

The international human rights regime and the protection of linguistic rights

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Introduction

Human rights law has evolved considerably in the last fifty years. Starting from a strong aspiration to build a system that respects the inherent dignity of the individual, it now resembles a sophisticated network of checks and balances with the aim of guaranteeing individual and group freedoms. However the particular route chosen for this development has been to stress individual civil and political rights, with much less emphasis on cultural rights such as those pertaining to language. This is now being rectified with renewed emphasis on minority rights law, and this paper seeks to offer some insights into this process.

At the outset however there are certain assumptions made that need to be made explicit:

- (1) Linguistic diversity is desirable and that state policy should, within identifiable constraints, promote multilingualism (Kontra 1999: 282),
- (2) Linguistic diversity is under threat with some languages being eroded,
- (3) Linguistic rights are fundamental to individual and collective identity,
- (4) The rights of minorities include the right to their own language,
- (5) Law is an appropriate tool with which to advocate protection of linguistic rights, and
- (6) International legal standards to protect linguistic rights are necessary and desirable.

While the underlying basis for the first assumption is clearly one of preference, the other five assumptions can be gauged empirically from discernable facts. That some languages are being eroded is clearly incontestable, as is the recognition that linguistic rights

are fundamental to individual and collective identity, as has been seen in numerous international legal treaties that seek to protect these vestiges of identity. This is also fundamental for assumption (4) which, once again, has as its basis the current evolution of minority rights law. The final two assumptions are a question of methodology, and while linguists might differ in their approach to the protection of languages, human rights lawyers stress that the best way to guarantee rights is first of all, to be able to frame them coherently after agreeing the underlying principles. The next step is to then put these coherently-framed laws into action through implementation mechanisms, and finally to create a system by which this implementation can be objectively refereed.

Human rights regime: the institutions

To understand the scope for the protection of linguistic rights it is important to understand what human rights consists of. This section will attempt to provide an overview of the framework institutions that work within the field of human rights law.

International human rights law is usefully classified as occurring either with Charter Based mechanisms or within Treaty Based mechanisms. The former is a reference to the UN Charter that was signed by 51 states in San Francisco in 1945 and which forms the basis for much of contemporary international law. Numerous human rights activities come under this classification, usually through the Commission on Human Rights, a governmental body consisting of 53 members, and ultimately through to the Economic and Social Council and the General Assembly of the United Nations. However while the discussion that takes place in these fora is intensely political, the real work of the drafting of issues and treaties takes place within groups of experts who work in the Sub-Commission of Human Rights and other working groups attached to this body. In addition the system also relies on the work of thematic rapporteurs who focus on specific issues that need to be highlighted and developed, and country rapporteurs who focus on the particular situations prevalent in specific states. The human rights work undertaken under Charter based mechanisms is complex and it is important to note that the Treaty Based system of human rights protection emanated out of the Charter based system. However it is also worth bearing in mind the intensely political nature of some of the

discussions that take place from the Commission of Human Rights upwards to the General Assembly.

Treaty Based mechanisms, on the other hand, are ostensibly less influenced by political discussion. While it is clear that they evolved out of a process that was political, once set up, they are envisaged as being able to independently monitor specific obligations. These specific obligations are contained in seven treaties examining particular issues, namely, civil and political rights; economic, social and cultural rights; racial discrimination; gender-based discrimination; torture; child rights; and the rights of migrant workers. Of these, the last treaty on migrant workers is yet to enter into legal effect since it has not yet achieved the minimum threshold for such a process to occur. However the other six treaties are all in force, and all attempt to create a system of specific legally-binding obligations. States, by consenting to these obligations, make these systems legally binding upon themselves. The result of this is that states need to implement the obligations promised within their own domestic legislations. The treaties provide for a refereeing body that is composed of independent experts who monitor the extent to which these obligations are being fulfilled.

