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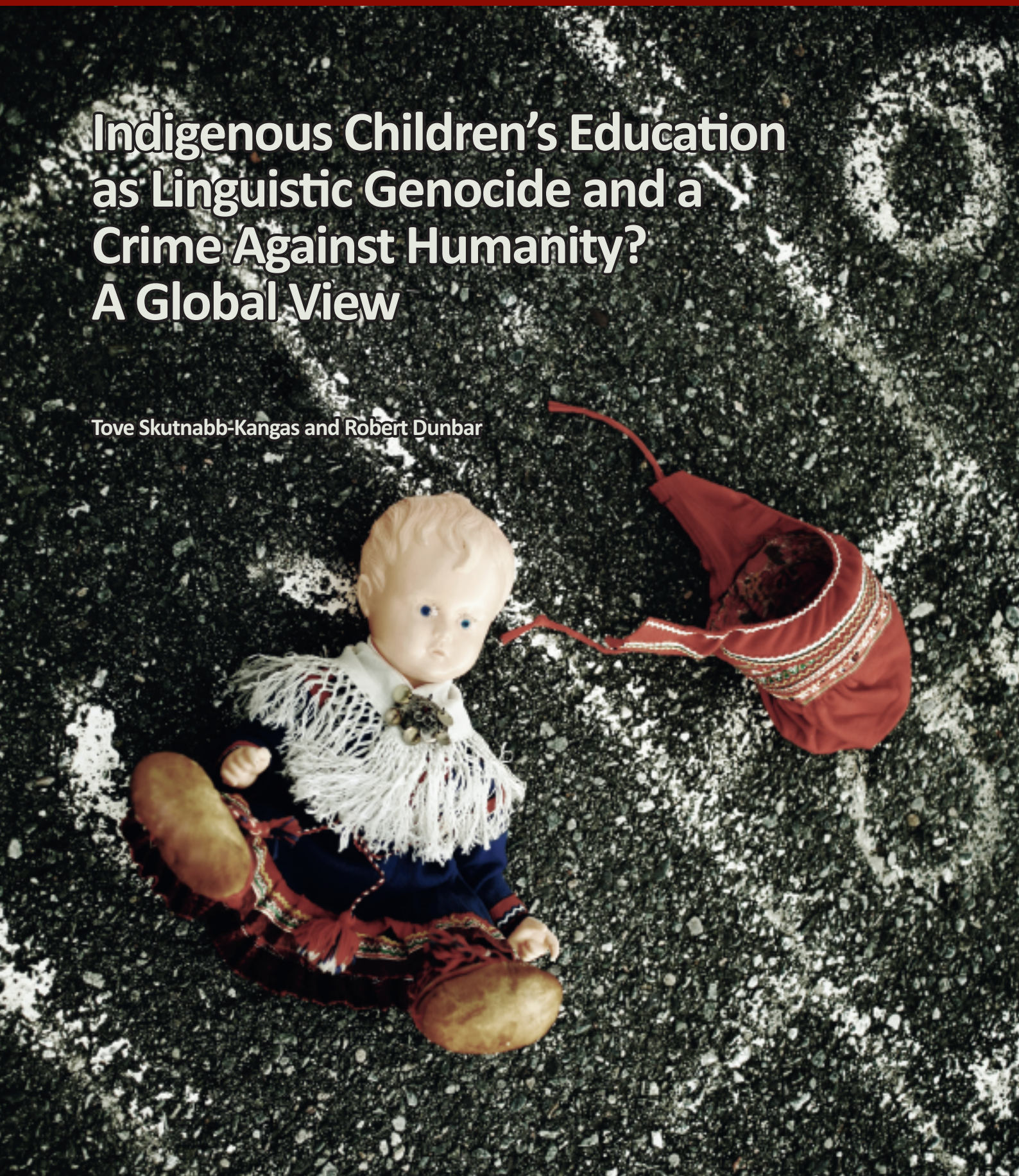
Indigenous Children's Education as Linguistic Genocide and a Crime Against Humanity? A Global View

Tove Skutnabb-Kangas and Robert Dunbar



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Foreword

This book is partially based on two Expert papers that Tove Skutnabb-Kangas and Robert Dunbar were the main authors of, for the United Nations Permanent Forum on Indigenous Issues (UNPFII). These were *Indigenous Children's Education and Indigenous Languages* (2005), by Ole Henrik Magga, Ida Nicolaisen, Mililani Trask, Robert Dunbar and Tove Skutnabb-Kangas, and *Forms of Education of Indigenous Children as Crimes Against Humanity?* (2008). The latter is in the UNPFII system labelled as «presented by Lars-Anders Baer, in collaboration with Robert Dunbar, Tove Skutnabb-Kangas and Ole-Henrik Magga. New York: United Nations Permanent Forum on Indigenous Issues, 2008, http://www.un.org/esa/socdev/unpfii/documents/E_C19_2008_7.pdf. Ole Henrik Magga, who was the first Chair of the UNPFII, commented in detail on the first paper and wrote the Recommendations in it; Ida Nicolaisen and, especially, Mililani Trask gave comments; Ole Henrik Magga and Lars-Anders Baer read and accepted the second paper. We want to thank all of them for their cooperation and support. They are of course in no way responsible for what we write in this book.

In addition to the Expert papers, we have added quite a lot of material (e.g. Skutnabb-Kangas 2008a), including some that we had to exclude from the Expert papers because of length. We have substantially added to and updated the legal, educational, sociolinguistic and economic arguments in the light of research and our own experience since late 2007 when the second Expert paper was finished. Two important documents, Andrea Smith's (2009) *Indigenous Peoples and Boarding Schools: A Comparative Study*, written for the UN Permanent Forum on Indigenous Issues, and EMRIP's (2009) *Study on Lessons Learned and Challenges to Achieve the Implementation of the Right of Indigenous Peoples to Education. Report of the Expert Mechanism on the Rights of Indigenous Peoples*, written for EMRIP's second session in Geneva 10-14 August 2009, arrived too late to be properly included, but there seems to be nothing in them that would be contrary to what we write.

We hope that this book might be of some modest support to those Indigenous and Tribal peoples and minorities who have been or are experiencing the phenomena that we describe, and make them even more aware of the unacceptability of the kind of subtractive education that may have deprived or continues to deprive them not only some of their languages and cultures but also of their identities, life chances and dignity.

Finally, we know that there will be some people who do not like what we say. Often the mere concept of genocide makes some people react emotionally and negatively. This seems to prevent them from considering the arguments used. We would appreciate relevant comments pertaining to the argumentation, showing where it might be strengthened, or where we have overlooked evidence that does not support our arguments. At the same time, we would like to remind those who might want to attack the messengers rather than the message of Desmond Tutu's famous metaphor:

> *If you are neutral in situations of injustice you have chosen the side of the oppressor. If an elephant has its foot on the tail of a mouse, and you say that you are neutral, the mouse will not appreciate your neutrality* (Bishop Desmond Tutu, quoted in Fine et al. 2004: 4).

We are very grateful to Gáldu and Magne Ove Varsi for publishing and distributing this book. Magne Ove's enthusiasm and flexibility has been a great support. We want once again to thank and acknowledge our earlier co-authors, listed above. Tove also wants to thank ALL her Indigenous, tribal and minority friends (and their supporters) for everything you have taught me, sharing your lives, and her husband/colleague, Robert Phillipson, for his patience and, as always, unfailing support and encouragement during the writing process.

Preface

Gáldu Čala – Journal of Indigenous peoples Rights No.1/2010 *Indigenous Children's Education as Linguistic Genocide and a Crime Against Humanity? A Global View* is written by Tove Skutnabb-Kangas and Robert Dunbar. Skutnabb-Kangas is a sociolinguist and an educationist, and Dunbar is a human rights lawyer. It is based on two Expert papers for the United Nations Permanent Forum on Indigenous Issues.

As the title shows, the book argues that past and present Indigenous/Tribal and minority education, where children have a dominant language as the main instruction language in school, can be legally seen as a crime against humanity, according to relevant international instruments. This subtractive education teaches children (some of) the dominant language at the cost of their Indigenous mother tongues. It contributes to language shift, and thus to the disappearance of the world's linguistic diversity (and, through this, also disappearance of biodiversity).

Using arguments from education, sociolinguistics, psychology, anthropology, sociology, political science and economics, the book shows that this kind of education intentionally transfers children from their own group to the dominant group linguistically and culturally, and can and often does cause both physical and mental serious harm to them, with consequences that can last for generations.

The education is organised against solid research evidence. The book also considers the extent to which subtractive education also meets the criteria for acts of genocide as set out in two of the definitions of what constitutes genocide in the United Nations Genocide Convention. The book demonstrates how such forms of education are inconsistent with a range of human rights and other international legal obligations. The book describes this education with examples from all over the world. It also answers the question of what forms of education would be consistent with law and research, and ends with concrete recommendations.

Magne Ove Varsi
Executive Director

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Abbreviations

BICS	= Basic Interpersonal Communicative Skills
CALP	= Cognitive-Academic Language Proficiency
CLIL	= Content and Language Integrated Learning
DRIP	= see UNDRIP
EMRIP	= UN Expert Mechanism on the Rights of Indigenous Peoples
ICSU	= the International Council of Science (www.icsu.org)
IK	= Indigenous Knowledge; see also TEK
ILO	= International Labour Organization (www.ilo.org)
IMF	= International Monetary Fund (www.imf.org)
ITM	= Indigenous /Tribal or minority
L	= language
L1	= first language, mother tongue
L2	= second language
LHRs	= Linguistic Human Rights
LRs	= language/linguistic rights
MLE	= (Mother-tongue based) MultiLingual Education
MT	= Mother tongue
MTM	= Mother-tongue medium
TEK	= Traditional Ecological Knowledge; see also IK
UNDRIP	= (UN) Declaration on the Rights of Indigenous Peoples
UNICEF	= The United Nations Children's Fund (www.unicef.org)
WB	= the World Bank (www.worldbank.org)

1. Introduction and Summary

«Worldwide, minority children suffer disproportionately from unequal access to quality education. Disadvantaged minorities are far more likely to receive an inferior education than a good one. Disadvantaged minority children are more likely to start school later than the prescribed age, if at all; they are less likely to be ready or well prepared for school; and more prone to drop out or fail to achieve in school. That perpetuates the cycle of poverty, leaving them unable to later fulfil their human potential, to gain meaningful employment and to become respected members of society.» (Gay McDougall, independent UN expert on minority issues, 2009: 7)

«Deprivation of access to quality education is a major factor contributing to the social marginalisation, poverty and dispossession of indigenous peoples» (John Henriksen, chairperson of the UN Expert Mechanism on the Rights of Indigenous Peoples, 2009: 10).

«About 50 to 70 percent of the world's 101 million children out of school are from minorities or indigenous peoples», and «Over half of world's school dropouts are from minorities», London-based Minority Rights Group International (MRG) said when launching their **2009 State of the World's Minorities and Indigenous Peoples** report in July, according to Gáldu (http://www.galdu.org/web/index.php?odas=3979&giella1=eng). The quotes above are from its Foreword[1]. When Indigenous/Tribal and minority (ITM)[2] children whose MT[3] is an indigenous or minority language[4] do attend school, state education policies frequently force them into education through the medium of a/the dominant state or official language.

Firstly, these policies play an important role in the process of language shift. An obvious effect of such policies is on the ITM *languages themselves*; their exclusion from schools often robs them of terminology necessary for more formal or «higher» domains; they are being underdeveloped. Another obvious effect is on *attitudes*: children and parents tend to start believing that their language is worth less than the dominant language. These attitudes usually have a strongly negative influence on the *use* of indigenous languages. Language, culture, customs and traditions are not anything we are born with; they have to be lived, acquired and taught for them to be learned. If children are not surrounded by at least some adults and elders from their own group who (are allowed to) teach them their languages, stories, customs, traditions, not only at home and in the community but also in school, these will not be learned proficiently. And if the ITM children are not proficient in their languages, the likelihood of them transferring these to their own children is seriously diminished.

Secondly, the harmful consequences of the use of the dominant state language as the only language of instruction in schools can have a marked negative impact on the development of ITM children. As exemplified later, the use of the children's language has often been either overtly or covertly forbidden. This is still the case in some situations, as our examples show. Not allowing children to learn their language, or preventing them from using it through separation from proficient adult users, means 'prohibiting the use of the language of the group in daily intercourse or in schools'. This separation is most obvious when children have been removed from home and placed in residential schools. But it also occurs when all or most of the teachers come from the dominant group and do not speak the ITM language.

As we demonstrate in this book, such policies have often resulted in both serious physical harm (see Sections 4.3 and 4.4) and very serious mental harm (social dislocation, psychological, cognitive, linguistic and educational harm), and, partially through this, also economic, social and political marginalisation. Quoting studies and statistics

from the USA, Teresa McCarty writes about the consequences of «medium-of-instruction policies» (2003: 74):

> *Indigenous and other minoritized students experience the lowest rates of educational attainment, the lowest family incomes, and, particularly among Indigenous youth, the highest rates of depression and teen suicides.*

In our first Expert paper (Magga et al., 2005), we used arguments and research results from international law, education, educational anthropology, applied linguistics, sociolinguistics, psycholinguistics, psychology, sociology, economics, and political science. We concluded that mainly dominant-language medium education for ITM children can and does have extremely negative consequences for the achievement of goals required by or implicit in major international human rights instruments and especially the right to education. In discussing the legal basis for education, we showed, using the late UN Special Rapporteur on the Right to Education Katarina Tomaševski's interpretations (2001, 2004, 2006; see also www.tomasevski.net/), that this dominant-language medium education *effectively prevents access to education*, because of the linguistic, pedagogical and psychological barriers it creates.

We also concluded that without adherence to educational linguistic human rights, especially a right to mainly mother tongue medium (MTM) multilingual education in (non-fee) state schools, with good teaching of a dominant language as a second language, given by competent bilingual teachers, most ITMs have to accept *subtractive* education through the medium of a dominant/majority language. In *subtractive language learning*, a new (dominant/majority) language is learned *at the cost of the mother tongue*. The mother tongue (hereafter MT) is first displaced. This leads to an unstable diglossic situation: the MT is used in some contexts (e.g. home) and a dominant language in most official contexts, e.g. in school. Later, the MT is often completely replaced by the dominant language. Subtractive teaching subtracts from the child's linguistic repertoire, instead of *adding* to it. These kinds of educational models are called *submersion* models: the child is being submerged in a foreign language, without any chance of learning how to «swim» in it. She has no support because her MT competence (which would form a solid basis for learning especially more cognitively demanding aspects of other languages) is excluded from school.

In this enforced language regime, children undergoing subtractive education, or at least *their* children, are effectively transferred to the dominant group linguistically and culturally. At a community level, this often leads to their own languages first becoming endangered, when the intergenerational transfer from the parent generation to the children's generation is interrupted. Later, it may lead to the extinction of indigenous/tribal languages, and in many cases also minority languages. When a whole group changes language, this also contributes to the disappearance of the world's linguistic diversity.

Education and media are some of the most important *direct* causal factors in this disappearance of languages - behind them are of course the world's political, economic, techno-military and social forces, including neoliberal corporate globalisation.

Research conclusions about results of present-day ITM education show that the length of mother tongue medium (hereafter MTM) education is more important than any other factor (including socio-economic status) in predicting the educational success of bilingual students, including their competence in the dominant language (e.g. Thomas & Collier 2002). The worst results, including high push-out[5] rates, are with students in programmes where the students' MTs are not supported at all or where they are only taught as subjects.

We concluded in our first Expert paper that today's ITM education is organised in a way that is at odds with solid evidence about how best to reach high levels of bilingualism or multilingualism and how to enable ITM children to achieve academically in school. We showed that the present practices of educating indigenous children through the medium of dominant national/state languages are completely contrary both to solid theories and to empirical research results about how best to achieve the goals for good education (see Section 4.1), and to the rights that indigenous and tribal children have in international law, including educational rights (see Chapter 2). In addition, present practices also violate the parents' right to intergenerational transmission of their values, including their languages.

The first Expert paper also argued, applying to

education leading development economists such as Nobel laureate Amartya Sen (e.g., 1985, Dreze & Sen 2002), that poverty is not only about economic conditions and growth. Expansion of human capabilities is a more basic locus when analysing poverty alleviation, and it should be a more basic objective of development (e.g. Misra & Mohanty 2000a, b, Mohanty 2000). Dominant-language medium education for ITM children often curtails the development of the children's capabilities. Thus it perpetuates poverty, and can and often does cause serious mental harm.

In the second Expert paper, we were particularly concerned with the human cost of these educational policies. There is a wealth of evidence of the suffering and intense mental and, often, physical harm that has resulted to ITM children from such policies. It is now clear that governments are often aware of these and other adverse effects of forcing ITM children to be educated through the medium of the dominant language, as will be described further in this book. That States persist in such policies, given such knowledge, has been described as a form of linguistic and/or cultural genocide, and, in the words of Rodolfo Stavenhagen 1990, 1995), «ethnocide».[6] We explored the extent to which the deliberate pursuit of such policies can and should be considered to be criminal, within the categories currently provided in international law. In this book, we consider further the possibility that such policies, implemented in the full knowledge of their devastating effects on those who suffer them, constitute international crimes, including both genocide, and crimes against humanity, within the meaning of the United Nations' 1948 *Convention on the Prevention and Punishment of the Crime of Genocide*[7] *and other instruments* (the «Genocide Convention»).

Chapter 2 considers the legal basis of the right to education and the extent to which that right now requires MTM education. We argue that the various forms of submersion education which have been used and which continue to be used in respect of ITM children are inconsistent with the basic right to education, as set out in a range of international standards. We also argue that while many of those standards do not explicitly require MTM education, their satisfaction may imply the use of such education. When viewed from the perspective of the prohibition on discrimination and the requirement of equal protection of the law, cornerstones of international human rights law, MTM education is essential if equal treatment of ITM children in the education system is going to take place. We also consider the growing number of international standards in the area of the rights of minorities and of indigenous peoples, and show how these generally contemplate MTM. Finally, we consider a range of other international standards whose effective implementation would be frustrated by submersion education practices and whose accomplishment would be facilitated by MTM education.

Chapter 3 discusses the importance of the MTs and the role of language in general, and in creating social hierarchies. This includes definitions of concepts such as «mother tongue». We also present some debates about the extent to which the concepts «mother tongue», «identity», or «language» are romanticising, reifying (= making something abstract more concrete or real), and essentialising phenomena that by their nature are always changing and multifaceted. The Chapter also presents many Indigenous views on the role of the MTs/languages for Indigenous/Tribal peoples (and minorities).

Chapter 4, on the educational basis of the right to education, sets the goals for ITM education, based on the human rights documents discussed in Chapter 2. It then presents and assesses «non-models» and «weak models» of bilingual/multilingual education, models that do not reach these goals. It discusses various types of force that have been used as means of control in ITM education - «sticks», «carrots» and «ideas» - and presents examples of them. It concludes with a presentation of the (negative) educational, social, physical and psychological consequences of this type of submersion education.

Chapter 5 is concerned with some economic parameters of ITM education. It is often claimed that *mother-tongue-based multilingual education* (from now on, *MLE*) is too expensive and that states cannot afford it. We show that these claims are not only untrue, but also that this is the wrong question – we should instead ask how states can afford NOT to implement this education. We also discuss the ecological relationship between linguistic and cultural diversity on the one hand and biodiversity on the other hand. Traditional Ecological Knowledge, encoded in the small languages of ITMs and local people, is often more detailed and accurate than western scientific know-

ledge. The maintenance of biodiversity is gravely endangered with the disappearing of these languages.

In Chapters 6 and 7, we consider the extent to which the various forms of submersion education which have been practiced and which continue to be practiced by States could be considered to give rise to international criminal responsibility. In Chapter 6, we explore the application of the legal concept of genocide, and in Chapter 7, we explore the concept of crimes against humanity. In both cases, we note the existence of a range of barriers to the application of either concept to forms of submersion education, although we note, particularly in relation to the concept of crimes against humanity, that the law is not particularly clear and is constantly evolving, which may make the application of at least some concepts of international criminal law to submersion education possible as the law develops.

Finally, Chapter 8 asks how ITM education should be organised to be consistent with both legal requirements and research results presented in the foregoing Chapters. It presents and exemplifies «strong models» of MLE and their results and looks at principles behind successful models that reach the educational goals set in Section 4.1. The book ends with a series of detailed recommendations.

2. The Education Rights of Indigenous/Tribal and Minority Children: The Legal Basis

2.1. Introduction

There are a large number of standards in international law of relevance to the education of ITM children. These standards are set out in treaties which create binding legal obligations as well as in other instruments which, although not constituting binding legal obligations, are nonetheless significant both in political and moral terms and because they may evolve into legally «harder» commitments over time. In respect of the legally-binding treaty obligations, it is important to remember that such obligations are only binding on states which have ratified the relevant treaty; some of the treaties which shall be discussed in this chapter have been ratified by a large majority of states, whereas others have not been (examples include so-called «regional» human rights instruments created by regional international organisations such as the Council of Europe, the Organization of American States and the African Union, and the important indigenous peoples-specific treaty, **ILO Convention No. 169 on Indigenous and Tribal Peoples** («ILO Convention No. 169», see http://www.ilo.org/ilolex/cgilex/convde.pl? C169). Thus, when considering the application of the principles discussed in this chapter in any particular state, it is important to consider whether that state has, in fact, ratified the particular treaty in question. Furthermore, even where States have ratified a treaty, they sometimes enter a reservation or reservations in respect of certain commitments, pursuant to which they attempt to limit the application of those commitments; while the legality and therefore effectiveness of such reservations is sometimes questionable, reservations must nevertheless be checked. Furthermore, obligations, and sometimes the mechanism for implementing a treaty, can be set out in optional protocols to a treaty, which are essentially additions to a treaty that are made by subsequent agreement; generally, though, even though a State may be a party to the original treaty, such optional protocols only apply where the State has also ratified them.

With respect to the standards themselves, in addition to the right to education, from which all children, including ITM children, benefit, ITM children also benefit from the evolving international standards on the education of minority children and from the more specific international standards on the education of indigenous and tribal children, which are also evolving. We shall be considering the extent to which basic rights to education and these other evolving international standards include a right to education in one's own language. It is also important to consider the potential impact of equality rights, particularly in the context of education rights of general application, and this issue will be considered as part of our discussion of the right to education with which we begin this chapter. Finally, we shall conclude the chapter with a consideration of other international standards which, while they do not directly address the education of ITM children, are standards whose performance by states would, we shall argue, be greatly enhanced through the observance by states of the various education rights discussed in this chapter and more generally through the implementation of the sorts of education for ITM children that are advocated in this book.

2.2. The Right to Education

The ***right to education*** was referred to in Article 26 of the **Universal Declaration of Human Rights** (the «Universal Declaration») (http://www.un.org/en/documents/udhr/), adopted on 10 December 1948 by the United Nations General Assembly: although the Universal Declaration is not a treaty and, like other General Assembly declarations, not strictly binding, it is nonetheless a fundamentally important international instrument. Paragraph 1 of Article 26 guarantees the right of everyone to education. Paragraph 2 provides that such education «shall be directed to the full development of the human personality», and «shall promote understanding,

tolerance and friendship among all nations, racial and religious groups». Interestingly, paragraph 3 of Article 26 states that parents have a «prior right to choose the kind of education that shall be given to their children».

Like other provisions of the Universal Declaration, the right to education was given a binding legal basis in one of the two major United Nations human rights treaties of 1966:[8] it is set out in Article 13 of the **International Covenant on Economic, Social and Cultural Rights** (the «ICESCR») (http://www2.ohchr.org/english/law/cescr.htm). While Article 13 echoes many parts of Article 26 of the Universal Declaration, it also differs in important respects. Paragraph 1 recognises the right of everyone to education; like Article 26 of the Universal Declaration, it also states that such education shall be directed to the full development of the human personality,[9] but also adds a reference to the sense of the dignity of the human personality. Like Article 26 of the Universal Declaration, paragraph 1 makes reference to the role of education in promoting understanding, tolerance and friendship amongst not only nations, racial or religious groups[10]– the groups referred to in paragraph 2 of Article 26 of the Universal Declaration – but adds reference to «ethnic groups» as well. While it is surprising that there is no separate reference to linguistic groups (as many human rights treaties do make such a reference), given the recognised close relationship between language and ethnicity, it is unlikely that the omission of linguistic groups would disentitle such groups to the protection of this provision. Furthermore, paragraph 1 goes beyond Article 26 of the Universal Declaration by noting that education shall also «enable all persons to participate effectively in a free society». However, paragraph 3 of Article 13 of the ICESCR arguably narrows the reference in paragraph 3 of Article 26 of the Universal Declaration to the rights of parents to choose the kind of education that is given to their children. It provides that States should respect the liberty of parents (and where applicable, legal guardians) to ensure that «the religious and moral education of their children» is in conformity with their own convictions; furthermore, the way in which parents (or guardians) actualize this liberty is through the choice of schools other than those established by the public authorities. In other words, the paragraph protects the right of parents to send their children to non-state (and therefore presumably non-state-funded) schools to ensure that children receive «religious and moral» education which conforms to parents' wishes; the paragraph does not appear to guarantee such conformity within the public school system itself.

Of perhaps even greater importance than Article 13 of the ICESCR are the provisions on education in the United Nations' **Convention on the Rights of the Child** of 1989 (the «CRC»), the other major UN treaty which makes reference to the right to education: after all, the CRC is the most widely ratified of all the UN human rights treaties.[11] The basic right to education is set out in Article 28, paragraph 1, in which the States parties to the CRC recognise the right of the child to education. The paragraph also provides that with a view to achieving this right «progressively and *on the basis of equal opportunity*», States will take a range of steps, including, in subparagraph (e), measures to encourage regular attendance at schools and the reduction of drop-out rates. Article 29 of the CRC expands on the basic right to education set out in Article 28 by stipulating that the education of the child must be directed at a number of aims. Some of these echo the provisions of Article 26 of the Universal Declaration and Article 13 of the ICESCR: for example, subparagraph (a) stipulates that education shall be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential, and subparagraph (d) provides that education shall be directed to the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of the sexes (a reference not found in the other instruments), and friendship among all peoples, ethnic, national and religious groups *and persons of indigenous origin* (also a reference not found in the other instruments, and a very significant one for our purposes). Article 29 goes beyond Article 26 of the Universal Declaration and Article 13 of the ICESCR in important respects, however: in addition to providing in subparagraph (b) that education shall be directed to the development of respect for human rights and fundamental freedoms, subparagraph (d) stipulates that education should be directed to the development of respect for the child's parents, *his or her own cultural identity, language and values*, as well as 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. Furthermore, Article 30 makes specific reference to minority and indigenous children; drawing considerably on Article 27 of the 1966 United Nations' **International Covenant on Civil and Political Rights** (the «ICCPR») – the famous «minorities» provision of that fundamentally important treaty – Article 30 provides as follows:

> *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 own group, to enjoy his or her own culture, to profess and practice his or her own religion,* ***or to use his or her own language.***[12] (emphasis added)

It is important to note that the right to education is also recognized in a number of important regional human rights treaties. For example, Article 2 of the First Optional Protocol of 1952 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 the «ECHR») (http://conventions.coe.int/treaty/en/Treaties/Html/005.htm) provides that no person shall be denied the right to education, and that the State shall respect the right of parents to ensure that such education and teaching is in conformity with their own religious and philosophical convictions. The right to education is enumerated even more tersely than this in Article 17 of the **African Charter on Human and Peoples' Rights** of 1981 (the «African Charter») (http://www.hrcr.org/docs/Banjul/afrhr.html), paragraph 1 of which says simply that every individual shall have the right to education. In an African context, this basic right is expanded upon, though, in Article 11 of the **African Charter on the Rights and Welfare of the Child** of 1990 (available at: http://www.africa-union.org/child/home.htm), which is generally similar to Article 13 of the ICESCR.[13] So, too, is Article 13 of the **Additional Protocol to the American Convention on Human Rights**[14] in the area of economic, social and cultural rights of 1989 (http://www.oas.org/juridico/English/treaties/a-52.html).

What is noticeable from the foregoing is that no direct reference is made in any of these provisions to a right to education in or through the medium of any particular language or, specifically, to education in or through the medium of the mother tongue of the child. This issue was considered in an early and very important case under the ECHR. In the 1968 *Belgian Linguistic Case*,[15] 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 this right to education did not include a right to be taught in the language of parents' choice. Significantly, given the reference in Article 2 of the First Optional Protocol to the ECHR to the requirement that the State must respect the right of parents to ensure that education was in conformity with their own religious and philosophical convictions, the court also ruled that such convictions did not extend to a choice of language of instruction. The position may, however, be changing. Take, for example, the European Court of Human Rights' decision in the *Cyprus v. Turkey*[16] 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 (in keeping with the earlier case law) that, as it was possible for the children to continue their education at a Turkish- (or an English-) language school, there was «in the strict sense» no denial of the right to education, also noting that this right does not specify the language in which education must be conducted (para. 277). Nevertheless, the court went on to note that such options were «unrealistic in view of the fact that the children in question have already received their primary education in a Greek-Cypriot school», and that in these circumstances, the failure of the authorities to make continuing provision for Greek-medium education at the secondary-school level must be considered in effect to be a denial of the substance of the right to education (para. 278).

It is difficult to know how this case will be interpreted and applied in the future, and it is possible that it could be interpreted narrowly and

applied only in situations where the facts are identical or highly similar to those in this particular case. However, we suggest that this would be an inappropriately narrow reading of the case. In particular, it seems likely that the European Court of Human Rights was influenced by the linguistic realities: children with relatively limited command, due to the home environment and any previous schooling that they had received, of the Turkish language. It is surely this reality that led the court to the conclusion that the failure to provide education through the medium of Greek would effectively amount to a denial of the right to education itself. We would argue that the case can and should be interpreted with this in mind, with the result that where children with limited linguistic skills in a particular language are subject to education through the medium of that language, this should be considered to be a denial of the substance of the right to education. We are strengthened in this view by the decision of the United States Supreme Court in a very important case involving the provision of education only through the medium of English to about 1,800 children of Chinese ancestry or origin who effectively spoke no English. The case, *Lau v. Nichols*,[17] is relevant to the question of the interaction of the right to education and the principle of non-discrimination, and shall be discussed below in that context. However, the Supreme Court noted the following about such educational practices:

> *Basic English skills are at the very core of what these public schools teach. Imposition of a requirement that, before a child can effectively participate in the educational program, he must already have acquired those basic skills is to make a mockery of public education. We know that those who do not understand English are certain to find their classroom experiences wholly uncomprehensible and in no way meaningful.*

The case did not involve a consideration of a right to education, but the conclusion that the education here was «incomprehensible» to the students and therefore «in no way meaningful» is clearly suggestive of a complete frustration of any right to education which may have existed.

We have documented in this book, especially in Section 4.4., that submersion education can be and often is, in fact, «incomprehensible» to ITM children who are subjected to it and is «in no way meaningful» to them; indeed, we would add that it is now clear, based on the evidence we have presented in this book, that such education is downright harmful to ITM children who are subjected to it (see, e.g., Examples 5, 6, 8, 9, 10, 11, 14, 15, 32, 43). We would argue that, while the basic right to education as set out in the instruments we have just discussed may make no specific reference to MTM education, in the context of the actual effects of the failure to provide such education to children who are insufficiently familiar with the dominant language of the school, such failure would, under a proper contemporary interpretation of the right to education, constitute a violation of the substance of that right. While the right, interpreted in this way, may not be capable of being read as a right to MTM education throughout the educational process, it would, we suggest, require MTM education at least until students become sufficiently fluent also in the academic and not only in the conversational aspects of the dominant language of the school system (see BICS and CALP, notes 65 and 83) so that they are able to benefit equally from education in such language as children fluent in that language.

There are other aspects of the right to education, as set out in the various UN instruments (and in many of the regional ones) referred to above which are relevant to this discussion. As we have seen, a common feature of the UN instruments which create a right to education is the requirement that such education be directed to the full development of the human personality and the sense of its dignity (see Art. 13, para. 1, of the ICESCR), or, in the terms of the relevant CRC provision, to the development of the child's personality, talents and mental and physical abilities to their fullest potential (Art. 29, subpara. 1(a)). Based on the evidence set out in this book with regard to the wide range of seriously harmful consequences of various forms of submersion education for such development, with resulting impact on employment prospects, mental and physical health, and life chances generally, we submit that such forms of submersion education are completely inconsistent with this aspect of the right to education. Further, given the significant evidence that we present in this book about the very important contribution that MTM

education for ITM children makes to their cognitive, emotional (including identity-related), academic and social development, we are of the view that MTM education, and particularly in the early years of education, is absolutely essential to the *full* development of ITM children. Therefore, we are of the view that not only is it implicitly required by the basic right to education, but that only MTM education, at least in primary school, is consistent with the relevant treaty provisions. This is 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 as effectively in society.

The right to education in the UN instruments and in many of the regional instruments referred to above also require that education be directed to the preparation of the child for responsible life in a free society. In the terms of the CRC, it requires that such education be in the spirit of understanding, peace, tolerance, and friendship among all peoples, ethnic, national and religious groups *and persons of indigenous origin*. While we do not suggest that MTM education is implied by this, we would, however, suggest that MTM education would be consistent with and, indeed, would promote these goals: the ability of an education system to respond to the particular needs of a segment of the population constitutes a profound message about the importance of diversity and the tolerance of diversity in society.

Finally, there are certain provisions of the CRC that are of particular importance: once again, we would emphasise the wide scope of these binding obligations, as virtually every State in the international community have ratified this treaty.[18] As already noted, Article 28, subparagraph 1(e) requires States parties to take measures to encourage regular attendance at schools and the reduction of drop-out rates. We know, as is discussed elsewhere in this book, that the effects of enforced dominant language medium educational policies, and particularly submersion education, tend to result not only in considerably poorer performance results but also higher levels of non-completion, and so forth (see, e.g. Examples 6, 8, 9, 11, 22). Thus, the pursuit of such policies would, in our view, clearly frustrate and arguably violate Article 28, subparagraph 1(e). As also noted above, Article 29, subparagraph 1(c) of the CRC provides that 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*», among other things. It seems obvious that an education in a language other than the child's mother tongue (or, if absolutely necessary, another extremely well known language) which contains no recognition of that mother tongue is highly unlikely to contribute to respect for the child's own cultural identity, language and values. Given that such forms of education are clearly premised upon the superiority of the dominant language and culture and are intended to convince or have the effect of convincing ITM children of this, we would argue that such education violates the provisions of Article 29, subparagraph 1(c). Indeed, we would suggest that only MTM education can adequately ensure the development of the respect that is required by those provisions.

We have also discussed Article 30 of the CRC, which 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 practice his or her own religion, or to use his or her own language.» As already noted, this provision echoes Article 27 of the ICCPR. The precise implications of both provisions in respect of MTM education are, however, not clear. The Human Rights Committee, the treaty body created under the ICCPR, has, however, noted in its General Comment No. 23 (1994) on Article 27 (http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/fb7fb12c2fb8bb21c12563ed004df111?Opendocument) 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 in the context of education those measures are, or whether they would include measures relating to MTM education (it should also be noted that, in a similar fashion, the US Supreme Court in *Lau v. Nichols* did not spell out specific measures).

In addition to treaty provisions and associated case law, it is also important to consider views expressed by bodies created under the various treaties considered here, and views of prominent officials of international organisations such as the

UN under whose auspices such treaties have been created. Although such views do not, strictly speaking, have binding legal force and effect, they are highly significant indications of how treaty provisions should be interpreted. An important example is the work of Dr. Katarina Tomaševski[19], the former UN Special Rapporteur on the Right to Education. She has illustrated how the State obligations in Article 13, paragraph 1 of the ICESCR and in Article 28, paragraph 1 of the CRC contain four elements, namely *availability, accessibility, acceptability and adaptability*.[20] 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» (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 the concept of «*Acceptability*» (2001, paras. 12-15, and 29-30), where respect for the parents' choice of language of instruction is seen as similar to respect of parents' religious convictions in education. Although, as we have seen, parents' rights to statefinanced education in a language of their choice was denied in the *Belgian Linguistic Case*, she has noted elsewhere (http://www.right-to-education.org/sites/r2e.gn.apc.org/files/B6g%20Primer.pdf, p. 29) that the court does indicate that State regulation of education may vary in time and place according to the needs and resources of the community and of individuals; likewise, the affirmed right of minorities to establish, manage and control their own schools in minority languages at their own expense is mentioned (2001, para. 30).

In our view, language of instruction belongs mainly under the concept of «*Accessibility*», where one of the points is «identification and elimination of discriminatory denials of access»[21] (again, we shall return to the relationship between the principle of non-discrimination and the right to education below). Barriers to «access» can be interpreted as **physical** (e.g. distance to school); **financial** (e.g. school fees - not even primary education is free in 91 countries (Tomaševski (2004), 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 (Tomaševski, 2004, para. 4b), or school schedules (Tomaševski, 2001, para. 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.[22] 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—that is, 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**.

With regard to opinions expressed by treaty bodies, the **Committee on the Rights of the Child** held at their 34th Session (15 September - 3 October 2003) a Day of General Discussion on the Rights of Indigenous Children. Their Recommendations on Education provide «that States parties ensure access for indigenous children to appropriate and high quality education» (See E/C.19/2004/5/Add.11, Annex, p. 10). 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[23];*
>
> *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.*

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 book, this is a necessary prerequisite for high levels of bilingualism and for preparing the children for higher education. 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), Article 4, paragraph 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).

Finally, we would make reference to the extremely important recent General Comment of the treaty body established under the CRC, the Committee on the Rights of the Child, with regard to Indigenous children and their rights under the CRC.[24] As a general matter, the Committee noted that the specific references to indigenous children in the CRC[25] «are indicative of the recognition that they require special measures in order to fully enjoy their rights» (para. 5). By this, it is clear that the Committee means special measures of support which address the particular needs of indigenous children, a point they make explicitly later in the General Comment: «The Committee considers that special measures through legislation and policies for the protection of indigenous children should be undertaken in consultation with the communities concerned and with the participation of children in the consultation process» (para. 20; such consultation is, as the Committee noted, required by Art. 12 of the CRC). The Committee noted the importance of the fundamental principle under the CRC that any measures taken should be in the best interests of the child, and highlighted that the «application of the principle of the best interests of the child to indigenous children requires particular attention»:

> *The Committee notes that the best interests of the child is conceived both as a collective and individual right, and that the application of this right to indigenous children as a group requires consideration of how the right relates to collective cultural rights. Indigenous children have not always received the distinct consideration they deserve . . . .* (para. 30)

> *When State authorities including legislative bodies seek to assess the best interests of an indigenous child, they should consider the cultural rights of the indigenous child and his or her need to exercise such rights collectively with members of their group. As regards legislation, policies and programmes that affect indigenous children in general, the indigenous community should be consulted and given an opportunity to participate in the process on how the best interests of indigenous children in general can be decided in a culturally sensitive way. Such consultations should, to the extent possible, include meaningful participation of indigenous children* (para. 31)

The emphasis placed on meaningful consultation (it is further emphasised at paras. 37-39) is, as we shall see below, entirely in keeping with the developing international law on minorities and indigenous and tribal peoples, which also increasingly emphasizes the importance of such participation. It is important to note that very frequently, indigenous peoples and indigenous children have been, and often continue to be, totally excluded from deliberations as to the type of education that indigenous children should receive.

The Committee devoted an entire section to the education of indigenous children. The Committee noted that the education of indigenous children contributes both to their individual and community development as well as to their participation in the wider society, concluding that «the implementation of the right to education of indigenous children is an essential means of achieving individual empowerment and self-determination of indigenous peoples» (para. 57).

The Committee noted that education is, contrary to the CRC, commonly *not* available to indigenous children on the basis of equal opportunity (something that we also showed in our discussion of «access» in our 2005 Expert paper, Magga et al.):

> *. . . in practice, indigenous children are less likely to be enrolled in school and continue to have higher drop out and illiteracy rates than non-indigenous children. Most indigenous children have reduced access to education due to a variety of factors including insufficient educational facilities and teachers, direct or indirect costs for education as well as a lack of culturally adjusted and bilingual curricula in accordance with Article 30.* (para. 59)

This clearly implies that the Committee is of the view that culturally adjusted and, in particular, bilingual curricula (presumably MTM as well as the dominant language) are required under the CRC. With regard to protecting children from all forms of discrimination, something required under Article 2 of the CRC, the Committee said the following:

> *In order to effectively implement this obligation, States parties should ensure that the curricula, educational materials and history text books provide a fair, accurate and informative portrayal of the societies and cultures of indigenous peoples. Discriminatory practices, such as restrictions on the use cultural and traditional dress* ***(sic)****, should be avoided in the school setting.* (para. 58)

The Committee made oblique reference to the use of residential schools:

> *States parties should ensure that school facilities are easily accessible where indigenous children live. . . . States parties should only establish boarding schools away from indigenous communities when necessary as this may be a disincentive for the enrolment of indigenous children, especially girls. Boarding schools should comply with culturally sensitive standards and be monitored on a regular basis. Attempts should also be made to ensure that indigenous children living outside their communities have access to education in a manner which respects their culture, language and traditions.* (para. 61)

Finally, with regard to the language of instruction, the Committee could hardly have been more clear and categorical:

> *Article 30 of the [CRC] establishes the right of the indigenous child to use his or her own language.* ***In order to implement this right, education in the child's own language is essential.*** *Article 28 of the ILO Convention No. 169 [discussed further, below] affirms that indigenous children shall be taught to read and write in their own language beside being accorded the opportunity to attain fluency in the official languages of the country.* ***Bilingual and inter-cultural curricula are important criteria for the education of indigenous children.*** *Teachers of indigenous children should to the extent possible be recruited from within indigenous communities and given adequate support and training.* (para. 62)

It is therefore clear that MTM education is viewed by the Committee on the Rights of the Child as being essential and required under the CRC; as noted, given that the CRC is the single most widely-ratified human rights treaty, and therefore arguably the single most important source of binding legal obligations in respect of education, General Comment No. 11 represents a huge step forward.

