empowering linguistic minorities to participate in designing educational policy. Article 27(2) of ILO Convention No. 169 states that "the competent authority shall ensure the training of members of these peoples and their involvement in the formulation and implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to these peoples as appropriate." Moreover, Article 27(3) stipulates *expressis verbis* that "appropriate resources shall be provided for this purpose" which may be interpreted either as organizational or financial resources. Bearing in mind that ILO Convention no. 169 only refers to indigenous people, it seems that in the light of the objectives set in Article 13(1) of the ICESCR, as well as Article 30 of the CRC,<sup>29</sup> the scope of the LHREs shall be extended to other linguistic minorities. Taking into account the concluding observations of the CESCR Committee, this is all the more justified. The Committee, on various occasions, recommended that the state party shall "ensure, to the extent possible, adequate opportunities for minority children to receive instruction in their native languages by effectively monitoring the quality of minority language instruction, providing textbooks and increasing the number of teachers instructing in minority languages."<sup>30</sup>

### The right to learn the dominant language

Another element of great importance is the right to know the dominant language and, therefore, to receive a proper second language education. On the one hand, lack of or limited knowledge of the dominant (official) language can lead to discrimination or the exclusion of minorities from political life, and from access to justice or access to various educational institutions.<sup>31</sup> On the other hand, in bilingual communities in which one language is very dominant, acquisition of the minority language can be hampered under

28 CESCR Committee, in order to clarify the meaning of states' obligations under the Convention, has developed a doctrine of the triad of obligations: to respect (refrain from interfering with the enjoyment of the right), to protect (prevent others from interfering with the enjoyment of the right), to fulfil (adopt appropriate measures towards the full realization of the right). Cf. O. de Schutter, *International Human Rights Law: Cases, Materials, Commentary*, Cambridge 2014, pp. 281–291.

29 Article 30 of the CRC reads as follows: "In those States in which [...] linguistic minorities [...] exist, a child belonging to such a minority [...] shall not be denied the right, in community with other members of his or her group, to enjoy [...] to use his or her own language."

30 CESCR Committee, Concluding Observations: The former Yugoslav Republic of Macedonia (2008) E/C.12/MKD/CO/1, § 48.

31 UN Development Programme, *United Nation's 2004 Human Development Report*, New York 2004.



conditions of reduced input.<sup>32</sup> For instance, in Welsh-speaking communities in England, children's acquisition of Welsh is correlated with the degree of input in Welsh which the speakers receive in their homes and at schools.<sup>33</sup> Therefore, an appropriate language policy which balances the acquisition of first and the second languages is crucial for ensuring children's full development, as well as for enabling an individual to participate effectively in a free society. The requirement of "effectiveness," enshrined in Article 13(1) of the ICESCR, can be fulfilled only when the knowledge of the dominant language is good enough to actively participate in the political life of the dominant population, e.g. exercising the right to vote and stand for elections, and the right to access public information.<sup>34</sup> The right to know the dominant language has recently been placed high on the international agenda, as it refers, *inter alia*, to migrants. The CERD Committee has called for organizing intensive language classes to support the learning of the dominant language by migrant children and their parents, as well as to provide adequate training of teachers.<sup>35</sup> Moreover, the Committee has drawn attention to the fact that "children of immigrants are overrepresented in special schools for under-achievers" mainly on account of their lack of adequate dominant language skills.<sup>36</sup>

Adequate measures aiming at the linguistic integration of language minorities shall be preceded by consultations with these minorities and applied with great caution. The CERD Committee pointed out the need to "facilitate the participation of ethnic minorities in the elaboration of cultural and educational policies that will enable persons belonging to minorities to learn or to have instruction in their mother tongue, as well as in the official language."<sup>37</sup> The States' authorities should bear in mind, however, that linguistic integration does not equal linguistic assimilation. The latter is built upon the idea of rearranging the linguistic identity of the particular ethnic communities into a new identity, an embedded feature of which is proficiency in the dominant (official) language. In many cases, an assimilation policy implies the loss of a particular language and, as a result, the extinction of that culture. Out of the world's 6,700 languages, over 50% of them are endangered nowadays and will potentially be lost within one to four genera-

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32 V. C. Mueller Gathercole, E. M. Thomas, *Bilingual First-language development: Dominant language takeover, threatened minority language take-up*, "Bilingualism: Language and Cognition" 2009, no. 12, pp. 213–237.

33 *Ibidem*.

34 Human Rights Council, Report of the independent expert on minority issues, Gay McDougall (2011), A/HRC/16/45/Add.2 § 87.