It is instructive to note that as far as linguistic rights are concerned, there is no specific treaty that deals with the issue. The most relevant provisions of international human rights law would be contained in four of the treaties,¹ though without a thorough exposition in any of them. The basis for linguistic rights is ostensibly civil and political as well as economic, social, and cultural. To the extent that it is a political right it comes within the auspices of Article 27 of the civil and political rights covenant which contains the bland provision that:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

This remains the best provision for minority rights and even though the covenant on economic, social, and cultural rights ought to protect linguistic rights in more depth, it fails to do so. Instead, besides the standard non-discrimination provision, there is only one

reference to culture in the obligations and it leaves the issue relatively undefined.²

The race convention is interesting not because of a specific mention of linguistic rights, but rather for the creation of a positive legal obligation to adopt special measures. In the words of Articles 1(4) and 2(2):

1(4)

Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

2(2)

States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

Thus the race convention, rather than identifying specific rights that are relevant in the protection of linguistic diversity, provides us instead with a mechanism that can be utilized effectively for such protection. This mechanism of 'affirmative action' or 'positive discrimination' is, it is suggested, a vital tool provided by human rights law with which to address some of the historical grievances that have resulted in the loss of diversity of some languages. Although broader in scope than merely the protection of linguistic rights, positive discrimination measures provide a legal mechanism to try and redress the balance. It can be conceptualized as an elevator

mechanism. This mechanism is designed to raise a particular segment of the population that is at level zero (in terms of issues such as access to services or civil, political, economic, social, and cultural rights) to the level that the rest of the population enjoys, which can be conceptualized as being at level one. The causes for this difference between the target group and the rest of the population are largely historical. However rather than a revision of history which is difficult and undesirable, an elevator mechanism accepts the need for the focusing of specific measures aimed at the alleviation of a particular disadvantage faced by a specific group.

However crucially this mechanism needs to be subject to some specific tests for it to be truly beneficial:

- a. The target group should be demonstrably disadvantaged
- b. The aspiration for equality should be justified
- c. The measure should be designed to ensure closure of the gap
- d. Empirical evidence should examine its success
- e. The measures should not be unreasonably discriminating against the majority
- f. The measures should cease on the achievement of equality
- g. The measures should cease should it be demonstrated that they are ineffective.

These tests are crucial and have come before different legal fora and tested. A common criticism of positive discrimination measures is that they discriminate against the majority, and while this is true, the pursuit of effective equality in society, in an attempt to rectify historical injustice, is seen as a necessary and sufficient criterion for this discrimination.

The minority regime: a critique

The lacuna of specific protection of linguistic rights within international human rights law can be traced to the corresponding lacuna in

the protection of minority rights law. Linguistic rights come very much within the realm of cultural and civil rights that differentiate one segment of the population from others. The issue of language as a tool of identity is one that is feared by international lawyers as being the cause of division within states to the detriment of order; and since order is a prime function of law, any mechanism or prerogative that affects this order is viewed suspiciously, with the result that minority rights law in general has been very slow to develop under the UN auspices.

An examination of the evolution of international legal history reveals that minority rights were a central issue in discussions prior to the Peace of Westphalia of 1648, which is generally accepted as signalling the start of public international law in its current form. There were numerous 'minority rights treaties' throughout this period whereby the rights of certain vulnerable groups were guaranteed in the face of more powerful regimes. The texts of these conventions and treaties make fascinating reading and are also indicators of historical animosities notably between Greeks and Turks, and Bosnians and Slavs. The treaties were evolved as a means by which certain identity rights of vulnerable groups within populations were protected. These identity rights were classically identified as religious, cultural, and linguistic rights. Thus there was express recognition of linguistic rights in early international law, with mechanisms guaranteeing their protection.

The League of Nations system in the inter-war period in the last century tried to create a much more formal system for the protection of minorities within states. Minority rights were explicitly protected in the Versailles Treaty of 1919 and a quasi-judicial body was set up to regulate complaints of such violations. While there were numerous challenges that were adjudicated upon by this body, the system collapsed with the onset of World War II. Worse, the hostilities during the conflict were directed exclusively at vulnerable minorities who suffered disastrous consequences as a result. In the aftermath of this war, rather than revisiting the old system of legalistic protection for minority rights, the United Nations made no direct mention of the subject. This is partly explained by the belief that if there is explicit provision for the inherent dignity of every human being, there is implicit recognition that distinction between majorities and minorities, or between any other groups for that matter, is irrelevant. However while the UN insisted on international peace and security and called upon states to regulate their

behaviour towards each other, it was only with the start of human rights law that the internal behaviour of states began to be monitored. Starting with the Universal Declaration on Human Rights of 1948, gradual inroads were made into state sovereignty, whereby (albeit with a state's consent) a state could be effectively monitored against pre-agreed obligations.

