

Linguistic Rights and Evolving Normative Framework (2005)

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INTRODUCTION

Preserving the richness of cultural and linguistic diversity has emerged as a global concern in today's world, characterized by economic and technological integration and rapid developments in information and communication technologies. As societies are increasingly becoming multicultural and multi-ethnic, the need for harmonious interactions between people and social groups with different cultural and linguistic heritage is being recognized. Intercultural dialogue to promote respect for each others' cultures, language and values, especially through education, has become crucial. Culture and languages have an important place in advancing mutual knowledge and understanding of peoples. These developments are also characterized by identity-based conceptions in the search for preservation of culture and languages. The nature and scope of linguistic rights, contents of their multiple dimensions and overall normative framework of these rights call for reflections. In that perspective, the emerging concept of linguistic and cultural *heritage* of humanity have significance.

NORMATIVE FRAMEWORK

The linguistic rights are part of the right to education which is an overarching right, essential for the exercise of all other human rights.² They are also part of cultural rights³ which are both individual and collective rights. As such, the normative framework for the linguistic rights is composed of various dimensions of both the right to education⁴ as well as the cultural rights – rights which are primarily within UNESCO's field of competence. Such a framework evolved as part of the elaboration of rights of cultural, linguistic and religious minorities. Need for promoting respect for cultural and linguistic diversity has enriched it further. The concept of all language as heritage of humanity is a modern perception to spur on further development of the framework for linguistic rights.

Non-Discrimination and Language

Normative framework for linguistic rights has its nexus with the overarching principle of non-discrimination, enshrined in the Charter of the United Nations and other international instruments. The principle of non-discrimination is of overriding importance in the United Nations system. Article 1, paragraph 3, of the United Nations Charter states that one of the purposes of the United Nations is “to achieve international cooperation in solving

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² General Comment No. 13 on the right to education (Article 13 of the Covenant), adopted by the Committee on Economic, Social and Cultural Rights at its twenty-first session in 1999. E/C. 12/1999/10, 2 December 1999 (para. 1).

³ “Educational and Cultural Rights: An Overview of UNESCO's Normative Action” by Kishore Singh, in “Cultural and Educational Rights in the Enlarged Europe”, edited by Jan De Groof and Gracienne Lauwers, Wolf Legal Publishers, the Netherlands, 2005 (pp. 87-101).

⁴ Yves Daudet and Kishore Singh “The Right to Education: An Analysis of UNESCO's Standard-Setting Instruments”, UNESCO, Paris, 2001.

international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all *without distinction as to race, sex, language, or religion*” [emphasis added]. The principle of non-discrimination is reaffirmed in Article 13, paragraph 1 (b), Article 55 (c) and Article 76 (c) of the Charter. This principle is further developed in the *Universal Declaration of Human Rights*, enumerating the prohibited grounds for discrimination. Article 2, paragraph 1, of the Universal Declaration states that: “Everyone 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.” (emphasis added). The principle of equal opportunity in education also implies that all languages are given equal recognition.

The *Convention against Discrimination in Education* (1960)⁵ which occupies the foremost place among UNESCO’s normative instruments, prohibits discrimination in education “based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth”.⁶ It defines ‘Discrimination’ to “includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, *language*, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose of nullifying or impairing equality of treatment in education.”⁷ (Article 1 of the Convention, emphasis added).

The Convention has been recognized by UNESCO’s Executive Board as a key pillar of the Education for All (EFA).⁸ It has become a central reference in the field of the rights of national minorities and linguistic rights. The normative action as a follow up to the Convention contributes to making education as the constitutional right of all children and adults, irrespective of gender, ethnic, social, cultural, religious or linguistic affiliation or any other difference.

Language as a ground of discrimination is also prohibited by other instruments elaborated by UNESCO. The *World Declaration on Higher Education for the Twenty-first Century*⁹ (1998) states that “no discrimination can be accepted in granting access to higher education on grounds of race, gender, language or religion, or economic, cultural or social distinctions, or physical disabilities.” (Article 3 § a Equity of access).

⁵ The Convention was adopted by the General Conference of UNESCO on 14 December 1960 at its Eleventh session, held in Paris, and came into force on 22 May 1962. So far, 93 States have adhered to the Convention.