35 CERD Committee, Concluding Observations: Liechtenstein (2007), CERD/C/LIE/CO/3, § 21.

36 CERD Committee, Concluding Observations: Germany (2008), CERD/C/DEU/CO/18, § 23.

37 CERD Committee, Concluding Observations: Mongolia (2006), CERD/C/MNG/CO/18, § 21.



tions.<sup>38</sup> However, not all of them were lost due to government policies, the disappearance rate has grown significantly since the 15<sup>th</sup> century and correlates strongly with government policies which treated language as a consolidating factor for multicultural and/or multi-ethnic societies. Some authors refer to this phenomenon as *linguistic genocide* or *linguicide*. Interestingly, some claim the “assimilationist character of the jurisprudence” worldwide which put the *raison d’être* (national unity, more precisely) above the minorities being able to exercise LHREs.<sup>39</sup> On the other hand, the CRC and CESCR Committees have emphasized the importance of programmes promoting bilingual education within indigenous peoples<sup>40</sup> and have called for the establishment of programmes to revitalize indigenous languages.<sup>41</sup> Moreover, the CERD Committee clearly stated that bilingual education initiatives should be an opportunity to consolidate the use of two languages rather than lose the native language in favour of the dominant one.<sup>42</sup>

One of the most aggressive linguistic assimilation policies has been implemented in China’s autonomous region of Xinjiang, which is inhabited by a relatively large population of Uyghurs. Since 1984, Uyghur-language instruction has been gradually reduced at all levels. Until the mid-1990s, Chinese had been only taught as a second language in minority-language schools, but after the mid-1990s Chinese became the language of instruction from the third grade of primary school.<sup>43</sup> In the 2000s Chinese became the language of instruction from the first grade, and since then it is Uyghur that has been taught as if it were a second language. Moreover, since September 2002, Xinjiang University has not offered any courses led only in the Uyghur language and even Uyghur poetry is now taught entirely in Chinese.<sup>44</sup> The CERD Committee expressed its concern that “in practice Mandarin is the sole language of instruction in many schools in the autonomous minority provinces, especially at secondary and higher levels of education. [...] [The Committee] reiterates its concern about remaining disparities for ethnic minority children in accessing education which is often linked to the availability of teaching in Mandarin only.”<sup>45</sup>

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38 T. Skutnabb-Kangas, *Linguistic genocide in education...*, *op. cit.*

39 M. Paz, *The Tower of Babel: Human Rights and the Paradox of Language*, “European Journal of International Law” 2014, vol. 25, no. 2, pp. 467–496.

40 CESCR Committee, Concluding Observations: Costa Rica (2008), E/C.12/CRI/CO/4, § 7.

41 CERD Committee, Concluding Observations: El Salvador (2010), § 21.

42 CERD Committee, Concluding Observations: Peru (2009), CERD/C/PER/CO/14-17, § 13.

43 A. M. Dwyer, *The Xinjiang Conflict: Uyghur Identity, Language Policy, and Political Discourse*, Washington DC 2005, pp. 34–35.

44 K. Große, *Kein Studium in Muttersprache: Peking schaltet Uigurisch ab*, “Frankfurter Rundschau” 2002, vol. 4, no. 2.

45 CERD Committee, Concluding Observations: China (2009), CERD/C/CHN/CO/10-13, § 22.

## Freedom from involuntary language shift

Katarina Tomasevski, former Special Rapporteur of the Commission on Human Rights on the Right to Education, elaborated on the freedom to use one's language, when describing the criterion of *acceptability* embedded into the right to education: "the State is obliged to ensure [...] that education is acceptable both to parents and to children." Moreover, she made a direct reference to language by pointing out that "the language of instruction can preclude children from attending school."<sup>46</sup> Therefore, the criterion of the *acceptability* of the right to education in relation to linguistic minorities encompasses three elements: 1) the freedom of parents to choose schools for their children other than those established by the public authorities (e.g. non-public schools offering education of/in the minority language), 2) the freedom of individuals and bodies to offer education in the language of their choice in the educational institutions established by them, and 3) the freedom of the individual to use their language in public and in private (including public and non-public schools). While the first element is guaranteed *expressis verbis* in Article 13(3) of the ICESCR as well as Article 2(b) and Article 5(1)c of the CADE, the remaining two require further justification.