However no attempt was made to extend this particular kind of human rights protection to the specific issue of the protection of minorities' civil, political, economic, social, or cultural rights. While in recent years the belief has grown in the need for a specific convention dealing with these issues, this has been fiercely resisted by states, who often view minority rights protection as undermining existing sovereignty within the state, and as giving rise to separatism based on identity politics. As a result, while a declaration (similar to a statement of intent) has been passed in 1993 outlining the rights of minorities, no legally binding standard has yet materialized from this. In addition in modern human rights law, there is now a distinction between the right of minorities and the rights of indigenous peoples — who can be conceptualized as 'super' minorities — with links to territory that minorities may or may not possess. The discussions on the furtherance of this dialogue currently takes place in numerous fora, particularly in the Sub-Commission of Human Rights which has two separate working groups on each issue. In addition there is a Permanent Forum on Indigenous Peoples and a Special Rapporteur who examines issues concerning indigenous peoples' rights.

At European level the discussion is more advanced, with numerous organizations having debated these issues in great depth for centuries. While the EU is developing guidelines on the issue of minority rights it is the other two organizations in Europe that have made more significant progress. The Council of Europe, the body that deals with human rights within the region, has developed a particular convention that seeks to guarantee linguistic rights within Europe.

This Charter, as can be seen in Table 1 below, highlights certain objectives and principles that are germane to the protection of regional languages. Some of these objectives are practical-oriented, e.g., the requirement that the language be territorially based. This is to ensure that any measure directed towards its protection can be contained within a region based on economies of scale and practicality. The other objects and principles such as that of non-

discrimination and consultation are considered vital to the development of specific regimes. In terms of building regimes of protection the Convention offers a host of different issues that it calls upon states to consider. These range from language educational rights, to allowing for specific exchanges in the target language across frontiers — especially relevant in instances where the 'nation' is spread out across more than one state. It also calls upon states to place safeguards on administrative, judicial, cultural, and economic and social life, and to seek to give regional languages coverage in national media.

Table 1: European Charter for Regional or Minority Languages, 1992

I. Definitions

- Regional language
- Territory in which the language is used
- Non-territorial language

II Objectives and principles

- a. Territorial base
- b. Elimination of discrimination – adoption of special measures
- c. Promotion of mutual understanding
- d. Duty to consult linguistic groups/establish appropriate consultation/advisory bodies on linguistic policy
- e. Duty to apply to non-territorial languages where appropriate

III Measures

- a. Education
 - b. Non-territorial – where appropriate
 - c. Judicial Authorities
 - d. Administrative authorities and public services
 - e. Media
 - f. Cultural activities and facilities
 - g. Economic and social life
 - h. Trans-frontier exchanges
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While the document is an interesting one, it has not had a significant impact on linguistic protection, primarily since it does not put in place any specific monitoring process. This, coupled with the rather programmatic nature of the rights described, makes it a strong

exhortation to states, rather than enforceable law. By contrast, the other organization that works on issues of human rights and security in Europe, the OSCE, has had a different, more interesting approach.

The organization has a special office entitled the 'High Commissioner for National Minorities' who works with groups all across Europe. This office, working under the 'security and human rights' mandate of the organization, is in place to help with preventative measures and confidence building between minorities and the states in which they live. It is an organization that works through negotiation and discussion, rather than through law; and in terms of linguistic rights, has developed a set of guidelines that are instructive of the view of human rights law towards linguistic protection. These guidelines, called the 'Oslo Recommendations', seek to provide states with best practice on the issue of protection of linguistic rights, and take into account a host of issues as identified in Table 2.