To summarise, reference can again 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» (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 outlined in Section 4.1 of this book how 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 achieve the four goals for good education outlined in this

part of this chapter. In addition, they also violate the parents' right to intergenerational transmission of their values, including their languages (see, e.g. Examples 6, 7, 14, 15, 16, 17, 18, 21). In Tomaševski's view (2004, para. 5), the impact of a rights-based education should be «assessed by the contribution it makes to the enjoyment of all human rights». «International human rights law demands substitution of the previous requirement upon children to adapt themselves to whatever education was available by adapting education to the best interests of each child» (2004, para. 54). The right to use one's own language is made impossible if the children lose it during the educational process.

2.3. Interaction of the Right to Education and the Principle of Non-Discrimination

The prohibition of discrimination based on a range of grounds, including language and ethnicity, is a fundamental principle of international human rights law and, unsurprisingly, it finds expression in virtually all of the instruments referred to in the previous and subsequent sections of this chapter.[26] In addition to the prohibition of discrimination, many international human rights instruments guarantee the related principle of equality before the law and equal protection of the law.[27] Indeed, the principle of non-discrimination is so fundamental that it is considered to be *jus cogens*, or a peremptory norm of international law, meaning a rule which is so widely accepted that it forms part of customary international law (and therefore has legally binding force even if a State has signed no treaty which recognizes it) and which cannot be set aside.[28] Thus, it is also important to consider the interaction of the basic right to education together with the principle of non-discrimination.

Research on educational performance described elsewhere in this book, especially in Chapter 4, indicates that ITM children 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. Such research has also demonstrated that they suffer from higher levels of push-out rates, and so forth (see, e.g., Examples 6, 8, 9). There would therefore appear to a be a strong—indeed, an almost irrefutable—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, that this distinction is based on language, and therefore that such educational practices constitute discrimination both in respect of access to education and in respect of the equal protection of the law.

In this regard, the case of *Lau v. Nichols*,[29] referred to earlier, is illustrative. As noted, 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 paragraph 601 of the *Civil Rights Act* of 1964, which banned discrimination based «on the ground of race, color, or national origin» in any program or activity, such as the system of public education run by the City of San Francisco, which received US Federal financial assistance. Mr. Justice Douglas, who delivered the opinion of the US Supreme Court, noted 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 fore-closed from any meaningful education» (p. 566) and concluded that «[i]t seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from the [City of San Francisco's] school system, which denies them a meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned [by the law]» (p. 568). 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 to which they are entitled. While the court did not specify the precise nature of the remedy which should be put in place, they did make clear that the City of San Francisco had to take steps to ensure that the children in question were put in a position to enjoy education on the same basis and with the same effectiveness as for English-speaking students. It is important to note that a similar approach has recently been mandated by the Committee on the Rights of the Child in its General Comment 11 (2009):

The Committee, through its extensive review of

> *State party reports, notes that indigenous children are among those children who require positive measures in order to eliminate conditions that cause discrimination and to ensure their enjoyment of the rights of the Convention on equal level with other children. In particular, States parties are urged to consider the application of special measures in order to ensure that indigenous children have access to culturally appropriate services in the areas of health, nutrition,* ***education****, recreation and sports, social services, housing, sanitation and juvenile justice.* (para. 25) (emphasis added)

Finally, we would note the very important recent decision of the European Court of Human Rights in *Case of D.H. and Others v. The Czech Republic*,[30] the so-called «Ostrava Case» of 2007. The case involved the widespread practice in the Czech Republic of placing disproportionately high numbers of Roma children in «special schools» for children with «mental deficiencies» who were therefore adjudged unable to attend «ordinary» primary schools.[31] The court found that where, as here, domestic legislation produces such a discriminatory effect, it constitutes indirect discrimination, regardless of whether there was any intention on the part of the State to discriminate (para. 194). The court found that this discriminatory treatment had no objective or reasonable justification: the State relied on the fact that students were placed in such schools on the basis of aptitude tests, but the court found that these were biased in their application to the Roma children (paras. 200-1), and the court also rejected that the placing of Roma children in such schools was justifiable because Roma parents had consented, noting that the parents, who were members of a disadvantaged community and themselves often poorly educated, were not capable of weighing up all the aspects of the situation and the consequences of giving their assent (paras. 202-4). Crucially, the court found that the education provided in such schools was inferior to that provided in «ordinary» schools, and had the effect of significantly reducing children's life chances:

> *. . . as a result of the arrangements the applicants were placed in schools for children with mental disabilities where a more basic curriculum was followed than in ordinary schools and where they were isolated from pupils from the wider population. As a result, they received an education which compounded their difficulties and compromised their subsequent personal development instead of tackling their real problems or helping them to integrate into the ordinary schools and develop skills that would facilitate life among the majority population. Indeed, the Government have implicitly admitted that job opportunities are more limited for pupils from special schools.* (para. 207)

The Ostrava case makes clear that the effective segregation of children into schools which provide different and inferior quality education to one group of children is discriminatory. In our view, the principle in the Ostrava case would clearly be applicable to residential schools. However, we believe that the principle in this case goes well beyond the residential school context. It was not simply segregation of the Roma children which the European Court of Human Rights found offensive in the Ostrava case, but the fact that the Roma children were being placed in form of education that was inferior, not based on their special needs, and which limited their life chances (see, e.g., Examples 8, 10, 11, 14, 34, 35, 36, 37, Section 5.1, for other examples). As we have shown in Chapters 4 and 8 in this book, submersion education has precisely these same effects, and we would therefore submit that such forms of education are inherently discriminatory, and are prohibited under the principle of non-discrimination. We do not suggest that this principle necessarily guarantees indigenous, tribal and minority children a right to education through the medium of their own language throughout their primary and secondary education, although we would suggest that, based on maximising student outcomes, such education would, based on the growing evidence from the field of education that we discuss in this book, be appropriate. We do suggest, however, and again based on the educational evidence set out in this book, that MTM education in the early school years, followed by the gradual introduction of the dominant language, is not only the best but is perhaps the only way of ensuring that ITM children will be placed on the same footing in terms of educational opportunities as children from the dominant language community. We suggest, therefore, that the principle of non-

discrimination at very least requires such an approach to education, and that the failure to provide such education is a fundamental violation of the *jus cogens* prohibition on discrimination.

2.4. Instruments and Provisions Specifically Directed at Minorities and Indigenous and Tribal Peoples

In addition to the right to education, many minorities and indigenous peoples will benefit from additional education rights created in a range of minority- and indigenous peoples-specific international instruments. It is important to recognise that indigenous and tribal peoples benefit from provisions directed at minorities as well as those which are specifically directed at them.[32] It should also be noted, however, that many of the most important minority-specific instruments have been developed in a European context with application primarily to European states, with the result that they would benefit only the relatively small number of indigenous peoples present in such States.

The most important of the indigenous and tribal peoples-specific instruments, ILO Convention No. 169 (referred to at the start of this chapter) and the United Nations' General Assembly **Declaration on the Rights of Indigenous Peoples** («UNDRIP») of 7 September, 2007, are both global in scope, but both suffer from certain limitations. ILO Convention No. 169, as a treaty, creates binding legal obligations for those States which ratify it, but thus far, only twenty states have done so[33]. While the UNDRIP received very broad support within the UN General Assembly, such support was not universal.[34] In any case, as a General Assembly declaration, it does not, strictly speaking, create binding legal obligations.

With regard to education provisions in minority-specific 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,[35] the 1995 **Framework Convention for the Protection of National Minorities** (the «Framework Convention»), and the **European Charter for Regional or Minority Languages** (the «Minority Languages Charter»), both of which came into force in 1998. Article 5 of the Framework Convention sets out some important general obligations with respect to the treatment of minorities. Paragraph 1 of that article provides that the Parties to the treaty will promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve essential elements of their identity, including their religion, language, traditions and cultural heritage. Paragraph 2 of Article 5 requires that Parties refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will. There are a number of provisions in the Framework Convention which relate to education of persons belonging to national minorities. For example, paragraph 1 of Article 12 provides that Parties must take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities. Paragraph 2 of that article provides that in the context of such education and research, Parties shall provide adequate opportunities for teacher training and access to textbooks. Article 13 of the Framework Convention provides that Parties shall recognise that persons belonging to national minorities have the right to set up and to manage their own private educational and training establishments, although paragraph 2 of the article makes clear that the exercise of this right does not entail any financial obligations for the State. Perhaps the most significant provision in the Framework Convention is Article 14. Under paragraph 1 of this article, States Parties recognise that every person belonging to a national minority has the right to learn his or her minority language. Paragraph 2 goes even further, and requires States Parties to «endeavour to ensure» that persons belonging to national minorities shall have adequate opportunities for being taught their minority language (i.e. as a subject) or for receiving instruction in this language (i.e. with the language being the medium of instruction). This obligation is, however, hedged with conditions: it only applies in those areas of the State inhabited by persons belonging to national minorities «traditionally or in substantial numbers», and only to the extent that there is «sufficient demand» for such education. While Article 14, paragraph 2 contains a very important recognition of the importance of the mother tongue in the education of minority children, such conditionality is most unfortunate, as the flexibility which it introduces can be misused.

The Minority Languages Charter protects «regional or minority languages», which are defined in Article 1 as languages traditionally used within a given territory of a State by nationals of the State who form a group numerically smaller than the rest of the State's population. A regional or minority language must be different from the official language or languages of the State,[36] and cannot include either a dialect of the official language or languages or a language of migrants. Part II of the Minority Languages Charter contains a number of general provisions which apply in respect of all of the regional or minority languages of a State which ratifies the treaty. Among the most important of these, for our purposes, are a number of subparagraphs set out in paragraph 1, which requires that Parties to the treaty must base their policies, legislation and practice on a number of principles, including: the recognition of regional or minority languages as an expression of cultural wealth (subparagraph 1 a); the need for resolute action to promote such languages in order to safeguard them (subparagraph 1 c); the facilitating and/or encouragement of the use of these languages, in speech and in writing, in public and in private life (subparagraph 1 d); and most significantly for the purposes of this chapter, the provision of appropriate forms and means for the teaching and study of regional or minority languages at all appropriate levels (subparagraph 1 f) and the promotion of study and research on these languages at university or equivalent institutions (subparagraph 1 h). Of even greater potential importance is Article 8, which provides for a range of measures which States which have ratified the Minority Languages Charter may be required to take (should they opt under the treaty to accept these obligations)[37] in respect of education. The obligations range from the teaching of the regional or minority language as a subject in the curriculum, to teaching the curriculum through the medium of that language, and range from such obligations at the pre-school through the primary, secondary and tertiary levels (as well as the provision of adult and continuing education courses). The obligations often only apply, however, in respect of certain territories within the State, and not throughout the State as a whole. These territories are generally those in which there are sufficient numbers of users of the language to justify the measures in question (Article 1, para. b).

Other very influential non-treaty standards have been developed 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 of the CSCE** (the «Copenhagen Document») (http://www.osce.org/documents/odihr/1990/06/13992_en.pdf),[38] which in many respects inspired the Framework Convention. Like Article 13 of the Framework Convention, Article (32.2) of the Copenhagen Document provides that persons belonging to national minorities have the right to establish and maintain their own educational institutions, although as under Article 13 of the Framework Convention, the State is under no obligation to provide any financial or other support. Like Article 14, paragraph 2 of the Framework Convention, Article (34) of the Copenhagen Document obliges States to endeavour to ensure that persons belonging to national minorities have «adequate opportunities» for instruction of their mother tongue or in their mother tongue. These obligations do not, strictly speaking, create binding legal obligations, but they do represent very significant non-binding commitments of the states which are members of the OSCE.[39] Influential, though also non-legally binding, 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/documents/hcnm/1996/ 10/2700_en.pdf). In this document, MTM education is recommended at all levels, including secondary education, and this includes bilingual teachers in the dominant language as a second language (Art. 11-13). In its Explanatory Note, the following comment is made about subtractive education:

> *[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* (para. 5)

Once again, as all of these OSCE standards apply mainly in Europe (loosely defined), they are of limited relevance for those indigenous peoples who reside elsewhere.

One important minority-specific instrument which has a global rather than a European scope is the 1992 United Nations' General Assembly **Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities** (the «UNGA Minorities Declaration») (http://www2.ohchr.org/english/law/minorities.htm), although it does not, strictly speaking, create legally binding obligations. As a statement of general policy, Article 1, paragraph 1 requires States to protect the existence and the identity, including the linguistic identity of minorities, and also requires States to encourage conditions for the *promotion* of such identity. We believe that the evidence presented in this book makes clear the fundamentally important contribution that MTM education makes to the protection and promotion of minority and indigenous linguistic identity. Furthermore, the evidence presented in this book makes clear that submersion education is wholly incompatible with this obligation. Article 4, paragraph 2 is also relevant: it provides that States must take measures to create favourable conditions to enable persons to develop their culture, *language*, religion, traditions and customs. Again, based on the mass of evidence we have presented in this book, we would argue that submersion education creates conditions which are highly *unfavourable* to the expression of minority (and indigenous) characteristics and to the development of their language and culture, and therefore clearly violates Article 4, paragraph 2. We would also argue that of all possible forms of education for minority and indigenous children, only mother tongue medium education could be said «to create favourable conditions» for the expression of characteristics and the development of language and culture. However, the UNGA Minorities Declaration itself specifically addresses education issues in paragraphs 3 and 4 of Article 4. Paragraph 3 provides that 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 meaning of the UNGA Minorities Declaration has been clarified in a Commentary prepared by Asbjørn Eide, the former Chairperson of the UN Working Group on Minorities (Eide, 2001). Eide suggests that the steps required under this paragraph depend on a number of factors, including the size of the minority group and whether it lives compactly together or is dispersed throught the country; he also suggests that whether the minority is a long-established one or a «new minority composed of recent immigrants» is also relevant (para. 60). Where the language of the minority is a «territorial language traditionally spoken and used by many in a region of the country» – this would clearly be the case for the languages of many indigenous and tribal peoples – Eide suggests that States should «to the maximum of their available resources ensure that linguistic identity can be preserved» and that pre-school and primary school education should ideally in such cases be in the child's own language (i.e. the minority language spoken at home). He notes that persons belonging to minorities have «a duty to integrate into the wider national society», and therefore have to learn the official language or languages; however, that language should only gradually be introduced into the curriculum in stages (para. 61). Even where the minority language is not associated with a particular territory and its speakers are not concentrated in particular places, children who are members of the minority should, according to Eide, «always have an opportunity to learn their mother tongue» (para. 63). Finally, paragraph 4 of Article 4 of the UNGA Minorities Declaration provides that States should also take measures in the field of education to encourage knowledge of the history, traditions, *language*, and culture of minorities existing within their territory.

With respect to international standards which are specific to indigenous and tribal peoples, as noted, ILO Convention No. 169 and the UNDRIP are the two most important. ILO Convention No. 169 specifically addresses the education of indigenous and tribal peoples in Part VI (Articles 26 to 31). Article 26 sets out what is, in effect, a non-discrimination provision: it requires States which are party to the treaty to ensure that members of indigenous and tribal peoples have the opportunity to acquire education at all levels «on at least an equal footing with the rest of the national community». Article 29 sets out the overall aim of education for children belonging to indigenous and tribal peoples. It speaks of the imparting of general knowledge and skills. It again makes reference to the principle of non-discrimination – it refers to «full» participation and participation «on an equal footing» of such children. Finally, it makes clear that such partici-

pation should be both in their own communities and within the national community. As is clear from our discussion in Chapters 4 and 8, and as noted earlier in this chapter, submersion education in all its forms is completely incompatible with both Article 26 and Article 29, as it ensures that indigenous and tribal children are significantly disadvantaged as compared to other children and ensures that their participation in both their own communities and within the national community is neither «full» nor «on an equal footing» (see, e.g., examples 6, 8, 14, 15, 16, 17, 21). Indeed, as is clear in our discussion in this book, only significant MTM education, particularly in the early years, will guarantee the satisfaction of both these articles.

However, ILO Convention No. 169 contains even more explicit references to the sort of linguistic education indigenous and tribal children should receive. Article 28, paragraph 1 provides that indigenous and tribal children must 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. Where this is not immediately possible, the paragraph provides that the authorities of the State must consult with the indigenous and tribal peoples «with a view to the adoption of measures to achieve this objective». Article 29, paragraph 2 provides that adequate measures must be taken by the State to ensure that indigenous and tribal children also have «the opportunity to attain fluency in the national language or in one of the official languages» of the State; as noted in Chapters 4 and 8, one of the perverse effects of submersion education is that it tends to ensure that children who suffer it will generally be effectively *denied* the opportunity to obtain at least cognitive but sometimes even conversational fluency in the national or official language, because such education has a very poor track record of delivering such fluency (see, e.g., Examples 6, 9, 10, 21, 22, 32). Once again, the educational research discussed in this book makes clear that MTM education, particularly in the early school years, followed by the gradual introduction of the national or official language in the curriculum, is the best way to ensure fluency in that other language (see, e.g. Examples 9, 10, 11, 22, 41, 42, 45), and therefore best ensures the satisfaction of Article 28, paragraph 2. Finally, paragraph 3 of Article 28 requires States to take measures to «preserve and promote the development and practice of the indigenous languages of the peoples concerned». Again, based on the now very substantial educational evidence, outlined in this book, submersion education is certain to frustrate the attainment of this article, and MTM education is most likely to ensure the opposite (see, e.g., Examples 8, 9, 14, 15, 17, 19, 20, 21, 22, 38, 41, 43, 45).

Finally, although Article 27 of ILO Convention No. 169 does not make any specific reference to the language of education of indigenous and tribal children, it does contain some other general principles which are of relevance to this discussion with respect to the general structure of such education. In particular, paragraph 1 requires that education programmes and services for indigenous and tribal peoples must be developed and implemented in co-operation with them «to address their special needs», and requires that such programmes and services «incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations».[40] Paragraph 2 contemplates the progressive devolution of control over education to indigenous and tribal peoples themselves: it provides that States must ensure the training of members of indigenous and tribal 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».[41] And paragraph 3 reiterates the right commonly recognised in the minorities-specific instruments, discussed above, of indigenous and tribal peoples to establish their own educational institutions and facilities; unlike the cognate provisions in the minorities-specific instruments, however, paragraph 3 of Article 27 requires States actually to provide «appropriate resources» for the purposes of allowing indigenous and tribal peoples to establish their own institutions and facilities.

With respect to the UNDRIP, it is important to recognise as a preliminary matter that, pursuant to Article 43, the rights set out in the declaration «constitute the minimum standards for the survival, dignity and well-being» of indigenous peoples. It is also important to note that the declaration contains a number of rights relating to physical and mental integrity.[42] As we document in this book, submersion education generally has very serious

harmful consequences for the mental health and integrity of children who have been subjected to it, and in many cases, has also had very serious harmful consequence for the physical health of those who have suffered it (see, e.g., Examples 5, 14, 15, 17, 19, 21, 23, 24, 25, 26, 27, 28, 29, 30, 34, 35). Thus, such forms of education strongly tend to violate these provisions of the UNDRIP. In this context, it is also important to note Article 8. Paragraph 1 of this article provides that indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture; as also documented in this book, not only submersion education but also any form of education that does not include a substantial amount of MTM education has profound assimilative effects and has demonstrably contributed to the destruction of the languages and associated cultures of indigenous peoples (see, e.g., Examples 2, 3, 8, 9, 13, 14, 15, 16, 17, 21, 23, 29, 30, 31, 32, 33, 38, 40). Paragraph 2 of Article 8 is notable in that in requires States to provide effective mechanisms not only for the prevention but also the *redress* for: any act which has the aim *or effect* of depriving indigenous peoples of their integrity as distinct peoples, or of their cultural values or ethnic identities (subparagraph (a)); any form of forced population transfer which has the aim *or effect* of violating or undermining any of their rights (subparagraph (c)); and, any form of forced assimilation or integration. As discussed in this book, submersion education tends always to have the effect of depriving (and is often intended to deprive) indigenous peoples of their integrity as people and of their cultural values and ethnic identities (see, e.g., Examples 6, 8, 13, 14, 15, 16, 17, 19, 20, 21, 24, 25, 39). More aggressive forms of submersion education, and in particular residential schools, must, as we have argued in this book, be viewed as a form of forced assimilation, and may arguably constitute a form of forced population transfer which at very least has the effect of undermining their rights.[43] As such, we suggest that under Article 8, paragraph 2, States are not only obliged to prevent the use of all forms of submersion education and in particular the use of residential schools, but they also are now obliged to provide redress for having employed such methods of education in the past. States should thus have full economic and other responsibility for all educational programmes for both children and adults where Indigenous and tribal peoples attempt to relearn and revitalise their languages (see Chapter 8, and, e.g. Bear Nicolas 2009 for Canada and McCarty 2009 for the USA).

With respect to the language of education, the single most important provision in the UNDRIP is Article 14. Paragraph 2 of this article is a non-discrimination provision of the sort we have explored elsewhere in this chapter: it provides that indigenous individuals, particularly children, have the right to all levels and forms of education of the State *without discrimination*. Paragraph 1 is also a right of the sort we have seen before, the right to establish own educational institutions. However, unlike most such provisions, it makes express reference both to language and indigenous pedagogical methodologies: it provides that indigenous peoples have the right to establish and control their educational systems and institutions *providing education in their own languages*, and in a manner appropriate to their cultural methods of teaching and learning (see the examples from Nepal and India in Chapter 8 for this). It is important to note that although Article 14, paragraph 1 does not make any reference to support from the State for such systems and institutions, Article 39 of the UNDRIP provides that indigenous peoples have the right to have access to financial and technical assistance from States for the enjoyment of *all the rights* set out in the declaration, which would obviously include Article 14. Perhaps the most important provision in Article 14, though, is paragraph 3, which requires States, in conjunction with indigenous peoples, to take effective measures in order for indigenous individuals, and particularly children, to have access to an education in their own culture *and provided in their own language*. This latter form of words clearly suggests an entitlement to education through the medium of the mother tongue, rather than simply the teaching of the mother tongue as a subject in the curriculum. It should also be noted that this right applies both to indigenous individuals and children living in their traditional communities and those living outside their communities; this is an important provision, as many indigenous individuals and children have effectively been forced to move from their traditional communities and into urban areas within the State.[44] MTM education for such individuals and children is nonetheless essential for their development, and is mandated as a right in Article 14, paragraph 3.

As in ILO Convention No. 169, the UNDRIP contains a number of provisions requiring participation by indigenous peoples in decision-making that affects them (see, for example, Art. 18), and consultation and cooperation with them in order to obtain their prior consent to the adoption and implementation of legislation or administrative measures which may affect them (see, for example, Art. 19). These provisions would also apply in the context of decision-making, legislation and administrative action relating to the education of indigenous individuals and children.

Finally, there are a number of provisions in the UNDRIP which do not make specific reference to education, or to education in or through the medium of the mother tongue of indigenous individuals or children, but whose accomplishment would nonetheless be facilitated, and arguably may actually require, such forms of education. One example is Article 13, paragraph 1 of which provides that indigenous peoples have the right to revitalise, use, develop and transmit to future generations their histories, *languages*, oral traditions, philosophies, and writing systems and literatures. Paragraph 2 of this article provides that States must take effective measures to ensure that this right is protected. While traditionally such information has been transmitted orally through both informal and formal community-based mechanisms, without question the school system now will have a major role to play, particularly where such older media and community institutions have been compromised or even destroyed by modernity and by State policy, including State educational policy. Schools not only support but are now important foci for not only the teaching and transmission of languages, but also of histories, oral traditions, literatures and so forth. In this context, it would seem essential that linguistically and culturally sensitive education is best delivered through the medium of the indigenous or tribal language. This is implicit in the provisions of Article 15, paragraph 1 of the declaration, which states that indigenous peoples have the right to dignity and diversity of their cultures, traditions, histories and aspirations (see, e.g., Examples 6, 8, 13, 14, 15, 17, 19, 20, 21, 25, 39, 40) which shall be appropriately reflected in *education* as well as in public information. It is also obvious from what we have presented in this book that submersion forms of education are quite incompatible with the accomplishment of Article 13. Another provision in the UNDRIP which would clearly seem to imply the need for linguistically and culturally sensitive education of the sort which can generally only be provided through education through the medium of the mother tongue is Article 31, paragraph 1 of which stipulates that indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions: all of these are generally manifested in the language of the people concerned, and tend to be lost when the language itself is not used or is lost (see Maffi, 1994).

What is significant about these various indigenous- and minorities-specific standards is that they all recognise explicitly to a greater or lesser degree the right of members of minorities and of indigneous and tribal peoples either to the teaching of their languages or to education through the medium of their languages. It is notable that these rights are not limited merely to the early years of education. The Hague Recommendations, for instance, provide that mainly MTM education continue also through secondary education. Nor are these rights conceived merely as a means of transition from education through the mother tongue to education through the dominant language (although in some cases, such as in ILO Convention No. 169, the instruments recognise that ITM children should have the opportunity to learn the dominant or official language (Art. 28, para. 2), and in all cases, this recognition is implicit). However, it is clear that the acquisition of that language through the education system should not be at the expense either of the mother tongue, in general, nor of the acquisition of the mother tongue at all stages in the educational system. The indigenous-specific standards are obviously of particular importance, and they are especially clear about the signficant obligations States bear to provide MTM education, as well as education that is culturally sensitive to indigenous and tribal children.

2.5. Instruments to Which Appropriate ITM Education Would Make a Significant Contribution

In the previous section of this chapter, we took the view that there were a number of provisions in the various minorities- and indigenous peoples-specific instruments, such as Articles 13 and 31

of the UNDRIP, which did not make any reference to education or to education in or through the medium of the mother tongue of indigenous and tribal children, but which nonetheless implied such forms of education, simply because it is, in our view, difficult to satisfy such provisions without such forms of education. In this final section, we consider a number of other international instruments which do not make specific reference to education or education in or through the medium of the mother tongue, but some of whose provisions could, in our view, only be adequately satisfied through the provision of such education.

An important example is the UNESCO **Convention for the Safeguarding of the Intangible Cultural Heritage** of 17 October, 2003, MISC/2003/CLT/CH/14 (http://unesdoc.unesco.org/images/0013/001325/132540e.pdf). The purposes of this convention are set out in its Article 1. They include the safeguarding of intangible cultural heritage and the ensuring of respect for the intangible cultural heritage of the communities, groups and individuals concerned. «Intangible cultural heritage» is defined in Article 2, paragraph 1, but paragraph 2 of that article gives examples of how such heritage is manifested, and reference is made to oral traditions and expressions, «including language as a vehicle for cultural heritage», performing arts, and knowledge and practices concerning nature and the universe. Thus, language itself is considered to be intangible cultural heritage; however, much else referred to in the definition is transmitted through language and is closely linked to language. The safeguarding of such heritage necessarily requires the safeguarding of the cultures and language associated with such heritage. Given the importance of MTM education in maintaining language, and given the incompatibility of various forms of submersion education with the maintenance of languages of indigenous peoples and their associated cultures, it would seem implicit that the Convention on the Intangible Cultural Heritage will be best facilitated through instruction through the medium of the ITM language. Indeed, the treaty itself makes clear the obvious relevance of education in general to the accomplishment of its objectives: Article 3 defines the concept of «safeguarding» as used in the treaty, and specifies that it means measures aimed at ensuring the viability of the intangible cultural heritage through a variety of means, and «particularly through formal and non-formal education». Furthermore, Article 14, subparagraph (a) (ii) provides, for example, that each State Party to the convention shall endeavour to ensure recognition of, respect for, and enhancement of the intangible cultural heritage through «specific educational and training programmes within the communities and groups concerned».

Another striking example is the UNESCO **Convention on the Protection and Promotion of the Diversity of Cultural Expressions** of 20 October, 2005 (http://unesdoc.unesco.org/images/0014/001429/142919e.pdf). In its preamble, the Convention makes clear the importance of cultural diversity. It refers to cultural diversity as «a defining characteristic of humanity». It notes that cultural diversity creates «a rich and varied world» and therefore «is a mainspring for sustainable development for communities, peoples and nations». It recalls that cultural diversity is indispensable for peace and security, and it celebrates the importance of cultural diversity for the full realisation of human rights and fundamental freedoms. Significantly, the preamble also specifically recognises «the importance of traditional knowledge as a source of intangible and material wealth, and in particular *the knowledge systems of indigenous peoples*, and its positive contribution to sustainable development». Also significant is the fact that the preamble recalls that «*linguistic diversity* is a fundamental element of cultural diversity» and reaffirms «the fundamental role that *education* plays in the protection and promotion of cultural expressions». With regard to the substantive treaty provisions, Article 4 defines a number of important terms. For example, «cultural diversity» is defined as «the manifold ways in which the cultures of groups and societies find expression. These expressions are passed on within and among groups and societies». The definition goes on to provide that cultural diversity is made manifest in a number of ways, including through the variety of «cultural expressions». «Cultural expressions» are defined in Article 4 to be those expressions that result from the creativity of individuals, groups and societies, and that have «cultural content». «Cultural content» is then defined in Article 4 to be the symbolic meaning, artistic dimension and cultural values that originate from or express cultural identities. There are a number of objectives of the convention which are set out in Article 1, and they include the pro-

tection and promotion of the diversity of cultural expressions (paragraph (a)), the creation of conditions for cultures to flourish (paragraph (b)), the promotion of respect for the diversity of cultural expressions and the raising of awareness of its value at the local, national and international levels (paragraph (e)), and the giving of recognition to the distinctive nature of cultural activities, goods and services as vehicles of identity, values and meaning (paragraph (g)), among others. In addition, there are a number of guiding principles of the convention set out in Article 2, including «3. Principle of equal dignity of and respect for all cultures», which provides that the «protection and promotion of the diversity of cultural expressions presuppose the recognition of equal dignity of and respect for all cultures, *including the cultures of persons belonging to minorities and indigenous peoples*» (emphasis added). While the convention makes no specific reference to education of ITM children, it seems obvious to us, based on the massive evidence, discussed elsewhere in this book, concerning the culturally destructive nature of submersion education and the culturally enhancing nature of MTM education (see, e.g., Examples 6, 11, 14, 15, 21, 25, 33, 39, 40, 43, 45) that all forms of submersion education are completely incompatible with and inimical to the objectives and guiding principles of the convention, and that those objectives can only be realised and those guiding principles can only be respected through the provision of culturally sensitive MTM education of the sort we describe.

Finally, the importance of education which is sensitive to and supportive of the languages and cultures of indigenous peoples is important, and in our view even essential, to the performance of other important international legal obligations of States under a wide range of other treaties, some of which, on first glance, would not appear to engage issues relating to the education of indigenous and tribal children at all. An excellent example of this is the United Nations' **Convention on Biological Diversity** concluded at Rio de Janeiro on 5 June, 1992 (see http://www.cbd.int/). We have already noted the strong correlation between biodiversity on the one hand and linguistic and cultural diversity on the other (see, especially, Section 5.2.4). It is therefore in some senses not surprising that the Convention on Biological Diversity might be of general albeit indirect relevance to the broader issue of maintenance of linguistic and cultural diversity. However, on closer observation, this treaty has, we suggest, direct implications with respect to the education issues considered in this book. The overall objectives of this treaty, as set out in its Article 1, are the conservation of biological diversity,[45] the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources. Article 8, which deals with *in situ* conservation, imposes on States which are party to it a number of requirements, including the requirement to respect, preserve and maintain *knowledge, innovations and practices of indigenous and local communities* embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity (paragraph (j)), and the requirement to develop or maintain necessary legislation and/or other regulatory provisions for the protection of threatened species and populations (paragraph (k)). In Article 10, which deals with sustainable use of components of biological diversity, the convention requires States to protect and encourage *customary use* of biological resources *in accordance with traditional cultural practices* that are compatible with conservation or sustain-able use requirements (paragraph (c)). As we have noted in Section 5.2.4., the sorts of knowledge, innovations and practices referred to in Article 8, paragraph (j) and the sorts of traditional cultural practices referred to in Article 10, paragraph (c), are sustained in and transmitted through the languages of the indigenous and tribal peoples concerned. As we have also noticed, the sorts of submersion education widely practiced and documented in this book lead to the loss of such languages and inevitably also lead to the loss of relevant cultural knowledge, including the sort of knowledge described in the convention provisions just referred to. Thus, once again, it is, in our view, impossible to escape the conclusion that the sorts of submersion education to which indigenous, tribal and minority children are frequently subjected frustrates and therefore violates the provisions of the Convention on Biological Diversity to which we have referred, and that, furthermore, those provisions cannot be satisfied without MTM education and education which is also sensitive to the cultures and patterns of cultural and intellectual transmission of indigenous and tribal peoples.

In all the foregoing cases, it seems obvious, for the reasons just described, that certain forms of education described in this book, notably forms of submersion education, will frustrate the accomplishment of these various treaties. It seems equally obvious that mother tongue medium education of the sort described elsewhere in this book will not only facilitate the accomplishment of the objectives of these other instruments, but may be essential to their accomplishment, and therefore could be said to be implicit in these various instruments.

3. Why are languages and mother tongues so important?

3.1. Mother tongues – some definitions

Before starting to describe and compare the role of languages, especially ITM mother tongues, in educational models that can be used and have been used with ITMs, and the educational and other results of such models, we have asked the question of why language is so important for ITM children's life prospects. First we summarise some definitions of mother tongues. Then we present some examples of how ITMs themselves have seen the importance of MTs, and their destruction. Next we discuss recent attempts to belittle MTs and to disinvent languages. Finally, we look especially at some of the hierarchising functions that languages have in today's global world.

The most often used terms in international conventions, covenants and declarations which grant some rights to ITM languages are «their own language», «their own indigenous language», «their mother tongue», and «the minority language». These terms are not defined legally in the human rights instruments (except that «languages of migrants» and «dialects» of official languages are excluded from «regional or minority languages», as defined in the *European Charter for Regional or Minority Languages*). What is needed, therefore, is that we define at least the concept of «mother tongue» that we use here, for the purposes of this book.

In all definitions about people, one has to decide whose definition is valid. Is it an *endo-definition*, i.e. people's own definitions of what is «their own language» or their «mother tongue»? Or is it an *exo-definition*, i.e. a definition from the outside, where somebody else (for instance the state, the census bureaucrats, laws and regulations, the school, outside researchers) can define what somebody's «own language» or «mother tongue» is? Because of unequal power relations, it is often not any kind of «objective» characteristics of what is being defined (for instance «a minority language» or «a mother tongue») that are decisive, but the relation between the definer and the defined. These terms are therefore relational. It does not help that I say that my mother tongue is X, if state representatives say that it is Y. If there is disagreement, one has to negotiate. And in most cases, the ones with more power, and higher status, win the 'argument', and *their* exo-definitions prevail. Thus it is important to think of strategies for how one can get one's own endo-definition accepted and respected by others, including the state. Thinking of MTs, this should, in fact, be one of the basic Linguistic Human Rights (LHRs).

'Own language' can possibly be defined in the same way as 'mother tongue'. A 'minority language' is difficult to define as long as there is no accepted definition of what a minority is – and in international law there is no agreement[46]. First we concentrate on MT definitions[47] applicable to hearing (i.e. not deaf) ITMs who know their language at least to some extent. The MT definitions here (originally from the early 1970s) are as follows (Table 1 from Skutnabb-Kangas 1984: 18):

Table 1. Definitions of mother tongue

Criterion	Definition
ORIGIN	The language learned first
IDENTIFICATION Internal (own)	The language one identifies with
External (by others)	The language one is identified as a native speaker of by others
Competence	The language one knows best
Function	The language one uses most

Skutnabb-Kangas has also presented several theses about the definitions (here from 2000: 108):

1. *The same person can have different MTs, depending on which of the definitions in Table 1 is used.*

2. *A person's MT can change during her life-time, even several times, according to all other definitions listed in Table 1 except the definition by origin.*
3. *A person can have several MTs, especially according to definitions by origin and identification, but also according to the other criteria.*
4. *The MT definitions can be organised hierarchically according to their degree of linguistic human rights awareness. This degree in a society can be assessed by examining which definition(s) the society uses in its institutions, explicitly and implicitly*[48].

Our own nuclear families[49] exemplify the first three theses, different MTs depending on which definition is used, changing mother tongues, and more than one MT. We will clarify the consequences here for the choice of definition in relation to the fourth thesis.

For *linguistic majorities* (e.g. speakers of Norwegian in Norway, or speakers of Japanese in Japan) all the definitions usually converge. They have learned Norwegian/Japanese first, they identify with Norwegian/Japanese, are identified by others as native speakers of Norwegian/Japanese, know Norwegian/Japanese best and use Norwegian/Japanese most. Thus, a combination of all the definitions can be used for them.

If ITMs live and work where a majority language (or a former colonial language) dominates, this dominant language usually becomes their most used language in most formal domains, and often also informally. Therefore it is not fair to use a MT definition by function («the language one uses most») for ITMs, since they have not chosen freely to use the dominant language most. The expression 'not fair' here means that the definition by function does not respect linguistic human rights, and here especially the right for a person to choose freely what one's MT is, to endo-define.

If ITMs get their education in submersion programmes, i.e. through the medium of the dominant language, the dominant language often becomes the language they know best in most more formal domains (if they stay in the educational system long enough). Therefore, it is not fair to use a MT definition by competence either («the language one knows best»). They might have wanted to learn their MT by origin up to a high level of proficiency but got no support for this in school and were often actively prevented from learning it.

Often a combination of MT definitions by origin and by internal identification is a good MT definition for ITMs: the MT is the language(s) you have learned first and identify with.

But there are exceptions where not even this is a good, fair and respectful definition. One important exception is the Deaf. 90-95% of Deaf children are born to hearing parents. If the children were to get a good education, they would learn Sign language early on, and get most of their formal education through a Sign language. In this case, children and parents do not have the same MT. For most Deaf children the fairest MT definition is: the language that they identify with, even if they may not have learned it first. Often, at least later on, this can also be used in combination with an external identification: the language that they are being identified as native speakers of by others. For Deaf children, a Sign language is the only language that they can express themselves fully in. They cannot do this in any spoken (as opposed signed) language except when writing this language. Therefore we can, for them, also add a modified definition by competence: The MT is the language that they identify with and that they can express themselves fully in (see Skutnabb-Kangas 2008b for an elaboration).

Another important exception is forcibly assimilated Indigenous/Tribal or minority children. If the forcible assimilation has taken place already in the parent or grandparent generation, it is not fair to use a MT definition by origin either, because the parents have not spoken (or have not been able to speak) the MT (e.g. Saami or Maliseet or Ainu) to the children. In this case a MT definition by internal identification can be the only possible fair definition.

But what if an ITM child or a Deaf child is NOT one of those fortunate ones whose parents or caretakers have used the MT by identification from the very beginning, and where the child has had most of her education through this MT? What if the child *does not know* this MT at all – can one still call it a MT? Our claim is that it is possible to identify with a language that one does not know. It is possible to have a MT that one does not have (any or 'full') competence in. There are many examples among ITMs of this[50].

If this were to be accepted in international law (and it has not yet been tried in court), those few

rights that exist for MT medium education and for learning the MT as a subject, would also apply to ITM children in various revitalisation programmes, and to Deaf children.

When forcible assimilation has led to an ITM language being seriously endangered ('dying', 'moribund', in need of revival) or 'neglected' (endangered, in need of revitalisation), the strategy could (or should?) be to ONLY use a MT definition by internal identification, when demanding full Linguistic Human Rights (LHRs) for individuals and collectivities, regardless of whether the individuals are receptive or productive users or even non-users of this MT that they identify with.

The same might apply to Deaf children, and this certainly requires proper information packages to hearing parents of Deaf children.

At the same time as we are working for the right to MT medium education, where the MT is defined by self-identification, claims for compensation for MT loss should be raised in courts. Some cases have already been raised. In the Australian example below, compensation was sought for education lost because of language:

> *«The Federal Court of Australia has found that the Queensland government discriminated against a 12-year old boy by not providing him with a sign language interpreter at school. The boy who, according to Deaf Children Australia, has the academic skills of a six-year old was awarded $ 64,000 in compensation for future economic losses as a result of his inadequate education. The implications of this finding could prove to be a landmark decision for Deaf education in Australia as it establishes firmly deaf children's right to an AUSLAN [Australian Sign Language] interpreter in school.»*
> Source: SIGN Matters, June 2005.

It might also be possible to get compensation for loss of mother tongue[51].