⁶ The *Convention on Technical and Vocational Education*, adopted by the General Conference of UNESCO at its twenty-fifth session (Paris, 10 November 1989) also lays down that “The Contracting States shall guarantee that no individual who has attained the educational level for admission into technical and vocational education shall be discriminated against on grounds of race, colour, sex, *language*, religion, national or social origin, political or other opinions, economic status, birth, or on any other grounds.” (Article 2 § 3). (Emphasis added).

⁷ UNESCO adopted at the same time as the *Convention against Discrimination in Education* in 1960, the *Recommendation against Discrimination in Education*. Barring differences in wording and in legal scope inherent to the nature of these two categories of instruments, the content of the Recommendation is identical to that of the Convention.

⁸ 171 EX/Decision 28, taken by UNESCO’s Executive Board in April 2005. The Convention reflects UNESCO’s constitutional mission of ensuring “full and equal educational opportunities for all”.

⁹ The *World Declaration on Higher Education for the Twenty-first Century: Vision and Action and Framework for Priority Action for Change and Development in Higher Education*, was adopted by the World Conference on Higher Education, (Paris, 9 October 1998).

Rights of Ethnic, Religious and Linguistic Minorities and Linguistic Rights

The process of elaboration of UNESCO's *Convention against Discrimination in Education* shows the evolution of the linguistic rights within the broad framework of the rights of cultural ethnic, religious and linguistic minorities, recognized by international instruments. Article 5 § 1 © of the *Convention against Discrimination in Education*¹⁰ closely reflects the proposals made by the then Sub-Commission on Prevention of Discrimination and Protection of Minorities.¹¹ The draft convention against discrimination in education referred to "ethnic, religious or linguistic minorities".¹² That draft was amended by the Special Committee of Governmental Experts, which preferred the expression "national minorities". That definition was adopted and is accordingly reflected in the text of the *Convention against Discrimination in Education*.¹³ Thus, the term national minorities was originally conceived to comprise ethnic, religious and linguistic minorities. The Special Committee of Governmental Experts engaged in lengthy debates on the subject. One of the points raised was whether a distinction should be drawn in the proposed instrument between "national minorities" who "have always been regarded as such, in particular by the State within whose territory they live, and those who arrive as immigrants". Some delegations supported the distinction on the grounds that "it was neither desirable nor possible to accord immigrant minorities the right to open schools in which teaching would be given in their mother tongue". The distinction was not, however, adopted and the Committee confined itself to the expression "national minorities" without further explanations.¹⁴

Regarding the right of national minorities to engage in educational activities,¹⁵ it is clearly stated that it might be understood differently "depending on the *educational*

¹⁰ Daudet and Eisemann, "Right to Education: Commentary on the Convention against Discrimination in Education", UNESCO, 2005 (pp. 27-31).

¹¹ Document 10 C/23, Annex 1, pp. 1-2; and Final Report by the Director-General UNESCO/ED/167 – Add. 1, p. 5, para. 38.

¹² The first difficulty encountered in drafting the Convention concerned the very notion of minority. The Director-General's preliminary report stated that: "the protection of minorities is understood as meaning protection of non-dominant groups which, while wishing in general for equality of treatment with the majority, wish for a measure of differential treatment in order to preserve basic characteristics which they possess and which distinguish them from the majority of the population". However, this definition addresses the question of minorities only from the angle of the treatment that must be accorded to them and offers the somewhat vague definition of a minority as a non-dominant group in the country.

¹³ In fact, the preliminary report showed that "failure to 'protect the minority' may be tantamount to denying 'equal educational treatment'". In support of this argument it was pointed out that allowing a minority to receive early childhood education in its mother tongue could be a factor in preventing any disadvantage whereas, paradoxically, at a certain level of education, members of the minority might be disadvantaged if they did not speak the dominant language. This example amply showed that the drafters of the Convention had little room for manoeuvre in taking the difficulties that might be experienced by minorities into account. See Daudet and Eisemann, "Right to Education: Commentary on the Convention against Discrimination in Education", *opt. cit.*