Table 2: Oslo Recommendations, 1998

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- a. Names
 - b. Religion
 - c. Community life and NGOs
 - d. Media
 - e. Economic life
 - f. Administrative authorities and public services
 - g. Independent national institutions
 - h. Judicial authorities
 - i. Deprivation of liberty
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Cases concerning linguistic rights

In addition to the above Charter and guidelines there have also been numerous occasions where the issue of linguistic rights has been tested before judicial bodies. These challenges form an important part of human rights literature since they reveal not only the extent of law and the extent of violations, but also a judicial interpretation of these events. While there have been numerous cases that are of relevance, the following are offered as a selection to demonstrate the potential of this mechanism for linguistic protection.

1. Minority Schools in Albania (1935)

The issue in this early case before the Permanent Court of Justice were the rights of worship and education of the Greek ethnic minority. The conflict surrounded what was perceived as a violation of article 5 of the Albanian Declaration of 1921 which stated:

Albanian nationals who belong to racial, linguistic or religious minorities, will enjoy the same treatment and security in law and in fact as other Albanian nationals. In particular, they shall have an equal right to maintain, manage and control at their own expense, or to establish in future, charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein.

While this article guaranteed the linguistic rights of the Greek minority, there was significant controversy when Albania sought to modify its undertaking in 1933. This modification stated:

The instruction and education of Albanian subjects are reserved to the State and will be given in State schools. Primary education is compulsory for all Albanian nationals and will be given free of charge. Private schools of all categories will be closed.

The result of course, was a direct violation of the linguistic rights of all non-Albanian-speaking minorities. However the Albanian government insisted that the modification put in place was not set up as one targeting minorities, but rather a measure that applied equally to all segments of the population. The court ruled that:

the plea of the Albanian Government that, as the abolition of private schools in Albania constitutes a general measure applicable to the majority as well as the minority, it is in conformity with the letter and spirit of the stipulations laid down in article 5, first paragraph of the Declaration of October 2nd 1921, is not well founded.

2. *Belgian Linguistic Case (1968)*

In this case before the European Court of Human Rights in 1968, Francophone parents living in Belgium sought to challenge the government's linguistic policy. The primary issue arose due to the Belgian government's delimitation of the state into regions via acts in 1932 and 1963, for the purpose of demarcating specific language teaching. All people who came under this territorial delimitation would only thus have access to the language chosen for that subdivision, which was felt by the parents to be against the rights guaranteed by article 8 (family life) of the European Convention for Human Rights. The Court ruled that:

It is true that one result of the Acts of 1932 & 1963 has been the disappearance in the Dutch unilingual region of the majority of schools providing education in French. Consequently French-speaking children living in this region can now obtain their education only in Dutch, unless their parents have the financial resources to send them to private French-language schools. This clearly has a certain impact upon family life when parents do not have sufficient means to enrol their children in private school. ... Harsh though such consequences may be in individual cases, they do not involve any breach of Article 8.

Thus the Court seemed to imply that the right to learn the mother language did not automatically include a right that such language be the principal medium of instruction.

3. *Guedson v France (1990)*

This case before the Human Rights Commission pursuant to the individual petition mechanism concerned a Breton speaker in France. Believing in the right to the Breton language, he took the criminal action of defacing road signs that were in French. On being arrested, tried, and sentenced, he claimed before the Human Rights Committee that his rights to a fair trial had been violated since proceedings were not conducted in Breton and he and his witnesses were not allowed to give testimony in Breton.

The Committee, on considering both the issue of fair trial as well as the issues arising out of article 27 of the Covenant (on

minorities), came to the conclusion that there was no violation of the Covenant rights by France. In paragraph 10.4, the Committee stressed that 'French law does not, as such, give everyone a right to speak his own language in court', and that as long as the claimant could understand proceedings in French there was no obligation to provide for proceedings in Breton.