We suggest that readers think of what their own MTs are, according to which criteria, and what kind of changes there have been, if any. Also think of the theses and the discussion about consequences of the various definitions. In the next section we will first look at the consequences for ITM languages of ITM MTs not having almost any place in schools. Then we hear some ITM voices about the importance of MTs and languages.

3.2. The importance of languages/ mother tongues: Indigenous voices

Optimistic estimates of what is happening to the world's languages 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 in some UNESCO documents (see, for instance 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' later estimate (e.g. Krauss 1996, 1997). UNESCO's Intangible Cultural Heritage Unit's Ad Hoc Expert Group on Endangered Languages (see UNESCO 2003a; see also 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). We may thus have only 300-600 oral (spoken) languages left around 2100 as unthreatened languages, transmitted by the parent generation to children; these would probably be some of those languages that today have more than one million speakers, and a few others (Krauss 1992).

Most of the disappearing languages will be indigenous or tribal languages (see Harrison 2008 for some examples), 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.

The language shift that many ITM children experience is not, we argue, voluntary, if alternatives do not exist and if parents do not have enough solid research-based knowledge about the long-term consequences of their «choices». The United Nation's *2004 Human Development Report* links cultural liberty to language rights and human development (http://hdr.undp.org/en/reports/) and argues that there is

> *no more powerful means of 'encouraging' individuals to assimilate to a dominant culture than having the economic, social and political returns stacked against their mother tongue. Such assimilation is not freely chosen if the*

choice is between one's mother tongue and one's future.

Often ITMs have a deep understanding of the assimilationist processes in this language shift/killing, and of what the stakes are. But so far, most ITMs have neither had the alternatives nor the research-based knowledge on what to do, even if they have known both the consequences and many of the causal factors.

How do ITMs themselves understand the importance of their languages/MTs then? How have they seen the «destruction» of their languages, cultures and identities and the destruction of themselves as peoples, including the relationship between physical and linguistic/cultural destruction? In Example 1 we present some quotes about the importance of language for indigenous/tribal peoples and minorities – and, indeed, for some dominant group representatives too:

Example 1.

A. *'Our language is dying, that is the first sign of deterioration. Our native style of life has to be based on four elements - heritage, culture, values, language - and if you take one away it begins to break down. Then we have the symptoms of this breakdown, alcoholism and abuse'* (Randy Councillor, Ojibway, director of a detoxification centre in Ontario, Canada, himself an earlier 'street-drunk', in Richardson 1993: 25).

B. *'A person forced to leave her language loses the meaning of her life. A people has a genetic soul. It is best transmitted in their own language'* (Andres Sütö, Hungarian author from Transylvania, Romania).

C. *'Language is the pinnacle of the culture of every nation, and if assimilation annihilates identity, then the people too will be annihilated'* (Bari 1996: 67. Károly Bari, a Roma poet – see also *Roma Rights*).

D. *'The voice of the land is in our language'* (National First Nations Elders/Language Gathering, Mi'gmaq Nation, Canada).

E. *'Words are, of course, the most powerful drug used by mankind'* (Rudyard Kipling, 1923)

F. *'It is easier to divest a nation of all its guns than it is to rob it of its language. Machine-guns will fall silent sooner than the loquacious mouths that raise so very different words up to the sky'* (Kosztolányi 1987: 27).

G. *'It was not by chance that in Germany, the murderers in power were burning books (before burning in crematoriums the corpses of millions of victims). It was not by chance that the Francoists in Spain shot to death Lorca, who was poetry itself'* (Clancier 1996: 28).

H. *'... language and culture are not only words or syllables, but ... have spiritual links to the Creator. When I could pray in my own language it was like the first breath I could take after being on a life support respirator. Language and culture are an umbilical cord to the Creator'* (Task Force 2005: 62).

I. *'Language and culture cannot be separate from each other – if they are, the language only becomes a tool, a thing... Our language and culture are our identity and tell us who we are, where we came from and where we are going'* (Task Force 2005: 58).

J. *'We came from the land – this land, our land. We belong to it, are part of it and find our identities in it. Our languages return us again and again to this truth. This must be grasped to understand why the retention, strengthening and expansion of our First Nation, Inuit and Métis languages and cultures is of such importance to us and, indeed, to all Canadians.'* (Task Force 2005: 24).

K. *«Lucille Watahomigie, an educator and native speaker of Hualapai, a Yuman language spoken in northern Arizona, provides this example from the origin account of her people: 'In the beginning, after the creation of the people at Spirit mountain, Elder Brother and Younger Brother were instructed through visions by the breath-giver to teach the people about cultural values and mores, and how the newly created people were to live. All the instructions were in the native language... [T]he Hualapai language ... is a gift to us from the Creator ... And the sacred gift must be passed on from generation to generation; it cannot be allowed to die ...* (Watahomigie 1998: 5, quoted in McCarty 2008: 203).

L. *«'The Yaqui language is a gift from Itom Achai, the Creator of our people', the Yaqui Tribal Language Policy begins, 'and, therefore, shall be treated with respect. Our ancient language is the foundation of our cultural and spiritual heritage without which we could not exist in the manner that our Creator intended ... Since time immemorial Yaqui has been, and*

will continue to be, our mother or native tongue which is the natural instrument of thought and communication' (cited in Zepeda 1990: 250-251, here quoted from McCarty 2008: 203).

M. *«According to Tohono O'odham linguist Ofelia Zepeda, the Tohono O'odham language policy 'also makes clear … that language is the gift from the Creator and … no other tribe can claim it. It is what makes us Tohono O'odham…'»* (quoted in McCarty 2008: 203).

N. *Mary Joy Elijah (2002) quotes from* ***Resolution No. 9/90 Protection of First Nations' Languages, Special Chiefs Assembly, Ottawa, Ontario – December 11, 1990, Georges Erasmus National Chief:***

SUBJECT: Protection of First Nations' Languages

WHEREAS *language is a direct gift from the Creator; and*

WHEREAS *First Nations languages are the cornerstone of who we are as a people; and*

WHEREAS *our culture cannot survive without our languages; and*

WHEREAS *the right to use and educate our children in our aboriginal languages is an inherent aboriginal and treaty right,*

THEREFORE BE IT RESOLVED THA*T, as aboriginal people of this country, First Nations languages must be protected and promoted as a fundamental element of aboriginal heritage and must be fully entrenched in the Constitution of Canada; and*

FURTHER BE IT RESOLVED THAT *the federal government has a moral and legal obligation, through (pre-Confederation) treaties and through legislation, to provide adequate resources that will enable First Nations languages to exercise this right.*

O. *Ko te reo te tāhuhu o tēnei whare (Our language is the ridgepole of this house - i.e. one's indigenous language is the crux of one's being as a people.* (Maori saying, from Vaughan Rapatahana, email 3 March 2009).

When we analyse the ITM voices above, we can see that many if not most of them refer to identity-related issues. Two kinds of interest in LHRs can be distinguished, according to Ruth Rubio-Marín (Professor of Constitutional Law in Seville, Spain). One is «the expressive interest in language as a marker of identity», the other an «instrumental interest in language as a means of communication» (Rubio-Marín 2003: 56); these correspond fairly closely to what we (Skutnabb-Kangas & Phillipson, e.g. 1994) have called «necessary» and «enrichment-oriented» rights. The *expressive* (or non-instrumental) language claims

> *aim at ensuring a person's capacity to enjoy a secure linguistic environment in her/his mother tongue and a linguistic group's fair chance of cultural self-reproduction* (Rubio-Marín 2003: 56).

It is only these rights that Rubio-Marín calls «language rights in a strict sense» (2003: 56), i.e. these could be seen as linguistic *human* rights (LHRs). The formulation above beautifully integrates the individual rights of ITMs with their collective rights. It is mainly these expressive rights, or lack of them, that are exemplified in the quotes.

Educational language rights, on the other hand, seem superficially to be more about instrumental rights. These *instrumental* language claims

> *aim at ensuring that language is not an obstacle to the effective enjoyment of rights with a linguistic dimension, to the meaningful participation in public institutions and democratic process, and to the enjoyment of social and economic opportunities that require linguistic skills* (ibid.).

But the educational goals presented in Section 4.1, as well as the educational linguistic rights discussed in Chapter 2, show clearly that good ITM education has both expressive and instrumental goals. Unfortunately these insights are adversely affected when some instrumentalists claim that those interested in the expressive aspects exclude the more instrumental communication-oriented aspects (for instance unequal class- or gender-based access to formal language or to international languages). The debates in 2003 numbers of the *Journal of Language, Identity and Education* are an example of this old division based on outmoded ideas being reinvented again. The same debates have been fought already in the 1960s and 1970s, both over integration of minorities (are they more interested in their languages, *or* in jobs) and over indigenous claims (are they

more interested in identity, language and traditions, *or* in autonomy/land rights). Most groups are mostly interested in *both* types of rights, expressive and instrumental, and often one is a prerequisite for the other, with both being alternately causal AND dependent variables. Many of us work with both aspects, and see them as complementary, not mutually exclusive[52].

One example of the debates where even raising issues about the expressive-intrinsic values of mother tongues and language in general has been strongly rejected is the one we present in the next section.

3.3. Reifying? Essentialising? Romanticising? Arguments belittling mother tongues /languages, and some counterarguments

Ethnicity has been proclaimed dead many times during the last and even this century, especially after the Second World War. Liberal researchers have claimed that ethnic identity was a traditional, romantic characteristic, which would disappear with modernisation, urbanisation and global mobility, to be replaced by other loyalties and identities: professional, social, gender, interest-group, state-related, global, and so on. Marxist researchers claimed that class-related solidarities, crossing national borders, would replace ethnicity: an international proletariat would unite against world capitalism. Many post-modernist researchers now pronounce that we have (should have?) no lasting identities, only flexible temporary nomadic hybrid ones. In the same vein, some of them present claims about the relationship between forms and functions of language and end up claiming that the «object» of linguistic human rights, namely specific «languages», do not exist either, as countable entities. Thus mother tongues do not exist either. All languages are changing all the time; therefore efforts to demarcate the boundaries of a particular languages are inevitably at best able to provide a snapshot of the language at a particular time and place (Reagan 2004: 44). A language is «ultimately collections of idiolects [what individual speakers say] which have been determined to belong together for what are ultimately non- and extra-linguistic reasons» (ibid., 46). A thorough recent argumentation about the non-existence of languages as objects for study, as countable nominal entities, is in Sinfree Makoni's and Alastair Pennycook's 2005 article «Disinventing and (Re)Constituting Languages», and their later 2007 edited book. They seem to overgeneralise to the whole world the fact that many «languages» were in fact invented in Africa by missionaries from competing Christian groups, and also by European states dividing Africa between them-selves in 1878-90. Many dialects of the same languages started to be called languages and the differences were exaggerated by missionaries; when the same language, spoken over a large area, was divided by Europeans into several «states», speakers were also often told that they spoke different «languages» (see, e.g., Alexander 1992). But claiming that most languages in the world were inventions by missionaries does not correspond to most realities outside Africa.

Language names such as English, Swahili or Chinese belong, according to Jan Blommaert, «to the realm of folk ideologies», and «only every now and then are they salient as objects of sociolinguistic inquiry» (Blommaert 2005: 390). Thus we who talk about languages or MTs are claimed to be reifying (= making something abstract more concrete or real) something that by its nature is always changing and multifaceted.

We are also accused of romanticising the importance of languages and especially MTs and their importance for ITMs and their identities. Language is claimed by some postmodernists, especially political scientists, not to be an important or even necessary feature in the construction of individual or collective identities (e.g. May 2005). The existence of multiple linguistic identities and hybridity shows, according to them, that there is no link between language and identity. If there was a strong link, there would be no or little language shift. Stephen May summarises his own views, referring to several other researchers, and claims that there is

> *... widespread consensus in social and political theory, and increasingly in sociolinguistics and critical applied linguistics, that language is at most a contingent factor of one's identity. In other words, language does not define us, and may not be an important feature, or indeed even a necessary one, in the construction of our identities, whether at the individual or collective levels* (May 2005: 327, referring to John Edwards 1985, 1994; Carol Eastman 1984, Florian Coulmas 1992; Abdelâli Bentahila and Eirlys Davies 1993; but see also May's classic 2001 book with different views).

The consequence of such a view is obvious. If language use were merely a surface feature of ethnic identity, adopting another language would only affect the language use aspect of our ethnic identity, not the identity itself. Thus the loss of a particular language is not the 'end of the world' for a particular ethnic identity – the latter simply adapts to the new language.

> *… there is no need to worry about preserving ethnic identity, so long as the only change being made is in what language we use* (Eastman 1984: 275).

The fact that many people have more than one MT is also seen as proof for the thesis that there is no link between language and identity. Hybrid people can have no roots, ethnically or linguistically. Rootedness is seen as essentialism.

How can these claims be countered? First, identities. *Of course* all of us have multiple identities. We may identify at the same time as, say, woman, socialist, ecological farmer, world citizen, mother, daughter, wife, researcher, Finnish, Scandinavian, European, witch, theosopher, lover of music and plants. This can be done without these identities necessarily being in conflict with each other. Some identities will be more or less salient, focussed and emphasised than others, at different times. New identities will emerge or be added, with others fading or being rejected over time.

Still, ethnic identities and, especially, linguistically anchored ethnic identities, seem to be remarkably resilient, as the literally tens of thousands of «ethnic» organisations all over the world show[53]. Jim Cummins, who has during the last two decades also worked with students' «identity investment» in schools, writes about

> *the centrality of* ***identity enhancement*** *as a driving force fueling students' investment in learning … unique minority languages [which] have little functional utility beyond their immediate territorial zone and are seldom even required within that zone because virtually everyone is fluent in the dominant language». He goes on to describe this enhancement of aspects of their identity as generating «the expanded sense of belonging that derives from linking one's identity to the community of speakers of the language. For those whose ethnic or national origin corresponds to the language, fluency solidifies the bond to previous generations and links the individual's emerging personal narrative to the collective history of the ethnic or national group»* (Cummins 2008: 1).

Most Indigenous and tribal languages are «unique minority languages» in the sense described by Cummins (the concept comes from Cenoz and Gorter, 2008). Both ethnicity and an attachment to one's language or MT(s) as a central cultural core value (Smolicz 1979) seem to draw on primordial, ascribed sources: you are 'born' into a specific ethnic group and this decides what you MT (or MTs, if you have two, for instance with parents/caretakers speaking different languages) will *initially* be. But what happens *later* to your ethnicity, your identity, and your language(s) and how they are shaped and actualised is influenced by (achieved) economic/political concerns, by your social circumstances and later life.

This also influences to what extent you are aware of the importance of your ethnicity and your MT(s) and the connection between them. Often native speakers of dominant languages are not aware of this connection – their languages have never been threatened. *Ethnicity, identity and mother tongues thus draw on primordial sources but are shaped by social forces.*

We do not agree with those researchers who see both ethnicity and MTs in an instrumentalist way as something you can choose (to have or not have, use or not use), according to your own whims and wishes. Because of the primordial sources, reaching back into infancy and personal history, neither ethnicity nor MT, nor even identities can be treated as things, commodities, which you can choose at will and chuck out like an old coat if that is what you want. Our examples in section 3.2., under Example 1. , and later in this book, testify to this. Joshua Fishman's 1997 book *In Praise of the Beloved Language. A Comparative view of Positive Ethnolinguistic Consciousness* is a collection of examples from all over the world. Human rights lawyers Mancini and de Witte (2008: 247) present the opposite view to May's claim above (2005: 327) «that language is at most a contingent factor of one's identity». They write that it «is generally accepted that the use of a particular language not only serves as a means of functional communication, but also expresses that person's cultural identity as well as the cultural

heritage developed by all previous speakers of that language.»

On the other hand, this does NOT mean that they are unchangeable givens or impossible to influence or change. If languages are mainly seen as something that is being performed every minute, not as something that has been written down in grammar books and other texts to freeze a snapshot (and we agree with this view), we can compare ITM languages with what some Indigenous peoples' representatives say about change and Traditional Knowledge. This knowledge is in no way static either, as Four Directions Council in Canada (1996, quoted from Posey, 1999: 4) describe it:

> *What is «traditional» about traditional knowledge is not its antiquity, but* ***the way it is acquired and used.*** *In other words, the social process of learning and sharing knowledge, which is unique to each indigenous culture, lies at the very heart of its «traditionality».* ***Much of this knowledge is actually quite new,*** *but it has a social meaning, and legal character, entirely unlike the knowledge indigenous people acquire from settlers and industrialized societies* (emphases added).

If those who are guardians of Traditional Knowledge still call it «traditional» even if they know and accept that the «body» of that knowledge is in constant flux in several ways, then it should be possible to see change as an *inherent* and necessary characteristic of not only knowledge or languages but of everything living. And knowledge and languages are «living» in this sense, not any kind of museal objects. Thus constant change (for instance taking in new technical vocabulary from other languages) does not in any way make the existence of languages less real. They can be named. «Mother tongues» are also «languages» in this sense, to those who claim them (regardless of whether they or others call them languages or dialects or variants or varieties). They have an existence. MTs can thus be named too. As the ITM voices in the previous section showed, languages and MTs are not only «real» for them; the ITM views contradict strongly views such as those seen by May as representing a «widespread consensus in social and political theory, and increasingly in sociolinguistics and critical applied linguistics», views that claim that «language does not define us, and may not be an important feature, or indeed even a necessary one, in the construction of our identities, whether at the individual or collective levels» (May 2005: 327).

What is important to study, then, is not whether ethnic identities and languages «exist», but under which circumstances can ethnicity and language(s) of ITMs become positive forces and strengths, sources of empowerment in people's lives?

But as usual in other matters important for Indigenous and Tribal peoples, their voices have been more or less completely absent in the debates (or, if they have been quoted, they have been ridiculed, not respected). They have had no right themselves to decide whether they have a named MT or MTs; this has often been exo-defined, decided for them by researchers, bureaucrats, or politicians. Often these decisions and debates of the kind just referred to have been used not to promote ITM languages but to be complicit in or even actively support their destruction. We fully agree with the Māori scholar Linda Tuhiwai Smith (2004), in her excellent discussion of the concepts of «authenticity», «essentialism», and «spirituality» which delineate indigenous interpretations of these concepts and also posits them as strategic tools in the struggle for decolonization of the mind. What she says about post-colonialism may apply with equal force with the postmodern discourses we have hinted at:

> *There is also, amongst indigenous academics, the sneaking suspicion that the fashion of post-colonialism has become a strategy for reinscribing or reauthorizing the privileges of non-indigenous academics because the field of 'post-colonial' discourse has been defined in ways which can still leave out indigenous peoples, our ways of knowing and our current concerns* (ibid.: 24).

3.4. Linguicism and hierarchisation

Language is a key dimension, along with class, gender, and religion, and partially replacing 'race', in the complex processes of hierarchising groups in society and maintaining and reproducing patterns of dominance. Language is used increasingly, instead of or in addition to other means of control[54], in maintaining, legitimating, effectuating and reproducing an unequal division of both

structural power and material resources between the elites of the world (the A-team), and the 'B team', the dominated, the ordinary people. The haves and the have-nots are partly constructed by means of language, so that the way we label, talk about and attribute characteristics to individuals and groups and thus construct them, legitimates this unequal division of power and resources.

The world's haves and have-nots are also partially constructed on the basis of their ethnic origins and culture (their cultural capital) and *on the basis of which languages they know or do not know* (their linguistic capital). These new -isms, culturally and ethnically argued racism (ethnicism), and *linguistically argued racism (linguicism)*, are akin to and in the process of replacing traditional biologically argued racisms. Racism, ethnicism and *linguicism* have been defined as

> ideologies, structures and practices which are used to legitimate, effectuate and reproduce an unequal division of power and (both material and non-material) resources between groups which are defined on the basis of
> - «race» (biologically argued racism)
> - ethnicity and culture (culturally argued racism: ethnicism)
> - LANGUAGE (linguistically argued racism: *linguicism*) (Skutnabb-Kangas 1988: 13).

People are thus no longer only divided into those with more and those with less access to material resources and structural power on the basis of their skin colour ('race') alone but also on the basis of their ethnicity, culture, and, again, increasingly, religion[55], and on the basis of their language (their mother tongue(s), and their competence, or lack of competence, in official and/or 'international' languages[56]). There is, then, a change from biologically argued racisms and discrimination towards culturally/ethnically argued discrimination (ethnicism) and linguistically argued discrimination (linguicism).

Linguicism is a major factor in determining whether speakers of particular languages are allowed to enjoy their linguistic human rights, meaning not only the «negative right» to be protected against abuse but also the «positive right» to enjoy appropriately supportive state policies. Lack of these rights, for instance the absence of ITM languages from school timetables, makes ITM languages invisible.

Linguicism is a much more sophisticated way of preventing the use of a language than brutal, open and visible prevention through jailing, torture, etc (for instance the type that the Kurds, especially in Turkey, are still the victims of[57]). Firstly, Indigenous and Tribal peoples and many minority groups are, both structurally and through attempts at colonising their consciousness into believing in the ideology of monolingual reductionism[58] prevented from developing their languages as one of the most important bases for being and for reproducing themselves as distinct groups or as peoples wanting self-determination.

Secondly, groups can be denied self-determination because it is claimed that they are not «a people», just a group or population: they do not possess one of the prerequisites for nationhood, a language; they only speak a dialect or a vernacular, or what they sign is not a language, it is just iconic.

Thirdly, groups are invisibilised and invalidated with the help of the labels used about them. The Deaf are not seen as a linguistic minority that could be included in the European Charter for Regional or Minority Languages; they «are» just a handicap group (see Krausneker 1998, Skutnabb-Kangas 2002). «Education should address the *backward ethnic groups*, women and those below poverty line, children speaking minority languages and children with disability», writes The *National Curriculum Framework for School Education in Nepal* (NCF) (2007) section 3.3.6., p. 34, emphasis added. In India, the term «backward tribes» is still in official use, and for instance the founding father of sociology in India, professor Govind Sadashiv Ghurye, used «backward areas» (p. 116), «backward tribes» and «backward people» (e.g. p. 124) in his book *The Scheduled Tribes of India* (the latest hardback edition was published in 1995).

And fourthly, people are made to believe that both this and the unequal division of power and material resources in general is fair, through attemps at colonising their minds with the dominant groups' ideas, mediated through (the dominant) language. Most of the arguments that exclude the Deaf from services that they should have, for instance, use arguments of this kind (see, e.g., articles in Dirksen Bauman, ed. 2008).

As compared to physical colonisation, physical violence and biologically argued racism, these are a more sophisticated and more vicious means of widening the gaps in the world, of converting the

have-nots into never-to-haves, and of concealing the responsibility of the elites for the increasingly fast progress they are making in destroying the planet. As mentioned earlier, many scholars foresee the killing (or, as many of them call it, death) of at least 50% of the world's close to 7000 oral languages within our children's lifetime and pessimistic but very realistic estimates say that 90 % of the oral languages we have today may be seriously threatened or extinct in a 100 years' time (e.g., Krauss 1992). And nobody has even made predictions of how many Sign languages are doomed to extinction. The threat to linguistic diversity is thus much greater than the threat to biodiversity[59] (see Section 5.2.4).

We also need to consider the role of language and the historical knowledge encoded in the various languages. The knowledge of who a people or a group are, where they came from, their creation stories, their purpose, and all of their oral and language-based art and knowledge is encoded in their languages. Regardless of how imagined or metaphorical this knowledge is, it contains important guidelines for the people to remember, and to feel connected. The Australian Songlines are a good example. With the disappearance of a language, these memories (and their «true» meaning and interpretation) also disappear to a very large extent. This has also been seen as part of genocide:

> *There is increasing consensus that conceptually, at its central core, genocide is the thought and act to nullify, to erase absolutely a segment of the human population. In essence it is the act of terminating their existence - to the fullest extent possible - the presence, of a targeted population. This can range from the destruction of group-life* ***to total annihilation of memory, history, and culture.*** *Not only can genocide destroy a group's present and future, but it can also* ***erase any sign of its past*** (Huttenbach 2003, emphases added).

As Ward Churchill points out in his 1997 book *A Little Matter of Genocide. Holocaust and the Denial in the Americas 1492 to the Present*, especially in his long discussions about the history and development of the concept of genocide, and what got included or excluded in the final Convention and why, this kind of inclusiveness that the quote above represents would be completely in line with the meanings and interpretations of the concept of genocide by its inventor, Raphaël Lemkin (e.g. 1944). The Maliseet scholar Andrea Bear Nicholas writes about *historicide* in relation to Indigenous peoples in Canada (Bear Nicholas 2003). Kathleen Heugh gives examples of historicide, historical amnesia, in Africa's «forgetting» its past, for instance the fact that African languages were used for educational and scientific purposes already from the 12th century on, as the rediscovery of the thousands of manuscripts in Timbuktu have shown (Heugh 2009: 95-96). When languages (are made to) disappear, the historical knowledge encoded in them is also invisibilised, making it more difficult for people to trace their past for their identity construction and for their rights; this renders a people vulnerable, as if they did not have a history. That makes hierarchisation still easier.

4. Right to Education: The Educational Basis

4.1. Goals in ITM education

On the basis of the legal rights to education discussed in Chapter 2, and the importance of MTs in Chapter 3 we can now formulate goals in good education for ITM children. We use «goals» and «outcomes» alternately; for the educational systems, these are goals they should strive towards; for the child, they are outcomes of good education.

> *A good educational programme leads to the following outcomes from the point of view of ITM children's language(s), identity, economic opportunity and life chances:*
> *1. high levels of multilingualism;*
> *2. a fair chance of achieving academically at school;*
> *3. strong, positive multilingual and multicultural identities 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 (e.g. in Skutnabb-Kangas 2004).*

For indigenous and tribal children, we can build these goals/outcomes especially on the following formulations in human rights instruments (all the emphases are ours):

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) states in Art. 13.1

> *«Indigenous peoples have* ***the right to revitalize, use, develop and transmit to future generations*** *their* ***histories****, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons»* (Art. 13.1).
> *Art. 14 (1 and 2) states: «1. Indigenous peoples have the* ***right to establish and control their educational systems and institutions providing education in their own languages,*** *in a manner appropriate to their cultural methods of teaching and learning»; and «2. Indigenous individuals, particularly children, have the right to all levels and forms of* ***education of the State*** *without discrimination».*

The first two quotes imply that the child has the right to learn the MT. Since most forms and levels of the «education of the State» (14.2) use the «State» languages as a medium, the child cannot have access to this education without knowing the State language. These quotes together imply that high levels of at least bilingualism (goal 1 above) must be a goal in the education of an Indigenous/ tribal child[60].

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 and tribal children's right to education is not respected unless they become bilingual and bicultural through schooling (especially Goal 1); otherwise they cannot participate fully in both communities. In order to be in contact with one's family, community, culture and ancestry, to know who one is and where one comes from, to be able to build a strong rooted identity, one needs a well developed mother tongue (or two). To be able to choose one's educational career and to have a choice on the labour market, and to participate in democratic processes in the country where one lives, one needs a well-developed national/official language (or two). Both/all are an absolute necessity for ITMs, and formal education plays a decisive role in the access to them (Goals 1, 2 and 4).

The Convention on the Rights of the Child (CRC) states in Art. 29 that the education of the child shall be directed to

> *[t]he development of the child's personality, talents and mental and physical abilities to their fullest potential.*

Goals/outcomes 2 and 3 above are aspects of this development «to their fullest potential». Art. 29 also asks education to be directed towards «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». Goal 4 above represents this direction.

Of course, the education of ITM children also has to fulfill further demands that can be made on any good education. These include issues about «the four A's» (*availability, accessibility, acceptability and adaptability*; see Chapter 2) presented by the UN Special Rapporteur on the Right to Education in her reports, e.g. removing the barriers to access to education (see our references to Tomaševski, especially her 2001).

We are mainly concentrating on the language of instruction in promoting these goals/reaching these outcomes. We have two main reasons for this. First: among the many factors that influence the extent to which the goals are reached, the medium of instruction, and especially the number of years that the MT/first language is the main medium, is the most vital, according to many studies, for instance the world's largest study comparing various models of minority education (Thomas & Collier, e.g. 2002). The number of years of MT-medium instruction is in their study (with over 200,000 children) even more important than socioeconomic status (see our discussion of ITM education and poverty, Section 5.1). Secondly, many among the other influencing factors are much more difficult and sometimes impossible to change, whereas changing the language of instruction IS possible. This is clear when comparing with some of the other factors, such as the children's age (older children are better than younger children in most aspects of learning), gender (girls are mostly better language learners than boys), socioeconomic status (middle class children do better in present-day schools than working class children), number of years in the new country for immigrant minorities (the longer they have stayed, the better the children are doing in school), availability and standard of schools, classrooms, well-trained multilingual teachers, teaching materials, etc.

Next we shall look at some of the prototypes for bilingual/multilingual education from the point of view of to what extent the role that language(s), especially the medium of education is/are granted in school, support the achievement of the four goals above.

4.2. Non-models and weak models of bilingual education do not reach the goals; they harm ITM children and promote language shift

4.2.1. Summary of prototypes for bi/multilingual education

The prototypes can be discussed in terms of *non-models, weak models and strong models of bilingual/multilingual education* (see Skutnabb-Kangas & McCarty 2008 for more detailed definitions).

First a summary. The *non-models* do not reach the four goals. In the North countries[61], they often lead to monolingualism or very strong dominance in the majority/dominant language and a negation of goals 2, 3 and 4. In the South countries, the knowledge of the MTs may remain or become somewhat better in the case of dominated linguistic 'majorities'[62], but as Heugh, Diedericks, Prinsloo, Herbst and Winnaar (2007) show in a study of literacy and numeracy of students in the Western Cape Province in South Africa, «almost 80% of students cannot read or write material required across the curriculum at grade 8. This applies to both the mother tongue and the second language» (quoted in Heugh 2009: 111).

The *weak models*, even when assimilationist, are not quite as harsh for the child. They may often lead to somewhat better chances of school achievement. But in general they do not reach the goals either, especially not goals 1 (where they may reach limited bilingualism) and 3.

Strong models are the only ones that may reach the goals at a group level. Their linguistic aim is to promote multilingualism (or, minimally, bilingualism) and multiliteracy.

The non-models and weak models – models which are insufficient in reaching the goals, which violate linguistic and cultural human rights and harm the children – are, regrettably, still the

most common models for educating ITM children and children from dominated linguistic 'majorities'.

At a group level the bulk of ITM children still 'fail' in school. Many are pushed out early, and the school achievement of many is below that of linguistic majority/ dominant group children as a group. Later on, ITM children are over-represented in unemployment and youth criminality statistics and other statistics showing results of an unequal society.

This is the general picture. However, there are both individuals and groups who are an exception and are managing well, sometimes even better than dominant group children. Mostly they do it *despite* the way their education is organised, not *because of* it.

4.2.2. Deficiency-based theorising and assimilation

Before presenting the prototypes in more detail, we discuss the theorising and ideologies that have led to the negative prototypes. In the West, the ideology of the nation state has to a large extent prevailed until now. In this linguistically, culturally and socially homogenous community of an integrated population, national and linguistic identities are supposed to coincide (see Examples 2 and 3):

Example 2:

Theodore Roosevelt, president of the USA, wrote in 1919 in a letter to the next president: «In the first place, we should insist that if the immigrant who comes here in good faith becomes an American and assimilates himself to us, he shall be treated on an exact equality with everyone else, for it is an outrage to discriminate against any such man because of creed, or birthplace, or origin. But this is predicated upon the person's becoming in every facet an American, and nothing but an American ...There can be no divided allegiance here. Any man who says he is an American, but something else also, isn't an American at all. We have room for but one flag, the American flag ... We have room for but one language here, and that is the English language ... and we have room for but one sole loyalty and that is a loyalty to the American people.»[63]

Below we give a few examples of expressions of similar Turkish assimilationist ideologies from 1923 onwards (see Skutnabb-Kangas & Fernandes 2008 for many more), and the policies and practices that were aimed at realising the goals of the Kemalist state:

Example 3A:

On March 3, 1924, ... a decree banned all Kurdish schools, organizations, and publications, as well as religious fraternities and medressehs, which were the last source of education for most Kurds. Deportations of Kurds to the west [occurred] after the Sheikh Said rebellion was crushed in 1925. The purpose was to dilute the Kurdish population in order to facilitate its assimilation ... Law No. 2510 in June 1934 sought further to disperse the Kurdish population to areas where it would constitute no more than 5 percent of the total. It was even suggested that Kurdish children be sent to boarding schools where they would speak exclusively in Turkish (Gunter 1997: 5, 6).

Example 3B:

Nationalism is our only factor of cohesion. Before the Turkish majority, other elements have no kind of influence. At any price, we must turkify the inhabitants of our land, and we will annihilate those who oppose Turks or 'le Turquisme.' – Ismet Inonu, Turkey's Prime Minister, 4 May 1925 (quoted in Meiselas 1997: 124).

Example 3C:

They were all Turks, [Mustafa Kemal] Atatürk told them, and for decades after his death that's how the Kurds were officially described – 'Mountain Turks' who would be assimilated over time into 'civilised society'. Often, it was done by overwhelming force: military officers who led the campaign against the PKK in the 1980's and 1990's had plenty of historical parallels to emulate (Morris 2006: 93).

Example 3D:

«I believe that the Turk must be the only lord, the only master of this country. Those who are not of pure Turkish stock can have only one right in this country, the right to be servants and slaves». (The Turkish Minister of Justice,

> *Mahmut Esat Bozkurt, reported in the daily newspaper **Milliyet** no 1655, 16 September 1930)[64].*

Both the Turkish and the French constitutions claim that the state is indivisible – that there are no minorities. (Article 3.1: «The Turkish state, with its territory and nation, is an indivisible entity. Its language is Turkish»; Article 1: «France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion»). Most states in the world are of course NOT nation-states in this sense. Since there are 7,000-10,000 oral languages (and maybe equally many sign languages) but only just over 200 states, there are necessarily many 'nations' and speakers of many languages in all but a few states. Therefore this (assimilatory) 'integration' and homogenisation has to be achieved through social engineering and state-initiated reforms. Formal education has always played a decisive part in trying to achieve it. Joshua Fishman, one of the grand old men of sociolinguistics, captures this well:

> *More than most other authoritative specialists, the authorities of the educational system are deeply implicated in planned language shift... Education [is] a very useful and highly irreversible language shift mechanism.»* (Fishman 2006: 320).

The nationalistic, racist and linguicist (and classist and sexist) tendencies in this ideology were directed towards all those who had to be forcefully 'uplifted' from their 'otherness': linguistic minorities, the working class, women, etc. This static and ethnocentric view still prevails in many countries: the whole burden of 'integration' is on the dominated groups and individuals alone: they are the ones who have to change. The dominant group is presented as non-ethnic. Its values are presented as The Norm, or as Standard, and as somehow 'shared' and 'universal', rather than particularistic and changing, like all values are. When the majority population is presented in this way as an integrated mainstream, homogenously sharing universal cultural values, this characteristic «legitimates» its access to most of the power and resources. These are, of course, shared unevenly on a class and gender basis within the majority population, but this is often not mentioned when integration is discussed.

Even today the denial of collective rights (e.g. the right of ITMs to exist as ITMs) has to do with the mostly unfounded fear of the disintegration of the state, clearly seen in how Turkey and France interpret and act on their constitutions. An imagined unity of the state through forcibly trying to homogenise the citizens linguistically, culturally and even ethnically is one of the strong motives behind human rights violations, where the elites controlling the state are the perpetrators.

We can see the same trend all over the world: in Australia's «one literacy», a «singular, measurable, narrowly defined, English-only literacy» (Lo Bianco 2001); in the «homogenising effect of imposed Hispanization» (Bolivia); or «a deliberate attempt to 'whiten' and 'Chilenise' Andean populations … under Pinochet» (Arnold & Yapita 2001; see also Satchdev et al. 2006); or in the European examples of «such abject failures of nerve…such failures to attempt to defend the rights of linguistic minorities … such sociolinguistic sophistry» that Peter Trudgill (2000: 58) quotes from Bulgaria (Videnov), Greece (Angelopoulos), Hungary (Deme) and Britain (Stein and Quirk), just to take a few examples. Unless collective rights are considerably strengthened (but without weakening individual rights), the world's linguistic diversity will be lost.

Another question is also: what exactly were/are Indigenous and Tribal children being assimilated into? Barrington (1992: 69) writes about Māori education in Aotearoa/New Zealand before 1950 that the aim of the educational assimilation was «to lift Māori from one society to another». The Māori were prepared through education to change life-style completely, to become farmers, like the colonisers were (see Simon, ed., 1998).

The same official goal was openly expressed in the Canadian residential schools policy where the aim was «to get rid of the Indian problem […] Our objective is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic, and there is no Indian question, and no Indian Department» (Duncan Campbell Scott before a Parliamentary Committee in 1920, quoted in Milloy 1999: 46).

But 'getting rid of the Indian problem' did NOT mean that the Indians would become 'like everybody else' socio-economically or in any

other way (see example 37). Just as in yesterday's and today's migrant worker discussions, people are treated as labour, as commodities; to use Stephen Castles' (1980, 1984; see also Castles & Kosack 1973) terms: they are brought in to do the shit-work that middle-class westerners do not want to do.

In contrast, for a few national minorities (e.g. Swedish-speakers in Finland, English- and Afrikaans-speakers in South Africa), their right to exist, to define independently who they are (to *endo-categorise),* and to reproduce themselves as minorities and, accordingly, to have MT medium education, have been not only accepted but more or less self-evident. This is not because the linguistic majorities in these countries are more enlightened than most – it rather reflects the fact that these demographic minorities earlier had the power in their respective countries. In Finland, this has not been the case for almost a century; in South Africa the economic power still lies with them, even if they apparently have lost some of the political power.

Most ITMs do not have these rights. For most ITMs who have even (some of) these rights today, achieving them has been a result of a long struggle. Most ITMs are still *exo-categorised,* i.e. defined by others. The problems they (may) face in the educational system are misdiagnosed by representatives of the dominant group(s).

Typically the *ITMs themselves* have been and are blamed for any failures. 'Reasons' for problems in school have been said to stem from several *deficiencies* or handicaps in the ITMs themselves. The ITM child, her parents and her group have been seen as causing the problems. The most often used 'diagnoses' for these problems have been, according to Stacy Churchill (1985), *linguistic* (related to either L2 or L1 (L = language; L2 = second language; L1 = first language, mother tongue), *social* or *cultural*. The child is seen as suffering from handicaps/deficiencies which are

- *L2-related*: the ITM child (and her parents) do not know the dominant language (e.g. English) well enough;
- *social*: the children's parents represent the lowest social groups, with little formal education, high rates of unemployment, few if any books at home, no working space for the child to do home work, too many chores for the child at home, etc; the children do not get enough school-related support at home;
- *cultural*: the ITM culture — family patterns, gender roles, relations between the generations, etc — is different from the dominant group's culture; there is a cultural clash; this prevents the child from achieving; and, in a later phase,
- *L1-related*: the child does not know her mother tongue well enough and is therefore left without a solid basis for L2-learning too (see Table 2, from Skutnabb-Kangas 1988: 34-35).

In deficiency/deficit theories (the first four stages in Table 2), the ITMs themselves, and their characteristics (including bilingualism or multilingualism), are seen as *The Problem*. *Measures* to cure the problems have typically included more L2-teaching, social support, some forms of multicultural or intercultural education, and, later, some L1-teaching (MT teaching), respectively. Quick assimilation, linguistically and culturally, and acceptance of the dominant group's linguistic, social and cultural norms, have been official or unofficial *goals*, decided by the dominant group for the ITMs. Some minorities, like the Roma, have both been excluded from formal education and have themselves resisted the assimilatory formal education. All four deficiency-related explanations have been and are being used to explain the non-participation, early push-out and lack of success in schools for Roma children.

The educational models used in these early phases of deficiency theorising can be called *non-models and, at the most, weak models of bilingual or multilingual education*. We now turn to a more detailed description of these models (mainly based on Skutnabb-Kangas 1984, 1988, 2000).

4.2.3. Presentation of non-models and weak models of bi/multilingual education

A *submersion or sink-or-swim programme* is a programme where linguistic minority children with a low-status MT are (forced to accept) being instructed through the medium of a majority language, unfamiliar to them, with high(er) status.