The freedom of individuals and bodies to establish and direct educational institutions is guaranteed under Article 13(4) of the ICESCR. It is, however, not unlimited – institutions are subject to the observance of the principles set forth in Article 13(1) and to conforming with the minimum standards laid down by the state. Both requirements are intrinsically related to language, as the role of the states' authorities is to foster, on the one hand, the full development of one's personality (associated with the usage of the mother tongue) and, on the other, the skills necessary to effectively participate in society (dependent on the knowledge of the dominant language). Thus, the minimum standards should include, *inter alia*, linguistic requirements such as the minimum proficiency level of the dominant language of graduates. Similarly, Article 5(1)c of the CADE recognizes *expressis verbis* that education in minority-led schools shall not prevent the members of minorities from understanding the culture and language of the community as a whole. *Ipsa facto*, unless this requirement is fulfilled, educational institutions may adopt any linguistic approach, also regarding the language of instruction. The role of the state is, in turn, to ensure the equal treatment of minority-led educational institutions and equal opportunities for their graduates. It requires public authorities not to interfere with the freedom but to take legislative measures to ensure actual non-discrimination (e.g. ensuring official recognition of the non-public education).<sup>47</sup>

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46 K. Tomasevski, *Economic, Preliminary Report submitted by the Special Rapporteur of the Commission on Human Rights on the Right to Education*, UN Doc. E/CN.4/1999/49, §§ 62–69

47 Human Rights Committee, *Concluding Observations: Japan (2008)*, CCPR/C/JPN/CO/5, § 31.

The freedom of the individual to use his or her language in public and in private goes far beyond the scope of LHREs and encompasses all spheres of life. Nevertheless, as children spend a significant amount of time at school, ensuring they can use the language of their choice is particularly important for achieving full development of their personality with respect for the right to identity (individual dimension) and for sustaining the survival of the linguistic minority (collective dimension). The analysis of the Genocide Convention's *travaux préparatoires* indicates that the importance of language in education was widely discussed while drafting the definition of *cultural genocide*. Professor Raphael Lemkin pointed out that the prohibition on teaching the language of the group concerned or restrictions regarding the use of that language were aimed at the "rapid and complete disappearance of the cultural, moral and religious life of a group of human beings."<sup>48</sup> Some scholars today find Article 2(b) of the Convention highly relevant in the context of linguistic human rights (including LHREs). Nevertheless, language is not mentioned *expressis verbis* in the document.<sup>49</sup> Other scholars have noticed that language, besides being a means of communication in social intercourse, remains a means of governmental control of one's development, beliefs and prejudices.<sup>50</sup> In other words, language restrictions lead not only to the disappearance of certain groups, but result in increasing social tensions by fuelling hatred and a sense of inferiority which undermines the very foundations of human rights.

## Conclusions

The analysis confirms that LHREs are grounded in several major UN treaties and are indeed applied by the treaty-based bodies. Nevertheless, taking into account the state of the art in various fields (including sociolinguistics, anthropology and human rights law), LHREs remain underestimated or – one may claim – intentionally underrepresented, as they settle controversies over the legal status of various communities, including national minorities and indigenous people. By taking a soft but consistent approach, CESCRC, CRC and CERD Committees, in fact act to strengthen the legal grounds for the protection of LHREs.

Although there are numerous categorizations and definitions of LHREs, the two elements – namely the right to receive education in the mother tongue and the right to learn the dominant language – are fairly well grounded in the literature and they are reflected in the Committees' concluding observations. One of the aims of this paper was

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48 H. Abtahi, P. Webb, *The Genocide Convention. The Travaux Préparatoires*, vol. 1, Leiden – Boston 2008, p. 235.

49 T. Skutnabb-Kangas, *Language Rights*, *op. cit.*, p. 191.

50 A. H. Leibowitz, *Language as a Means of Social Control: The United States Experience*, Annual Meeting of the World Congress of Sociology, August 1974.

to emphasize the necessity of distinguishing another dimension – the freedom from the involuntary language shift which is conceptually rooted in the Genocide Convention of 1948, however, due to controversies over the definition of “cultural genocide,” it was abandoned by the negotiators of the final text.

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## SUMMARY

### **Linguistic Human Rights in Education**

Linguistic human rights are a concept remaining on the crossroads of several scientific disciplines, e.g. linguistics, anthropology, psychology and, last but not least, human rights law. Taking the latter as a lens, this study seeks to clarify the concept of linguistic human rights in education – presumably, the most linguistically sensitive sphere in the life of individuals and communities. The paper demonstrates that despite little mention of language in the UN treaties (ICESCR, CRC, CERD, CADE), its importance is reflected in the practice of the relevant treaty-based bodies. Moreover, increasing interest from scholars across a range of disciplines is contributing to the development of a linguistic human rights doctrine and is penetrating the UN human rights framework.

Keywords: human rights, linguistic human rights, language, education

ŁUKASZ SZOSZKIEWICZ, Adam Mickiewicz University Poznań, Faculty of Law and Administration, Al. Niepodległości 53, 61-714 Poznań, Republic of Poland, e-mail: lukasz.szoszkievicz@amu.edu.pl.