¹⁴ *Ibid.*

¹⁵ The Convention protects the educational rights of national minorities. The States Parties to the Convention agree that "It is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language, provided however, (a) That this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities, or which prejudices

policy of each State”. The insertion of the term “educational” reflects the Committee’s fear of giving States too much freedom in the application of this provision of the Convention and of the risk that might consequently arise of national policy being overused as an argument to lessen or weaken the rights that the article grants to national minorities. This right is therefore subject to three conditions. The first condition is that “this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities, or which prejudices national sovereignty”. This may mean, in particular, that the rights granted to minorities must not be interpreted as allowing minorities to isolate themselves from the community as a whole. The second condition concerns the standard of education in those schools, which must not be “lower than the general standard laid down or approved by the competent authorities”. Lastly, while the right to conduct educational activities and manage schools is granted, attendance at such schools is optional and depends on parents’ wishes and choices for their children.¹⁶

The *Convention* thus establishes the principle according to which, the linguistic and educational rights of majorities and minorities should be exercised in a national perspective. Respecting the diversity of national education systems, the Convention lays down the norm of uniformity of educational standards in a country and maintaining the quality and standards of education both in public and private schools. The States Parties to this Convention have undertaken to take all necessary measures to ensure the application of these principles.

The concept of ethnic, religious and linguistic minorities is reflected in several other instruments adopted by UNESCO. These instruments are especially important as they lay down the normative framework for the linguistic rights – covering both the right to education and the cultural rights.

The principle of equality of opportunity in access to education was further developed by UNESCO as regards educational rights of various minority population groups. The *World Declaration on Education for All*, adopted at the World Conference on Education for All, (Jomtien, 1990) made an important contribution in developing this principle. It stipulates that “An active commitment must be made to removing educational disparities. Underserved groups – the poor; street and working children; rural and remote populations; nomads and migrant workers; indigenous peoples; ethnic, racial, and *linguistic minorities*; refugees; those displaced by war; and people under occupation – should not suffer any discrimination in access to learning opportunities.” (Article 3 § 4 Universalizing Access and Promoting Equity). Similarly, the *Declaration and Integrated Framework of Action on Education for Peace, Human Rights and Democracy* (1995)¹⁷ postulates that “in order to create understanding between different groups of society, there must be respect for the educational rights of persons belonging to national or ethnic, religious and *linguistic minorities*, as well as indigenous people, and this must also have implications in curricula and methods as well as in the way education is organized”.

national sovereignty; (b) That the standard of education is not lower than the general standard laid down or approved by the competent authorities”. (Article 5 § 1 c).

¹⁶ Daudet and Eisemann, “Right to Education: Commentary on the Convention against Discrimination in Education”, opt. cit.

¹⁷ The Declaration was adopted by the International Conference on Education (Geneva, October 1994) and endorsed by UNESCO’s General Conference in 1995, when the General Conference also approved the *Integrated Framework of Action on Education for Peace, Human Rights and Democracy*.

Some other Recommendations adopted by UNESCO mention educational rights only of the minorities¹⁸ or ethnic minorities.¹⁹ Other Declarations, in particular of the nine high-population developing (E-9) countries, made as part of the EFA process, also contain provisions relating to the educational rights of minorities and bear upon linguistic rights. The *Delhi Declaration* (1993)²⁰ uses the term *cultural, ethnic and linguistic differences*.²¹ Universalizing access to education and ensuring the right to education of ethnic minorities is among the objectives set at the World Education Forum (2000). The *Dakar Framework for Action*, adopted at the World Education Forum expresses collective commitment by Governments and international agencies to ensuring, inter alia, “that by 2015 all children, particularly girls, children in difficult circumstances and those belonging to ethnic minorities, have access to and complete free and compulsory primary education of good quality.” The linguistic rights thus form part of the educational rights of minorities in a broad sense in standard-setting instruments elaborated by UNESCO.

Among the instruments elaborated by the United Nations, it is important to mention the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* (1992), which, as its title shows, lays down normative framework of the rights of national or ethnic, religious and linguistic minorities.²²

Issues in universalizing access to education and minority rights have been addressed as part of UNESCO’s collaboration with professional bodies and intellectual community for promoting the right to education. Collaboration with the European Association for Education Law and Policy (ELA) in the field of the right to education has been valuable in generating public debate on the right to education and reflections on key issues such as

¹⁸ Thus the *Hamburg Declaration on Adult Learning* (1997) states that “The State remains the essential vehicle for ensuring the right to education for all, particularly for the most vulnerable groups of society, such as minorities and indigenous peoples, and for providing an overall policy framework. [...]”