4. Ballantyne, Davidson & McIntyre v Canada (1993)

This case, also before the Human Rights Committee, puts the issue of 'what is a minority' in interesting perspective. The facts concerned English speakers who lived in the town of Sutton in Quebec. The three claimants were tradespeople who conducted their trade in English to an English-speaking clientele in the town — which consisted of about a third of the total population of the town. The case arose in challenge of Section 6, Bill no. 178 of the Quebec legislation, which, translated into English, reads:

Except otherwise provided in this section, only the French version of a firm name may be used in Quebec. A firm name may be accompanied with a version in another language for use outside Quebec. That version may be used together with the French version ... if the products are offered both in and outside Quebec. ...

On public signs and posters in commercial advertising:

1. A firm name may be accompanied with a version in another language, if they are both in French and another language.
2. A firm name may appear solely in its version in another language, if they are solely in a language other than French.

The claimants thus alleged that their rights as minorities (article 27) were being violated in addition to their freedom of expression (article 19 of the same covenant). While the Committee dismissed their claim under minority rights it upheld the claim of a violation of the freedom of expression in the English language. In rejecting the claim under minority rights the Committee ruled that 'minority' for the purpose of that article pertained to a group within the entire territory of the state and not a specific region. Thus in that particular

context, French speakers were the minority in Canada, rather than English speakers in Quebec.

Affirmative action as a tool for guaranteeing linguistic protection

While the decision of the Committee in the Ballantyne case can be criticized since English speakers were clearly a minority in Quebec, it remains logical in view of the purpose of minority protection. Mechanisms that seek to protect defined vulnerable groups seek to achieve this in the context of historical grievances. It is the identification of the gap between the majority and the minority that ultimately gives rise to the request for affirmative action in order to protect and buffer vulnerable groups from extinction. The tests for affirmative actions have already been introduced above. The concept of affirmative action can thus be defined as 'a coherent package of measures, of a temporary character, aimed specifically at correcting the position of members of a target group in one or more aspects of their social life, in order to obtain effective equality'.³

The determination of when a group is entitled to these special package of measures will always be an intensely political one. It is beyond the function of law to attempt to resolve this, since these discussions will ultimately result from political processes taking place within a state. However law would stress that the decision ought to be taken on empirical grounds. The test to examine the claim for affirmative action can be determined on at least two factors: (i) existence of determinable and persistent status of inequality, and (ii) effective articulation of the legal right to special measures by representatives

The latter suggests that minorities who do not articulate their view are not entitled to special measures. While this is not the intention, it is clear that even in the application of special measures there must be the consent of the target group. Thus minorities who choose to assimilate ought not to be compelled to maintain their identity should they choose to waive this right. Of course there are numerous other issues too that are germane to the determination of affirmative action. For instance, it is likely that affirmative action programmes will create new disadvantaged groups. There are numerous examples of this, e.g., in India in affirmative action by way of reservation of seats at University towards specific disadvantaged

groups. Since University entrance is competitive, this has often resulted in people from privileged backgrounds seeking certification of their categorization as minorities in order to avail of the lower threshold of entry into University in the reserved quota. Another related issue is the belief that minorities express: that by availing of special measures, their own achievements are negated by the majority, who see them as special cases rather than meritorious of the benefit accrued to them.

However the justification for special measures remains manifold. First and foremost it is a legal tool through which traditional power relationships in the system are sought to be balanced. While this process is not always ultimately successful the attempt to seek this redressal has to be acknowledged as reasonable within societies that have perpetrated long historical injustices towards segments of the population. Second, measures of affirmative action attempt to remedy social and structural discrimination. While not necessarily tackling the prejudice that might exist in societies towards specific groups, it created legalistic mechanisms that can ensure that current structural and institutional imbalances are not reproduced *ad continuum*. Third, it attempts the creation of diversity or proportional group representation.⁴ While this is not always successful and is often viewed as tokenism, it nonetheless has the effect of creating new aspirations and expectations within minorities with a view towards fuller participation in all aspects of public life. A fourth argument in favour of affirmative action is one of social utility which stresses that society as a whole is better off with all its components participating in processes that affect them. Related to this is a fifth argument which stresses that this level of involvement and contact between different groups in a society will preempt social unrest, by creating the possibility of other fora for the ironing out of cultural and other grievances. Sixth, it is proven that fuller participation leads to better efficiency of the socioeconomic system, and hence affirmative action that enables this process has to be viewed in a positive light. Finally, an argument related to some of these, is that fuller participation of minorities in the public workings of a state will contribute to a healthier 'nation' building process,⁵ whereby the vision of the state is one that includes different perspectives rather than one single perspective. While these positives can be ascribed to the general measure of affirmative action, they all apply equally well to the specifics of linguistic protection as well.