In the North, they are placed in classes where some children are native speakers of the language of instruction. Usually the teacher does not understand the MT of the minority children. The majority language constitutes a threat to the minority children's MT. The MT runs the risk of being displaced or replaced — a subtractive

Table 2. Stages in the development of ITM education

REASON FOR PROBLEMS	MEASURE	GOAL
Deficit theories		
1 *Linguistic L2-related handicap, learning deficit* (the child does not master L2 well enough)	*More teaching of MaL* (auxiliary teaching, ESL, introductory clases etc); compensatory	MI is to become MaL speaking as fast as possible
2 *Social handicap, socially linked learning deficit* (the child's parents come from the lowest social classes)	*More social and pedagogical help* (aids, tutors, psychologists, social workers, career advisers etc); in addition to measure 1; compensatory	Same as 1
3 *Cultural handicap, culturally linked learning deficit* (the child has a «different» cultural background; the child has low self-confidence; the child is discriminated against)	*Inform* MI-children about MA culture/about their own culture; inform all children about MI-cultures/start multicultural/ intercultural educational programmes; eliminate discrimination/racism in teaching materials; in addition to measures 1 and 2; compensatory	MiL in the family 1–2 generations; MI-children need help to appreciate MI-culture (until they become MaL speaking)
4 *Linguistic L1-related handicap, learning deficit because of L1 deprivation* (the child does not know her own L properly and has therefore poor grounding for the learning of L2 CALP) (the child loses content while learning L2)	*Teaching of L1 as subject; elementary education through the medium of L1 with as fast a transition to L2-medium as possible.* MiL has no intrinsic value, it is therapeutic; compensatory (more self-confidense, better co-operation with home, gives better basis for MaL learning, functions as bridge for transmission of content during L2-learning); in addition to measures 1 and 3	Same as 3
Enrichment theories		
5 High levels of bilingualism beneficial for the individual but difficult to attain, demands much work and energy. The primary goal is to learn MaL properly; it is a prerequisite for equal opportunity	Teaching through the medium of MiL for several years inside MA-school; obligatory teaching of MaL; transition to MaL-medium teaching after elementary education	MiL is allowed to be maintained for private use; bilingualism necessary; MiL is allowed to exist (in a diglossic situation) as long as demographic basis exists
6 Bilingualism enhances development. If problems arise, the causes are similar to those of monolingual children; some problems may be caused by racism/discrimination	Separate, equal school system for MI and MA children, L1 is medium for both and L2 obligatory (or possible to study) for both. Positive discrimination for the MI economically (smaller units allowed)	Existence of minorities is enriching for the whole society. MiL has (at least some) official status and its use in encouraged, also for MaL children

Source: Skutnabb-Kangas 1988: 34-35.

MI = minority; MiL = minority language; MA = majority; MaL = Majority language

language learning situation. The MT is not being learned (properly); it is 'forgotten'; it does not develop because the children are forbidden to use it or are made to feel ashamed of it – and, in any case, the MT is not used in school as a medium of instruction, and mostly it is not even taught as a subject (except sometimes on a voluntary basis and/or outside school hours). This is the most common — and most disastrous — method in the present world for educating ITM children.

In another variant of a submersion programme, mainly in the South, powerless/ dominated linguistic majority children (or groups of minority children in a country with no decisive numerical and/or power majorities) are forced to accept instruction through the medium of a foreign (often former colonial) high-status language, because MT medium education does not exist. This often happens in mixed MT classes, mostly without native speakers of the language of instruction. But it also happens in linguistically homogenous classes, sometimes because MT-medium education does not exist and sometimes because the school or the teachers hesitate to implement a MT-medium programme. The teacher may or may not understand the MT of (some of) the children. The foreign language of instruction is not learned properly. Often the teachers' own competence in it is low (see Benson 2009, Skutnabb-Kangas & Mohanty 2009). At the same time, the children's MTs are being displaced and not learned either (properly or at all) in relation to formal domains (for instance literacy is often not achieved). Often the children are made to feel ashamed of their MTs, or at least to believe in the superiority of the language of instruction. Many African, Latin American and Asian countries use these programmes for ITM children.

A *transitional programme* is a programme where ITM children with a low-status MT in both South and North countries are initially instructed through the medium of their MT for a few years. But their MT is viewed as having no intrinsic value, only limited instrumental value. The MT is seen as useful only so far as its auxiliary use enhances the knowledge of the dominant language. Teaching through the medium of the MT is not seen as a right that the child is entitled to. Using the MT also gives the children some subject matter knowledge while they are learning the majority/dominant language.

The children are transferred to a dominant language medium programme as soon as they can function, at least to some extent, in the dominant language orally (*early-exit transitional model*) - as soon as they have reached some BICS-type proficience (Basic Interpersonal Communicative Skills), but without proper CALP (Cognitive-Academic Language Proficiency) – see Cummins 2009 for the latest applications of the concepts[64] - or at the latest around grade 6 (*late-exit transitional model*).

A transitional programme is a more sophisticated version of submersion programmes, a more 'humane' way of assimilating. In the North, transitional bilingual education encourages a shift to first dominance and later on even monolingualism in the majority language. These programmes are common in the education of migrant children in some of the more progressive settings (some programmes in Sweden, earlier also in the Netherlands and USA, etc). In the South, they are also used in parts of 'Anglophone' Africa, and recently to some extent also in African countries with French or Portuguese as an/the official language[66]

A *segregation programme* is a programme where linguistic minority children with a low-status MT are forced to accept instruction through the medium of their own MT, or the national language of their country of origin. For instance, Kurdish children from Turkey who have had any teaching through the medium of «their own language», have been taught through the medium of Turkish not Kurdish (for instance in Bavaria, Germany, or in Denmark (see Taylor & Skutnabb-Kangas 2009 for Denmark). The children are in classes with minority children with the same MT only. The teacher may be monolingual or bilingual but is often poorly trained. Often the class/school has poorer facilities and fewer resources than classes/schools for dominant group children. The teaching of the dominant language as a second/foreign language is mostly poor or non-existent. Many present education models for Roma children can also be characterised as segregation, either by direct educational design or as a result of demographic and economic circumstances. Results are negative in many respects – but see Heugh on Bantu education in Example 11.

But majority/dominant group children also have non-models: *mainstream monolingual programmes, maybe with some foreign language as a subject teaching*. In the worst case (as in many North American or Russian classrooms), no foreign languages are taught at all, leading to what we call monolingual reductionism. In other countries, one or several foreign languages are taught as subjects for a few hours per week. This is still the preferred mode of foreign language instruction in the world. The best foreign-language-as-a-subject teaching, for instance in The Netherlands or in the Nordic countries, can give a solid basis for bi- or multilingualism, if it is combined with travel or using the language in daily intercourse later. During the last many decades, media and advertisements have also contributed to better proficiency, especially for English. Earlier, this was mainly in countries which did not dub films or TV-programmes but used subtitling; today young people, at least elites, have access to English directly in most countries through internet. Most ITMs have no access to subtitling in their own languages and can thus not use media in dominant languages as teaching materials to the same extent as those who, through subtitling, can compare the languages.

4.2.4. Assessing the non-models and weak models

ITM struggles in relation to languages in education often start when parents can see that their children are not doing well at school, despite trying to do whatever the dominant society and school demand. In addition, the parents often feel that they are losing their children, who may no longer know the MT (well), who may feel ashamed of their parents, their language and culture, and who assimilate rapidly in the North countries, but without getting the benefits which were promised with assimilation (e.g incorporation on

the labour market; even if immigrant minorities, against all odds, get high formal qualifications, discrimination prevents them from getting jobs that would correspond to their qualifications, as many studies in Europe show[67]). Many ITMs start the struggle with demands for the learning of the ITM's own culture and instruction in the MT, first as a voluntary subject and later also as a required medium of instruction. In the initial phases of mother tongue medium (MTM) education, the legitimation has often been that it leads to better L2-competence and helps school achievement because the children who are instructed in their mother tongue do not lose content while learning L2. This instrumental justification is, as mentioned above, still the only (grudgingly accepted) general legitimation for bilingual education in most Western countries. It leads in the best cases to transitional early-exit programmes. These are still based on seeing the ITM child as deficient and education as a means of trying to 'compensate' for the deficiencies.

Transitional early-exit programmes are a more humane way to assimilate ITM children than direct submersion (i.e. placing the children in dominant-language-medium classes). At least, the children understand initially what the teacher is saying. At the beginning, during the first grade or two, the results may seem really good – and compared to direct submersion, they ARE (see Example 45, Papua New Guinea). Still, they are language shift programmes. They do not normally lead to high-level bilingualism, as several Examples below show. Example 4 explains the reason:

Example 4.

*Kathleen Heugh (in a Power Point presentation in New Delhi, February 2008, resulting in Heugh 2009) asks the question how long it takes to learn a second language for educational purposes, and, listing many sources, answers: «From 1953 to the mid 1980s, most literacy/language education specialists thought that it would be possible to provide early literacy (**learning to read**) in MT and switch to L2/FL (**reading to learn**) by years 2 or 3. We now know from comprehensive studies in Scandinavia, Australia, Russian Federation, India, North America, and, especially in Africa that it takes 6 - 8 years to **learn** enough L2 to be able to **learn through** the L2»* (emphases added).

All non-models and weak models for ITM children fit one of the genocide definitions in an early draft of what later became the UN Genocide Convention (see Chapter 2). Linguistic genocide was defined (in Art. 3.1 – which is not part of the final Convention) 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.*

'Prohibition' can of course be overt and direct, e.g., killing or torture for using the MT, as in Turkey vis-à-vis Kurds – still in 2009; see Kaya 2009, Skutnabb-Kangas & Fernandes 2008). Often it is covert, more indirect, accomplished via ideological and structural means (see Section 4.3. below). If the ITM language is not used as the main medium of education and childcare, the use of the language is indirectly prohibited «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, for many 'national' minorities, and for most Indigenous First Nations. It is also the situation in the South for most ITM children.

We shall present some examples of this education. As becomes clear, all of them involve subtractive teaching through the medium of a language foreign to the student. Examples 5, 6, 7 and 8 represent submersion programmes, examples 10 and 11 are early-exit transitional programmes, and example 9 has both. In some, it is also shown that an early-exit transitional model leads to better results than a straight-forword submersion model. But it is clear that the results do not live up to the four goals in Section 4.1. in the early-exit transitional models either.

Example 5:

The following example comes from the USA. In an article called 'Educational Malpractice and the Miseducation of Language Minority Students' (2000), John Baugh, after having documented the harm caused, draws a parallel between how physicians may maltreat patients and how minority students (including students who do not have mainstream US English as their first language, for instance speakers of Ebonics/Black English), are often treated in

education in the USA. Just as physicians can be taken to court for malpractice, Baugh thinks schools should be in a similar way responsible for miseducation. The harm caused to them by this maltreatment and miseducation also fits the UN definition of «causing serious bodily OR MENTAL harm to members of the group».

Example 6:

The following examples come from Canada, with Indigenous students, all taught through the medium of English. Katherine Zozula and Simon Ford tell in their 1985 report ***Keewatin Perspective on Bilingual Education*** *about Canadian Inuit 'students who are neither fluent nor literate in either language' and present schooling statistics showing that the students 'end up at only Grade 4 level of achievement after 9 years of schooling' (quoted in I. Martin 2000a: 3; see also I. Martin 2000b). The same type of results are presented in the* ***Canadian Royal Commission on Aboriginal Peoples 1996 Report****. They note that 'submersion strategies which neither respect the child's first language nor help them gain fluency in the second language may result in impaired fluency in both languages' (quoted in I. Martin 2000a: 15). The Nunavut Language Policy Conference in March 1998 echoes this in claiming that 'in some individuals, neither language is firmly anchored'* (quoted in I. Martin 2000a: 23). *This statement is partially based on the empirical study by two experienced Arctic College educators, Mick Mallon and Alexina Kublu, in a 1998 Discussion Paper for the conference which states that 'a significant number of young people are not fully fluent in their languages', and that many students 'remain apathetic, often with minimal skills in both languages' (quoted in I. Martin 2000a (9: 27). A 1998 report (****Kitikmeot struggles to prevent death of Inuktitut****) notes that 'teenagers cannot converse fluently with their grandparents'* (quoted in I. Martin 2000a: 31).

Example 7:

The example is a longitudinal study from Europe by Pirjo Janulf (1998). She studied Finnish immigrant minority children in Sweden who had Swedish-medium education. She went back to as many of them as she could find, after 15 years. Regardless of the nationality and language background of their spouses, not one of them spoke any Finnish to their own children. Even if they themselves might not have forgotten their Finnish completely, their children were certainly forcibly transferred to the majority group, at least linguistically (see, e.g., Kouritzin 1999 and Wong Fillmore 1991 for other examples).

Example 8:

«In Nepal, as in India and many other countries, a large proportion of ITM children joining school are pushed out during the early years of primary education. The National Language Policy Recommendation Commission in Nepal pointed to this problem as early as 1994 (Yadava and Grove (eds.) 2008: 24). The children enrolled at primary level tend to «drop out» from the schools. In some cases, the students leave the school and enrol again. For these students it takes nine to twelve years to complete the primary education (National Education Commission 2049 VS). This is an indication of a great educational loss. The majority of the school dropouts are found in grade (1-2). This indicates that they find school life to be not only unfamiliar but often unbearable and useless. One of the reasons given for this for ITM children is the difference in the language they use at home and in school. It would therefore be appropriate to educate the children in their mother tongue in order to make the break between home and school as small as possible. Neglect of children's home language or their MTs in the school programs is thus a major factor in the large-scale school failure of ITM children.

In India, public education is offered mostly in the major languages of the Constitution. Only 26 languages out of over 350 languages are used as languages of teaching in primary education classrooms. Except for 6 tribal/indigenous languages in the North-Eastern states in India, only official languages are used as languages of teaching (Jhingran, 2009) .[In 2008-2009 there are 12 tribal languages used as media of instruction in 345 schools in Orissa; Mahendra Kumar Mishra, personal communication, 1 May 2009]. Jhingran (2009) estimates that nearly 25% of primary school children in India face moderate to severe learning problems due to

these dominant-language-only programmes. Over 84.3 million tribal peoples in India constitute 8.2% of the national population and they speak 159 tribal languages (Singh 2002). Over 99% of the tribal children are deprived of access to schools where their MTs have a place. A number of studies in India (see Mohanty, Mishra, Reddy and Ramesh 2009, for a discussion) show poor learning achievement and low representation of the tribal students compared to the other groups of children who do not face learning problems due to the mismatch between their home language and school language. Language barriers for children in the dominant-language-only programmes are also a major contributing factor in capability deprivation and poverty in India. A large number of schools have a majority of tribal children; still, in all these schools the medium of education is the dominant language of the state. There are 165,869 schools with over 50% and 103,732 with over 90% tribal children (Jhingran 2009). All these children are taught in forced submersion programs in L2 (majority language) medium with subtractive effects on their MT. Absence of MT-based MLE has serious consequences for education of these children, contributing to capability deprivation and poverty not only in relation to the individual children but also their communities (Mohanty 2008, Mohanty et al. 2009). The push-out rate for the tribal children is 51.57% by grade 5 and 80.29% by Grade 10 (Mohanty et al. 2009). This means that fewer than 20 out of 100 tribal children entering schools survive to appear for the high school examination at the end of 10 years of schooling, and of these only about 8 pass the high school examination. Thus, there is a wastage of 92% in the dominant-language school education for the tribal groups in India. Even among those who pass the high school final exam, most have a very low level of performance, and therefore they cannot even try to get to higher and technical education. As a result, despite the provision of reserved quota in admission for tribal students in India, the proportion of such students in higher and technical education is less than 5%, far below their 8.2% share of the national population. This, as Dreze and Sen (2002) argue, ensures that the tribal communities remain in the unskilled labour category which contributes to their capability deprivation and poverty. Thus, absence of MT-based MLE (except for some experimental programs which we discuss later) is a major factor in school failure and poverty among the tribal communities in India. This is also true of other South Asian countries such as Pakistan, Bangladesh, and Bhutan (see Mohanty's Introduction to Skutnabb-Kangas 2007).» (Skutnabb-Kangas & Mohanty 2009: 21-22).

Example 9:

The next example is Edward Williams' study of basic education in Zambia and Malawi, with some 1,500 students in grades 1- 7 (1998; see also Williams 2006 for more nuances). The Zambian students had all their education in English from grade one, with no teaching of their mother tongues, even as subjects; a typical ***submersion*** *model. The results state that large numbers of Zambian pupils 'have very weak or zero reading competence in two languages.' The Malawi children were taught in local African languages (mainly Chichewa) during the first 4 years, with English as a subject. From grade 5 they had English-medium education, with an African language as a subject; an* ***early-exit transitional*** *model. Williams documents that the Malawi children in grade 5 do as well in tests of the English language, after one year of English-medium studies, as the Zambian children after 5 years of English-medium submersion. In grade 7, the Malawi children had slightly better test results in the English language than the Zambian students. In addition, the Malawi children knew how to read and write their mother tongues, and had learned some content during their first 4 years of schooling.*

Still, the level of the Malawi students' English, even when better than the Zambian students' English, was nowhere near what would be required to learn various subjects using English as the instruction language after grade 4. None of the groups had the competence in English needed for using it as the teaching-learning language, but the Malawi children had a better chance of reaching the required competence. In addition, they became biliterate, and learned some of the content in their own languages whereas the Zambian children could not read or write any language well and

had therefore missed most of the content teaching (see also Kathleen Heugh's 2009 summary of African results). Williams' conclusion was that 'there is a clear risk that the policy of using English as a vehicular language may contribute to stunting, rather than promoting, academic and cognitive growth'. This can be seen as «causing mental harm» (Chapter 2) (see also the similar conclusions in Lowell and Devlin 1999).

Example 10:

The next two examples are from South Africa. Zubeida Desai's 2001 study shows similar results to Williams' study (Example 9). Xhosa-speaking grade 4 and 7 learners in South Africa were given a set of pictures which they had to put in the right order and then describe, in both Xhosa and English. In Desai's words, it showed 'the rich vocabulary children have when they express themselves in Xhosa and the poor vocabulary they have when they express themselves in English' (ibid., 321). *The Pan South African Language Board (where Desai was since 1996 a member and has also served as the Chair and the Deputy Chair) argued in March 1999, criticising the Government, that 'African learners are not likely to receive quality education if they are not able to access knowledge equitably. The board further argued that a more pedagogically sound approach would be to enable all learners to write their examinations in their primary languages'* (ibid., 337-338; see also other references to Desai in the bibliography).

Example 11:

Kathleen Heugh showed in a study (2000; see also other references to her in the bibliography; likewise references to Alexander and Desai) that the percentage of Black students who passed their exams went down every time the number of years spent through the medium of the mother tongues decreased. Comparing apartheid Bantu education in its various phases, she showed that even with the racist education for African students, the secondary school pass rate rose, with 8 years of MTM, to 83,7% by 1976 and the English language as a subject pass rate rose to over 78%. When after the Soweto uprising MTM education went down to only 4 years, with an earlier transition to English-medium, the secondary school pass rate declined to 44% by 1992, with a parallel decline in English language proficiency.

We could present literally thousands of similar examples (see Skutnabb-Kangas 1984, 2000a for many more), also from Deaf education[68], and we have more examples later in the book). Our tentative conclusion is that most indigenous, tribal and minority education in the world has disastrous effects and may *from an educational and sociological point of view* participate in committing genocide, according to the present genocide definitions in the UN Genocide Convention (Chapter 6).

But before embarking on final educational and sociological conclusions on the non-models and weak models (see Section 4.4.), we present ways of using force as a means of control in conducting subtractive dominant language medium education, together with some of the negative educational and sociological consequences of it. We suggest that the research about the effects of the various forms of subtractive education applied to ITM children, and, in particular, the very serious harm caused by the experience of residential schooling, does inflict serious mental harm and may often directly or indirectly inflict or cause physical harm, as the victims of such schooling often suffer very serious psychological, linguistic, cognitive, educational, social (including health-related) and economic damage. We also suggest that such damage can be permanent, as the consequences of most of these types of damage may follow indigenous peoples that have suffered such education, throughout their lives[69].

4.3. Force as means of control in ITM education: «sticks», «carrots» and ideas

We shall use peace researcher Johan Galtung's (1980) differentiation between three forms of force. All of these can accomplish the same goal. Here the goal is state control of educational processes and outcomes in relation to ITMs. The three forms that power-holders can use are «sticks», «carrots» or «ideas». First we clarify these concepts, and then we give more examples of especially the use of sticks and ideas in relation to language, from a sociological-educational point of view.

Taking children away from the parents with the use of physical force, physically punishing them or depriving them of food because they have used their own language are examples of the use of «*sticks*«.

«*Carrots*» were used when teachers in Norway could from 1851 up to the 1920s «get a supplement to their salary if they could document good results in linguistic Norwegianisation of Saami and Kven children; likewise poor parents and children could get grants for food and clothing for showing 'positive attitudes', i.e. learning and using Norwegian, at the cost of their own languages (Eriksen & Niemi 1981: 48, 53). *Positive reinforcement of the dominant language* ('carrots') was used simultaneously with *negative reinforcement of the mother tongue*» (Skutnabb-Kangas & Phillipson 1989: 31) (see Example 12).

Example 12:

In the Saami and Finnish speaking areas in Norway, radio licences were cheaper than in the rest of Norway. The programmes were of course in Norwegian only. In both Norway and Sweden, books, newspapers and journals in Norwegian/Swedish were distributed free of charge in these areas while there were severe restrictions on importing books in Finnish; these were seen as unpatriotic literature. The overt prohibition of buying Finnish books was in force in Sweden until 1957 in the library of Torneå, the border city between Finland and Sweden (Skutnabb-Kangas & Phillipson 1989: 31).

The use of «*ideas*» as a means of control (see Herman & Chomsky's 1988 classic on manufacturing consent) convinces through ideological manipulation. Formal education is central to this, and youngsters can themselves often see it (an African-American youngster said in an interview: «To me how I feel about the education system, I mean they don't have the locks on our hands and feet no more, but they've got it on our brain. They've got the locks on our brains now»; Price 2000: 223). It can cause shame and loss of self-confidence, when ITM children are taught that their own language, culture, traditions, etc. (and therefore they themselves) are inferior to (those of) a dominant group. This is exemplified by the Kurdish boarding schools in Turkey where ideas were combined with physical separation from parents and the Kurdish community and culture (Example 13):

Example 13:

«One of the reasons why they began to build boarding schools in 1964 was that they wanted to prevent the children from having contact with their parents. By isolating them in schools far away from their parents for the greater part of the year the authorities hoped to make the children forget their Kurdish. And since the Turkish teachers did not want to work in the primitive Kurdish villages and the government did not trust the Kurdish teachers, it was decided to bring the children to the Turkish teachers rather than the other way round. […] After a few years the children no longer want to know their parents. The children are forbidden to speak Kurdish at school. They are taught that the Kurds are dirty and primitive. And when they go home to their villages they tell their parents that now they are Turks and don't want primitive Kurdish parents. They want their parents to start speaking Turkish and being civilized.» (Clason & Baksi 1979: 75, translated by and quoted in Skutnabb-Kangas 1984: 310, 312).

Here the psychological separation from one's language, culture and ethnic identity and possible transfer to another language, culture and identity has, as in many other cases too, been connected with (temporal or permanent) physical separation from one's own group (i.e. «sticks»). The mandatory use by States of residential schools and similar institutions has involved the removal of indigenous children (and, as Example 13 with Kurdish children in Turkey and some later examples show, also oppressed minority children) from their homes and their native communities, their transfer to institutions that were often very far from their homes and communities - and in some cases, to families of the dominant community (see Examples 14, 15 and 16):

Example 14:

Both in the USA and in Canada it was clear that many of the schools were much further away than they needed to be. The explanation often was that they were mission schools, and 'we were sent to Moose Factory in Ontario because we were Anglicans, and the Anglicans

had residences for Indian kids only from Ontario to B.B.' (Buckley Petawabano, a Cree man from Mistissini reserve in northern Quebec, quoted in Richardson 1993: 107). Thus, first Indigenous peoples were forced to accept the divisions within Christianity, which meant nothing to them (they were made 'Anglicans'), and then they were punished for it. Sometimes the children were flown thousands of miles away. Or they used other means of transport, as Hyacinth Colomb, a Cree taxi driver describes about his own journey south to a Catholic boarding school at the age of ten - the journey took about a week and a half: «They would send six men to take the kids out to school, with eight kids in a canoe. When we left Puk every little kid had his own paddle; we had to work our way (quoted in Richardson 1993: 221)… 'For the children, being sent to boarding schools was 'a Trail of Tears,' a form of compulsory and permanent expatriation... In Alaska... Indian children are shipped as far away as Oklahoma, 6,000 miles from their parents' (Cahn & Hearne 1969: 32).

Example 15:

Up to a third of all Aboriginal children in Australia (some 100,000), the 'stolen generations,' were forcibly removed from their families between 1910 and 1970 and placed in white missions, institutions, foster homes, «forced into a form of slavery, often physically and sexually abused and denied protection by the state» (Pilger 1998: 240; see Fesl 1993, Edwards & Read (eds) 1992).

Example 16:

East Turkistan (officially «Xinjiang Uyghur Autonomous Region») where the Turkic Uyghur people (an estimated 10-15 million; the official figure is 8.5 million) live was occupied by Communist China in 1949, and has since then been seen as part of China. The State-sponsored systematic linguistic and cultural assimilation process that the Uyghur people are currently being subjected to started in early 1990's and has all the ingredients of cultural genocide described in Skutnabb-Kangas 2000. Some examples include stopping the use of Uyghur language as the medium of education from kindergarden to university, creating residential schools everywhere and far away from home and moving the Uyghur students to those schools, and sending the Uyghur middle and high school students to schools in the inner Chinese proper (Han Chinese regions) thousands of kilometers away from the Uyghur homeland (Bilge Tarim, pseudonym, personal communication, March 2009).

The following are summaries of some Uyghur readers' responses to articles on many websites by Bilge Tarim (pseudonym) at the beginning of 2009:

1. All of the top 1-5% students in all Uyghur middle schools are being selected and sent to high schools in Han Chinese regions, usually 4,000-6,000 km away from East Turkistan. This has had a big negative impact on the academic achievement of the remaining Uyghur kids: all the academic leaders in various classes suddenly disappeared. Uyghur teachers felt this impact very strongly as well; teaching the remaining kids is not as exciting as before.

2. All the Uyghur elementary and middle school teachers were forced to take Han Chinese language tests after about 2006, and those who «were not qualified» were laid off, transferred to other jobs, or forced to retire early. They are all very experienced teachers, usually having 20-30 years of teaching experience. The positions of those teachers were filled with Han Chinese people who were born and went to schools in Han Chinese regions of China, who do not speak a single word of Uyghur, and who do not understand Uyghurs and their homeland. This part of China's population transfer policy means encouraging Han Chinese people to go to East Turkistan with special privileges while more than 50% of Uyghur graduates are being left jobless. Now such Han Chinese newcomers are teaching not only elementary school first graders, they are also teaching in Uyghur daycare centers and kindergartens. The Uyghur kids are losing self-esteem and self-confidence, are not able to learn any subjects, and the government only cares about their learning of the Han Chinese language; the rest doesn't matter for them. That is, the Uyghur kids are now being educated to be qualified slaves who master the Han Chinese language but nothing else. Many Uyghur teachers were fired from their jobs for peacefully expressing opposition to the so-called «bilingual education», and for signing a

petition to promote the use of Uyghur language in official government dealings and on government websites. For example, a teacher of Kashgar Normal University reported in 2007 being fired along with other 12 Uyghur teachers because they signed a petition to promote the use of the Uyghur language. This is a disaster for the Uyghur youths, because it is so difficult for them to find such a job.

3. There has been a huge difference in government-allocated budgets to Uyghur and Han Chinese schools in East Turkistan since the 1950's. The same is true for children in daycare centers. Now the government increased the budget substantially for daycare centers and schools who use the Han Chinese language as the only medium of instruction. Many people have started to think that this is the benefit of «bilingual education». The Chinese government has been calling the education program in East Turkistan that uses Han Chinese language as the only medium of instruction, starting in elementary school first grade and which does not teach the Uyghur alphabet before third grade «bilingual education». It is all about jobs. You can see the «Uyghurs will not be hired», «No Uyghurs will be considered» signs in various job fairs or TV job ads in East Turkistan. The Chinese government is treating the Uyghurs who got their education in the other Han Chinese parts of China preferably first, and those who got their whole education in Chinese schools next. The Uyghur kids who went to Uyghur schools are now treated as 100% second class citizens. («Bilge Tarim», PhD, emails 3, 4 and 5 March 2009.)[70]

Children in submersion education were and are often allowed to return physically to their communities, both at school break times and upon the completion of such education. But there are many examples of the return being conditional and the state representatives trying to prevent it, sometimes permanently (see Examples 17 and 18).

Example 17:

The descriptions of what happened in the mission schools and (other) boarding schools could be from any country - the similarities are striking. Some children were taken away 'only' for term time and were allowed to go home for holidays. Others were taken away completely and placed in orphanages and schools or given away to 'white' 'foster parents'. «Once in a boarding school, the children are effectively cut off from their families... Permission to see one's own parent is not a 'right'. It is often granted as a reward for good behavior - or denied as a form of punishment' (Cahn & Hearne 1969: 33).

Example 18:

A young Saami woman (in her early thirties) told one of us at the end of the 1980s about her boarding school experience in Norway. She had spoken Saami several times during the week outside the classroom. On Friday she was told that as a punishment she was not allowed to go home for the weekend. She started crying. She then called her elder brother, who called the school. He managed, with difficulty, to persuade the head of the school that he could come and fetch his little sister.

The wish to remove children from the influence of the parents (Example 19) is by no means over – if parents refuse, force has been suggested as late as in 2009 (Example 20).

Example 19:

Claudio Marta (1979) tells about a Swedish social worker who regretted that he couldn't remove a Lovara Roma boy from his parents and put him in a Swedish foster family - the only «deficit» in the boy's family was that they spoke Romani to the boy. The social worker «tried to persuade the parents to give up their child, but they refused» (ibid.: 33).

Example 20:

In Denmark, immigrant minority families are still (2007) hugely overrepresented among those whose children are forcibly removed for «social» reasons - these may often be linguistic. As a rule, the children are placed in Danish-speaking families, and often the parents have been forbidden to visit them. In 2009, the Social Democrat MP and the party's chair for Social Affairs, Mette Frederiksen, suggested passing a new law to the effect that immigrant minority parents who «have poor Danish competence» and do not speak Danish with their children at home, should be forced to send

their children to (Danish-medium) daycare when the children are one year old. If the parents refuse, she wants to remove the children from the parents[71].

The use of physical separation and other «sticks», «carrots», and «ideas» have all involved and still involve subjection to education through the medium of a language other than the group's MT. Such assimilationist practices can and do have very harmful psychological, cognitive, linguistic and educational consequences, described both in our first Expert paper (Magga et al. 2005) and here. Likewise, they lead to a destruction of the group's language and culture.

4.4. Educational, social, physical and psychological consequences of submersion education

The late UN Special Rapporteur on the Right to Education, Katarina Tomaševski, 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 (para 30). The whole «collapsed model» of educational process and its outcomes are summarised succinctly in our Example 21:

Example 21:

Navajo children are taught in a foreign language; they are taught concepts which are foreign; they are taught values that are foreign; they are taught lifestyles which are foreign; and they are taught by human models which are foreign. The intention behind this kind of schooling is to mould the Navajo child (through speech, action, thought) to be like members of the predominant Anglo-Saxon mainstream culture. The apparent assumption seemingly being that people of other ethnic groups cannot be human unless they can speak English, and behave according to the values of a capitalist society based on competition and achievement. The children grow up in these schools with a sense of: (1) Confusion regarding the values, attitudes, and behaviour taught at school and the values, attitudes, and behaviour taught at home. (2) Loss of self-identity and pride concerning their selfhood – their Navajo-ness. (3) Failure in classroom learning activities. (4) Loss of their own Navajo language development and loss of in-depth knowledge of their own Navajo culture (Pfeiffer 1975: 133).

Summarising, then, there are studies (see below, and in Chapter 8) comparing several types of programmes for ITM children, both in North and South countries. This includes children in Africa and Asia in countries with many different ethnolinguistic groups and no numerical majorities, and often with an ex-colonial language as a dominant language. The following types of programmes have been compared:

a) completely dominant-language medium education from grade 1;
b) early-exit transitional programmes, with MTM education for the first 1-2 years, followed by using a dominant language as the teaching language;
c) late-exit transitional programmes where the transition from a MTM programme to a dominant language medium programme is more gradual but is mostly completed by grade 5 or 6; and
d) programmes where the mother tongue is the main medium of education at least for the first eight years, or even longer.

Research results comparing academic achievement of these children show unanimously that the children from programme types a) and b) are as a group never likely to reach a native-like competence in the dominant language; at the same time they will not learn their own language well either (they do not learn to read and write it, for instance, even if a writing system and materials exist) (e.g. Williams 1998, 2006; Ramirez 1992, Ramirez et al. 2001a, b, Thomas & Collier 2002, Alidou et al. 2006, Mohanty 1995, 2000, 2006, 2008, 2009, Skutnabb-Kangas 2000, Skutnabb-Kangas & Mohanty 2009). Their academic achievement results are mostly very poor at a group level (even if some individuals may manage). Children in late-exit transitional programmes fare somewhat better, but even their results are much below what they could be (see Chapter 8).

As has become clear from many studies, the length of MTM education is more important than any other factor in predicting the educatio-

nal success of bilingual students, including their competence in the dominant language. It is also much more important than socio-economic status, something extremely vital in relation to dominated/ oppressed ITM students (e.g. Alidou et al 2006, Heugh 2007a, b, 2009, Heugh et al. 2007, May & Hill 2003, May, Hill & Tiakiwai 2003, Thomas & Collier 2002). The worst educational results are even today with students in regular submersion programmes where the students' MTs (L1s) are either not supported at all or where they have only had some mother-tongue-as-a-subject instruction. Dominant-language-only submersion programmes «are widely attested as the least effective educationally for minority language students» (May & Hill 2003: 14, a thorough two-volume survey of bilingual education research, commissioned by the Māori Section of the Aotearoa/New Zealand Ministry of Education; see http://www.minedu.govt.nz/; see also May, Hill & Tiakiwai, 2003). Thomas & Collier (2002:7) state in the conclusions of their massive study of various forms of Spanish-English bilingual education (some 210,000 students) that «the strongest predictor of L2 student achievement is the amount of formal L1 schooling. The more L1 grade-level schooling, the higher L2 achievement» (see Section 8.1.3. for more details). It is also clear that submersion education is the most important causal factor in ITM students' educational failure. In addition, it is a factor than can be changed.

Summing up consequences of submersion education, in most cases non-models and weak models for ITM children lead to

(1) *negative educational consequences*, in terms of achievement and outcomes;
(2) *negative physical consequences* which can flow from (2) above, including alcoholism, incest, suicide, violent death rates, and so forth;
(3) *negative psychological consequences*, with particular reference to the devastation caused by residential schools;
(4) *loss of language and in-depth knowledge of culture*: and
(5) *negative socio-economic and other social consequences which influence the life chances of children as adults, and which are long-term and can last for generations* (e.g. higher levels of unemployment, lower incomes, economic and social marginalisation, alienation, mental illness).

We exemplify all of these further in this section, starting with

(1) *negative educational consequences*. The harm caused by subtractive education can be seen in figures showing consequences for indigenous children and adults. Since most educational data has not been disaggregated, and many figures are guestimates (=estimates not based on hard data but on guesses), we do not have any *global* hard data overviews (e.g. from UNESCO) of how ITM children are doing in the educational system. However, on the basis of many studies from various countries, the general picture is fairly clear. ITM 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 attendance period (see, e.g. the figures from India in Example 8). 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 one. Hundreds of books and thousands of articles, reports and surveys show the negative consequences; we only want to refer to the bibliography, and give just a couple of examples here, one with quantitative (Example 22) and one with qualitative (Example 23) descriptions.

Example 22:

In South Africa, in a Grade 6 Systemic Evaluation National Report (Department of Education 2005: 77; quoted in Heugh 2009), English- and Afrikaans-speaking students who have their MT as the teaching language throughout their education, outperform those non-English and

non-Afrikaans MT students who have switched to their second language, English, by grade 4, across all provinces in South Africa, with a national average passing rate in language of 69% for mother tongue medium (English or Afrikaans) students and 32% for second language students (see also Example 11). Heugh[72] (see also her 2009) summarises the African experience on early-exit transitional models on the basis of many large-scale studies: *«Early transition to the international language of wider communication/ILWC across Africa is accompanied by:*

- *Poor literacy in L1 and L2* (SACMEQ 11 2005; UIE-ADEA study 2006; HSRC studies in S Africa 2007)
- *Poor numeracy/mathematics & science* (HSRC 2005; 2007)
- *High failure and drop-out rates* (Obanya 1999; Bamgbose 2000)
- *High costs/ wastage of expenditure* (Alidou et al 2006).»

Heugh also states (2009: 97-98) that «early transition from the MT to the educational second language in African settings does not facilitate the requisite competence in the second language. High-level linguistic competence is necessary for meaningful access to the curriculum and without this the student is unable to engage with educational materials and discourse. Education in the former colonial (second) language therefore, does not offer equity with MTM education and it cannot deliver quality education. The comprehensive ADEA-UIE stock-taking evaluation of mother-tongue and bilingual programmes across sub-Saharan Africa found no evidence that second language only or early transition to the second language programmes produce successful academic achievement for students (Alidou et al 2006) … Several cross-national studies show disturbing signs of poor achievement in literacy, mathematics and science, in the second language, across the region (UNESCO 2000). SACMEQ II (Southern and Eastern Africa Consortium for Monitoring Education Quality) 2000-2002 shows that 44% of learners in 14 countries achieve minimal levels of literacy at grade 6 whereas only 14.6% achieve the desired level of literacy achievement (Mothibeli 2005). *These studies suggest that current language models fail most students and that the early transition to second language medium contributes to failure and attrition»* (Heugh 2009: 110).

Example 23.

The following description is based on Dr. Mahendra Kumar Mishra's Power Point called «Classroom, Curriculum, Pluralism and Social Inclusion: Voices from the Margin», from a course for MLE teachers, March 2000. Mishra, a former folklorist and head of a tribal school, is the State Tribal and Minority Education Coordinator at Orissa Primary Education Programme Authority, Bhubaneswar, India. He has spent years in villages and classrooms, observing teaching and collecting children's and elders' stories, and, for the last few years, managing mother-tongue based multilingual schools in Orissa (see Mohanty et al. 2009; see also Mishra 2009), including organising in-service courses for teachers. Most of what follows is Mishra's own words; some of his English has been revised by one of us, with his permission.

Mishra juxtaposes the Village and the School: «The Village is a composition of many languages, ethnicities and religions – they coexist. What is the secret that perpetuates the coexistence of these diversities in the villages? The School: though physical access is not denied, children's cultural values and experience is not captured. What is the secret that denies the diversities of language, ethnicity and gender?

What type of classroom do our schools contain? Children from different languages, different religions, different ethnic groups, different cultural backgrounds. Teachers are the authority (on the chair) and children exist in a culture of silence (sitting on the ground). Does the school replicate our inherited colonial mindset? The teachers' values represent The As-Is Situation. Often the only voice heard in class is that of the teacher. When children's voices are heard, they are answering the teacher's questions or repeating the teacher's words. Do the children's voices matter? Do the children have choices of learning something of/from their languages and cultural contexts? Do our classrooms count on these diversities? NO. Where can we see this? Traditional social

biases; A mindset of untouchability (high /low); Behaviour as seen through body language; Cultural attitudes; Seating arrangements in classrooms; Gender disparity- and caste-based space management; priority is given to upper caste children and importance of upper caste teachers, with a corresponding neglect of Adivasi and Dalit [tribal and untouchable] children. All these are invisible in our mindset. Marginalised children have physical access only to the school; they are intellectually neglected. The rich human values of the Adivasi are not discussed. The dignity of the labour of workers is not respected. The contribution of Muslims is ignored. Tolerance of women and girls is absent.

How does our curriculum represent cultural diversities? Uniform curriculum and textbooks have little space for cultural diversities. Local social, religious or linguistic diversities are not discussed in the classrooms. The curriculum designers, textbook writers and teachers are always chanting the «mainstream» mantra. The teachers are faithful followers of textbooks (the course completion syndrome). Only what is written is knowledge, nothing else is (exam-related texts). This ignores all knowledge outside the classroom. There is no emphasis on the social composition of the village (or town) which is constitutive of children's knowledge and environment. There is no or little connection between Village and School»[73].

Tsui and Tollefson conclude, in their 2003 edited book *Medium of Instruction Policies,* with these observations, on the basis of worldwide studies:

The use of a foreign language as the medium of instruction for children who are still struggling with basic expression in that language hampers not only their academic achievement and cognitive growth, but also their self-perception, self-esteem, emotional security, and their ability to participate meaningfully in the educational process (2003: 17).

(2) *negative physical consequences*. Examples abound from all over the world of ITM children having experienced serious physical punishment (both in residential and in day schools), lack of food, sexual abuse, and so forth - some examples have been given earlier. We could repeat the instances from Example 24 below hundreds of times, from all over the world.

Example 24:

One of us has «spoken with Torneå Valley Finns (in Sweden) who were made to carry heavy logs on their shoulders or wear a stiff collar which prevented them from turning their heads or looking down, all because they had spoken Finnish (and I have heard about the same punishment inflicted on Welsh children – Edith Redfern, personal communication, 1979). I have Saami friends who were beaten or kicked as children for answering questions in Saami. Tage Ranängen from Luleå University organised an exhibition of the workhouses in the province of Norrbotten; these were a kind of boarding school which poor children were allowed to attend, and where during the winter they also lived, earning their keep by doing much of the day-to-day domestic work, so that the whole system ran cheaply. He describes how the children were lined up in the school playground when one of them had spoken a word in Finnish to have their ears boxed one by one. Many schools also organised the children to spy on one another, rewarding the child who reported another for speaking the forbidden language, often by giving her extra food» (Skutnabb-Kangas 1984: 309).