The *Recommendation concerning the Status of Higher-Education Teaching Personnel*, adopted by the General Conference of UNESCO (Paris, 11 November 1997) provides that higher education institutions should be accountable by adopting policies and procedures to ensure the equitable treatment of women and minorities and to eliminate sexual and racial harassment.

The *Revised Recommendation concerning Technical and Vocational Education* (2001) provides that technical and vocational education should be so designed that it “is available to people with disabilities and to socially and economically disadvantaged groups such as immigrants, refugees, minorities (including indigenous peoples), demobilized soldiers in post-conflict situations, and underprivileged and marginalized youth in special forms adapted to their needs in order to integrate them more easily into society”. (Article 7 § g).

¹⁹ The *Recommendation on the Development of Adult Education* (1976) enjoins upon the States the obligation to “take measures with a view to promoting participation in adult education and community development programmes by members of the most under-privileged groups, including members of ethnic minorities (...)”

²⁰ The Delhi Declaration was made on 16 December 1993 by the Education for All Summit of Nine High-Population Developing Countries. It is noteworthy that the E-9 countries, comprising Bangladesh, Brazil, China, Egypt, India, Indonesia, Mexico, Nigeria and Pakistan, account for more than 50 per cent of the world’s population.

²¹ Through the *Delhi Declaration*, the E-9 countries committed themselves to “eliminate disparities of access to basic education arising from gender, age, income, family, *cultural, ethnic and linguistic differences* and geographic remoteness”. Recently at Beijing (Republic of China), in a Ministerial Review Meeting in 2001, the Ministers and representatives of E-9 countries committed themselves to the strategies to “reinforce action-oriented programmes to meeting the learning needs of disadvantaged groups such as children with special needs, migrants, minorities and the rural/urban poor.”

²² The Declaration was adopted by the United Nations General Assembly resolution 47/135 of 18 December 1992.

equality of educational opportunities and universal access to education. This has covered linguistic rights as well. A recent UNESCO-ELA co-publication on this subject discusses developments in national and the use of minority language in education.²³ Key issues such as the right to education concerning notably vulnerable groups, such as immigrants, the handicapped, indigenous people, *linguistic and ethnic minorities* and the millions deprived of education on account of extreme poverty, were dealt with at the International Colloquium organized by the INTERCENTER and UNESCO in December 1999 on “The Right to Education of Vulnerable Groups whilst Respecting their Cultural Identity” (*Le droit à l'éducation des groupes vulnérables dans le respect de leurs identités culturelles*).²⁴

Promoting Linguistic Diversity: Normative Bases

The expanding nature and scope of linguistic rights can be attributed to the significance attached to the concept of linguistic diversity, inseparable from that of cultural diversity. The concept of cultural diversity and cultural identity is articulated succinctly in the *Mexico City Declaration on Cultural Policies* (1982)²⁵, which states that «cultural diversity and cultural identity are inseparable» and that «...the recognition of the presence of variety of cultural identities wherever various traditions exist side by side constitutes the very essence of cultural pluralism».

Reflections by UNESCO have centred around cultural diversity as an inherent feature of all human societies. Normative framework developed has the objective to ensure that each culture has the possibility to preserve its identity and dignity. *UNESCO's Universal Declaration on Cultural Diversity* (2001)²⁶ epitomizes this perception. It expresses central concern respect for the diversity of cultures. The Declaration provides that “The defence of cultural diversity is an ethical imperative, inseparable from respect for the human dignity. It implies a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples.” (article 4).