Conclusion

Thus in building a specific human rights regime for linguistic protection there are two issues that are vital. First the extent of the rights affected, and second, the considerations that need to be taken into account for the creation of such a regime.

In terms of the rights affected, the issues discussed above and the cases that have come before the different judicial bodies would indicate a wide range of issues that ought to be covered under the umbrella of a special linguistic protection mechanism. Clearly the cornerstone for any convention seeking to protect linguistic rights would have to be the non-discrimination provision. In the specific instance of linguistic protection, this would entail ensuring equal access to different languages, based on empirical rather than political factors. Linked to the issue and difficult to differentiate would be the implied right to equality of protection for different languages. In addition another dimension of linguistic rights includes the freedom of expression, as was visible in the case in Quebec. Also at issue would be other specific rights such as the right to education and fair trial. But perhaps the most significant component of a linguistic regime would be the tacit acceptance of the right to linguistic identity, since it is in protection of that identity that the issue arises in the first place.

In terms of building a specific regime there are also some considerations that need to be borne in mind (see Packer and Sieminski 1999: 339). These are contained in the Oslo Recommendations and reveal the extent of the subtlety required of any mechanism that seeks protection of linguistic rights. For instance there would need to be a definition of what constituted a minority language, and a differentiation from that of a 'regional' language. This differentiation already exists in the Charter of Minority Languages discussed above but needs to be reflected in any other specific universal mechanism. Another differentiation that needs to be made is the distinction between restrictions in the public sphere and that in the private sphere which would constitute an unwarranted intrusion into privacy. In addition the limitations of linguistic protection have to be recognized, especially when they are based on practicalities. In addition special dispensation needs to be made for the language of business, to prevent the placing of restrictive strictures which will affect smooth functioning. Equally vital, especially from a human rights perspective, are the issues

surrounding deprivation of liberty, access to justice, and the propagation of fundamental rights. However there needs to be an awareness of the potential, in using linguistic rights protection, of separatism and gerrymandering which would inhibit the rights of groups within states rather than enhance them.

Thus in conclusion the following arguments can be made in terms of human rights and linguistic protection.

- I. The threatened extinction of certain languages and the identities accompanied by this loss suggest that there is a need for the creation of a protection mechanism that seeks to prevent this loss. This is particularly true in view of the recognition of the importance of identity in international society, and the universalism that is being created by process of globalization.
- II. By virtue of being a mechanism for the protection and provision of rights, the human rights regime is ideally placed to deal with this issue. While there is no specific instrument of human rights law that deals with linguistic rights, minority rights literature over the centuries has demonstrated a tendency to be geared up towards linguistic protection.
- III. Affirmative action is a recognized tool for the elevation and protection of vulnerable groups to the level existing for majority groups. It is a justified tool for use of linguistic protection, but comes attached to a number of conditions that must be fulfilled for it to be effective and not unreasonably discriminatory towards the majority.
- IV. In determining particular packages of affirmative action it is vital to subject these to the ultimate test of effectiveness. Should the measure prove effective in combating persistent inequality it should be affirmed and continued; but should it fail to provide an adequate solution, it should be dispensed with. In addition, it is important to accept that all affirmative measures are temporary, and to be in force until the inequality they seek to address has been alleviated.