The economic marginalisation reproduced by education in its turn often results in direct *physical harmful consequences* in terms of health-related issues: no or poor maternity care, high infant mortality, under-nourishment, dangerous work (e.g. mines, logging, chemicals in agriculture) or unemployment, child labour, poor housing and health care. Health and other physical effects from alcoholism, abuse of women and children in families, incest, and overrepresentation in suicide and crime statistics are also instances of serious physical harm. In several countries the education system, especially the residential schools, have been squarely shown to be a direct and important, often the main causal factor in this harm.[74] An article in *International Journal of Circumpolar Health* (Rothe, Makokis, Steinhauer, Aguiar, Makokis & Bretton 2006: 348), based on an empirical study, including a «Talking Circle», concludes (just as many other articles) the following:

Parents typically teach their young right from wrong, good from bad, desire from need. However, with the introduction of federal government residential schools, First Nations people were stripped of their cultural values in child rearing, family functions and civic responsibilities. Their experiences in residential schools produced low self-esteem, cultural shame, loss of spirit and language, loss of extended family and community bonding, increased domestic violence, child and elder abuse, alcoholism, drug addiction, and internalized oppression that the residential schools endangered. Members of the older generation no longer had the traditional roles and responsibilities in the community and shared customary relationships with friends and family members. Some responded by engaging in deviant behaviors, like common assault, family violence, alcohol and drugs abuse and suicide, Others became passive, removing themselves from community affairs and traditional parenting responsibilities.

The article shows that the negative consequences of residential schooling (and, as the article emphasises, the loss of language and cross-generational communication skills) has influenced not only the generation in the schools but both their parents and grandparents' generation, and future generations. Obviously it is fair to ask to what extent it is education, and even more specifically, the language in which this education is given, that is the main causal factor in explaining the irrefutable negative outcomes. Many researchers (e.g. Cummins, Mohanty, Thomas & Collier, Toukomaa & Skutnabb-Kangas, all in many books and articles) have discussed the causality in various ways both theoretically and with empirical work, keeping other possible causal factors constant, statistically, or by design. The medium of education seems constantly to come out as the strongest causal factor, and certainly the one that is easiest to change, as opposed to, for instance, the child's age or gender, the parents' level of formal education, teacher competence, quality of the instruction, the socio-economic conditions of the parents, the school, the community, and the whole country – these are much more difficult and often impossible to change.

(3) *negative psychological consequences*. Here we give 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, a Swedish Saami, recognised this when he was trying to translate to his father a lecture that he had given in Swedish. His father had heard it but had not understood much of it (Example 25). Ironically, the lecture 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):

Example 25:

That was the first time since I grew up that I realised 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 realised 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).

The mental harm caused by the subtractive education can be expressed in spiritual terms, as in the three quotes below Examples 26, 27 and 28):

Example 26:

Native American psychologist Eduardo Duran 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).

Example 27:

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).

Example 28:

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).

Often education has caused *both physical and mental harm*. It is often difficult to judge which one has been more traumatising (see Example 29).

Example 29:

In the case of Australian Aborigines, residential schools were unashamedly seen as the best means of removing children from the influence of their parents. Many children, taken from their parents, completely lost touch with them and in later years set out on a traumatic search for their families. For many, if not most of these people, schooling away from home is remembered as a searing experience, the designation in conversation most often used being 'cruel.' This is often remembered as physical cruelty; the striking of children as a disciplinary measure is not part of the socialization of indigenous peoples. However, it was the psychological cruelty of removal from family and immersion into an alien way of life which was perceived as equally destructive, so that generations of indigenous people internalized negative attitudes to the «whitening» processes employed in the schools (Jordan 1988: 191).

Many children who have suffered such education are permanently alienated from both their native language and culture and their families and home communities (see Example 30).

Example 30:

«Kee was sent to boarding school as a child where – as was the practice – he was punished for speaking Navajo. Since he was only allowed to return home during Christmas and summer, he lost contact with his family. Kee withdrew both from the White and Navajo worlds as he grew older, because he could not comfortably communicate in either language. He became one of the many thousand Navajos who were non-lingual – a man without a language. By the time he was 16, Kee was an alcoholic, uneducated and despondent – without identity. Kee's story is more the rule than the exception.» (Platero 1975: 57, 58).

The psychological consequences are very often connected to all the other negative consequences. We exemplify them further below in connection with

(4) *loss of language*. As several of the examples show, many children lose their language during and because of the educational process, completely or partially. This has happened in residential schools but it also happens to ITM children in day schools, sometimes even in one generation. We give some examples of the process and consequences for the Navajo (Examples 31 and 32):

Example 31:

«For nearly a hundred years the policy of the United States government was to acculturate the Navajo, so that the Navajo could be assimilated into the White society. To effect this assimilation Navajo children were taken from the shelter of the family and sent to boarding school. Almost every child who entered the boarding school spoke only Navajo, and most of the people employed at the boarding schools spoke only English. When a Navajo child spoke the language of his family at school, he was punished» (Platero 1975: 57).

Example 32:

The following quotes are about adults, pre-school children, and school children, respectively: «[young adults] had been Navajo speakers before they went to school. Then they attended school in the English language and had lost the use of their Navajo» (Blanchard et al. 2003:197)*; «Many of the [pre-school] children who were becoming monolingual in the English language came from households where the parents spoke Navajo.»* (ibid.:199)*; «In 1970 about 90% of Navajo children who came to boarding schools met English there for the first time, by 1990 the situation seems to have reversed, with six-year-old children beginning Head Start said to have very little if any knowledge of the language of their people.»* (Spolsky 2002:172)*; «Young Navajo children do not speak Navajo, but their knowledge of English is far from adequate»* (ibid.:173)*. «Like other Indigenous peoples, Navajos have been dispossessed of their language»* (McCarty et al. 2006:93).

Examples 33 and 34 below, from the education of the Nenets in the Russian Federation and of Deaf children in oral schools, show similar linguistic and educational harm. There are thousands of similar examples from all over the world (see references).

Example 33:

In the Russian Federation, in Siberia, the Far East and the North of the European part of Russia, there are at least 35 endangered languages still in use (Kazakevitch 2004: 9; see also Harrison 2008). Tundra Nenets (about 25,000 speakers) is «the strongest» among them, «partly due to the relatively large size of the ethnic group (over 32,000) and partly to the fact that the majority of the Nenets still keep to their traditional occupation – reindeer herding – and hence lead a nomadic or half-nomadic life […].Up to now in some districts children come to school speaking only Nenets. As soon as the children are able to speak Russian it becomes the only means of school instruction. Nenets is taught as a subject both in primary and in secondary school. Unfortunately, Nenets classes don't have any significant influence on the language preferences of the pupils who stay at a boarding school for 9-11 years and visit their families only during holidays. After finishing secondary school many of these choose to speak mostly Russian. Luckily for the language, not all Nenets children finish secondary school: some leave school after grade 4, 5 or 6 and return to their families with their traditional occupations. Of course there are exceptions, but on the whole it should be stated ***that the level of education is in inverse proportion to the degree of mother tongue use*** *(our emphasis). The level of education of a speaker determines if not his/her competence in his/her ethnic language, then the ethnic language competence of his/her children. As a rule, children of well educated Nenets parents (even those who are concerned with protection and preservation of the ethnic language – such as school teachers of Nenets, language planners, language and folklore researchers - have poor or no command of Nenets.»* (Kazakevitch 2004, 10, 12).

The NUD description below shows in fact examples of all five types of negative consequence listed earlier in this Section:

Example 34:

The National Union of the Deaf in UK (NUD) discusses oralist mainstreaming of deaf children into hearing classes, and traces the development from ancient Roman customs of getting rid of deaf babies and children through direct killing, through Adolf Hitler's policies, to not only abortion and threat of abortion but also sterilisation of deaf mothers against their will and often without their knowledge (NUD 1982: 59-64).[75] *NUD sees oral-only practices and suppression of Sign language and culture as causal factors, causing «real mental harm by default and neglect, if not by deliberate intent» (ibid., 60). They mention statistically significantly higher suicide rates than the national average, mental breakdown, disorders and mental ill-health through these practices. They also state that «through the implementation of integration, deaf schools are being effectively forced to close and therefore children of one ethnic/linguistic minority group that is deaf people are being forcibly transferred to another group that is hearing people» (ibid., 60-61). The NUD also comments (1982: 64, footnote 2): «The only growth area is that in some*

schools, the surrounding area's failure rate of children who have been integrated is so disastrous that they have been moved to deaf schools at the age of twelve or older. We have observed many of these children, and find them almost dummies, unable to communicate through speech or sign language, and in the initial stage almost ineducable. ***To reduce a deaf child of normal I.Q. to a virtual cabbage in this way is truly shocking to behold*** (emphasis added).»

It is important to note that the question of losing or not losing one's language is thus NOT whether children are in residential schools or not, as the issue of Deaf children above shows. For Deaf children whose parents in 90-95% of the cases do not know a Sign language when the children are born, residential schools which use Sign language as the teaching language and with both Deaf and signing bilingual teachers (i.e. additive, not subtractive teaching) would be the preferred option (e.g. Ladd 2003, Dirksen Bauman, ed., 2008). The main issue is to what extent the goal of the school is to enable the children to add to their linguistic repertoire instead of subtracting from it, to become high-level bilingual or multilingual, with maintenance (or learning, as is the case for the Deaf children) and thorough development of their own language as a self-evident goal (see Watahomigie & McCarty 1996), but adding a high competence in the dominant language too.

(5) *negative socio-economic and other social consequences which influence the life chances of children as adults, which are long-term and can last for generations.* Most statistics about indigenous peoples show that they are *socio-economically marginalised*. We can see similar negative figures on the long-term consequences of the non-education of many Indigenous and Tribal children from all over the world (Examples 35, 36 and 37).

Example 35:

Aboriginal nations in Australia: Indigenous men's life expectation is 59.4 years, as compared to 76.6 years for the non-indigenous population; for women it is 64.8 (82.6); the average equalised gross household income is A$364 a week (A$585), the unemployment rate is 20% (7%), and 22% of the prison population is Indigenous even though they form only 2,2% of the whole population (Ferraro 2009:42; her source is the Human Rights and Equal Opportunities Commission; see more at http://www.aihw.gov.au/publications/ phe/rrrh05/rrrh05-c05.pdf).

Example 36:

«Compared to other racial and cultural groups in Canada, indigenous people have the lowest life expectancies, highest infant mortality rates, most substandard and overcrowded housing, lower education and employment levels, and the highest incarceration rates» (**Terraviva. UN Journal**, Wednesday, 10 October 2007, Vol. 15: 184, p. 6).

Example 37:

Based on CESC 2007, Mendelson 2008:1, Richards 2008: 3-4, and, more generally, also Goar 2008, Friesen 2008, and Hambrook 2008, Andrea Bear Nicholas, Chair of Native Studies at St. Thomas University Fredericton, New Brunswick, writes (December 2008, manuscript): «Beyond a doubt, the almost universal practice of subtractive education in Canada must now be addressed as a central factor in the continuing high rate of educational failure among Inuit and First Nations children. Recently released statistics on school completion rates for Indigenous young people (2006) show that there has been no improvement in school completion rates in over a decade. In 1996 over sixty percent of Inuit and on-reserve First Nations youth age 21 to 24 had not completed school. In 2001 and 2006 the rates were precisely the same. This is … a disturbing and telling statistic when compared to the average school completion rate of 80 to 90 percent among non-Aboriginal youth across Canada» (see also Bear Nicholas 2009).

Even if the marginalisation is a result of multiple historical, geographic, social, political, cultural, linguistic and educational factors, in most cases connected to earlier or present colonisation, today formal education and especially subtractive education, through the use of a dominant non-indigenous language as the teaching language (together with non-indigenous curricula and teaching methods) play an increasingly important role in reproducing the powerless economic and political status of indigenous peoples.

Residential schools have been «arguably, the most damaging of the many elements of Canada's colonization of this land's original peoples and, *as their consequences still affect the lives of Aboriginal people today, they remain so*» (Milloy, 1999: xiv; emphasis added).

Deirdre Jordan (1988: 190) who compared the impact of formal education on identity among the Australian Aboriginal peoples, the Saami in Norway, and Inuit in Greenland and Canada, claims that

> *... history shows that it was not only forces springing from economic bases, and the exploitation of material resources, which, breaking the nexus of indigenous people with their land, acted to destroy their culture and substitute for a positive identity the negative traits with which indigenous people have come to be stereotyped. One of the crucial forces which has acted to destroy the identity and the culture of indigenous people has been that of schooling.*

There are countless examples from many parts of the world from the early and mid-1800s onwards and up to the mid-1900s and even longer where the *intention to destroy* an indigenous group *as a group*/a nation/a people (physically or in other ways) has earlier been *overtly* expressed (see Example 38). The more covert expression of this intention later can be seen as a direct continuation of the earlier expressions; the goal has not changed, only the way it is expressed. Some of our examples quote policy directly, some are researchers' analyses of policy.

Example 38:

> *«Tribal dissolution, to be pursued mainly through the corridors of residential schools, was the Department's new goal», John Milloy (1999: 18) states about the Canadian 1857* ***Act to Encourage the Gradual Civilization of the Indian tribes in the Province****. Norwegianisation was also the official goal for boarding schools in Norway: «The building of the boarding schools and the Norwegianisation of Finnmark are closely bound together. Norwegianisation was the goal. And the building of the boarding shools was the means. Both were part of Norwegian educational policy in Finnmark»* (Lind Meløy 1980: 14; Lind Meløy was himself headmaster of one of the boarding schools). *In the process of Norwegianisation it was the goal of many school administrators that the Saami languages should become extinct* (e.g. Bernt Thomassen, Superintendent for schools 1902-1920; quoted in Lind Meløy 1980: 98-99). *Hans Vogt, later Vice-Chancellor of the University of Oslo, wrote in 1902: «Norwegianisation [through schools] has been victorious, a policy which means purely and simply* ***an intentional extinction of the Saami and Finnish languages****»* (emphasis added; quoted in Lind Meløy 1980: 106).

Similar policy statements abound from all over the world. Barrington (1992: 69) writes about Māori education in Aotearoa/New Zealand before 1950 that the aim of the educational assimilation was «to lift Māori from one society to another». The Māori were prepared through education to change life-style completely, to become farmers, like the colonisers were (see Simon, ed., 1998). The same official goal was openly expressed in the Canadian residential schools where the aim was «to get rid of the Indian problem […] Our objective is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic, and there is no Indian question, and no Indian Department» (Duncan Campbell Scott before a Parliamentary Committee in 1920, quoted in Milloy 1999: 46).

But the question is also, as we mentioned earlier: what exactly were/are Indigenous and Tribal children being assimilated into? As described in Section 4.2.2, in many assimilation discussions the dominant culture is being treated as homogenous. This has enabled the presentation of assimilation as something beneficial to the ITMs, something where they would get all the benefits that middle classes in the «mainstream» had. Not so, as Example 39 shows:

Example 39:

> *First, the image that in Indian residential schools an «inferior» culture was being replaced with a «superior» culture (which thinking, thanks to the P. M. [Prime Minister], we now know has «no place» in Canada) is simply wrong. Indian children were not being taught to drink tea with their pinkies extended, speak with an affected English accent, or appreciate poetry and opera; they were being taught to perform as menials (domestics, farm hands,*

cooks, etc.) for members of the superior culture (and even the not-so-elevated members of that culture). If they were expected to learn anything in residential schools, it was to learn their place; to perform, without question and with dispatch, the commands of their betters. If this was assimilation into «dominant culture» it was into its lowest, most wretched, most disposable stratum, where the inhabitants moiled to eke out a marginal existence. It was alright that these serfs would be Indians; after all, our «betters» have never really concerned themselves with the color of their peons (Chrisjohn, Bear Nicholas, Stote, Craven (Omahkohkiaayo i'poyi), Wasacase, Loiselle & Smith 2008).

All the results, both practical and research-based, about the negative consequences of subtractive education are and have been well known, not only by the ITMs themselves but also by researchers, governments, NGOs and international organisations for a long time; this is not new knowledge. Some of the main causes of educational failure in multilingual societies were correctly diagnosed centuries ago. There are many indications that Indigenous peoples themselves (e.g. Handsome Lake, Seneca from the USA, in the mid-1700s, see Chief Jacob Thomas, 2001) knew the devastating results of submersion programmes. So did churches and educational authorities (see, e.g. Milloy 1999 for Canada, Example 40; there are many descriptions and references from the Nordic countries in, e.g., Skutnabb-Kangas and Phillipson 1989; see also Example 37, and the references in Note 74).

Example 40:

*In Canada,«for most of the school system's life, though the truth was known to it», the Department of Indian Affairs, «after nearly a century of contrary evidence in its own files», still «maintained the fiction of care» and «contended that the schools were 'operated for the welfare and education of Indian children'» (*Milloy 1999: xiii-xiv*). These schools represented «a system of persistent neglect and debilitating abuse», «violent in its intention to 'kill the Indian' in the child for the sake of Christian civilization» (ibid.: xiv; xv). Finally closed down in 1986, the Department and the churches were «fully aware of the fact» that the schools «unfitted many children, abused or not, for life in either Aboriginal or non-Aboriginal communities. The schools produced thousands of individuals incapable of leading healthy lives or contributing positively to their communities»* (ibid.: xvii).

Also the positive research results of mainly MTM education for indigenous and minority children are solid and consistent (see, e.g., Cummins 2009 for a recent summary of results and principles behind them; see also Cummins 1989, 1996, 2000). And they were also known more than a century ago (Examples 41 and 42):

Example 41:

The American Board of Indian Commissioners wrote in 1880: «…first teaching the children to read and write in their own language enables them to master English with more ease when they take up that study…a child beginning a four years' course with the study of Dakota would be further advanced in English at the end of the term than one who had not been instructed in Dakota. … it is true that by beginning in the Indian tongue and then putting the students into English studies our missionaries say that after three or four years their English is better than it would have been if they had begun entirely with English» (quoted from Francis and Reyhner 2002: 45-46, 77, 98).

Example 42:

A government resolution was formulated in (British) India in 1904 when Curzon was the Viceroy. It expressed serious dissatisfaction with the organisation of education in India. The extract below shows its present-day relevance, and perhaps suggests that postcolonial education and most minority education has failed to learn from earlier experience: «It is equally important that when the teaching of English has begun, it should not be prematurely employed as the medium of instruction in other subjects. Much of the practice, too prevalent in Indian schools, of committing to memory ill-understood phrases and extracts from textbooks or notes, may be traced to the scholars' having received instruction through the medium of English before their knowledge of the language was sufficient for them to understand what they were taught. As a general rule the child should not be allowed to learn English as a

> *language [i.e. as a subject] until he has made some progress in the primary stages of instruction and has received a thorough grounding in his mother-tongue. […] The line of division between the use of the vernacular and of English as a medium of instruction should, broadly speaking, be drawn at a minimum age of 13».*[76] (Curzon, quoted in Skutnabb-Kangas 2009: 42).

UNESCO's 1953 book *The use of the vernacular languages in education* included firm recommendations, written by experts, on how multilingual education can best be organised. Similar informed consultations went into drafting UNESCO's Education position paper in 2003*, Education in a multilingual world*. The remaining (fewer and fewer) counterarguments against strong models of multilingual education, i.e. against proper mother-tongue-based MLE, are political/ideological, not scientific.

For obvious reasons, no state or educational authority can today be expected to express *openly* an intention to «destroy» a group or even to «seriously harm» it, even if some politicians in strongly assimilationist countries such as Denmark (see Example 20) express what can be seen as a wish to forcibly «transfer its members to another group». However, the intention can be inferred in other ways, by analysing those structural and ideological factors and those practices which cause the destruction, harm or transfer. We have done this in several ways, comparing with the older more overt ways (which often used more «sticks» and/or «carrots», in addition to «ideas», than present-day methods). We thus claim that if state school authorities continue an educational policy which uses a dominant language as the main medium of education for ITM children, when the negative results of this policy have been known both through earlier concrete empirical feedback (as in Canada, the United States, and India, see Examples 40, 41 and 42 above) and through solid theoretical and empirical research evidence (as they have, at least since the early 1950s; see, e.g., UNESCO 1953), this refusal to change the policies constitutes, *from discourse-analytical, sociolinguistic, sociological, political science, and educational policy analysis perspectives*, strong evidence for an «intention».

Structural and ideological factors have appeared also in some lawyers' interpretations of, for instance, the concept of discrimination in education (see Gynther 2003 for a short summary of the development, from more sociologically oriented discussions from Myrdal via Carmichael & Hamilton, Knowles & Prewitt, Feagin & Feagin, Hill, Okin, and Lee Bacchi, to more legally oriented clarifications, mainly from the USA and Canada; see also Gynther 2007). Gynther pleads for cooperation between lawyers, sociologists and educationists and for a broadened analytical framework, in clarifying some of the basic concepts, which are used when subjugated minorities are denied access to education. She traces a trend in academic discourses

> *«from a concern with 'evil motive discrimination' (actions* ***intended*** *to have a harmful effect on minority group members) to 'effects' discrimination (actions have a harmful effect whatever their motivation)»* (Gynther 2003: 48; emphasis added)*. However, she also points to «a trend from the deconstructive social criticism of the 1960s and 1970s to a watering down of the conceptual framework of systemic discrimination towards the 1990s» (ibid.: 48). When discrimination and racism [including linguicism] «permeats society not only at the individual but also at the institutional level, covertly and overtly … racial control has become so well institutionalized that the individual generally does not have to exercise a choice to operate in a racist manner. Individuals merely have to conform to the operating norms of the organization, and* ***the institution will do the discrimination for them»*** (ibid: 47; emphasis added).

We have traced some of the historical evidence for «intention to harm» in the education of ITM children. We claim, that the fact that the main harmful causal factor in this education, namely the wrong medium of education, has not changed, despite strong empirical and research evidence that using the dominant language and excluding the ITM languages, has not worked, shows that the linguicist ideology, permeating sectors of educational decision making bodies, has during the last many decades been so well institutionalised in educational structures so that no *conscious* intention to harm needs to be overtly (or even covertly) expressed. The intention is still there, embedded in the way the institution functions and the institution of formal education will do the «harm».

5. Right to Education and Some Economic Factors

5.1. ITM education and poverty

Not surprisingly, the submersion form of education described, to which ITM children are generally subjected, also has profound consequences for their life chances, as we have already exemplified. Here, we describe in more detail some of the long-term economic aspects both for the ITMs themselves and as seen from the point of view of educational authorities and states. Some people might expect that economic theory is mostly about material resources whereas we have mainly so far discussed immaterial resources in relation to ITM education and the harm it has caused. But economist François Grin states that

> *nothing, in economic theory, mandates a restriction to material or financial resources, and … intangibles like social networks and interpersonal affection are, from the perspective of economic analysis, perfectly relevant resources* (Grin 2003: 7).

Here, we want to relate educational rights and other intangible resources (such as language and cognitive capabilities) to theories on the economics of poverty. This clarifies the role of dominant languages and indigenous MTs 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» (1985, Dreze and Sen 1996), and relate this to the role of languages in education. «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?» They answer themselves: There is «a general consensus among the economists, psychologists and other social scientists that education is perhaps the most crucial input»* (ibid.: 265).

What are the consequences for our argumentation for languages here? *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), *then* we have to look for the type of division of labour between both/all languages in education that guarantees the best possible development of these «cognitive and intellectual functions» which enhance children's «human capabilities». What is done in submersion education of ITM children today is not enhancing but rather curtailing these functions, and thus depriving children of the choices and freedom that are, according to Sen and others, associated with the necessary capabilities.

What role is played in poverty reproduction by using a dominant language, e.g., English, rather than the children's MT, as the main language of instruction? Many ITM and other 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. This competence is, objectively, one of the important prerequisites for upward mobility.

But English is by no means the panacea that it is presented as.[77] For the large majority of ITM children, and even for children from relatively dominant groups in Africa, Asia and the Pacific, English-medium education does not lead to the promised outcomes, as countless research results show (Example 43; see also Examples 6, 9, 10, 11, 21, 22, 32 and 42).

Example 43:

Andy Kirkpatrick (2009: 4) states that «lessons must be learned from south-east Asia's push for English» and warns that if «English is adopted as the medium of instruction for certain subjects across whole primary school system [which he thinks is «too early»], this can have its dangers» (ibid.). *Analysing several countries, he concludes, for instance for the Phillippines, where «maths and science are taught in English in primary school since 1974 [that] we encounter a common problem that the early introduction of CLIL [Content and Language Integrated Learning] can cause. Children whose mother tongue is not Tagalog (and that is the majority of Filipinos) enter primary school having to learn in two alien languages, Filipino [= Tagalog] and English. The result is that many Filipino children graduate from schools as semilingual in Filipino and English and unsure in their mother tongues. The introduction of English as a medium of instruction in primary school takes curriculum time from local languages, a phenomenon that can be seen across the region. The children who benefit most [i.e. suffer least] from this policy are Tagalog speakers from wealthy families.»*

Most Indigenous and Tribal children who attend school in the first place are in a situation similar to the one Kirkpatrick describes. MTM education would in most cases be a better way to reach the goals and achieve real capability building, in Sen's sense.

In addition, one might also note the predictions about English only not being enough. 'Good' English (which for most ordinary ITM children in Asia and Africa is a non-materialisable dream anyway) will fairly soon be like literacy yesterday or computer skills today: employers see it as self-evident and necessary but not sufficient for good jobs. Supply-and-demand theories predict that when many people possess what earlier was a scarce commodity (near-native English), the price goes down. The economic and status-giving value of 'perfect' English skills as a financial incentive decreases substantially when a high proportion of a country's or a region's or the world's population know English well. All else being equal, those with skills X, Y and Z, plus «native-like» (or «native» - whatever that might be) English, will lose out, in competition with those who possess the same skills X, Y and Z, plus «native-like» English *plus* skills in another language or two. Obviously those with good competence in more marketable (= «big») languages in addition to English will be in a better position for most jobs than those with numerically smaller languages (these will thus need more support because the market does not - yet? - appreciate them as much; but see Section 5.2). But the losers will definitely be the monolingual English speakers who will then neither have the added advantages from multilingualism nor uniquely superior English.

Studies testifying to the decreasing value of English are starting to appear, and attitudes are slowly starting to change, with growing aware-

ness, it seems. Just a few quotes, in Example 44:

Example 44A:

The Financial Times*, 3.12.2001: «inability to speak client's language can lead to failure. A survey undertaken for the Community of European Management Schools, an alliance of academia and multinational corporations, concludes that a company's inability to speak a client's language can lead to failure to win business because it indicates lack of effort.»*

Example 44B:

«Foreign» language skills – earn more! Graduates with foreign language skills earn more than those who only know English (reported in the British newspaper **The Independen**t 31.5.2001).

Example 44C:

«English is not enough. We are fortunate to speak a global language but, in a smart and competitive world, exclusive reliance on English leaves the UK ***vulnerable*** *and dependent on the linguistic competence and the goodwill of others … Young people from the UK are at a* ***growing disadvantage*** *in the recruitment market»* (emphases added) (**Nuffield Languages Enquiry**, 2000).

Example 44D:

Alienated snobs? (Professor Tariq Rahman, Pakistan, personal communication, 2002; see also other references to Rahman on language and education in Pakistan; see also Rassool 2007)*: «English-medium schools tend to produce snobs completely alienated from their culture and languages». «We are mentally colonialized and alienated from our cultures if all we know is in English».*

What this tendency of less ROI (Return On Investment) for English means from the point of view of our main subject is that those ITM parents who are prepared to sacrifice the ITM language, expecting English (or another dominant language) to open ALL doors, will see that the sacrifice was both unnecessary (because both or all languages could have been learned, at no cost to English) and unwise (because there will be fewer doors open to those monolinguals who only know a/the dominant language, as opposed to those who are multilingual at a high level).

As discussed in section 4.2.2. «Deficiency-based theorising and assimilation», 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 MTs 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 ITM mother tongues as the main instructional languages in education violates the human right to education, at the same time as it perpetuates poverty.

In a very important report on the rights of indigenous children launched in 2004, UNICEF states «Illiteracy is a direct result of educational exclusion». They also refer 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» (quoted in 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: MT maintenance is NOT a barrier and its loss does

NOT lead to social integration. 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.).*[78] *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).

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.

In conclusion, 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 non-dominant group 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[79]. «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).

The role of the World Bank (and the International Monetary Fund) in this non-education, both directly and indirectly, has been and is massive. «Since 1990, the WB has nearly tripled its lending and grants for primary education in developing countries, doling out loans worth 12.5 billon dollars to nearly 100 countries» (Mekay 2006: 1). But the Independent Evaluation Group, reporting directly to the executive board of the WB, says in its 2006 report that the WB stress enrolment and attendance rather than learning and that children are not improving their basic skills (ibid.). The WB has been known to refuse lending money to MT medium education while supporting education using ex-colonial languages. In many if not most cases, the medium of education has not been discussed at all (Brock-Utne 2000, Heugh 2007a, b, Mazrui 1997). Or, if it has, the WB has vigorously claimed that «three years of mother tongue is sufficient» and have even tried to prevent the presentation of data showing that this is not true (Heugh 2009: 120). In addition, structural adjustment requirements have forced governments to cut in those educational and social costs that might have enabled MTM education[80].

5.2. Do states act rationally in ITM education?

5.2.1. Are states following research recommendations?

As seen above, it would be rational to reduce poverty through organising ITM education according to research recommendations, i.e. use mother-tongue-based multilingual education. Even if the serious harm of not doing it has been well known for a long time, and the principles for what to do have equally been known, this has not led to MTM education on a large scale. A review of achievements in Africa concludes '[W]e are not making any progress at all' (Alexander 2006: 9); 'most conference resolutions were no more than a recycling exercise' (Bamgbose 2001, quoted in Alexander 2006: 10); 'these propositions had been enunciated in one conference after another since the early 1980s' (2006: 11); 'since the adoption of the OAU [Organisation for African Unity] Charter in 1963, every major conference of African cultural experts and political leaders had solemnly intoned the commitment of the political leadership of the continent to the development and powerful use of the African languages without any serious attempt at imple-

menting the relevant resolutions' (2006: 11). This has led to 'the palpable failure of virtually all post-colonial educational systems on the continent' (2006: 16). An excellent analysis of this is Rassool 2007. *The Asmara Declaration on African Languages and Literatures* from 2000) (http://www.outreach.psu.edu/programs/allodds/declaration.html) is one example of the impressive African declarations of intent. Even more optimistic plans are contained in *The Language Plan of Action for Africa* (http://www.acalan.org/eng/ textesreferenciels/pala.php), one of the results from ACALAN's (The African Academy of Languages, www.acalan.org) conference in Bamako, Mali, January 2009. Similar pronouncements exist on other continents but are less impressive. Still, ITM education is today organised against solid scientific evidence of how it should be organised.

We need implementation of the existing good laws and intentions (there are many), but the political will for that is mostly lacking. Neville Alexander's analysis of reasons for it (2006: 16) states:

> *The problem of generating the essential political will to translate these insights into implementable policy … needs to be addressed in realistic terms. Language planners have to realize that costing of policy interventions is an essential aspect of the planning process itself and that no political leadership will be content to consider favourably a plan that amounts to no more than a wish list, even if it is based on the most accurate quantitative and qualitative research evidence.*

What Alexander advocates, namely that the costs of organising – or not organising – MTM education are made explicit in economic terms, necessitates the type of multidisciplinary approach that minimally includes sociolinguists, educators, lawyers - the combination that we have in this book - and economists. Without that, it seems impossible to even start convincing states of rational policies that would in the end be really beneficial not only for ITMs but for the states themselves.

5.2.2. Moral considerations arguments and welfare considerations arguments – what does supporting ITM languages cost?

To react to the question of costing, we need to ask what would be reasonable costs for maintaining Indigenous/Tribal and minority languages, among others through mother-tongue-based MLE, and whether it should be the state that pays them. François Grin offers through his discussion of 'market failure' (2003) excellent arguments from economics for resisting market dominance for public or common assets/goods such as cultural products:

> *Even mainstream economics acknowledges that there are some cases where the market is not enough. These cases are called «market failure». When there is «market failure», the unregulated interplay of supply and demand results in an inappropriate level of production of some commodity* (Grin 2003: 35).

In Grin's view, many public goods, including minority language protection, 'are typically under-supplied by market forces' (ibid.). The level becomes inappropriately low. Therefore it is in his view the duty of the state(s) to take extra measures to increase it.

Grin (e.g. 2003: 24-27) differentiates between *moral considerations arguments* and *welfare considerations arguments* in answering the question why anybody, including society as a whole, should bother about maintaining ITM languages, and pay for maintaining them. Most of the legal discourse, including the LHRs considerations, refers to moral norms about the right to live in one's own language, even if the extent of the ensuing rights is debated (2003: 24-25).

In a moral discourse, in most cases the question of what kind of rights, if any, should be granted to speakers of ITM languages, and at what cost, seems to depend on how 'nice' states are. This is a shaky foundation for human rights, as Fernand de Varennes rightly observes (1999: 117):

> *Moral or political principles, even if they are sometimes described as «human rights», are not necessarily part of international law. They are things that governments «should» do, if they are «nice», not something they «must» do. Being nice is not a very convincing argument and is less persuasive than rights and freedoms that have the weight of the law behind them.*

In contrast,

> *the emphasis of the welfare-based argument is not on whether something is morally «good» or*

«bad», but on whether resources are appropriately allocated. The test of an «appropriate» allocation of resources is whether society is better off as a result of a policy (Grin 2003: 25).

In a welfare-oriented economic discourse one can calculate in much more hard-core terms (often but not necessarily always involving cash) who the winners and losers are. Here 'the question is whether the winners, who stand to gain from a policy, can compensate the losers and still be better off' [than without the policy] (Grin 2003: 25). This is an empirical question, not a moral question.

If what decides the fate of research-based suggestions for the education of ITMs were to be decided by market-value-based laws, both formalised and non-formalised, then the human rights, including educational linguistic human rights, of these people, would not stand a chance. If the rights are formulated in terms of cost-benefit analyses that show the economic market value of both granting these rights and of mother-tongue medium education, some of those politicians who use economic arguments against MTM education, might be forced to listen. Some lawyers now claim, that even human rights law is a 'marketable commodity' (Delmas-Marty 2003). Knowing that *today wrong economics prevail over human rights*, to what extent are we as researchers willing to go to «market our commodity» more effectively and efficiently, while maintaining our integrity?

When assessing the empirical question of why one should maintain minority languages, Grin uses both 'positive' and 'defensive' or 'negative' arguments, but both are then used within a welfare-considerations based paradigm. He asks both what the costs and benefits are if minority languages ARE maintained and promoted, and what the costs (and benefits) are if they are neither maintained nor promoted.

Some of Grin's promising conclusions are as follows:

– 'diversity seems to be positively, rather than negatively, correlated with welfare'
– 'available evidence indicates that the monetary costs of maintaining diversity are remarkably modest'
– 'devoting resources to the protection and promotion of minority cultures [and this includes languages] may help to stave off political crises whose costs would be considerably higher than that of the policies considered' [the peace-and-security argument].
– 'therefore, there are strong grounds to suppose that protecting and promoting regional and minority languages is a sound idea from a welfare standpoint, not even taking into consideration any moral argument (Grin 2003: 26[81]).

We agree. If states want to act rationally, the question whether states can afford MLE should rather be: can ANY state afford *not* to implement MLE?

Some poor countries have seen the economic and other benefits and have started the implementation of mother-tongue based multilingual education, even if it in our Example 45 is only early-exit transitional:

Example 45:

Papua New Guinea has more languages than any other country in the world. Within a population of some 6 million, there are over 850 languages. In 2001, 380 languages were used as the media of education in preschool and the first two grades; the plan was to add another 90. What were the early results, according to David Klaus (earlier World Bank) (2003)?

- *children become literate more quickly and easily in their mother tongues than they did in English;*
- *they learn English more quickly and easily than their older brothers and sisters did under the old system;*
- *the results of the Grade 6 examination in the three provinces which were the first to begin the reform in 1993 were much higher than the results of students from provinces where students were immersed in English from Day One of Grade One;*
- *access to formal education is increasing because many parents now appear more willing to send their children to school and to make the sacrifices necessary to keep them in school.;*
- *dropout [or push-out as we call it] rates have decreased. In particular, a higher proportion of girls are in school than was previously the case;*
- *children are more excited, pro-active, self-confident, and inquisitive about learning, and ask more questions* (Klaus 2003; see also Nagai & Lister 2003, Skutnabb-Kangas 2003).

Papua New Guinea is not one the world's materially richest countries - their riches are in linguistic and cultural diversity and biodiversity. Still, they have managed to grant some basic LHRs to speakers of hundreds of languages.

If they can do it, no other country can claim that they do not have the resources to at least start maintaining and developing all their languages; all other countries have extremely few indigenous languages in comparison. If they were as linguistically rich as Papua New Guinea (850 languages for some 6 million people), a country with 10 million people (e.g. Greece, Portugal, Tunisia, Belgium, Rwanda, Chad, Czech republic) would have over 1,400 languages. The USA, with a population of some 306 million would have over 43,000 languages, Australia with 21 million almost 3,000 languages, and Canada with some 33 million would have almost 4,700 languages. Still these three countries (which have killed off more Indigenous languages during the last 200 years than any other country in the world, according to Terralingua – see http://www.terralingua.org) do not even succeed to organise early-exit transitional mother-tongue based multilingual education for the very few Indigenous languages that they have left.

It is also important to acknowledge that the medium of education alone (and especially not in the weak form as in Papua New Guinea) is NOT a panacea – systemic political, economic and societal changes need to accompany changes of the teaching language. In addition, teaching methods, teacher training and the entire organisation of schools has to be changed – and this does cost. But in fact, the costs can be seen from many angles. Kathleen Heugh, one of the four investigators in the large-scale Ethiopian study of MLE (see the presentation of it in Section 8.1.3), compares Ethiopia and South Africa. In South African schools, there are far too few of the glossy-foreign-produced English textbooks, and the students are mostly not allowed to take them home. Ethiopian materials are «produced on inexpensive paper and students have learning materials which they are allowed to take home and use» (Heugh 2009: 111). «Large foreign-owned publishers have not been allowed to take over the schoolbook market in Ethiopia» (ibid.). One subconclusion is:

> *South Africa is arguably the wealthiest and Ethiopia is considered the poorest of countries in Africa. Yet, it is Ethiopia which furnished schoolbooks to most students while South Africa does not. The issue of cost and resources therefore needs far closer interrogation. In South Africa huge resources are spent on learning materials which are mostly in English and they are too expensive to provide to all children. In Ethiopia, on much more modest budgets, most primary school materials are produced in Ethiopian languages and although delivery of materials is patchy in some regions, a high proportion of students receive textbooks* (Heugh 2009: 112).

In Burkina Faso (Section 8.1.3) the MTM education has also cost less than the French-medium education (Ilboudo & Nikièma, 2010). But in addition to the fact that costs are relative and can be rethought, mother-tongue-based MLE also has many other benefits, not only for ITM individuals and communities, but for societies at large. A couple of them will be presented in the next section.

5.2.3. MLE, high-level multilingualism and creativity – the causal chain

Many power holders do not see the broader implications of organising ITM education properly so that it, among other things, leads to high-levels of multilingualism. The short version of a causal chain that shows how creativity, innovation, and investment are some of the results of additive teaching and multilingualism, is as follows (see Table 3).

Additive teaching (here meaning mother-tongue-based multilingual education for ITM children) can lead to high-levels of multilingualism. *Multilingualism* enhances creativity. High-level multilinguals as a group do better than corresponding monolinguals on tests measuring several aspects of 'intelligence', creativity, divergent thinking, cognitive flexibility, sensitivity to feedback cues, interpreting non-verbal body language, learning of additional languages, etc. (Skutnabb-Kangas 2000 gives an overview; see also Baetens Beardsmore 2008 and references in it). Mohanty 1995 shows convincingly that the main causal factor behind all these benefits that high-level bilinguals have is *metalinguistic awareness*[82]. This awareness is enhanced in MT-based MLE with the help of bi- or multilingual teachers who can support

Table 3. The causal chain: Creativity, innovation and investment as results of additive teaching and multilingualism

1.	Additive teaching (here: mother-tongue-based MLE) can lead to high levels of multilingualism
2.	High-level multilingualism enhances creativity. Combinations of any languages can enhance creativity through the resulting metalinguistic awareness
3.	Creativity leads to innovation
4.	Innovation invites (= leads to) investment

the children in comparing the languages and becoming aware of what is similar (and can be transferred from one language to the other[83]), and what is different (and has to be learned separately for each language). A monolingual teacher is at a loss when trying to support children in developing this awareness. Phillipson 1992a, b, Rampton 1992 and Skutnabb-Kangas 2000, among others, discuss the relative drawback of monolingual teachers. *Creativity*, one of the results of good MLE, precedes *innovation*, also in commodity production. *Investment* follows creativity.

And since a combination of any languages can, through metalinguistic awareness, enhance creativity, the maintenance and development of even numerically very small languages, those that are now seriously endangered, enhances creativity. Assimilation leads to homogenisation, and homogenisation, also in education, kills creativity. MLE works against homogenisation; it maintains diversity and fosters creativity. Creativity is the main asset, the main cultural capital that is needed in knowledge/ information/ networking societies. Homogenisation is bad economics. Human survival depends on creative solutions to the serious global and local problems of our own making. Proper ITM education is a key to the solution, not the problem.