The need for promoting “the richness of cultural diversity and respect traditional and indigenous peoples’ knowledge and systems of learning” through adult education was already recognized by the *Hamburg Declaration on Adult Learning* (1997), which states that “*the right to learn in the first language* should be respected and implemented. Adult education faces an acute challenge in preserving and documenting the oral wisdom of minority groups, indigenous peoples and nomadic peoples”. The reflections by UNESCO in recent years have brought into limelight “the principle of equal dignity of and respect for all cultures” – a principle which was stated by the *Mexico City Declaration on Cultural Policies*²⁷, and enshrined in Article 2 §3 of the *Convention on the Protection*

²³ Access to and Equality in Education, Jan De Groof and Gracienne Lauwers (eds.), a Co-Publication of UNESCO and the European Association for Education Law and Policy (ELA), 2004 (pp. 43-51).

²⁴ “The Right to Education of Vulnerable Groups whilst Respecting Their Cultural Identity”: Proceedings of the International Colloquium - a co-publication of the INTERCENTER and UNESCO, December 1999.

²⁵ The *Mexico City Declaration on Cultural Policies* was adopted by the World Conference on Cultural Policies (MONDIACULT), 6 August 1982, UNESCO 1982.

²⁶ The Declaration was adopted by the UNESCO General Conference in 2001.

²⁷ The *Mexico City Declaration on Cultural Policies*, opt. cit. states in its principle 1, that «every culture represents a unique and irreplaceable body of values since each people’s traditions and forms of expression are its most effective means of demonstrating its presence in the world».

and Promotion of the Diversity of Cultural Expressions, adopted by UNESCO's General Conference in 2005. In its preamble, the Convention 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." Further, the Convention states 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." (Article 2 § 3).

A landmark development consists in the recognition of the importance of languages in the domestic cultural activities, goods and services. This is established by the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*. In its Article 6 § 2 (b) relating to the rights of parties at the national level, the Convention provides that "the measures taken by states may include the "measures that, in an appropriate manner, provide opportunities for domestic cultural activities, goods and services among all those available within the national territory for the creation, production, dissemination, distribution and enjoyment of such domestic cultural activities, goods and services, *including provisions relating to the language used for such activities, goods and services.*" (emphasis added). It underlines the importance of education and public awareness, and lays down the obligation of the State parties to that end.²⁸ Article 7 § 1 (a) of the Convention relating to Measures to promote cultural expressions provides that "Parties shall endeavour to create in their territory an environment which encourages individuals and social groups "to create, produce, disseminate, distribute and have access to their own cultural expressions, paying due attention to the special circumstances and needs of women as well as various social groups, including persons belonging to minorities and indigenous peoples."

Right to Receive Education in Mother Tongue and in Local Languages

The right to receive education in mother tongue or in local languages is recognized in several instruments adopted by UNESCO and the United Nations. Already in late 80's, UNESCO had recognized the importance of language rights of populations groups of foreign origin, particularly migrant workers and their families. The *Declaration on Race and Racial Prejudice* (1978)²⁹ stipulates that these population groups who contribute to the development of the host country, should benefit from appropriate measures designed to afford them security and respect for their dignity and cultural values. Such measures should facilitate their adaptation to the host environment and their professional advancement with a view to their subsequent reintegration in their country of origin, and

²⁸ Article 10 of the Convention is entitled: Education and public awareness. It lays down the obligation for the State parties to:

"(a) encourage and promote understanding of the importance of the protection and promotion of the diversity of cultural expressions, inter alia, through educational and greater public awareness programmes; c) endeavour to encourage creativity and strengthen production capacities by setting up educational, training and exchange programmes in the field of cultural industries. These measures should be implemented in a manner which does not have a negative impact on traditional forms of production."

²⁹ The Declaration was adopted and proclaimed by the General Conference of UNESCO at its twentieth session in Paris on 27 November 1978.

their contribution to its development; “steps should be taken to make it possible for their children to *be taught their mother tongue*”.³⁰ (emphasis added).

Nearly two decades later, the importance of the mother tongue for education of other population groups, especially of indigenous and nomadic peoples was emphasized the *Hamburg Declaration on Adult Learning* adopted by UNESCO in 1997. The Declaration states the need for raising awareness about prejudice and discrimination in society “*by recognizing that all indigenous peoples and nomadic peoples have the right of access to all levels and forms of state education, and the right to enjoy their own cultures and to use their own languages. Their education should be linguistically and culturally appropriate to their needs and should facilitate access to further education and training by working together and learning to respect and appreciate each other’s differences in order to ensure a shared future for all members of society.*”

UNESCO’s work relating to the promotion of respect of linguistic rights and cultural identity received impetus from the *Universal Declaration of Linguistic Rights* (1996).³¹ The Declaration recognizes all languages as « the expression of collective identity » and equal rights of all language communities « to use, maintain and foster their language in all forms of cultural expression » and « right to full development ». The Organization has thus benefited from global partnership in developing normative framework for linguistic rights.