Notes

1. These are: Article 27 International Covenant on Civil and Political Rights (1966); Article 15 International Covenant on Economic, Social and Cultural Rights (1966); Article 1(4) and 2(2) of the International Convention for the Elimination of All Forms of Racial Discrimination and Articles 17 (children and media), 20 (upbringing), 29 (development of child), 30 (minority children), 40 (fair trial) of the International Convention on the Rights of the Child. Since all these rights pertain specifically to the issue of children's rights they will not form part of the review of this paper.
2. See Article 15, International Covenant for Economic, Social and Cultural Rights available at <http://www.unhchr.ch>.
3. Bossyut, Special Rapporteur to Sub-Commission, Progress Report, June 2001, E/CN.4/Sub.2/2001.15
4. Diversity as a justification for racial preference in higher education was discussed in *DeFunis v Odegaard* (416 US 312, 1974). Also see *Regents of the University v Bakke* (483 US 265, 1978), as quoted in Bossyut (2001).
5. See Federal Constitution of India; Article 153, Federal Constitution of Malaysia; Nigerian Constitution 1979; South African Constitution 1994

References

- Banton, Michael. 1996. *International Action Against Racial Discrimination*. Oxford: Clarendon Press.
- Bossuyt, Marc. 2001. The concept and practice of affirmative action. *Commission on Human Rights (Sub-Commission on the Promotion & Protection of Human Rights 53rd session)*.
- de Varennes, Fernand. 1999. Equality and non-discrimination: fundamental principles of minority language rights. *International Journal of Minority & Group Rights* 6(3): 307-318.
- de Varennes, Fernand. 2000. Minority rights and the prevention of ethnic conflicts. *Commission on Human Rights (Working Group on Minorities 6th session)*.
- Dunbar, Robert. 2001. Minority language rights in international law. *International & Comparative Law Quarterly* 50(1): 90-120.

- Eide, Asbjørn. 1999. The Oslo Recommendations Regarding the Linguistic Rights of National Minorities: an overview. *International Journal on Minority & Group Rights* 6(3): 319-328.
- European Commission of Democracy Through Law. 1994. *The Protection of Minorities*. Strasbourg: Council of Europe Press.
- Kontra, Miklós. 1999. Some Reflections on the nature of language and its regulation. *International Journal on Minority & Group Rights* 6(3): 281-288.
- Ó Riagáin, Dónall. 1999. The importance of linguistic rights for speakers of lesser used languages. *International Journal on Minority & Group Rights* 6(3): 289-298.
- Orlin, Theodore, Allan Rosas, and Martin Scheinin, eds. 2000. *The Jurisprudence of Human Rights Law: A Comparative Interpretative Approach*. Åbo Akademi: Institute of Human Rights.
- Packer, John and Guillaume Sieminski. 1999. The language of equity: the origin and development of the Oslo Recommendations Regarding the Linguistic Rights of National Minorities. *International Journal on Minority & Group Rights* 6(3): 329-350.
- Steiner, Henry and Phillip Alston. 2000. *International Human Rights Law in Context*. Oxford: Oxford University Press.
- Thornberry, Patrick. 1991. *International Law and the Rights of Minorities*. Oxford: Clarendon Press.

Documents

1. Universal Declaration of Human Rights 1948
2. International Covenant on Civil and Political Rights 1966
3. International Covenants on Economic, Social and Cultural Rights, 1966
4. International Convention for the Elimination of All Forms of Racial Discrimination 1965
5. European Charter for Regional or Minority Languages 1992
6. University College of Galway Act 1929
7. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious & Linguistic Minorities, 1992
8. Draft Declaration on the Rights of Indigenous Peoples, 1995
9. The Oslo Recommendations Regarding the Linguistic Rights of National Minorities, 1998

Cases

1. Minority Schools in Albania, PCIJ Ser A/B No. 64 (1935)
2. Belgian Linguistics Case (No. 2) (1968) 1 EHRR 252
3. Communication No.219/1986 CCPR/C/39/D/219/1986 Guedson v France
4. Ballantyne, Davidson, McIntyre v. Canada, Communications Nos. 359/1989 and 385/1989, UN Doc. CCPR/C/47/D/359/1989 and 385/1989/Rev.1 (1993)
5. Communication No. 327/1988 CCPR/C/41/D/327/1988 Barzhig v France
6. Communication No. 220/1987 CCPR/C/37/D/220/1987 T. K. v France
7. Communication No. 670/1995 CCPR/C/64/D/670/1995 Schlosser v Czech Republic