This means that, despite some initial costs, it is, also economically, viable and even beneficial for states in the long run to support MT-based MLE. Through this, rational states can reduce the enormous wastage, including in economic terms, that it is, to mis- and under-educate large parts of their population. In addition, states can through MLE both increase the total pool of creativity in its population, and at the same time support the maintenance of the world's linguistic and cultural diversity.

But these two types of diversity are both correlationally and causally linked to a third type of diversity, namely biodiversity. In Section 5.2.4. we present this ecolinguistic relationship (see www.terralingua.org; also Harrison 2008).

5.2.4. The ecolinguistic relationship between linguistic and cultural diversity and biodiversity

Language, knowledge, and the environment have been intimately related throughout human history. This relationship is still apparent especially in indigenous/tribal, minority, and local societies that maintain close material and spiritual ties with their environments. Over generations, these peoples have accumulated a wealth of wisdom about their environment and its functions, management, and sustainable use.

Traditional ecological knowledge and practices often make indigenous/tribal peoples, minorities, and local communities highly skilled and respectful stewards of the ecosystems in greatest need of protection. Local, minority, and indigenous languages are repositories and means of transmission of this knowledge and the related social behaviors, practices, and innovations.

Signed by 150 states at the 1992 Rio Earth Summit, the *Convention on Biological Diversity*, dedicated to promoting sustainable development, is the most important international treaty on ecology. It recognises that biological diversity is about more than plants, animals and micro-organisms and their ecosystems – it is also about people and their environment (see http://www.cbd.int/convention/). Here languages are included because much of the knowledge in «traditional lifestyles» is embodied and encoded in Indigenous and tribal languages (see below). In its Article 8j about traditional knowledge, each of the states promises

> *(j) Subject to its national legislation,* ***respect, preserve and maintain knowledge, innovations and practices of indigenous and local commu-***

> ***nities embodying traditional lifestyles*** *relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices* (emphasis added).

Further work on the Convention stresses the interlocking of language and ecology in traditional knowledge and its inter-generational transfer:

> *Traditional knowledge refers to the knowledge, innovations and practices of indigenous and local communities around the world. Developed from experience gained over the centuries and adapted to the local culture and environment, traditional knowledge is transmitted orally from generation to generation. It tends to be collectively owned and takes the form of stories, songs, folklore, proverbs, cultural values, beliefs, rituals, community laws,* ***local language,*** *and agricultural practices, including the development of plant species and animal breeds* (see http://www.biodiv.org/programmes/socio-eco/traditional/).

As with biological species, languages and cultures naturally evolve and change over time. But just as with species, the world is now undergoing a massive human-made extinction crisis of languages and cultures. Biodiversity is disappearing at an alarming pace[84]. But the pace of languages disappearing is even faster[85]. External forces are dispossessing traditional peoples of their lands, resources, and lifestyles; forcing them to (migrate or) subsist in highly degraded environments; crushing their cultural traditions or ability to maintain them; or coercing them into linguistic assimilation and abandonment of ancestral languages. People who lose their linguistic and cultural identity may lose an essential element in a social process that commonly teaches respect for nature and understanding of the natural environment and its processes. Forcing this cultural and linguistic conversion on indigenous and other traditional peoples not only violates their human rights, but also undermines the health of the world's ecosystems and the goals of nature conservation.

Recent research (e.g. Harmon 1995, 2002) shows high correlations between biodiversity and linguistic and cultural diversity. Where there are many higher vertebrates (mammals, birds, reptiles, amphibians), there are also often many languages; the correlation is very high. Languages and flowering plants show the same: a region often has many of both, or few of both; some types of butterflies likewise (Harmon 2002). Jonathan Loh and David Harmon (2005) have developed a very large-scale Framework for an Index of Biocultural Diversity (a Terralingua project, www.terralingua.org; the first draft version came already in 2002), which shows hundreds of detailed correlations. Almost regardless of which indicators for biodiversity we use, there are high correlations with linguistic diversity.

A large percentage of the world's endemic languages (= languages that exist in one country only – somewhat over 80 % of the world's languages are endemic) are in the Megadiversity Countries (= «countries likely to contain the highest percentage of the global species richness», Skutnabb-Kangas, Maffi & Harmon 2003: 56), in the Biodiversity Hotspots («relatively small regions with especially high concentrations of endemic species», ibid.: 55) and in the Global 200 Ecoregions. WWF (The Worldwide Fund for Nature) has identified nearly 900 ecoregions («A relatively large unit of land or water containing a geographically distinct assemblage of species, natural communities, and environmental conditions»; the definition is from Oviedo & Maffi 2000: 1). Of these, 238 have been found «to be of the utmost importance for biological diversity». These are termed the «Global 200 Ecoregions». Of the world's 6,867 ethnolinguistic groups 67% (4,635) were found in the Global 200 Ecoregions (Oviedo & Maffi 2000: 1-2)[86]. The Global 200 Ecoregions are in the tropics – and so are most endemic languages: Eric Smith's (2000: 107) account based on the 12th edition of the Ethnologue showed that 55.6% (3,630) of the world's endemic languages are in the tropical forest regions. Oviedo & Maffi (2000: 2) conclude

> *Correlations between Global 200 Ecoregions as reservoirs of high biodiversity and areas of concentration of human diversity are clearly very significant, and unequivocally stress the need to involve indigenous and traditional peoples in ecoregional conservation work.*

The relationship is most probably also causal, a co-evolution where biodiversity in the various ecosystems and humans through their languages and cultures have mutually influenced each other (e.g. Maffi, ed. 2001, Oviedo & Maffi 2000, Posey, ed. 1999, Skutnabb-Kangas 2000, Chapter 2, Skutnabb-Kangas, Maffi & Harmon, 2004; see also www.terralingua.org). The various ways that different peoples influence their environments were and are filtered through their cultural patterns, including their languages.

Some examples follow. Cultural attitudes to meat of cows, pigs, rats or dogs as food influence the occurrence, spread and life conditions of these animals. More than 40,000 edible plants were known to the Aboriginal inhabitants of South Australia. Very few of them have found their way to the plates of the European invaders; the Europeans have neither lexicalised these items of food nor used them. This influences their maintenance or disappearance («edible; vegetables» versus «weeds» etc).

On the other hand, local nature and people's detailed knowledge about it and use of it have influenced the perceptions, cultures, languages and cosmo-visions of the people who have been dependent on it for their sustenance. If, for instance, the areas where people have lived for a long time have plenty of animal protein but little of plant protein as, for instance, in the Arctic areas, it is unlikely that religions which support vegetarianism could have developed - and they haven't.

This relationship and mutual influence between all kinds of diversities is of course what most indigenous peoples have always known. Much of the knowledge about (necessary) elements of integrated ecosystems and the relations between these elements and about how to maintain biodiversity is encoded in small indigenous/tribal and local languages. One example of the encoding comes from the Saami and salmon spawning grounds: Finnish fish biologists had just «discovered» that salmon can use even extremely small rivulets leading to the river Teno, as spawning ground. Pekka Aikio, then President of the Saami Parliament in Finland (personal communication, 29 November 2001) told that the traditional Saami names of several of those rivulets often include the Saami word for «salmon spawning-bed». This is ecological knowledge inscribed in indigenous languages. ICSU, the International Council of Science (www.icsu.org), admitted in their 2002 report, prepared by the *ICSU Study Group* that indigenous/tribal Traditional Ecological Knowledge, TEK, is often much more accurate than western scientific knowledge. ICSU is worried about the transmission of this knowledge and blames schools (2002; no page numbers):

> *Universal education programs provide important tools for human development, but they may also compromise the transmission of indigenous language and knowledge. Inadvertently, they may contribute to the erosion of cultural diversity, a loss of social cohesion and the alienation and disorientation of youth. […] In short, when indigenous children are taught in science class that the natural world is ordered as scientists believe it functions, then the validity and authority of their parents' and grandparents' knowledge is denied. While their parents may posses an extensive and sophisticated understanding of the local environment, classroom instruction implicitly informs that science is the ultimate authority for interpreting «reality» and by extension local indigenous knowledge is second rate and obsolete. […] Actions are urgently needed to enhance the intergenerational transmission of local and indigenous knowledge. […] Traditional knowledge conservation therefore must pass through the pathways of conserving language (as language is an essential tool for culturally-appropriate encoding of knowledge).*

It is possible for (Western) researchers to discover for themselves the knowledge that was already encoded in the indigenous language - but, as in the case of salmon spawning grounds, probably at least a millennium later than the indigenous people had it. But in many cases, the knowledge may disappear in ways where (western) scientific retrieval is impossible, or a rediscovery of the knowledge may in any case come too late (agriculture or building of dams could, for instance, have drained the rivulets – something that is happening on a large scale in Asia).

Luisa Maffi (Terralingua's president) showed in her doctoral dissertation (1994) that nuances in the knowledge about medicinal plants and their use disappear when indigenous youth in Mexico become bilingual without teaching in and through the medium of their own languages. The

knowledge is not transferred to Spanish, which does not have the vocabulary for these nuances, or the discourses needed. Even if the vocabulary is there, people may still be «environmentally illiterate», i.e. unable to name animals, plants and features of the landscape (Mühlhäusler 2003: 41), for instance in urban contexts, or if their technologically oriented worldview sees nature as a passive «ecomachine», for humans to use and exploit as they please. This is partly what enables the «growthism ideology» (ibid.: 132) to continue.

The conservation traditions that promote the sustainable use of land and natural resources, expressed in the native languages, are, according to James Nations, «what Hazel Henderson called 'the cultural DNA' that can help us create sustainable economies in healthy ecosystems on this, the only planet we have (Gell-Mann 1994: 292)» (quoted in Nations 2001: 470).

Oviedo and Maffi state (2000: 2):

> *There is evidence from many parts of the world that healthy, non-degraded ecosystems - such as dense, little disturbed tropical rainforests in places like the Amazon, Borneo or Papua New Guinea - are often inhabited* ***only*** *by indigenous and traditional peoples* (emphasis added).

Where we others have settled (often in temperate climates), we have been a disaster to the world's biodiversity. We would obviously also have colonised and inhabited those areas which are still today relatively less degraded, had we been able to. Jared Diamond (1991, 1998) shows convincingly that what has kept us out is the fact that we westerners have not been able to manage the tropical climate. Since the degradation is mainly created by humans, a conclusion is that those indigenous peoples who have not been colonised by others, have been and are important agents in the maintenance of biodiversity. The knowledge they have when interacting with (the rest of) nature in non-degrading ways is part of what has been called «Traditional Ecological Knowledge» (TEK).

For their 2009 report *Protecting traditional knowledge from the grassroots up* for IIED (International Institute for Environment and Development), Swiderska, Argumedo, Pant, Vedavathy, Munyi, Mutta, Herrera, Song, and Li have done «participatory research with indigenous and local communities in areas of important biodiversity: Mijikendaand Maasai, Kenya; Quechua, Peru; Kuna and Embera-Wounaan, Panama; Lepchas and Limbus, eastern Himalayas, India; Yanadi, Andhra Pradesh, India; Adhivasi, Chattisgarh, India; and Zhuang and Yao, Guangxi, southwestern China». Their Policy Pointers summarise some of their conclusions (2009: 1); these are completely in line with the argumentation in this book. We quote only the most relevant ones for our argumentation: «**Intellectual property** protection centred on commercial rights is unsuited to safeguarding traditional knowledge (TK), which is primarily used for subsistence. **Local customary law** and practice effectively safeguard TK by protecting collective rights. … **Policy to protect TK** should be developed closely with indigenous communities and supported by international legal frameworks. **TK rights need to be accompanied by rights to biocultural heritage** – ancestral territories, resources *and culture*» (emphasis added). As Susanna Mancini and Bruno de Witte convincingly show, «linguistic rights are part – indeed, a very prominent part – of the broader category of cultural rights» (2008: 247).

If the detailed knowledge, encoded in small indigenous/tribal languages, about the complexities of biodiversity and how to manage ecosystems sustainably, is to be maintained, the languages and cultures need to have better conditions. They need to be transmitted from one generation to the next, in families and through schools. If global linguistic diversity is not to suffer irreparable attrition, as a result of linguistic genocide, major changes are needed in educational language policy.[87] Again, MLE thus can contribute decisively to the well-being of our whole ecosystem and thus to humanity.

6. Indigenous Education and International Criminality: Genocide

In preceding chapters, we have demonstrated that the various forms of submersion education for ITM children described therein has had – and continues to have, where such forms are still practiced – profoundly harmful effects on the languages and cultures of ITM children and ITM communities. Indeed, the evidence that such forms of education have had a direct, causal effect on the destruction or virtual destruction of such languages and cultures is now massive and, we believe, undeniable. As we have seen, states which implement or have implemented such forms of education are usually aware of such effects, and, indeed, often intend for such effects to take place.

In previous chapters, however, we have also provided copious evidence of the profoundly harmful effects of submersion education for ITM children themselves, effects which are manifested in a large variety of ways and which often plague the children who have suffered such forms of education throughout their lives. As we have also seen, states have often been aware of such harmful effects. It is sometimes suggested, however, that while we may now know of the harmful effects of submersion education for ITM children, the harmful effects of such education were not always so clear, and that policy-makers who instituted such policies in the past were simply seeking to improve the lot of ITM children by attempting to integrate and, indeed, assimilate them into the dominant language and culture of the society. This is, of course, not an excuse which any state which persists in such forms of education can use—and many, many states do still use such forms of education widely. In any case, in addition to being redolent with a colonial mindset, such excuses are difficult to sustain, given that the profoundly negative effects of submersion education have been documented for quite some time now, not only by educationalists but by major international institutions such as UNESCO. In that context, it is simply not possible, nor is it an acceptable for states to have claimed ignorance of such effects during the period in which such evidence has emerged.

The use of submersion education is, in our view, nothing short of criminal, as one would use that term in a colloquial sense. However, in this chapter and the next, we shall consider whether the use of such forms of education could be described as criminal in a more narrow, technical sense, within the meaning of international law. In this chapter, we consider the issue of genocide. First, we consider the effects of such forms of education on the languages and cultures of ITM children and communities; then we shall turn to their effects on ITM children themselves.

The destruction of the languages and cultures to which the various forms of submersion education have contributed and continue to contribute has frequently been referred to as 'cultural genocide'. Rafaël Lemkin, who conceived of the term genocide, was of the view that it should encompass not only the physical destruction of what he termed «national groups», but also «the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves», and he made reference to the «disintegration of the political and social institutions of *culture*, *language*, national feelings, religion and the economic existence of national groups» (Lemkin 1944: 79; emphasis added). This concept of cultural genocide was considered at length during the drafting of the *United Nations' Convention on the Prevention and Punishment of the Crime of Genocide* (the 'Genocide Convention') (http://www.hrweb.org/legal/genocide.html).[88] Indeed, in the initial draft of the Human Rights Division of the Secretariat of the UN (UN Doc. E/447), genocide was defined as a criminal act directed against any racial, national, linguistic, religious or political group of human beings «with the purpose of destroying it in whole or in part, *or of preventing its preservation or development*» (Article 1.II). The criminal acts which gave rise to genocide were, following Lemkin (1944), divided into three categories, physical, biological,

and cultural. This third category involved «destroying the specific characteristics of the group», by one of the following means:

(a) forcible transfer of children to another human group;
(b) forced and systematic exile of individuals representing the culture of a group;
(c) prohibition on the use of the national language even in private intercourse;
(d) systematic destruction of books printed in the national language or of religious works or prohibition of new publications;
(e) systematic destruction of historical or religious monuments or their diversion to alien uses, destruction or dispersion of documents and objects of historical, artistic, or religious value and of objects used in religious worship (UN Doc. E/447).

The concept of cultural genocide was carried forward in the draft of the Genocide Convention prepared by the *ad hoc* drafting committee created by the UN Economic and Social Council. What constituted the crime of genocide was set out in two articles, Article II, which dealt with 'physical and biological' genocide, and Article III, which dealt with 'cultural' genocide. Article III provided that genocide also meant «any deliberate act committed with the intent to destroy the language, religion, or culture of a national, racial or religious group on grounds of the national or racial origin or the religious belief of its members such as:

1. 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;
2. Destroying or preventing the use of libraries, museums, schools, historical monuments, places of worship or other cultural institutions and objects of the group.» (UN Doc. E/AC.25/12).

When it came to the final draft of the Genocide Convention, however, the concept of cultural genocide was not included, due to opposition from several, mostly western States. Among the justifications for this opposition were that the physical destruction of groups was more serious that the destruction of their culture, that cultural genocide could result in «spurious claims» being brought, and that the inclusion of cultural genocide could inhibit the assimilation of cultural or linguistic groups. Ironically, delegates from some countries, including the United States and Canada, were also apparently concerned that the inclusion of cultural genocide could lead to claims by indigenous groups.[89]

The exclusion of cultural genocide from the final text of the Genocide Convention has the effect of greatly restricting the application of that treaty to the sorts of policies and practices described in the previous part of this book. As Schabas notes, «in light of the *travaux préparatoires* of the Genocide Convention, it seems impossible to consider acts of cultural genocide as crimes if they are unrelated to physical or biological genocide.» (Schabas 2000: 187). As a result, where submersion education policies are part of a policy of destroying the cultures and languages of groups, including those of indigenous peoples and of minorities, such policies, in themselves, could not be considered genocide within the meaning of the Genocide Convention.

However, what of the destructive impact of submersion education on the lives of indigenous peoples and minorities? Article II of the Genocide Convention defines genocide to mean the commission of any of the acts set out in paragraphs (a) to (e) of the article—the list is meant to be exhaustive—with the intention «to destroy, in whole or in part, a national, ethnical, racial or religious group, as such». Although neither indigeneity nor the minority concept is specifically referred to, there can be little doubt that indigenous peoples and minorities would be considered to be a protected group, for example on the basis of their ethnicity. Not surprisingly, given the drafting history of the Genocide Convention as just outlined, most of the acts set out in paragraphs (a) to (e) of Article II of the Genocide Convention concern the physical destruction – killing of members of the group (paragraph (a)), causing serious bodily harm to members of the group (paragraph (b)), deliberately inflicting on the group conditions of life calculated to bring about its destruction (paragraph (c)) – or biological destruction – imposing measures intended to prevent births within the group (paragraph (d)) – of the protected groups. However, there are two provisions in paragraphs (a) to (e) which fit less easily into this schema.

First, paragraph (b) of Article II refers not only to causing serious bodily harm to members of the group, but also to causing serious *mental* harm to them.[90] Second, paragraph (e) refers to «forcibly transferring children of the group to another group». This latter provision is particularly interesting, as it was one of the acts which constituted cultural genocide in the initial draft of the Secretariat working group, described above, and it did not form part of the definitions of physical or biological genocide that had been developed during the preparation of the convention. It has been noted that paragraph (e) was added to the Genocide Convention «almost as an afterthought, with little substantive debate or consideration.» (Schabas 2000: 175). Likewise, the inclusion of the concept of «mental harm» under paragraph (b) was a late addition to the convention, and although it attracted more debate – and initial opposition by some States – its meaning and consequences also did not receive a great deal of attention (ibid.: 159-160).

With regard to Article II, paragraph (b), what constitutes causing «serious bodily or mental harm» is not altogether clear. Rape or other acts of sexual violence would appear to be covered; interestingly, it seems that the level of harm required, though high, need not be permanent.[91] There is now considerable evidence of the widespread physical brutality and acts of sexual abuse that were and are regularly inflicted in residential schools[92] – some of this evidence is presented in the first part of this paper – and if «serious bodily harm» includes rape and other acts of sexual violence, there would be a strong argument that the experiences of many indigenous children in residential schools could constitute serious bodily or mental harm of the sort referred to in paragraph (b). As noted in the first part of this book, residential schooling and other forms of subtractive education suffered by indigenous children also have had a range of longer-term physical consequences. It is doubtful, however, that such longer-term effects would be covered by paragraph (b); rape and sexual violence – and the physical brutality often used in residential schools – have both immediate and direct as well as longer-term and indirect effects. It is simply not clear that the emergence of longer-term, indirect physical effects in the absence of immediate physical harm is sufficiently proximate to support the claim that the ultimate «bodily harm» has been caused by the sorts of schooling that have been used. The argument involves a long and by no means clear and direct chain of causation, and this would in all likelihood cause insurmountable problems. It is possible that sufficient evidence of a causative chain might emerge at some point in the future or in some particular case, but it is extremely difficult to comment on this in the abstract.

We have also seen that residential schooling and other forms of subtractive education have very serious mental consequences, and it would be difficult not to classify such consequences as «mental harm», based on the significant evidence of such presented in this book. Indeed, as we have seen, such harm does, in fact, tend to be of a permanent nature, and while, as also just noted, it is not necessary for harm to be permanent in order for it to be prohibited under paragraph (b), where such harm is permanent, this should strengthen the claim that any mental harm caused by such education is «serious». Unfortunately, the scope of «serious mental harm» is still unclear in international law, and remains problematic (Schabas 2000: 161). The paragraph contemplates that mental harm can exist independently of physical harm – «serious physical *or* mental harm» – and it must therefore be possible that the infliction of serious mental harm in the absence of physical harm can, potentially, constitute an act of genocide within Article II. The difficulty is that acts which have been considered to come within paragraph (b) by tribunals such as rape and sexual violence have a clear physical *as well as* mental element. If it could be established that the mental trauma inflicted by a particular act of «mental harm» has effects equivalent to the cumulative mental and physical trauma attendant upon rape, it may be possible to construct an argument, based on present authorities, that such trauma amounts to sufficiently serious mental harm to constitute an act of genocide.

It is clear from the sort of material presented in the first part of this book that subtractive education, and particularly residential schooling, can have very serious and, indeed, permanent serious negative consequences for the mental health of those who have suffered them; however, it is difficult, in the abstract, to determine whether such mental harm is sufficiently serious to constitute the sort of serious mental harm required by the convention, particularly given the current state of

the law. In order to determine whether the mental harm caused by submersion education may be sufficiently serious to constitute an act of genocide under paragraph (b) of Article II, concrete court cases are needed. The use of expert witnesses from those areas outside international law where lawyers have little expertise are needed to enlighten lawyers about the causal chains involved in long-term consequences of subtractive education. Especially experts in sociology of education, sociolinguistics, applied linguistics, child psychiatry and psychology can support courts in interpreting the scope of the concept of «serious mental harm» in connection with children's cognitive and emotional development under subtractive learning conditions and enforced language shift of the kind that much submersion education may involve. In the present situation, these aspects have not been sufficiently understood.

Another possibility is paragraph (c) of Article II, which refers to deliberately inflicting conditions of life calculated to destroy the group. Tennant and Turpel (1990: 296) have suggested that an argument can be made that the social, economic and cultural conditions which states impose upon indigenous peoples are calculated to bring about the physical destruction of indigenous groups, and they cite as evidence levels of alcoholism, infant mortality, suicide and disease. Unfortunately, the full nature of the argument was not sketched out, and the argument was made in consideration of the case of the Innu population of Quebec and Labrador, in Canada, who were subject to a range of mistreatment of which education formed only a part, but part of which, such as low-level flights by jet fighters from various NATO countries, caused considerable destabilisation of daily life and of the food supplies on which Innu, leading a traditional life based on hunting and fishing depended. In the *Akayesu* case, the Trial Chamber of the International Criminal Tribunal for Rwanda noted that paragraph (c) of Article II «should be construed as the methods of destruction by which the perpetrator does not immediately kill the members of the group, but which, ultimately, seek their physical destruction», and that for the purposes of interpreting this paragraph, the means referred to included, among other things, «subjecting a group of people to a subsistence diet, systematic expulsion from homes and the reduction of essential medical services below minimum requirement».[93] In another case before this tribunal, it said that the conditions of life referred to include «rape, the starving of a group of people, reducing required medical services below a minimum, and withholding sufficient living accommodation for a reasonable period».[94] These examples refer to the physical deprivation to members of a protected group of those things necessary to sustain life, and it is not clear that the measures which Tennant and Turpel allude to are of the same nature, or that the sorts of effects that they describe—alcoholism, infant mortality, suicide and disease—are of the same nature as the relatively immediate and direct negative effects produced by rape, deprivation of food and deprivation of housing. Although the negative consequences produced by submersion education are, as we have shown, extremely serious, it would be difficult to equate such education with deprivation of food or housing in terms of the immediate and direct harmful consequences that immediately or very quickly follow.

The precise scope of paragraph (e) of Article II and the nature of the acts it covers are even less clear than in respect of paragraph (b). As noted, paragraph (e) refers to «forcibly transferring children of the group to another», and it raises the question of whether residential schooling, at least, would be covered. There is, however, considerable ambiguity in this provision. With respect to the word «transfer», for example, does the transfer have to be physical, in the sense that it involves the actual removal of children from one group and their provision to another, or would the social and cultural alienation of children from their group of origin, even if they continue to reside amongst that group, be sufficient? The use of the adverb «forcibly» seems to suggest a physical transfer, although we shall consider the concept of «forcible transfer» momentarily. Further, in order to be covered, must the transfer be permanent – the children leave the group of origin, with the intention that they never return, or is a temporary transfer for a period of time – enough to acculturate the children into another group (usually, the majority) – sufficient? In many cases, residential schooling has not resulted in the permanent physical removal of indigenous children from their group of origin, although as is clear from the sort of evidence related elsewhere in this book, even where children who have undergone such schooling have *physically* returned to their home communities, there is often a per-

manent psychic break and alienation from the culture, language and even from the family. Such education is profoundly destructive of all such links. However, what is significant is that residential schooling has often in fact resulted in a permanent physical break from the home community as well – the very sort of complete break that even the most restrictive interpretation of the paragraph might contemplate.[95]

Also unclear in paragraph (e) is the meaning of the concept of «*forcible* transfer» of children. Certainly, the use of physical force would surely constitute «forcible transfer», but what about less coercive means? It has, for example, been suggested that «*forcible* transfer» may include, but is not necessarily restricted to, threats or intimidation.[96] It is at least arguable that residential schooling can, in some cases, constitute «forcibly transferring children of the group to another group».[97] It is certainly the case that, as noted above, children have been physically forced to leave their homes for residential schools, and where such force has been used, and where children have been placed in the custody of other families, the argument that such practices come within paragraph (e) is strongest. Given the overwhelming coercive power of the State that is implicit in the process of residential schooling, the actual direct use of physical force is, however, not present as it is unnecessary. This is particularly the case where the practices are so well-established that indigenous parents are resigned to the inevitability of the process. This is an example of Galtung's third form of force, use of ideas (Galtung 1980). The three processes involved (see Skutnabb-Kangas 2000: 408-413) when ideas are used to force a subordinated group to accept and even contribute to the reinforcement of their subordinate position are *glorification of the dominant group*, its language, culture, norms, traditions, institutions, level of development and observance of human rights, *stigmatization and devaluation the minorities/subordinated groups*, their languages, cultures, norms, traditions, institutions, level of development, observance of human rights, and so forth, so that they are seen as traditional, backward, not able to adapt to a postmodern technological information society, and, thirdly, *rationalization of the relationship between the groups* economically, politically, psychologically, educationally, sociologically, linguistically, so that what the dominant group/s do/es always seems functional, and beneficial to the minorities/subordinated groups (the majority is «helping», «giving aid», «civilizing», «modernizing», «teaching democracy», «granting rights» and «protecting world peace»). Such resignation and apparent «acceptance» of the practice, though, is always due to the huge inequality of power relationships, and often an experience of the implicit but overwhelming force of the State, as Example 46 demonstrate:

Example 46:

But the children (and parents) had structurally next to no chances of escape. In Canada compulsory attendance of all indigenous children at school was secured already in 1894, with the «added provision for 'the arrest and conveyance to school and detention there' of any children who might be prevented from attending by their parents or guardians (who, in such a case, would be liable to imprisonment)» (Richardson 1993: 101). *Children could be kept in the schools until they were 18. Richardson heard many people describe how the priests in Mackenzie Valley 'would come downriver by barge, in each village seizing Indian children to take to school, and how parents would send the children to hide in the bush'* (ibid.: 101-102). *A combination of threats and carrots was often used: 'Indian Affairs used to threaten people that if they didn't send their kids to school, they wouldn't get any welfare' (Buckley Petawabano, a Cree man from Mistissini reserve in northern Quebec,* quoted in Richardson 1993: 107).

In today's Denmark, threats have been suggested by several MPs and local politicians. Not only have there been suggestions that welfare should not be paid to minority parents if the children arrive late to school after holidays in the parents' country, but also that the school should refuse to receive the child at all that year. These are 'exact parallels to the U.S. experience in a number of states'.[98] *Likewise, tests in Danish have been suggested to 3-year old minority children, with a threat that if they do not pass, the children* ***must*** *attend Danish-medium preschools* (see also Example 20).

This type of «manufactured consent» (Herman and Chomsky 1988) has been discussed by the French sociologist Pierre Bourdieu explicitly in relation to education, where parents internalise

the inevitable and thus in many cases «accept» the legitimation for it. In addition, many parents (and children) are afraid of the force (physical, economic, political) that they know state representatives are able to use if the parents (or children) refuse to obey and participate in practices which they often know are destructive. Where such means have been employed by States to ensure the attendance of indigenous children in residential schools and similar institutions, there is a strong argument that sufficient force has been used. However, in the absence of any supportive authority, it is at best unlikely that, even if the concept of a «transfer» could be extended to cover residential schools, the phrase «*forced* transfer» would be extended to cover methods of effecting the transfer that fell short of intimidation backed up by the possibility of explicit physical force.

To conclude this part of the discussion, in spite of the omission of the concept of cultural genocide from the Genocide Convention, specific aspects of forms of submersion education may arguably constitute acts of genocide, within the meaning of certain paragraphs of Article II of the Genocide Convention. In all cases, such arguments are speculative, and there is little firm basis in the law as it has developed to the present that they would stand a very good chance of success; in the context of the foregoing discussion, the use of residential schooling, coupled with extensive evidence of physical and/or sexual abuse, would provide the most promising basis. However, even if such forms of education could amount to an act of genocide within Article II, there is a further, and likely unsuperable barrier to a successful claim that such forms of education amount to genocide. This is because, in order for there to be genocide under the Genocide Convention, the acts referred to in Article II must be accompanied by a mental element. This intent is set out in the introductory language of Article II, namely, «the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such». It is this aspect which presents a most serious barrier to a claim against all forms of submersion education discussed in this book under the Genocide Convention. As noted, such forms of education can and do have the effect of destroying the languages and cultures of indigenous peoples. However, such forms of education are generally not practised in the context of the attempted physical or biological destruction of indigenous peoples.[99]

The most significant difficulty is that there seems to be widespread agreement that the intention to physically or biologically destroy the group is essential to any genocide claim under the Genocide Convention. This is based on the decision to exclude «cultural genocide» from the scope of the treaty. The International Law Commission has expressed the position in the following terms:

> *As clearly shown by the preparatory work for the Convention, the destruction in question is the material destruction of a group either by physical or biological means, not the destruction of the national, linguistic, religious, cultural or other identity of a particular group. . . . [T]he text of the Convention, as prepared by the Sixth Committee and adopted by the General Assembly, did not include the concept of 'cultural genocide' contained in the two drafts and simply listed acts which come within the category of 'physical» or 'biological' genocide.*[100]

However, Articles 31 and 32 of the *Vienna Convention on the Law of Treaties* provide that reference may be made to preparatory work only when the ordinary meaning of the provision, taken in context and in light of its object and purpose, render it «ambiguous or obscure». It could be argued that resort should not be had to the preparatory work, as no such ambiguity or obscurity exists. In particular, it could be argued that an understanding of the concept of «destruction» as being limited to physical destruction sits uneasily with parts of the definition of the crime in Article 2. Article 2, paragraph (b), as noted, provides that genocide means the act of causing serious bodily or mental harm with the intent to destroy the group. As already noted, serious bodily harm and serious mental harm are clearly alternatives, and therefore the causing of serious mental harm alone could potentially constitute an act of genocide. If it is the case that «destruction» is limited to physical destruction, it is strange that an act, the serious infliction of mental harm, which does not involve physical destruction could constitute by itself an act of genocide, although it is, of course, possible to inflict such harm with the intention of ultimately causing

physical destruction (which is how the bulk of scholarly opinion suggest this provision should be interpreted).

Additional textual evidence in support of a reading of «destruction» that goes beyond physical destruction is provided by paragraph (c) of Article 2, which includes among the acts of genocide that of deliberately inflicting on the group conditions of life calculated to bring about its *physical destruction*. By qualifying the concept of destruction in paragraph (c) with the word «physical», it could be argued that the Genocide Convention implies that the concept of «destruction» must be wider than mere physical destruction. If «destruction» was intended to be limited to physical destruction, then there would be no need to qualify the word «destruction» in this way in paragraph 2(c).

In spite of these possible readings, international tribunals seem to continue to be wary of expanding the nature of the intent required for a finding of genocide beyond the physical or bio-logical destruction of the group.[101] The over-whelming bulk of scholarly opinion likewise generally continues to interpret the necessary intent as being limited to the physical or biological destruction of the group. Therefore, it would appear unlikely that, even if certain forms of subtractive education, and in particular, practices associated with residential schools, could amount to acts of genocide, within the meaning of Article II, paragraph (b), (c) or (e), without sufficient evidence that there existed the intention to destroy an indigenous people physically or biologically, it would be possible to arrive at a finding of genocide. As has been noted elsewhere in this chapter, it is, however, very difficult to make any conclusions in the absence of particular facts. These kinds of facts can only start emerging in concrete court cases. What we have sought to do, therefore, is to sketch the bases on which a claim of genocide in respect of various forms of submersion education might be made, and to alert potential claimants to the very serious legal obstacles that would face any such claim. We reiterate that this is most unfortunate, given the very serious negative consequences which flow to peoples and to individual members of groups affected, and that it is a matter of shame that Rafaël Lemkin's broad understanding of the concept of genocide, which included cultural genocide, was not ever turned into a binding international legal norm. While it seems unlikely that the international community will revisit this question, given the history of the drafting of the Genocide Convention and the concerns that some States had with respect to cultural genocide—concerns that almost certainly many States party to the Genocide Convention will still harbour—we also note that many researchers and organisations continue to argue vigorously and, in our view, convincingly that this should happen. Constitutions are frequently rewritten or amended, optional protocols are added to various instruments, and new instruments are being considered and written, all in response to evolving understandings of the effects of state policies, as we have seen already in many areas central to our argument[102]. None of the present instruments or interpretations of them are in any way sacrosanct. The exclusion of cultural (including linguistic) genocide from the Convention (aptly described by Ward Churchill, 1997; cf also Leo Kuper's 1981 book *Genocide: Its Political Uses in the Twentieth Century*) was a result of complex political negotiations and power politics. The constellation of political forces can, with continued activism and pressure, change.

If we were to concentrate more on the «punishment» part of the present Convention (Convention on the Prevention and *Punishment* of the Crime Against Genocide), the legal discussion above of the serious restrictions and challenges regarding the Convention's scope and interpretations, if one wants to include violations of educational language rights, is possibly pessimistic. But if, on the other hand, we are more interested in the «prevention» part of the Convention (one of Leo Kuper's books (1985) is specifically called «*The Prevention of Genocide*»; see also his 1984), matters may look somewhat different. Discussions about the scope of genocide have resulted in many suggestions of how to amend the present Convention. For instance, Ward Churchill has in his 1997 book, after a thorough discussion of the development of various debates, interpretations and misinterpretations of genocide, proposed, in his final chapter, a new Genocide Convention, based on Lemkin's pioneering work and influenced by discussions around Jean Paul Sartre's remarks (1968) on genocide. Likewise, many definitions of ethnocide (as a subcategory of genocide) have been suggested. Ethnocide was in Lemkin's view one subcategory of genocide (his subcategories

were physical, biological and cultural genocide), not anything less serious than the physical or biological subcategories. For instance, The Society for Threatened Peoples/ Gesellschaft für bedrohte Völker (http://www.gfbv.de/index.php?change_lang=english) regards the following acts as crimes of ethnocide (and their second point is at the heart of this book):

1. Forced resettlement of an ethnic group
2. Repression of a culture and of the oral and written use of a mother tongue
3. Deliberate manipulation of demographics and development policy
4. Destruction of traditional economic systems, especially those of tribal peoples
5. Forced conversion by missionaries
6. Systematic destruction of buildings that are part of a cultural heritage and of religious and cultural sites, in non-warfare situations as well as during warfare (Selbmann 1998, 43; see also van Bruinessen 1994).

With enough international pressure mounting, changes are possible even in areas such as the one under consideration.

7. Indigenous Education and International Criminality: Crimes against Humanity

Genocide is not the only act which constitutes a crime in international law; it is now generally accepted that other categories of criminality are war crimes, crimes against humanity, aggression, torture and terrorism (Cassese 2003: 738-54). In the context of the nature and effects of various types of submersion education described in this book, it is worth considering whether such education may give rise to one of these other forms of criminality; in particular, to what extent and in what circumstances could submersion education constitute a 'crime against humanity'? Like other forms of international criminality, the concept of crimes against humanity is a relatively recent development in international law, and many aspects of what constitutes criminality are unclear and are still being developed. Given the indeterminacy of many aspects of what constitutes a 'crime against humanity', in this chapter we are only able to sketch the concept and suggest how it may potentially be relevant. It is particularly difficult, given the legal uncertainties, to make definitive statements, particularly in the absence of particular facts in particular cases. Matters are further complicated by the fact that, even with the establishment of a standing international criminal court, most prosecutions of international crimes will take place within national courts, applying national laws which give effect to international legal principles, and the content of such crimes when translated into national laws can differ in important ways. Thus, our discussion is, of necessity, somewhat general. Given the many difficulties we have described in the previous chapter with respect to whether certain types of submersion education may constitute genocide, we do feel that, while the application of the concept of 'crimes against humanity' also raises a number of serious difficulties, it may potentially be somewhat easier for certain types of submersion education to come within this category of international criminality.

The term 'crime against humanity' was first used in the modern context in respect of the massacres of Ottoman Turkey's Armenians from 1915. It was translated into international legal principle in 1945, following the Second World War, in the London Agreement embodying the *Charter of the International Military Tribunal* (under which the Nuremburg Trials were conducted; see Cassese 2008: 101-108). Although long associated with armed conflict,[103] this is no longer the case; it is now accepted that they can also be perpetrated in times of peace (Cassese 2008: 108; Schabas 2001: 37). Antonio Cassese, one of the foremost scholars of international criminal law, has suggested that the category of crimes against humanity has now become part of customary international law, and that while the concept is «sweeping», it has a number of common features. First, they are «particularly odious offences in that they constitute a serious attack on human dignity or a grave humiliation or degradation of one or more persons». Second, they are not isolated or sporadic events, but «are part of a widespread or systematic practice of atrocities that either form part of government policy or are tolerated, condoned, or acquiesced in by a government». Third, such crimes can be perpetrated in time of war or in peace. Fourth, they are committed against civilians or, under customary international law (but not under the Statute of the International Criminal Court[104]), enemy combatants in armed conflicts (Cassese, 2008, 98-101).

The most complete description of what constitute «crimes against humanity» is now set out in the *Rome Statute of the International Criminal Court* of 17 July, 1998 (the «ICC Statute») (http://untreaty.un.org/cod/icc/statute/romefra.htm). Article 7, paragraph 1 of the ICC Statute defines «crime against humanity» as any of a number of acts set out in paragraph 1, «when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack». Subparagraph 2 (a) of Article 7 defines «attack directed against any civilian population» to mean a course of

conduct involving the commission of multiple acts referred to in paragraph 1 against any civilian population. Cassese notes that the reference to 'civilian population' is one of the ways in which the concept of 'crimes against humanity' as set out in the ICC Statute is narrower than the concept as understood in customary international law; under which it is possible for acts against combatants also to be included.[105] Furthermore, subparagraph 2 (a) also provides that the multiple commission of such acts must be «pursuant to or in furtherance of a State or organizational policy to commit such attack». Cassese argues that this is a second way in which the ICC Statute narrows the concept of 'crimes against humanity' as compared with how the concept is understood in customary international law; in customary law, it is enough that the State simply tolerates or condones the attacks (Cassese 2008: 125).

Before considering which sorts of acts are involved, it is possible to see the beginnings of an argument that certain forms of submersion education may, in some circumstances, constitute «crimes against humanity». Where used on indigenous children, such forms of education are, as we have seen throughout this book, generally put into place amongst a significant section of the indigenous population of the state, and it could certainly be argued that they are therefore being employed on a «widespread and systematic basis». Indeed, such forms of education are almost always put in place as part of a system of education for ITM children, and in such circumstances, it would be difficult to see how their use could be described as anything other than «widespread and systematic». Similarly, it is certainly arguable that, where they are employed, such forms of submersion education would constitute «multiple acts» committed against a civilian population. And, it is obvious that, as the State generally controls most if not all aspects of education policy, such forms of education are both pursuant to and in furtherance of a State policy. Depending on the content of the acts, which we shall turn to momentarily, it may be that only some forms of submersion education might potentially come within the relevant definitions; say, certain types of acts of violence which take place in residential schools, and which the State might argue have resulted from the implementation of policy by organisations, such as churches in the Canadian residential school system, to which the responsibility for operating the education has been devolved. However, if Cassese is correct is his assertion that the concept of crimes against humanity in customary international law is broader, and would apply even where the State simply tolerates or condones the attack, then it may not be possible for a State to escape liability, if it can be established that the State knew that such acts were occurring and refused to take action. Many of our examples in this book show that this has been and continues to be the case.

The crucial question, and the one which, as we shall see, is most severely clouded with legal uncertainty—at least in respect of the argument that some forms of submersion education are covered by the concept—is that of the categories of acts which constitute of crimes against humanity. The acts enumerated in paragraph 1 of Article 7 of the ICC Statute are: (a) murder; (b) extermination; (c) enslavement; (d) deportation or forcible transfer of population; (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) torture; (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (i), enforced disappearance of persons; and (j) the crime of apartheid. Most of these would generally not apply in respect of the forms of submersion education that have been considered in this book, with the possible exception of acts of sexual violence described in subparagraph (g); we have seen that sexual violence has been widespread in certain residential school systems. It is difficult to say in the abstract whether they are widespread enough to constitute a crime against humanity, and where the acts have been committed by non-state institutions, the question of whether customary international law is, as Cassese has argued, broad enough to cover toleration of such acts, important, as is the question of the level of precise knowledge that must exist for it to be said that the State is «tolerating» such acts. The law is simply not clear on these issues, and in any case, it is difficult to make any conclusive statement here in the abstract, without particular facts in a particular case. However, the language of the ICC Statute certainly raises possibilities.

There are, however, two other acts enumerated in paragraph 1 of Article 7 that may be more

fruitful. The one likely to be of most potential for any claim that certain forms of submersion education constitute acts which may be crimes against humanity is subparagraph (h):

> *persecution against any identifiable group or collectivity on . . . racial, national, ethnic, cultural, religious, . . . or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the [International Criminal] court.*

Cassese notes that the final requirement in subparagraph 1 (h) that persecution needs to be «in connection with any act referred to in this paragraph or any crime within the jurisdiction of the court» is not a requirement of the concept of «crimes against humanity» as understood in customary international law (ibid.: 125-126). This is important, in the context of the discussion in this book of submersion education, because as was just noted, it is not at all clear that any of the forms of such education described in this book would be acts in connection with any of the other acts set out in paragraph 1, with the possible exception of acts of sexual violence, as has just been noted. Article 7, subparagraph 2 (g) provides that «persecution» means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity. The ICC Statute does not specify what are «fundamental rights»; however, in at least one case, involving the comprehensive destruction of Bosnian Muslim homes and property, which was found to be «a gross or blatant denial of fundamental human rights», a tribunal has considered the crime of persecution in detail.[106] The Trial Chamber noted that, although the realm of human rights is dynamic and expansive, not every denial of a human right may constitute a crime against humanity. It argued that, «at a minimum», acts of persecution must be of an equal severity or gravity to the other acts enumerated as such (in the case, it was those acts enumerated in the Charter of the ICTY, although there are strong similarities between this and the categories set out in Article 7, paragraph 1 of the ICC Statute). The Tribunal went on to say the following:

> *The only conclusion to be drawn from its application is that only gross or blatant denials of fundamental human rights can constitute crimes against humanity . . . in order to identify those rights whose infringement may constitute persecution, more defined parameters for the definition of human dignity can be found in international standards on human rights such as those laid down in the Universal Declaration on Human Rights of 1948, the two United Nations Covenants on Human Rights of 1966 and other international instruments on human rights or on humanitarian law. Drawing upon the various provisions of those texts it proves possible to identify a set of fundamental rights appertaining to any human being, the gross infringement of which may amount, depending on the surrounding circumstances, to a crime against humanity. Persecution consists of a severe attack on those rights, and aims to exclude a person from society on discriminatory grounds.*

Based on the information set out in this book about the application and effects of many forms of submersion education, and, significantly, on the argument in chapter two about how such forms of education constitute violations, and widespread violations, of fundamental human rights, this category of crimes against humanity would seem to have some potential. The Trial Chamber concluded as follows:

> *The Trial Chamber therefore defines persecution as the gross or blatant denial, on discriminatory grounds, of a fundamental right, laid down in international customary or treaty law, reaching the same level of gravity as other acts prohibited in Article 5 [the equivalent of Article 7 in the ICC Statute] . . . acts of persecution must be evaluated not in isolation but in context, by looking at their cumulative effect. . . . In sum, a charge of persecution must contain the following elements: (a) those elements required for all crimes against humanity under the Statute [again, of the ICTY]; (b) a gross or blatant denial of a fundamental right reaching the same level of gravity as the other acts prohibited under Article 5 [again, the equivalent of Article 7 of the ICC Statute]; (c) discriminatory grounds* (ibid., paragraphs 616-27).

Again, the detailed definition of the crime of persecution creates the possibility of building an argument that at least some forms of submersion education may constitute crimes against humanity. There is, however, much that remains ambiguous in the definition. It must also be borne in mind that the case in question actually involved acts of significant physical violence, and because of this, and because of the emphasis that the Tribunal placed on reference to other categories of acts which constitute crimes against humanity, many of which involve significant acts of physical violence, it is not clear that any but the most brutal forms of submersion education, those which witness significant and systematic violence, would be covered. To date, there is simply too many questions unanswered with regard to the scope of the category of persecution. However, the clear linkage of this category to human rights standards creates possibilities.

The second sort of act enumerated in Article 7, paragraph 1 of the ICC Statute that may be relevant here is that set out in subparagraph (k), effectively a catch-all provision which refers to «other inhumane acts of a similar character [to those set out in paragraph 1] intentionally causing great suffering, or serious injury to body or to *mental* or physical health». As also discussed in this book, the sorts of education often suffered by indigenous children do indeed result in serious, often permanent injury to mental health; as noted, such education also tends to adversely affect longer-term physical health of those who have suffered it. As we have also seen, they often involve what could be described as «great suffering». While we are of the view that the forms of education described earlier involved a violation of fundamental rights, it is also difficult, in our view, not to conclude that the sorts of mental and physical suffering induced by such education also constitute «inhumane acts». Like the category persecution, however, this category has a number of definitional uncertainties which have not yet been clarified by courts and tribunals. A particularly difficult challenge is the requirement that the acts be of a similar character to other acts set out in paragraph 1. As noted in respect of persecution, this may imply that such acts must involve significant physical violence. This could potentially limit the application of the concept in respect of certain forms of submersion education. Nonetheless, as with persecution, this category creates some possibilities and suggests some lines of argument.

Again, it is difficult to be more conclusive given the definitional difficulties we have just considered and the general difficulty in discussing the application of categories to acts in the abstract, rather than particular cases and particular sets of facts. We would conclude this part by noting that this is a particularly dynamic area of the law, and there is therefore the possibility that the range of crimes against humanities, and in particular the categories highlighted here, will expand in ways that increase the possibility that at least certain forms of submersion education attract criminal liability in international law.

8. What forms of education would be consistent with law and research?

8.1. How should ITM education be organised on the basis of research results?

8.1.1. Change of ideology from forced homogenisation through assimilation to enrichment-based theorising and real integration

A prerequisite for even starting to listen to ITM voices for good education is a change of ideology, from seeing ITMs and the many languages as problems, to seeing diversity as an enrichment, and proper education for ITMs as a human right. In this phase, *enrichment-oriented* theorising must emerge, also in education. Bi- or multilingualism is in it increasingly seen as something positive, not only for ITMs themselves (for whom it is necessary) but also for the dominant groups and for the whole society.

ITMs start demanding the right to categorise themselves positively, as Indigenous/Tribal peoples and as minorities, and the right to reproduce themselves as peoples/minorities (*positive endo-categorisation*), and to be granted the rights that are needed for this. Initially various groups/peoples have gone different ways, with some emphasising more expressive linguistic, cultural and educational rights, some concentrating more on socioeconomic rights including land rights, i.e. instrumental rights (see Section 3.2. for these distinctions). Later, most groups/peoples strive towards both types of rights (see Skutnabb-Kangas, Phillipson, Panda & Mohanty 2009 for these various routes).

In ITM education, the enrichment-oriented ideology starts with demands for MTM classes and schools, initially early-exit transitional models, later late-exit models and, increasingly, maintenance models. For old minorities and indigenous peoples who have been linguistically assimilated already earlier, this is often a part of a revitalisation process. They have started *revitalisation immersion* programmes of various kinds (see Skutnabb-Kangas & McCarty 2008 for definitions of the various models). The Māori in Aotearoa/New Zealand started 'language nests' (Kōhanga Reo), Māori–medium preschools; the Hawai'ians followed soon after with their Pūnana Leo. Both now have full immersion schools in their languages[107]. Several Saami people in the Norwegian and Finnish parts of Sápmi followed suit – for the demographically very small Saami peoples (under 1000 speakers or, for some, under 400 speakers) MTM education is quite new[108]. Mohawk schools in Canada are also typical of revitalisation (see Kanerahtahere Michelle Davis' (2008) description of the *Kawenni:io/Gaweni:yo Mohawk School*; see also Bear Nicholas 2009 for the struggles to establish this kind of schools in Canada).

For speakers of dominant languages, such as English-speakers in Canada, Finnish-speakers in Finland, or Spanish-speakers in Catalunya, immersion programmes (see below) are started. In them, their children are taught through the medium of a minority language (here French, Swedish/English and Catalan, respectively). Initially dominant language speakers want these programmes mainly for instrumental reasons, for the (economic and labour market related) benefits that bilingualism can give.

In addition to more traditional educational expressive and instrumental arguments, ITMs and those (few) immigrant minorities who are arguing from an enrichment-oriented point of view, often use human rights arguments. These can be *individually oriented* ('it is a linguistic human right to learn one's MT fully, and also to learn an official language fully'). They can also be more *collectively oriented* ('it is a human right for a minority or a people to exist, and this presupposes learning both L1 and L2 fully'). A combination of both types may be expressed in terms of arguing that linguistic and cultural diversity are not only necessary for the planet but positive resources in any society. The link between bio-

diversity and linguistic and cultural diversity (Section 5.2.4) is increasingly used by indigenous and even tribal peoples.

There are examples showing that, with more sympathy towards the rights of ITMs, even transitional late-exit programmes may initially be accepted by state educational authorities. This was, for instance, happening in the United States in the early 1990s. But a strong backlash came already from the last year or two of the millennium onwards. In Sweden the same thing happened a couple of decades earlier. At the same time, the more human rights oriented demands often start exposing the power struggles involved in ITM education as a part of the more general polarisation, with growing gaps, which is happening everywhere in the world.

Some educators and parents with foresight, from both the minorities themselves and from the dominant populations, have also started relating the groups to each other. They claim that high levels of bi- and multilingualism are beneficial for *everybody*; that dominant groups need to become bilingual too; that for real integration to happen, both dominant and dominated groups need change; and that granting educational language rights may prevent ethnic conflict and disintegration. It does no good to try and change the ITM child to fit a majority school. It is not enough to try to give the ITM child an emergency kit so that the child can manage in a racist society. It is not enough to enrich the dominant group child through a bit of exposure to other cultures. Instead, the whole school has to change. Society has to change. The two-way schools in the USA are one indication of this, but there are many experiments all over the world, often little known outside the local contexts.

Often people have discussed only the instrumental necessities for ITMs (they have to learn L2) or instrumental benefits for dominant groups (bilinguals get better jobs) that a certain type of education can lead to. Alternatively, people discuss only ethnically/linguistically motivated identity-oriented necessities that a certain type of education can lead to for ITMs. But a less naive human rights argumentation is also emerging. It combines both instrumental and affective/expressive benefits.

The new discussions have also led to the development of better educational models, and several of them have already been mentioned. These are strong models of MLE that have a good chance of achieving all four goals listed in Section 4.1 – and more. Section 8.1.2 presents some of these models.

8.1.2. Presentation of strong models for the education of both ITM and dominant group children

Immersion programmes for dominant group children

An *immersion programme* is a programme where linguistic majority/dominant group children with a high-status MT voluntarily choose (among existing alternatives) to be instructed through the medium of a foreign (minority) language. The children are placed in classes which only have majority children, all with the same MT (the classical model), or at least in classes where the medium of instruction is a foreign language for everybody. The teacher is bilingual so that the children in the beginning can use their own language even if the teacher replies in the foreign language. The children's MT is in no danger of not developing or of being replaced by the language of instruction — they are in an *additive* language learning situation. Canada has been the pioneer of immersion programmes (see Lambert & Tucker 1972, Swain & Lapkin 1982). Most of them are still in French (for mainly English-speakers) but many other languages are also involved. More than a million children have been or are in these programmes in Canada. Most European countries and the United States also have a few immersion programmes in different languages.

Here a word of warning is also in place: in the USA (where, as opposed to Canada, very few immersion programmes exist), many educational authorities and politicians started already in the early 1980s to use the term «structured immersion» for submersion programmes where immigrant minority children were submerged in English-only classrooms. Wallace Lambert, who started immersion programmes in 1967 in Canada, tried, in vain, to protest (see, e.g. Lambert 1984). It should be clear that this is a misuse of the concept; a complete misunderstanding of the principles behind immersion. *Immersion is always additive while submersion is subtractive, and leads to at least partial loss of the MT*. The concepts of additive and subtractive learning/teaching are also Lambert's (1975).

Increasingly, immersion is also used by ITMs who no longer know their language by identification (Section 3.1), for revitalisation or reclaiming of their languages, as mentioned in Section 8.1.1. See also Huss 1999, 2003. Ironically, for those ITM children who no longer know their MT by identification, the dominant language is for all practical purposes their MT – therefore they can be taught through the medium of the ancestral language which from a linguistic proficiency point of view is a foreign language for them even if they may identify with it.

It is also very clear from the successes of immersion programmes that UNESCO's 1953 book *Vernacular languages in education* was NOT correct in its generalization, when saying that the mother tongue is axiomatically the best medium of education. For indigenous, tribal and minority children it is, yes. But when linguistic majority children, dominant group children, are taught in a second or foreign language, the situation is completely different. The outcome for children is decided by whether the teaching in an L2 is subtractive (leading to replacement of their MT) or additive (adding to their linguistic repertoire, with no risk to their MT). For ITM children, teaching them in an L2 is subtractive – therefore it should not be done. For linguistic majority children it is additive and can be done, and should be done if one wants them to become bilingual.

These distinctions are enormously important to understand – one cannot generalise the way UNESCO's axiom has been interpreted. Under certain conditions (i.e. those obtaining in immersion) it is perfectly fine to teach certain children in a language that is not theirs.

Language maintenance (language shelter) programmes for minorities

A *maintenance programme* or *language shelter programme* is a programme where linguistic minority ITM children with a low-status MT voluntary choose (among existing alternatives) to be instructed through the medium of their own MT. The children are placed in classes with other minority children with the same MT only. The teacher is bilingual. They get good teaching in the dominant language as a second/foreign language, and this is also given by a bilingual teacher. These schools are most often organised by an ethnolinguistic minority community itself. Initially, the students' native language is used for most of the content matter education, especially in cognitively demanding, decontextualised subjects, while the dominant or national language is taught as a subject only. Later on, some (but by no means all) maintenance programmes use the majority language as a medium of education for part of the time. But in proper maintenance programmes the minority language continues as a medium of education in several (or most, or all) subjects throughout the school. Eight years is an absolute minimum (see also Skutnabb-Kangas & Mohanty 2009).

For a few national minorities, maintenance programmes are a self-evident, 'normal' way of educating their children, a natural human right. It is indicative that most minorities of this type, e.g. the Swedish-speakers in Finland, Afrikaans- and English-speakers in South Africa, or Russian-speakers in Estonia and Lithuania, are either former power minorities or in a transitional phase where they have to accept the fact that they no longer have the power to impose their will on a numerical majority. But they still do have the power to organise their own children's education through the medium of their own language. Of course it should be a fundamental, self-evident linguistic and educational human right for *any* ethnolinguistic minority to use its own language as the main medium of education. But in fact most ITMs in the world do not have this basic right. A few indigenous peoples (who are numerically a minority in most of their own countries) have maintenance programmes, most of them do not. Most immigrant and refugee minority children do not have access to maintenance programmes either, even if it can be shown that such programmes would result in high levels of bi/multilingualism, enhanced school achievement and more societal equity.

The purpose of this type of multilingual programme is to ensure that language minority children continue to maintain and develop their MT up to a native (national minorities, indigenous peoples) or at least near-native (immigrant minorities) level. Likewise, they can learn the dominant/national language at a native level (provided the programme works well, as it should), and become biliterate. In a European context, they typically also learn further foreign languages. Some MTM programmes in African countries could also be counted under main-

tenance programmes, but most of them are still early-exit transitional models, i.e. weak programmes. Birgit Brock-Utne observes that in many of the African countries the majority language is treated in a way that minority languages are treated in the industrialised world.

This type of multilingual programme enriches society at large by promoting pluralism and mutual understanding and by ensuring that minorities gain access to linguistic and educational prerequisites for social, economic and political integration.

The results are positive. A recent Worl Bank report (by Nadine Dutcher, no date; see also her earlier reports, 1982 and 2004) gives a summary of some late-exit and maintenance programmes, including the largest evaluations done in the United States, by David Ramirez and his colleagues and, especially, by Wayne Thomas and Virginia Collier (see section 8.1.3). In the study of Finnish working class youngsters in Sweden (see section 8.1.3) who had had nine years of mostly Finnish-medium education, they were compared with mostly middle-class Swedish children in parallel classes in the same schools. In addition to doing almost as well as Finnish control groups in Finland on a Finnish language test, they performed slightly better than the Swedish control groups on a difficult Swedish language test. Their school achievement was somewhat better than that of the Swedish-speakers. They had a positive bilingual, bicultural, 'bicountrial' identity. In addition to achieving the educational goals presented in Section 4.1, this is also the model that responds to human rights demands, as they are presented in the Hague Recommendations (see Section 2.4.).

Several small- and large-scale experiments in, for instance, Nepal and India (Orissa, Andra Pradesh) are right now (2009) early-exit models, transitioning indigenous/tribal children to a dominant language medium programme after grade 3 (see Hough et al. 2009, Yonjan-Tamang et al. 2009 for Nepal and Mohanty et al. 2009 for India). Even these show already better results than non-MLE schools. For instance, a well-controlled study by Giridhari Hota (2009), compares 50 Kisan tribal children in a mother tongue medium MLE school with 50 Kisan children in an otherwise similar non-MLE school on three variables at the end of grade 1. Both average yearly school attendance (140 days vs 126 days) and language scores show statistically significant gains for the MLE children; their math scores are also better even if the difference is not statistically significant. However, there are attempts by ITM organisations, researchers and others to convince (regional or federal) governments that these programmes should be expanded both horizontally (more schools and languages) and vertically (to extend them to higher grades). It seems possible that these attempts may finally succeed, at least in Nepal (see Skutnabb-Kangas & Mohanty 2009, see also Awasthi 2004, Yadava & Turin 2006). Dr. Sushan Acharya's and professor Yogendra Yadava's Group reports from two workshops in March and April 2009 in Kathmandu, Nepal, with several government representatives present, are optimistic; one of us got the same impression of real commitment in meetings with the highest educational authorities in March 2009[109]. Yadava suggested this kind of programmes already in a 1994 report, Yadava & Grove 1994.

The programmes in Nepal and Orissa are using or are based on local Traditional/ Indigenous (Ecological) Knowledge (TEK/IK) and in some cases even teaching methods; at least some materials are locally generated by the communities, including children and IK/TEK-holders (see Hough et al. 2009, Panda & Mohanty 2009). Hough et al. 2009 also show how context-sensitive culturally appropriate education is being conducted in the promising MLE project in Nepal. The goal in Nepal is that all (over 100) language groups should have their first years of education in their MTs (see also Awasthi 2004, Yonjan-Tamang, Hough and Nurmela 2009). Balto (1997, 2005, ed. 1996) discussed how this education can be and has been done with the Saami. Panda & Mohanty (2009; see also Mohanty & Panda 2007) compare traditional rote-learning-based education, even when it is done through the medium of the MT, with education that is thoroughly based on the children's and communities' Traditional Knowledge, ascertained through extensive ethnographic studies. Special for this MLE Plus programme in 8 schools in Orissa is that it then takes the children through to a higher level of abstraction by developing their pragmatic locally based knowledge towards scientific concepts and knowledge. There are similar experiments on a small scale in many parts of the world. Unfortunately most of them are not scientifically described in a way that would make them easily accessible to

others on a large scale. Much more ITM networking is needed for this knowledge to be spread.

In several Latin American countries similar attempts are on their way (e.g. King & Benson 2004, all references to Hornberger in the References, and Pérez 2009, Pérez & Trapnell, 2010, for Peru). Interestingly (and this may be an optimistic reading), the programmes themselves have so far mostly been of the early-exit transitional kind, whereas the ideologies and demands seem to be much more enrichment-oriented. Also here, IK/TEK aspects have been emphasized, and critical post-colonial theory looms large. Many of the planners of these programmes have used Article 8j on traditional knowledge from the 1992 *Convention on Biological Diversity* (see Section 5.2.4) to legitimate introduction of local knowledge. Now more or less all indigenous and tribal programmes base themselves on or at least refer to the recent *Declaration on the Rights of Indigenous Peoples* (UNDRIP), especially Articles 13 and 14, in addition to the binding *ILO 169* (see Chapter 2 for these two instruments).

The African Academy of Languages (ACALAN) is also working to convince African governments of the importance of starting and/or extending mother-tongue-based MLE up to minimally grade 6, often grade 8 (see ACALAN 2007, ACALAN 2008, www.acalan.org). Several recent resolutions, mentioned earlier (e.g. the Asmara Declaration and ACALAN's *The Language Plan of Action for Africa*, Section 5.2.1) are trying to make this more than nice words but little implementation. The lack of implementation has been elegantly criticised by, e.g., Neville Alexander in 2006 – see Section 5.2.1). Many of the participants at the at the 1st session (Geneva, 1-3 October 2008) of the UN Human Rights Council's Expert Mechanism on the Rights of Indigenous Peoples (in *doCip Update* No 82, December 2008 – February 2009, pp. 11-15, see www.docip.org) also gave examples of discrimination, lack of educational provision, and lack of implementation of even those legal provisions that do exist. Similar testimonies were presented, also in December 2009, at the UN Forum on Minority Issues (many of the statements are available at http://www2.ohchr.org/english/bodies/hrcouncil/minority/oral_statements_forum_minority_2008.htm). There is a serious growing attention towards the lack of LHRs in ITM education; it may cause cautious optimism for the future.

The last two programmes that we mention are demographically restricted, but they follow many of the important MLE principles.

Two-way programmes and the European (Union) Schools model for minorities AND majorities. A *two-way programme* is a programme with around 50% minority (with the same MT) and 50% majority children. They are taught together by a fully bilingual teacher. Initially this happens through the medium of the minority language, later through both. Both languages are taught as subjects to both groups. A two-way programme combines a language shelter programme for the minorities and an immersion programme for the majorities. There are two-way programmes in over 200 schools in the USA. Most of the programmes have Spanish as the minority language. In many cases the «dominant language speakers», i.e. English speakers, are in fact children whose parents or grandparents have been speakers of the minority language in the programme, i.e. for them it is a revitalising immersion programme. The results are positive but complex (see Dolson & Lindholm 1995, Genesee, Lindholm-Leary, Saunders & Christian 2006, Lindholm-Leary 2001). The programmes have not spread much outside the USA, partly also because of the requirement of finding native dominant language speakers, willing to learn a minority language. This shows that the enrichment thinking is still in its infancy, at least when action is concerned.

A *European (Union) Schools model* is a programme where each language group (this includes only official EU languages) is taught separately in their own section. Initially the teaching is completely through the medium of their own language. Later they are taught partially together with children from other sections, through the medium of one or two foreign languages. These are first studied as subjects, then used as media of education in concrete contextually embedded subjects. Only after grade 8 are these languages also used as media of instruction in decontextualised, intellectually and linguistically demanding subjects, according to a careful plan. Both the MT and the first foreign language are taught as subjects throughout grades 1-12. The MT continues to be the medium in several subjects throughout the programme. In the last two grades, 11 and 12, the share of the MTM teaching increases again and several of the

linguistically most demanding subjects, such as philosophy or advanced courses in mathematics, are taught in the MT. The children can also choose for every subject in which language they want to be examined in their Baccalaureate. All staff are bi- or multilingual. The results in these schools are extremely positive (Baetens Beardsmore 1995). There are few of them, though (14, in 2009; see http://www.eursc.eu/index.php?l=2).

Although the strong forms of multilingual education outlined above have different sociolinguistic realities with regard to the linguistic background of the students and the language(s) of the classroom, and different sociopolitical realities with regard to the power relations between the groups attending and the rest of society, they all share an aim of cultural and linguistic pluralism, with the bi/multilingualism and bi/multiliteracy of students as an avowed minimum aim. They also follow similar principles; these are spelled out in Section 8.2. In the following section, results from a few of the projects mentioned are first described in more detail.

8.1.3. Presentation of some concrete positive projects

First, evaluations of two central large-scale USA studies (Ramirez et al., and Thomas & Collier), two small-scale studies (one Indigenous, from India and one immigrant minority study from Sweden; Saikia & Mohanty, Skutnabb-Kangas), and two large-scale African studies (dominated majorities, from Ethiopia and Burkina Faso; Heugh et al., Ilboudo & Nikièma) will be summarised. Since indigenous/tribal peoples in most cases are demographically very small, there are few if any large-scale comparative studies where the role of the teaching language for the results can be seen clearly. What is important here is to look at the principles behind the project results.

The Ramirez et al. (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 group, *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*. It is important to note that even for the late-exit students, 5-6 years of MTM education was not enough to take their English up to the required level in English. But judged on the basis of their learning curves, 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.

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 MT 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 [medium] schooling. The more L1 [medium] grade-level schooling, the higher L2 achievement.»

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 ITMs. The worst results,

including high percentages of push-outs[110]) in both studies were with students in regular submersion programmes where the students' MTs (L1s) were either not supported at all or where they only had some mother-tongue-as-a-subject instruction.

An extremely well controlled study is Saikia & Mohanty's (2004) study of indigenous/tribal *Bodo* children in Assam, India. After strong campaigning they have recently 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*, *B*odo children, taught through the medium of the *B*odo language, performed significantly better on ALL tests than group *BA*, the indigenous *B*odo children taught through the medium of *A*ssamese, the regional language, a second language for them. *Group BA did the worst on all the tests.* Group *AA*, *A*ssamese mother tongue children (i.e. the regional majority) taught through the medium of their mother tongue, *A*ssamese, performed best on two of the three mathematics measures. But 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.» There are hundreds of small-scale s tudies like this, from most continents (even if few are as well controlled), which show similar results[111].

The results agree with research on (autochthonous and immigrant) *minority* children. A typical 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 both a Finnish control group in Finland and with Swedish control groups in the parallel classes in the same schools. A difficult (CALP-oriented) 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 4).

The maximum number of points that one could get on the Swedish test was 13. The fact that the means were around 5 shows how difficult the test was. It is interesting that the Finnish youngsters' own evaluation of their Swedish competence (maximum number of points was 5) was somewhat lower than the assessment of the Swedish youngsters of their own competence – still, the Finnish children did better in the Swedish test. It is also remarkable when thinking of schools as democratisers that *all* the Finnish children's Swedish was at a high level: they were closely clustered around the average (= they had a lower standard deviation than the Swedish children), whereas there was more variation among the Swedish children's competence in Swedish. This also shows that the medium of instruction is important as a socio-economic equaliser even in relation to competence in the second language. In addition, their Finnish was

Table 4. Swedish test results and subjects' own assessment of their Swedish competence

	TEST RESULT in Swedish (1-13)		Own assessment of Swedish competence (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 (as opposed to context-embedded), CALP-type test where middle-class subjects can be expected to perform better (Skutnabb-Kangas 1987).

almost as good as the Finnish of Finnish control groups in Finland.

Next we present another study, this time a very large-scale one, showing a situations where the mother tongue medium has continued for longer than the first 6 years, with positive results, and another similar one where the good results may lead to more than a late-exit model: Ethiopia and Burkina Faso, two poor African countries, where English and French, respectively, have been the dominant high-status languages and the teaching languages in education.

Ethiopia has since 1994 an innovative and progressive national education policy which is based on 8 years of mother-tongue medium education. Regions have the authority to make their own decentralised implementation plans. Some regions transfer to English medium already after 4 or 6 years. Amharic, used as a *lingua franca*, is learned as a first or second language by all. The Ethiopian Ministry of Education commissioned a study across all the regions (Heugh et al. 2007; see also Heugh 2009, Benson 2009, Heugh & Skutnabb-Kangas, eds, 2010). There is an efficient collection of system-wide assessment data. These show very clear patterns of learner achievement at Grade/Year 8, 10 and 12. The Grade 8 data show that those learners who have had 8 years of MTM education plus English as a subject perform better across the curriculum, in mathematics, biology, chemistry, etc. than those who have had English-medium education from grade 5 or 7. In addition, their results in the English language are better than the results of most of the early-exit regions. The exception is «the more wealthy and urban city states of Addis Ababa and Harar where students with six years of MTM do show a consistently higher level of English language achievement. This is to be expected for socio-economic reasons and also because urban students have some access to English beyond school. In summary, the data show that the longer the students have MTM, the better their overall academic achievement» (Heugh 2009: 105). This shows very clearly that even when 4 or even 6 years of MTM education is much better than early-exit weak models (see the African results presented by Heugh in Example 22), to enable the transfer to the second/foreign language from the linguistic and cognitive competence developed in the MT, (minimally) 8 years is needed.

Burkina Faso's (late-exit) bilingual programmes have similar good results (see Paul Taryam Ilboudo's and Norbert Nikièma's article in Heugh & Skutnabb-Kangas, eds, 2010). 46 of the country's 59 languages are spoken by fewer than 100,000 people and only one language, Moore, has over a million speakers. Before the MTM education started, Burkina Faso showed all the typical symptoms of a non-functioning education system: «low promotion, high repeat and drop-out rates: 34 % of the boys and 42 % of the girls fell back into illiteracy; only 22 out of a 100 pupils who started primary school did complete it in 6 years (the normal duration of primary school) and only 17 of them passed the end of primary school certificate. Out of 1,000 pupils enrolled in grade one, only 17 could get the baccalaureate (end of high school diploma) 13 years later. Besides, although over half of the time in the syllabus was devoted to the learning of French, only 20 to 25% of the pupils could read or write properly by the end of primary school» (Ilboudo & Nikièma, 2010). An early-exit experiment started with 3 languages in 1979. Another much larger experiment with a late-exit model started in 1994, and by 2008, almost 7,000 children from the programme had taken the school leaving exam (which is in French), with an average success rate of 75.54, as compared to the ordinary French-medium schools' 64.91 % (ibid., Table 5). There is a wish to extend the programme both horizontally (more schools and languages) and vertically (up to grade 8). «The programme has shown that African mother tongues can be efficient tools of learning at school» and «multilingual education is implementable, sustainable, afford-able and not more costly than monolingual education in a foreign language» (ibid.).

Indigenous Saami in Norway and Finland[112] have the right to MTM education, with a better protection in Norway (see Aikio-Puoskari 2009) and fewer rights in Sweden. The Saami also have their own Saami-medium University College, a Nordic Saami [research] Institute, their own Saami Parliaments, etc. Gáldu, the Resource Centre for the Rights of Indigenous Peoples (www.galdu.org) has links to massive amounts of information about the Saami who are among the indigenous peoples with most language, culture and education-oriented rights in the world (while the rights to land and water are still sparce).

Swedish-speakers in Finland, an old autoch-

thonous minority, and French-speakers in Quebec, Canada, are probably in a better position in terms of educational language rights than any other national minorities. Jasone Cenoz (2008; see also Cenoz, 2009) has conducted a large-scale study in the Basque Country, comparing Basque children who have all their education through the medium of Basque, with Spanish as a second language (model D), to those who have either Spanish (model A) or both (model B) as the media of education; most of the children in models A and B have Spanish as their mother tongue even if many are of Basque origin. Model D children obviously do best in the Basque language, but they are also as good as the other groups in the Spanish language, despite having studied it as a second language subject only. Likewise, they are as good as the others or better in mathematics and natural sciences. In addition, they are doing better than the other groups in English, a language that all groups have studied as a foreign language subject. Their higher level of metalinguistic awareness has thus been an advantage. The mother tongue of ITMs can be learned at no cost to the competence in a dominant language or various subjects, and it can lead to a better performance in various subjects.

The positive results in these and in other experiments and models described in this section can be used to deduce some principles to follow, and, as may be the case, also issue a few warnings on what not to do.

8.2. Assessing the leading principles for strong models: Towards recommendations

The strong models and experiments described above in Sections 8.1, 8.2 and 8.3 have reached good results in terms of the first three goals that we mentioned initially in Section 4.1, namely high levels of bi- or multilingualism, a fair chance of success in school achievement, and positive multilingual/multicultural identities and attitudes. They also give indications that the fourth goal may have been achieved.

The principles which have to a large extent been followed in them can be formulated as eight research-based recommendations. They form one possible baseline that the reader can relate to, and hopefully agree with. We have used them and additional materials for our final recommendations. Here are the principles (source: Skutnabb-Kangas 1995: 12-17).

1. *Support (= use as the main medium of education, at least during the first 8 years) that language (of the two that the child is supposed to become bilingual in initially) which is least likely to develop up to a high formal level.* This is for all ITM children their own Indigenous/tribal or minority MT. For dominant group children, it should also be a minority language.[113]
2. In most experiments, *the children are initially grouped together according to their L1.* Mixed groups are not positive initially, and certainly not in cognitively demanding decontextualised subjects.[114]
3. *All children are to become high-level bilinguals, not only ITM children.* This seems to be especially important in contexts where linguistic majority and minority children are in the same classes.
4. *All children have to be equalised vis-à-vis the status of their MTs and their knowledge of the language of instruction.* Nice phrases about the worth of everybody's MT, the value of interculturalism, etc, serve little purpose, unless they are followed up in how the schools are organised.

There has to be equality in the demands made on the children's and the teachers' competencies in the different languages involved, so that the same demands are made on everybody. Both minority and majority children and teachers must be or become bi- or multilingual.

There has to be equality in the role that the languages are accorded on the schedules and in higher education, in testing and evaluation, in marks given for the languages, in the physical environment (signs, forms, letters, the school's languages of administration, the languages of meetings, assemblies, etc), in the status and salaries of the teachers, in their working conditions, career patterns, etc. (see Skutnabb-Kangas & García 1995 for a comprehensive list of this kind of factors).

It is possible to equalise the children vis-a-vis their knowledge of the language of instruction in several different ways:

A. All children know the language of instruction (maintenance programmes, European Schools initially);

B. No children know the language of instruction or everybody is in the process of learning it (immersion programmes, European Schools in certain subjects in a later phase);
C. All children alternate between 'knowing' and 'not knowing' the language of instruction (two-way programmes in a late phase; alternate-days programmes (50% minority and 50% majority children, the medium of education alternates daily).

5. *All teachers have to be bi- or multilingual.* Thus they can be good models for the children, and support them in language learning, through comparing and contrasting, and being metalinguistically aware. Every child in a school has to be able to talk to an adult with the same native language.
This demand is often experienced as extremely threatening by dominant group teachers, many of whom are not bilingual. Of course all ITM teachers are not high-level bilinguals either. But it is often *less* important that the teacher's competence in a *dominant* language is at top level, for instance in relation to pronunciation, in *second* language contexts, where all children have ample opportunities to hear and read native models of the dominant language outside the school anyway, whereas many of them do NOT have the same opportunities to hear/read native ITM language models in formal contexts. A high level of competence in an ITM language is often even more important for a teacher than a high level of competence in a dominant language.

Teachers' competence in a dominant language is, on the other hand, very important in situations where the dominant language is an ex-colonial *foreign* language that children, especially in the countryside, do not hear or use in their daily intercourse. The fact that many if not most teachers, especially in Africa, have a relatively low competence in the old colonial language, is, in addition to the lack of MTM schooling, an important explanatory factor for the less than impressive general results in education in Africa and elsewhere. But often the teachers may also have a relatively low competence in their own MTs in more formal domains, partly because their own training has often been through the medium of the old colonial language (see, e.g. Alidou et al. 2006, Benson 2009, Heugh 2009).

6. *Foreign languages should be taught through the medium of the children's MT and/or by teachers who know the children's MT.* No teaching in foreign languages as subjects should be given through the medium of *other* foreign languages. For instance, Turkish children in Germany should not be taught English through the medium of German, but via Turkish, and indigenous children in Nepal should not be taught English through the medium of Nepali but through the mother tongues.
7. *All children must study both L1 and L2 as compulsory subjects up to grade 12*[115]. Both languages have to be studied in ways which reflect what they are for the ITM children: MTs, or second languages or foreign languages. Many ITM children are forced to study a dominant or national language, their L2, as if it was their L1.
8. *Both languages have to be used as media of education in some phase of the children's education, but the progression in how, and how much each is used seems to vary for ITM and dominant group children.* Below we outline a summary of what we know from research, first about the role of the MT, then the role of the second/foreign language, and differentiating between ITMs and dominant group children. For convenience, we call them here *MINORITY* and *MAJORITY*.
For *MAJORITY* children, the **mother tongue** must function as the medium of education at least in some cognitively demanding, decontextualised subjects, at least in grades 8-12, possibly even earlier. Initially in Canadian immersion programmes, the children had no teaching in the MT as a subject; now they do. Many have most of the teaching in their MT already from grade 6 – probably too early. But *MAJORITY* children can be taught **through the medium of L2** at least in some (or even all or almost all) cognitively *less* demanding context-embedded subjects from the very beginning. L2 can also be the medium of education, at least partially, in cognitively demanding decontextualised subjects, at least in grades 8-12, as the European (Union) Schools show. Ordinary immersion programmes, for instance in Canada, do not do this (partly because they stop before this phase) and therefore their gains in the L2 are

not as impressive (even if they are good) as in these EU schools.

For *MINORITY* children the **mother tongue** must function as the medium of education in all subjects initially. At least some subjects must be taught through L1 all the way, up to grade 12, but the choice of subjects may vary. It seems that the following development functions well:

- transfer from the known to the unknown, in relation to content;
- transfer from teaching of a language as a subject, to teaching through the medium of that language; this has been formulated as «first learning to read, then reading to learn»;
- transfer from teaching through the medium of L2 in cognitively less demanding, context-embedded subjects, to teaching through the medium of L2 in cognitively demanding decontextualised subjects.

The progression used for all children in the European (Union) Schools seems close to ideal for minority children. The progression in relation to the **(minority) mother tongue** is as follows:

1. All subjects are taught through the medium of the MT during the first 2 years.
2. All cognitively demanding decontextualised core subjects are taught through the medium of the MT during the first 7 years.
3. There is less teaching through the medium of the MT in grades 8-10, and again more teaching through the medium of the MT in grades 11-12, especially in the most demanding subjects, in order to ensure that the students have understood, can express and critically evaluate them thoroughly.
4. The MT is taught as a subject throughout schooling, from 1-12.

The progression in relation to the **second language** in the special EU schools is as follows:

1. The second language is taught as a subject throughout schooling, from 1-12.
2. The second language becomes a medium of education already in grade 3, but only in one or a couple subjects which are cognitively less demanding and context-embedded (such as «European hours» or Physical education). Teaching can take place in mixed groups, but ideally together with other children for whom the language is also an L2.
3. Teaching in cognitively demanding decontextualised subjects only starts through the medium of L2 in grade 8, when the children have been taught that language as a subject for 7 years (grades 1-7) and have been taught through the medium of that language in cognitively less demanding context-embedded subjects for 5 years (grades 3-7). Children should not be taught demanding decontextualised subjects through L2 together with children for whom the language of instruction is their L1, before grade 8. In European (Union) Schools this is mostly not done even in grades 9-12 in compulsory subjects, only in elective courses.

When applying the principles to the strong models discussed above it appears that the European (Union) Schools model – which factually achieves the best results – gets more plus-ratings than any of the other models. Even if many of these schools are in several ways elite schools, they seem to succeed because the model is scientifically sound, not because of their elitism.

8.3. Recommendations for ITM education

Finally, we present some recommendations for ITM education, on the basis of the research results discussed in this book. In choosing these recommendations we have used three criteria. Education following them should enable the children to reach the four goals listed in Section 4.1. It should be consistent with research results. And it should be consistent with human rights and other law, including soft law, on the education of indigenous/tribal peoples and of minorities[116].

Recommendation 1:
The mother tongue should be the main teaching language for the first eight years

1a. ITM children should have their first or own language (or one of them, in case of multilingual children) as their main medium of education, during minimally the first eight years (but absolutely minimally the first six years), in non-fee state schools.

1b. Even if the MT might no longer be used as a teaching language after grade 8, it should be used orally in the classroom, and it should be studied as a subject throughout the entire education process.

Recommendation 2:
Good teaching of a dominant local or national language as a subject
ITM children should have good teaching of a dominant local or national language as a second language, given by competent bilingual teachers, from early grades, first orally. It should thereafter be studied as a subject throughout the entire education process. It should be studied as a second (or foreign) language, using second/foreign language pedagogy/methods; it should not be studied as if it were the children's MT.

Recommendation 3:
Transition from mother tongue medium teaching to using a dominant local or national language as a teaching language
3a. Some subjects can be taught through the medium of a dominant national language and/or an international language in the upper grades, but not before grade 7 and only if there are competent teachers.
3b. If necessary one or two practical subjects (physical education, music, cooking, etc) can be taught earlier through the medium of a second language, but cognitively and/or linguistically demanding subjects (such as mathematics, social sciences or history) should be taught in the child's first language minimally up to grade 7, preferably longer.

Recommendation 4:
Additional languages as subjects
ITM children should have an opportunity to learn further languages as school subjects, including a language in international use such as Arabic, English, French, Hindi, Spanish, Russian, etc, if this is not a dominant local or national language mentioned in Recommendation 2 above.

Recommendation 5:
Context-sensitive cultural content and methods
Just using the MT as the main teaching language is not enough. The cultural content of the education and the teaching methods need to fulfil two requirements. First, they need to be context-sensitive and applicable in the situation that the indigenous/tribal people or minority is in: they need to respect the traditions, knowledges, values, history and identities of the group, including their status as oral or literate people, and the teaching methods need to be acceptable to the group (see, e.g., Hough, Thapa Magar & Yonjan-Tamang 2009).

Secondly, the methods and content need to start from the children's and community's experience and knowledges and take the children from pragmatic everyday thinking to scientific thinking (including taking them from BICS – Basic Interpersonal Communicative Skills - to CALP - Cognitive-Academic Language Proficiency, in Jim Cummins' terms, see Cummins 1991, 2009, and Notes 65 and 83).

Recommendation 6:
Well-trained bi- or multilingual teachers
It is self-evident that teachers need to be well-trained, but it is also imperative that teachers for ITM children are minimally bilingual. A monolingual teacher (and especially one who does not know the child's language) cannot compare the languages and explore with the child what is common to the languages and what needs to be learned separately for each. S/he cannot help the child develop the metalinguistic awareness that is the main factor behind the benefits that high-level bilingual or multilingual children have as compared with monolingual children (e.g. Mohanty 1995; see Section 5.2.3). And a monolingual teacher is not a good role model for children who are to become bilingual.

Recommendation 7:
ITM parents and communities, and educational authorities need enough research-based knowledge about educational choices. Advocacy for sound models is necessary
If ITM parents are to choose the form of education that their children are to have, they need enough solid research-based information about the processes and methods of multilingual education and the long-term consequences of the alternatives (which have to exist), and of their choices. Otherwise the «informed consent» that indigenous/tribal peoples must give (see UNDRIP, Chapter 2) is impossible, a sham. Educational authorities also need this information – few of them know enough and many decisions are today based on ignorance. Advocacy for sound models and the argumentation for them and the research behind them is essential.

Recommendation 8:
Systemic changes in school and society are needed to increase access to quality education. This includes knowledge about how the present system harms humanity

Schools mirror societies. Systematic inequality in societies reflects and is reflected and reproduced in schools. Indigenous/tribal peoples and many minorities are at the bottom of societal hierarchies. Systemic changes at all levels are needed. Power holders need more information about how the present system harms not only indigenous/tribal peoples and minorities but the whole global society, through economic, educational and creativity-related wastage. On the basis of the diminishing linguistic diversity that schools are an important causal factor in, the present system also leads to loss of knowledge about how to preserve biodiversity and thus to worse conditions for humanity on the planet (e.g. Skutnabb-Kangas, Maffi & Harmon 2003, Maffi, ed. 2001). Our intention in this book has been to offer some tools for understanding why and what kind of changes might be needed and what some of the challenges are.

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Notes:

1 The full report can be downloaded from http://www.minorityrights.org/7948/state-of-the-worlds-minorities/state-of-the-worlds-minorities-and-indigenous-peoples-2009.html#links_and_downloads

2 «Tribal» is in several countries, e.g. India and Nepal, the official term denoting what in other contexts is called «Indigenous». *ILO 169* – see below – uses both. Even if we concentrate on Indigenous and Tribal children in this book, most of the contents also apply to minority children. «Minority» refers here to three groups: autochthonous minorities (both regional/territorial and non-territorial, in the sense of the *European Charter for Regional or Minority Languages*); immigrant/refugee minorities, and children from dominated linguistic groups, e.g. in Africa or in any countries where no group forms a demographic majority and where the dominant language or languages (often – but not always - old colonial languages) is/are foreign to most of the population. In this book, we also sometimes call this last group «dominated linguistic 'majorities'», because several of them together form a demographic majority in their country. E.g. in South Africa, the speakers of the various African languages, Zulu, Xhosa, Venda, etc, where none of them have even close to 50% of the population, nevertheless form a demographic majority together, in relation to the speakers of English and Afrikaans. Out of a total population of almost 45 million in 2001, some 10,6 million spoke isiZulu, 7,9 isiXhosa, 5,9 Afrikaans, 4,2 Sepedi, 3,677 Setswana, 3,673 English and 3,5 Sesotho. In addition, Xitsonga, siSwati and Tshivenda all had over 1 million speakers, according to Statistics South Africa, http://www.cyberserv.co.za/users/~jako/lang/stats.htm.

3 «Mother tongue» is in many ways a contested concept, just as «a language» is. We give more detailed definitions in section 3.1. Here our tentative definition of mother tongue(s) – to be modified for those who may have lost or never learned their mother tongue, partially or completely, through subtractive education – is: «The mother tongue is the language (or the languages) that a person has learned first, and identifies with».

4 We fully endorse Note 2 from UNESCO's *Language Vitality and Endangerment* (2003a): «Throughout this document, the term *language* includes Sign languages, and *speech* or *endangered language communities* also refer to Sign language communities». It is important to remember that Indigenous peoples also include Deaf individuals and communities who use Sign languages as their mother tongues.

5 We prefer the term «push-out», rather than the usual «drop-out». In most cases, children do not «drop out» voluntarily; it is the organisation of the education where ITM children usually are in classes where they do not understand the teaching languages that pushes them out.

6 «Linguistic Genocide» is also, in addition to ethnocide, an independent entry in Macmillan's recent *Encyclopedia of Genocide and Crimes Against Humanity* (see Skutnabb-Kangas 2005).

7 E793, 1948; 78 U.N.T.S. 277, entered into force Jan. 12, 1951; for the full text, see http://www1.umn.edu/humanrts/instree/x1cppcg.htm

8 The **International Covenant on Civil and Political Rights** (the «ICCPR») (http://www2.ohchr.org/english/law/ccpr.htm), and the **International Covenant on Economic, Social and Cultural Rights** (the «ICESCR»).

9 This is echoed in an important early UNESCO convention about which more will be said momentarily, the 1960 **Convention Against Discrimination in Education** (http://www.unesco.org/education/pdf/DISCRI_E.PDF). Article 5, subparagraph 1 (a) of this treaty provides that Education shall be directed to, amongst other things, the full development of the human personality.

10 This is also echoed in the Convention Against Discrimination in Education. Article 5, subparagraph 1 (a) of this treaty provides that Education shall be directed, amongst other things, to the strengthening of respect for human rights and fundamental freedoms and shall promote understanding, tolerance and friendship among all nations, racial or religious groups.

11 As of 20 March, 2009, the CRC had been ratified by 193 states; the ICESCR had only been ratified by 160: see http://www.bayefsky.com/docs.php/area/ratif/node/1.

12 Although not specifically directed to education, Article 17 of the CRC is also worth noting. Under it, States party to the treaty recognise the important function performed by the mass media, and requires States to ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States are required to do a number of things, including, under paragraph (d), to encourage the mass media to have particular regard to the *linguistic needs of the child who belongs to a minority group or who is indigenous.* This has obvious implications for broadcasting policy, but also emphasises the sympathy which the CRC has to the linguistic identity and needs of minority and indigenous children, a point of relevance to the interpretation of the scope of the provisions of Articles 28 to 30 relating to education.

13 Among the provisions which are not found in Article 13 of the ICESCR but which are found in Article 11 of the African Charter on the Rights and Welfare of the Child are that the education of the child shall also be directed to the preservation and strengthening of positive African morals, traditional values and *cultures* (paragraph 2 (c)), and that States Parties shall take special measures in respect of female, gifted and *disadvantaged* children to ensure equal access to education *for all sections of the community* (paragraph 3 (e)).

14 The **American Convention on Human Rights** (http://www.oas.org/juridico/english/sigs/b-32.html) was signed in 1969.

15 *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 (http://cmiskp.echr.coe.int////tkp197/viewhbkm.asp?action=open&table=F69A27FD8FB86142BF01C1166DEA398649&key=13939&sessionId=280905)71&skin=hudoc-en&attachment=true).

16 *Cyprus v. Turkey,* judgment of the European Court of Human Rights of 10 May, 2001, application no. 25781/94 (http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=28090571&skin=hudoc-en&action=request).

17 (1974), 414 U.S. 563 (available at: http://straylight.law.cornell.edu/supct/html/historics/USSC_CR_0414_0563_ZS.html.

18 The United States and Somalia are two States which have not yet ratified the CRC.

19 See Tomaševski (2001); also at 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, paragraphs 51-74; E/CN.4/2000/6, paragraphs 32-65; E/CN.4/2001/52, paragraphs 64-65.

20 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») (http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=157&CL=ENG) on the issue of minority rights in, to and through education. See also Skutnabb-Kangas 2004a.

21 Tomaševski (2004), paragraph 12; at paragraph 10, though, she warns, 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.

22 As noted earlier, The U.S. Supreme Court acknowledged this in Lau v. Nichols (1974) 414 US 563.

23 This recommendation comes from ILO 169, Art. 28, para 1 which, however, has the addition «wherever practicable».

24 General Comment No. 11 (2009), «Indigenous children and their rights under the Convention», Committee on the Rights of the Child, Fiftieth session, 12-30 January, 2009: Document CRC/C/GC/11 (http://www.crin.org/docs/GC.11_indigenous_New.pdf).

25 The Committee noted that the CRC was the first UN core human rights treaty to include specific references to indigenous children in a number of provisions (paragraph 1), pointing to Article 30 (paragraph 2), Article 29 (paragraph 3), and Article 17 (paragraph 4), all discussed earlier in this chapter.

26 See, for example, Article 2 of the Universal Declaration of Human Rights, which provides that «[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, *language*, religion, political or

other opinion, national or social origin, property, birth or other status», which is effectively repeated in Article 2, paragraph 1 of the ICESCR and Article 2, paragraph 1 of the ICCPR. The CRC non-discrimination provision, set out in Article 2, paragraph 1, is slightly different: «States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, *language*, religion, political or other opinion, national, *ethnic* or social origin, property, disability, birth or other status». The comparable provision in the ECHR, Article 14, makes reference to association with a national minority as well as language as grounds on which discrimination is not permissible.

27 See, for example, Article 26 of the ICCPR, which provides that «[a]ll persons are equal before the law and are entitled without discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, *language*, religion, political or other opinion, national or social origin, property, birth or other status». Of similar effect is Protocol No. 12 to the ECHR, on a General Prohibition of Discrimination (2000) (http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=177&CM=1&DF=16/08/2009&CL=ENG), which entered into force on 1 April, 2005, Article 1, paragraph 1 of which provides that «[T]he enjoyment of any right set forth by law 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».

27 See, for example, Ian Brownlie, *Principles of Public International Law*, (Oxford: Oxford University Press, 2008), 7th ed., at pp. 510-12. The characterisation of the principle of non-discrimination as a *jus cogens* norm is important with respect to the question of international criminal liability, which shall be considered further in chapter 7, below.

29 (1974) 414 U.S. 563.

30 13 November, 2007, Application no. 57325/00 (http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=D.H.%20%7C%20others%20%7C%20Czech%20%7C%20Republic&sessionid=28092386&skin=hudoc-en).

31 Evidence showed that only 1.8% of non-Roma children were placed in special schools in the city of Ostrava, where the complaints originated, whereas 50.3% of Roma children were placed in such schools, with the result that Roma children were 27 times more likely to be assigned to such schools: paragraph 18, *ibid*.

32 For example, thus far, all of the communications brought to the attention of the Human Rights Committee in respect of the so-called «minorities» article of the ICCPR, Article 27, discussed earlier, have been brought by individuals who are indigenous. Both States themselves and the relevant treaty bodies under the Council of Europe treaties discussed in this section, the **Framework Convention for the Protection of National Minorities** (the «Framework Convention») (http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=157&CL=ENG) and the **European Charter for Regional or Minority Languages** (the «Minority Languages Charter») (available at: http://www.coe.int/T/E/Legal_Affairs/Local_and_regional_Democracy/Regional_or_Minority_languages/) recognise that these treaties apply to the Sámi, an indigenous people.

33 As of July, 2009, they include nine South American States (Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru and Venezuela), four Central American States (Costa Rica, Guatemala, Honduras and Mexico), four European States (Denmark, Netherlands, Norway and Spain), as well as Dominica, Fiji and Nepal. See: http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C169.

34 143 States voted in favour, four opposed the Declaration (Australia, Canada, New Zealand and the United States), and eleven States abstained (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, the Russian Federation, Samoa and Ukraine). All but two of the twenty States which have ratified ILO Convention No. 169, Colombia (which, as noted, abstained), and Fiji (whose representative was absent and did not vote), supported the declaration. See http://www.un.org/News/Press/docs/2007/ga10612.doc.htm. It should also be noted that on 3 April, 2009, the Government of Australia announced that it now supported the UNDRIP: http://www.hreoc.gov.au/about/media/media_releases/2009/21_09.html.

35 The Council of Europe currently has forty-seven member states: see http://www.coe.int/aboutCoe/index.asp?page=47pays1europe&l=en.

36 Although under Article 3, paragraph 1, a State can specify that provisions of Part III of the Charter, which shall be discussed briefly, below, may be applied in respect of an official language that is less widely used on the whole or a part of the State's territory (an example of a language which has benefited by virtue of this provision is Swedish in Finland, although Swedish speakers already had extensive rights – which may go beyond what the Minority Languages Charter would require – under the Finnish constitution).

37 Article 8 is in Part III of the treaty, and provisions in Part III only apply to those regional or minority languages specifically designated by the State. Furthermore, the Part III obligations are set out in seven different articles, and in 69 paragraphs and subparagraphs, and States need only choose 35 of these paragraphs or subparagraphs in respect of any language designated for Part III protection: Article 2, paragraph 2. In respect of Article 8, on Education, there are ten separate paragraphs and subparagraphs, and States accepting obligations with respect to a particular regional or minority language under Part III need only select three of these paragraphs or subparagraphs: Article 2, paragraph 2.

37 The «CSCE», or the «Conference on Security and Cooperation in Europe» later became the OSCE.

39 It is important to note that the fifty-six States which participate in the OSCE include not only the forty-six member states of the Council of Europe, but also a number of other States which would not be considered to be part of Europe in a strictly geographical sense, including former Soviet Republics in Central Asia such as Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan, as well as the United States, Canada, Belarus and the Holy See.

40 ILO Convention No. 169 is infused with the themes of consultation and co-operation with indigenouos and tribal peoples, and is particularly clear in Article 6, paragraph 1, which provides that, in applying the provisions of the convention, States shall »(a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly; (b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them; (c) establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose».

41 Progressive devolution of power to indigenous peoples is also a recurrent theme in the convention: see paragraph 1 (c) of Article 6, *ibid*.

42 Article 7, paragraph 1 provides, for example, that indigenous individuals have the rights to life, physical and mental integrity, liberty and security of the person», and Article 24, paragraph 2 provides that indigenous individuals have an *equal right* to the enjoyment of the highest attainable standard of physical and mental health, and States are required to take the necessary steps to achieve progressively the full realization of this right.

43 The notion of forced transfer in the context of residential schools will be considered further, in Chapter 6, in our consideration of the law of genocide.

44 In Finland, for instance, some 70% of Saami children under the age of 10 live outside the traditional Saami area (Aikio-Puoskari 2009: 228).

45 Defined in Article 2 to mean «the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and ecological complexes of which they are part: this includes diversity within species, between species and of ecosystems».

46 See Skutnabb-Kangas 2000 for long discussions on the definitions.

47 All mother tongue definitions and discussions about them come from various publications by Skutnabb-Kangas, from the early 1970s onwards. She is probably the one who has systematized definitions of both mother tongues and bilingualism more than any other researcher in the world.

48 If the school, for instance, says that an ITM child's MT is the dominant language because that is the language the child uses most, or knows best, this use of the definitions of competence or function shows little awareness of the fact that an ITM child in most cases cannot choose which language to use most or learn best in formal contexts such as school and other institutions. Schools often fail to consider that lack of proficiency in the original mother tongue (= mother tongue according to the criterion by origin) is a result of not having been offered the opportunity to use and learn the original mother tongue well enough in those institutional settings where many especially western children spend most of their day (day care centres, schools, organised after-school activities). Lack of use leads to lack of competence, especially with children. A poor competence in the original mother tongue (which is a result of the neglect of the mother tongue in institutions earlier on, i.e. a result of earlier oppression) is then often used to legitimate additional oppression. The child is labelled as a majority language speaker, or she is denied teaching in the original mother tongue on the grounds that she does not know it well enough or because she knows the majority language better and therefore does not 'need' mother tongue teaching. Many indigenous people (Saami in the Nordic countries, Aborigines in Australia etc) may officially not always be counted as members of the group, if they no longer know the original mother tongue (which they have

been prevented from learning), or if their parents or grandparents did not know it. The dwindling numbers can then be used to legitimate lack of services offered in the Indigenous language (see e.g. Aikio 1988 for the Saami), which then leads to still less use and competence. The same numbers game is used to deny services in immigrant minority languages. Often denying language rights to both children and adults (in case of adults, for instance the right to information or voting or using the mother tongue in the work place) is implicitly based on a definition of function or competence. For more, see Skutnabb-Kangas 2000, Section 3.2.

49 Tove has two mother tongues by origin, Finnish and (Finland) Swedish, identifies with both and is identified by both groups as a native speaker. She is at a general level as competent in both languages as any «monolingual» Finnish- or Swedish-speaking academic but there is some functional differentiation; her vocabulary in some areas is better in Finnish and in other (fewer) areas in Swedish. Today she uses English more than any other language; it is her main professional language and her British husband speaks mostly English to her (but also Danish when Danes are present). In several areas that she has started working with only after moving away from Finland 30 years ago, her competence in terms of vocabulary is better in English than in Finnish or Swedish, and much of her farming vocabulary is best in Danish (she is an ecological smallholder). Thus her mother tongues by origin and internal identification have not changed, but her mother tongues by especially function and to some extent even competence have changed. Her computer terminology (which has so far been in English and to some extent Danish) is rapidly growing in Finnish, though, because her 8-year old Finnish-speaking grandson has been teaching her for some years.
Robert's only mother tongue is English, although he has learned several other languages through the formal school system or through self-instruction, and in one case, Portuguese, through both self-instruction and immersion through residence in Brazil for almost a year as a young adult. Of the languages he has learned, he is most fluent in Scottish Gaelic, in which he has a high competence in both spoken and written forms. His spouse is a native of the Isle of Lewis, in the Outer Hebrides, Scotland, whose only mother tongue was Scottish Gaelic. She spoke only limited English until she went to school, where she was confronted with English-medium education alone, until secondary school, when she could take a course in the Gaelic language, albeit one taught through the medium of Gaelic. Although she is a fully fluent Gaelic speaker and can read and write in the language, due to her educational experience, and the overwhelming social dominance of English for people of her age-group, like many if not most Gaelic-speakers, she is more comfortable in most formal, upper domains in English. Robert and his spouse have a two-year old son, with whom they usually speak Scottish Gaelic. He and his wife tend to speak both English and Gaelic together, although they seek to maximise the use of Gaelic in the presence of the son. Although Lachie-Alex is not yet speaking full sentences, he uses and understands both Gaelic and English (English, by virtue to his exposure to large numbers of English speakers, as Robert and his wife do not live in a Gaelic-speaking community, and even in those communities in Scotland, English is ever-present. English is an unavoidable and ever-present part of almost all aspects of daily life for them, something which is true of most Gaelic-speaking families, especially those living outside of the traditional Gaelic-speaking areas, and in Scotland's cities. Tove's assessment of Robert's family would thus be: Robert's mother tongue in all respects is English. His spouse's mother tongue by origin and identification is Scottish Gaelic, but she may have English as her mother tongue by competence, and both as her mother tongues by function (she works much in Gaelic professionally). The baby has two mother tongues by origin and probably identification, and also by function but Gaelic may be his mother tongue by competence. The last two might change.

50 See Annika Pasanen's 2006 articles about the day when Malu-Sina-Jampu-Ture (Tor Mikalsen, with his Norwegian exo-defined name) got a new mother tongue, Saami. He has started a Facebook group initially called«Morsmålet vi ikke fikk lære» [The mother tongue we were not allowed to learn], initially in Norwegian (Tor Mikalsen, tor.mikalsen@gmail.com). Some of our examples in 3.2. also show the identification of a language one does not know, as the mother tongue.

51 «Some residential school victims may eventually recover damage awards for their language loss (Cloud v. Canada (Attorney General) [2005] 1 C.N.L.R. 8)», writes lawyer David Leitch (2005). The court case still continues – it started in 1992 (Cloud v. Canada, Attorney General).

52 To some extent similar debates have been raging in discussing biodiversity and its legal protection. Here some of the science-technology-industry complex (and today more and more: the military-industrial and biotechnology-medical complexes - see *Alternatives to Economic Globalization. A Better World Is Possible* 2002, Chomsky 1994, 1996, 2000, Chomsky & Herman 1979, Kneen 1999, Pilger 1998, 2003, Shiva 1991, 1993, 1997, Singer 2003, for descriptions and criticisms of these) would stand for the instrumental values, and the Sacred Balance for the more expressive-intrinsic values. Ecofeminism (e.g. Reichel 1997) and deep ecology (e.g. Naes 1989) advocate for a thorough shift from the instrumental values to the intrinsic values, and so does Posey (1999: 14) but without false romanticising of indigenous peoples and their relationship with nature as «ecologically noble savages», something that, e.g., Jared Diamond has shown is incorrect anyway (see Diamond 1991, 1998, 2003) and that many indigenous peoples themselves reject (Posey 1999: 7).

53 Lists of them? A google search 4 July 2009 on «ethnic organizations» gives around 4 million hits – a good starting point.

54 In section 4.3 we continue to discuss language as a means of control in education, together with other means.

55 When the Cold War has ended and, with it, the 'politics of East/West boundary drawing, an argument essentially about economic systems', Mary Kalantzis argues that 'into the space have stepped arguments that are still about access to social resources, but arguments that are now expressed through a discourse of culture, identity and nation. This is the news, not only from Rwanda, Bosnia and Sri Lanka, but from the urban distress of the United States, France and Britain' (1995: 1). We could add Kurdistan (or Tibet, or the Uyghurs) to the list too. In this fairly recent discourse of culture, identity and nation, negotiations about not only the tolerance of but indeed the preservation, promotion and development of linguistic and cultural diversity are vital for world peace. Similar arguments about the centrality of cultural discourse are presented by many researchers who otherwise have a very different view from the one espoused here, e.g. Huntington 1996.

56 English is obviously the most dominant one of these 'international' languages, the 'killer language' (Anne Pakir's term) above all others, but many other dominant languages function in the same imperialist way. See, e.g., Phillipson 1992, 1999, 2009a, b, Phillipson & Skutnabb-Kangas 1994, 1995, 1996, Tsuda 1994, 1998, for analyses.

57 Kurds are victims of all three types of genocide, physical, cultural and linguistic; see, e.g. Besikci 1990, Hassanpour 1992, 1999, Hassanpour et al. 1996, Human Rights in Kurdistan 1989, 1990, Human Rights Watch 1993, Skutnabb-Kangas & Bucak 1994; Koivunen 2001, 2002, 2006, Skutnabb-Kangas & Fernandes 2008, Kaya 2009, Taylor & Skutnabb-Kangas 2009.

58 The ideology of «monolingual reductionism is characterized by several myths which glorify monolingualism, stigmatise multilingualism and/or real linguistic diversity, and rationalise linguistic homogenisation. There is an awareness and even acceptance of the fact that there are risks with reductionism *ad absurdum*: that 'one state - one nation - one language' might also be connected with or lead to 'one religion - one culture - one party - one leader', totalitarianism and fundamentalism. The factual linguistic reductionism, the disappearance of linguistic diversity, can, though, be rationalised by presenting diversity as a nice but romantic and unrealistic dream, fit for prefaces in human rights documents and other places for mantras but not for implementation in real life. Four of the myths (there are more) … claim or imply that monolingualism at both the **individual** level and the **societal** level is **normal, desirable, sufficient and inevitable** (unavoidable)» (Skutnabb-Kangas 2000: 238; Subsection 4.2, called «The ideology of monolingual reductionism/stupidity/naivety» presents and refutes the myths in detail (pp. 238-252).

59 See, for example, Posey (ed.) 1999, especially the article on language diversity by Maffi, Skutnabb-Kangas & Andrianarivo; see also Harmon 1995, Maffi 2005. A good place to continue is Terralingua's web-site, www.terralingua.org. 'Terralingua is a non-profit international organisation devoted to preserving the world's linguistic diversity and to investigating links between biological and cultural diversity'.

60 See also the discussion of Item 3, Lessons learned and challenges to achieve the implementation of Indigenous Peoples' Right to Education at the 1st session (Geneva, 1-3 October 2008) of the UN Human Rights Council's Expert Mechanism on the Rights of Indigenous Peoples, in *doCip Update* No 82, December 2008 – February 2009, pp. 11-15; also on doCip's website http://www.docip.org.

61 Instead or «developed/industrialised» and «developing» countries (extremely hierarchical and ideological terms) or even «underdeveloped countries» (i.e. those countries which we so-called whites have consciously underdeveloped and are continuing to underdevelop - see Rodney's *How Europe Underdeveloped Africa,* 1983; also 1969; see Insert 6.1. in Skutnabb-Kangas 2000: 388-390), we use the admittedly vague terms «the North» and «the South» and hope that the context makes it clear what we mean.

62 Dominated linguistic 'majorities' refers to powerless/ dominated linguistic majority children in countries where the numerically dominant language nevertheless is not the official or power language; this is most often a former colonial situation. It also refers to groups of minority children in a country with no decisive numerical and/or power majorities, where a numerically small elite who knows the ex-colonial language, forces it to be used in most official situation, including as a school language, often using national unity and the presumed neutrality of the ex-colonial languages as arguments.

63 Here quoted from http://urbanlegends.about.com/library/bl_roosevelt_on_immigrants.htm, accessed September 7, 2007.
64 Thanks to Zeri Inanç for finding the exact quote.
65 See Jim Cummins' home page at http://www.iteachilearn.com/cummins/ for these two important concepts.
66 See Alidou et al. 2006, Heugh 2009, articles in Heugh & Skutnabb-Kangas (eds, 2010), for African summaries. For Asian summaries, see, e.g., Kosonen 2005, Benson 2009, Benson & Kosonen, 2010, Tsui & Tollefson, eds, 2007.
67 See, e.g. http://fra.europa.eu/fraWebsite/eu-midis/index_en.htm, for the 2009 **EU-MIDIS: European Union Minorities and Discrimination Survey**.
68 See, e.g. Branson & Miller 1998, 2000, 2002, Grosjean 2001, Jokinen 2000, Lane 1992, David Martin 2001, Dirksen Bauman (ed.) 2008.
69 Andrea Smith gives a reflective overview in her 2009 report *Indigenous Peoples and Boarding Schools: A Comparative Study* written for the UN Permanent Forum on Indigenous Issues' Eighth session in May 2009.
70 See also Uyghur American Association's (UAA) Submission to UN (Feb. 2009): http://lib.ohchr.org/HRBodies/UPR/Documents/ Session4/CN/WUC-UHRP_CHN_UPR_S4_2009_ WorldUyghurCongressAndUyghurHumanRightsProject_JOINT.pdf; UAA's website http://www.uyghuramerican.org/; the Uyghur Human Rights Project' website: http://www.uhrp.org/ and the World Uyghur Congress' website http://www.uyghurcongress.org/En/home.asp).
71 Tove Skutnabb-Kangas and Robert Phillipson wrote a long debate article («Kronik«) in the large Danish daily *Politiken*, to protest, showing that the suggestion violates many international, European and Nordic human rights agreements. It also ignores all serious research that shows that the longer minority children have their own mother tongue as the main daycare and teaching language, the better they also become in the dominant language of the country, provided they have good teaching in it given by bilingual teachers/care-takers. *Politiken* had a supportive leader the same day. There has been a lively debate, with over 50 comments, some with racist tendencies. Search for 'Danmark er sunket til barbari' by Tove Skutnabb-Kangas & Robert Phillipson, and 'S vil tvinge indvandrerbørn i vuggestue', both in http://www.Politiken.dk. The debate continues (May 2009) and several other parties basically support the suggestion. In mid-May, the mayor or the second largest city in Denmark, Århus, decided to apply the suggestion in Århus.
72 From a Power Point presentation at the *International Conference on Multilingual Education: Challenges, Perspectives and Opportunities*, at Jawaharlar Nehru University, New Delhi, India, February 2008, resulting in Heugh 2009.
73 For more on the Orissa situation described here, see Mohanty, Mishra, Reddy & Ramesh 2009, Mohanty & Panda 2007, Panda & Mohanty 2009; Orissa is India's poorest state. For the background and many answers to Mishra's questions, see the 10 references to Debi Prasanna Pattanayak's work in the bibliography. He was the founding director of The Central Institute of Indian Languages. Back in his native Orissa, he is now (spring 2010) putting together his unpublished manuscripts into 6 volumes which will be a goldmine for researchers into ITM education. See also references to Khubchandani, and Mohanty.
74 See, e.g. Knockwood 1992, Milloy 1999, Richardson 1993, Rothe et al. 2006, for Canada, Churchill 1997, Crawford 1995, 1996, Costo & Costo (eds) 1987, Cahn & Hearne 1969, McCarty (ed) 2005, for the USA, Amery 1998, Jordan 1986, Fesl 1993 for Australia, Bryld 1998, for Greenland, Lind Meløy 1980, Eriksen & Niemi 1981 for Norway, Lundemark 1980 for Sweden – these are just a few examples.
75 Similar practices are being documented today against Roma women by the European Roma Rights Center in their Quarterly Journal, *Roma Rights.*
76 Compare this with Cummins and Skutnabb-Kangas & Toukomaa in the 1970s, with Ramirez et al., Thomas and Collier, Cazden and Snow, etc, in the 1990s, and with the present USA laws in several states forbidding bilingual education.
77 See Phillipson 1992b, 1997a, b, 1998, 2000a, b, 2002, 2006, 2009a, b, for some of the complexities; see also Phillipson & Skutnabb-Kangas 1994.
78 Compare this with goal 3 in the educational goals in Section 4.1.
79 This knowledge has recently (July 2009) led to Malaysia's decision, on the basis of an evaluation report, to drop English as the medium of instruction in maths and sciences, because of the poor results, and, by 2012, go back to teaching these subjects in Malay, Tamil and Chinese, the children's mother tongues (see, e.g. http://www.nytimes.com/2009/07/09/world/asia/09malaysia.html?_r=2).
80 It is also worth mentioning that this has been discussed as «economic genocide», e.g. by Michael Chossudovsky in his 1997 book *The globalisation of poverty. Impacts of IMF and World Bank Reforms.* Under the subtitle «Economic genocide», he writes «Structural adjustment is conducive to a form of 'economic genocide' which is carried out through the conscious and deliberate manipulation of market forces» (ibid.: 37). Already two decades earlier André Gunder Frank described the first intentional destruction of an economy and a country (with the help of actions following Milton Friedman's neoliberal Chicago School theories) in his book *Economic Genocide in Chile: Monetarist Theory Versus Humanity* (1976); he also wrote a letter to Friedman accusing him of economic genocide (Klein 2008: 239). Here, genocide is obviously used as a sociological not legal concept.
81 Grin's home page has a wealth of his publications on topics about economics, language and education: http://www.unige.ch/eti/ecole/organisation/departements/dfr/dfr-corps-enseignant/pages-personnelles/francois-grin.html#cv.
82 Wikipedia's definition is as follows: «Metalinguistic Awareness is an ability to objectify language as a process and as a thing. The concept of Metalinguistic Awareness is helpful in explaining the execution and transfer of linguistic knowledge across languages (e.g. code switching and translation among bilinguals). This Metalinguistic Awareness is also known as metalinguistic ability which is more closer to Metacognition (thinking about thinking).» http://en.wikipedia.org/wiki/Metalinguistic_awareness. In addition to Mohanty 1995 (which may be difficult to get hold of), see, e.g. http://coe.sdsu.edu/people/jmora/moramodules/MetaLingResearch.htm for a more thorough description.
83 This transfer is explained through two related concepts, partly what Jim Cummins has called the interdependence hypothesis, and partly through the theory of common (instead of separate) underlying proficiency – see Cummins' *ESL and Second Language Learning Web* at http://www.iteachilearn.com/cummins/, especially for these concepts and for BICS and CALP, mentioned earlier.
84 A major study, the Global Biodiversity Outlook, will be released in 2010, based on national reports governments are supposed to send. It will offer a snapshot of the state of biodiversity. There will be scientific data on whether countries have achieved the target (see interview with Ahmed Djoghlaf, Executive Secretary of the Convention on Biological Diversity, by Miren Gutierrez, in *UN Journal TerraViva* 20 July 2009).
85 See section 2.3, «Comparing the threat towards biodiversity and linguistic diversity», in Skutnabb-Kangas 2000, pp. 73-83, and references there.
86 For hotspots, see www.conservation.org/explore/priority_areas/hotspots/pages/hotspots_main.aspx. For Ecoregions, see http://www.worldwildlife.org/wildplaces/about.cfm.
87 A few weeks before her untimely death, Katarina Tomaševski, the former United Nations Special Rapporteur on the Right to Education (1998-2004), wrote to one of us, suggesting organising an informal meeting «very soon» (she knew she was going to die) «so as to strategize complaints against linguistic genocide. I thought a lot about this yesterday … and it can be made to work»(email 15 September 2006).
88 (1951) 78 UNTS 277. Adopted by the UN General Assembly on 9 October, 1948, and came into force in January, 1951.
89 Sautman, 2003: 183; see also Churchill 1997: 409-413). Some parties to the deliberations on the Genocide Convention felt that the appropriate way in which to deal with policies which aim at the destruction of cultures and languages was through the development of standards of minority protection, rather than through the Genocide Convention; for a discussion of the failure of the United Nations to deal with such destruction at all, see Morsink, 1999.
90 «Causing serious bodily *or mental* harm to members of the group» (emphasis added).
91 See, for example, *Prosecutor v. Akayesu*, (Case No. ICTR-96-4-T0), Judgment 2 September, 1998, para. 731, 501.
92 It should be noted that, while such physical abuse are most obvious in the residential school experience, widespread physical abuse of this nature are often also present in other forms of education to which indigenous children are subjected.
93 *Prosecutor v. Akayesu*, (Case No. ICTR-96-4-T0), Judgment 2 September, 1998, para. 505.
94 *Prosecutor v. Kayishema and Ruzindana* (Case No. ICTR-95-1-T), Judgment 21 May, 1999, para. 116.
95 For example, when children are subsequently put in the care of non-indigenous families, or when children never return to their families and home communities.
96 Schabas, 2000: 177, quoting the discussion paper of the co-ordinator, the Preparatory Commission for the International Criminal Court.
97 See, for example, The Australian Human Rights and Equal Opportunities Commission, 1997: 270-275.
98 Reagan, personal communication with Skutnabb-Kangas, December 1998.
99 If they were, building of a claim that such education constitutes genocide would be significantly less difficult, although actual probative aspects of a genocide claim always present sigificant difficulties.
100 Report of the Commission to the General Assembly on the Work

of its Forty-First Session, UN Doc. A/CN.4/CN.4/SER.A/1989/Add.1(Part 2), p. 102, para. (4).

101 *See, for example, Prosecutor v. Blagojević* (Case No. IT-02-60-T), Judgment of 17 January, 2005, para. 660, or *Prosecutor v. Krstić*, (Case No. IT-98-33-A), Judgment of 2 August, 2001, para. 580.

102 UNESCO has, for instance, undertaken some preparatory work which might lead toward preventing linguistic genocide, with a «preliminary study of the technical and legal aspects of a possible international standard-setting instrument for the protection of indigenous and endangered languages» (UNESCO Executive Board Document 180 EDX/11 and Add.). See also UNESCO's **Convention on the protection and promotion of the diversity of cultural expressions** (CLT-2005/CONVENTION DIVERSITE-CULT REV; the USA and Israel were the only states voting against it.)

103 For example, on 21 November, 1947, the United Nations General Assembly established the International Law Commission (ILC) and on that same day asked it to prepare a draft code of «offences against the peace and security of mankind», and in response the ILC formulated certain «crimes under international law» which included «crimes against humanity», defined as: «Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connexion with any crime against peace [defined by the ILC by reference to warfare] or any war crime»: see Brownlie 2008: 588.

104 Or of the Statutes of the International Criminal Tribunal for the former Yugoslavia or of the International Criminal Tribunal for Rwanda.

105 Cassese argues (2008: 124-125) that the concept of 'crimes against humanity' does, indeed, form part of customary international law, and is therefore not limited by the ICC Statute for general purposes.

106 The Trial Chamber of the International Criminal Tribunal for the former Yugoslavia, in *Kupreškic and others*, ICTY, Trial Chamber, judgment of 14 January, 2000 (case no. It-95-16-T).

107 See, e.g., Benton 2007, Durie 1997, Harrison & Papa 2005, Hemara 2000 for Aotearoa, and Kaomea 2005, Slaughter 1997, Warner 2001, Wilson 1999, Wilson & Kamana 2001, Wilson et al. 2006 for Hawai'i.

108 See Aikio-Puoskari 2009 for an overview; see also Aikio-Puoskari & Skutnabb-Kangas 2007, and the whole report *Revitalizing the Periphery* where this article is. See also Aikio-Puoskari in the Big Bibliography on TSK's website www.tove-skutnabb-kangas.org for many more details.

109 The newspaper *Himalayan Times* 14 July 2009, reported on a new government policy paper in relation to the new fiscal year and release of budget. The section on education states: «All Nepalis will get an opportunity to complete their primary education in their mother tongue».

110 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. See Note 5.

111 See summaries and references in, e.g., Baker 1993, Baker & Prys Jones 1998, references to Cummins in the bibliography, Dolson & Lindholm 1995, Huss 1999, 2003, Huss et al. (eds) 2003, 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 also the updated second edition of the Encyclopedia, edited by Nancy Hornberger, especially the volumes coedited with Jim Cummins and with Stephen May. All these references (and much more) can be accessed in the bibliography at http://www.tove-skutnabb-kangas.org/en/Tove-Skutnabb-Kangas-Bibliography.html.

112 We use Finland as an example. The Constitution of Finland (731/1999 http://docs.google.com/gview?a=v&attid=0.2&thid=11fec7912f728b30&mt=application%2Fpdf) states in Section 17, with the title «Right to one's language and culture» the following:
«The national languages of Finland are Finnish and Swedish. The right of everyone to use his or her own language, either Finnish or Swedish, before courts of law and other authorities, and to receive official documents in that language, shall be guaranteed by an Act. The public authorities shall provide for the cultural and societal needs of the Finnish-speaking and Swedish-speaking populations of the country on an equal basis.
The Sami, as an indigenous people, as well as the Roma and other groups, have the right to maintain and develop their own language and culture. Provisions on the right of the Sami to use the Sami language before the authorities are laid down by an Act. The rights of persons using sign language and of persons in need of interpretation or translation aid owing to disability shall be guaranteed by an Act.» Both the Saami Parliament and the language rights have their own Acts: Act on the Saami Parliament 974/1995 http://docs.google.com/gview?a=v&attid=0.1&thid=11fec7912f728b30&mt=application%2Fpdf; Sámi Language Act 1086/2003 http://docs.google.com/gview?a=v&attid=0.3&thid=11fec7912f728b30&mt=application%2Fpdf; Decree on the Sámi Parliament 1727/1995 http://docs.google.com/gview?a=v&attid=0.4&thid=11fec7912f728b30&mt=application%2Fpdf.

113 The European Schools do not follow this principle completely, because they teach also linguistic majority children initially through the medium of their MTs. For instance, the Italian-speaking children in the European School *in Italy* are initially taught through the medium of Italian, instead of a minority language. On the other hand, Italian children in other EU in other European countries *are* a minority.

114 Spanish-English Two-way programmes in the U.S.A. are an exception: they have mixed in the same class 50% minority, 50% majority children. All are initially taught through the medium of the minority language, later through both. This may be a relevant factor in accounting for the Spanish-speaking children's sometimes relatively less impressive gains in *both* languages, compared to English-speaking children in the same programmes. The mere presence of majority language children in the same classroom may be too overwhelming for minority children, despite the minority language being the medium of education.

115 The starting point for teaching the second or foreign language as a subject depends on the local situation. In some cases it can start orally already in grade 1, but in many cases it can be postponed even several years. It depends on how much the children hear it, and need it, on teacher competence and availability, materials availability in both languages, etc.

116 The Recommendations are based on Skutnabb-Kangas 2008a.

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