The right of persons belonging to national or ethnic, religious and linguistic minorities to express their characteristics and to develop, inter alia, their culture, language, is recognized by the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* (1992). The Declaration also recognizes the right to receive education in mother tongue. It enjoins upon that “States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.” (*Article 4 § 2*). The Declaration further stipulates 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.” (*Article 4 § 3*).³²

The rights of minorities to receive education in their mother tongue is recognized by several Conventions adopted by the United Nations. The Indigenous and Tribal Peoples Convention (1989)³³ recognizes the right of children belonging to these peoples, wherever practicable, 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. When this is not

³⁰ The *Declaration on Race and Racial Prejudice*, adopted and proclaimed by the General Conference of UNESCO at its twentieth session (Paris, 27 November 1978).

³¹ The Universal Declaration of Linguistic Rights was adopted by the World Conference on Linguistic Rights, organized in Barcelona (Spain), from 6-9 June, 1996.

³² The Declaration also stipulates that “States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.” (*Article 4 § 4*).

³³ The Convention was adopted by the General Conference of the International Labour Organization (ILO) on June 27, 1989.

practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective”. (Article 28 § 1).³⁴ Similarly, the Convention on the Rights of the Child and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990) contain elaborate provisions as regards the importance of mother tongue. The *Convention on the Rights of the Child* in Articles 28 § C 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.” These provisions are similar to those in Article 27 of the *International Covenant on Political and Civil Rights*.³⁵

The right to equality of treatment with nationals as regards access to education is laid down by the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. The Convention provides that “States of employment shall pursue a policy, where appropriate in collaboration with the States of origin, aimed at facilitating the integration of children of migrant workers in the local school system, particularly in respect of teaching them the local language.” (Article 45).³⁶ Moreover, it provides that “States of employment may provide special schemes of education in the mother tongue of children of migrant workers, if necessary in collaboration with the States of origin.” (Part IV, Art.45 § 4)

Concepts of linguistic richness and creative diversity have underpinned evolving framework of linguistic rights. These are embodied in the *UNESCO Universal Declaration on Cultural Diversity* which provides that “The flourishing of creative requires the full implementation of cultural rights as defined in Article 27 and the Universal Declaration of Human Rights and in Articles 13 and 15 of the International Covenant on Economic, Social and Cultural Rights. All persons have therefore the right to express themselves and to create and disseminate their work in the language of their choice, and particularly in their mother tongue.” (article 5).

Towards Normative Action for Multilingualism

Language is a tool for learning. Bilingual education and the use of local languages are important factor in the quality of learning. At the same time, multilingualism is necessary for acquiring different levels of competence international environment and its advantages

³⁴ The Convention provides that “Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned”. (Article 28 § 3).

³⁵ Article 27 of the *International Covenant on Political and Civil Rights* stipulates 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 other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language».

³⁶ The Convention states that “States of employment shall endeavour to facilitate for the children of migrant workers the teaching of their mother tongue and culture and, in this regard, States of origin shall collaborate whenever appropriate.” (Article 45 §3)

must be acknowledged in today's knowledge societies.³⁷ Norms governing multilingualism should promote international linguistic and political collaboration. The choice of the language of instruction in multilingual contexts is indeed an important dimension in promoting normative action in the field of linguistic rights. The need for learning both local and national languages is articulated in the *Indigenous and Tribal Peoples Convention*, mentioned above, which stipulates that "Adequate measures shall be taken to ensure that these peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country". (Article 28 § 2). The complexity of the language issue³⁸ calls for measures in consideration of these approaches.

UNESCO has addressed issues relating to critical need of preserving diversity of languages in face of globalization, propelled by rapid developments in information and communication technologies. UNESCO's General Conference has adopted successively resolutions with regard to the promotion of multilingualism and universal access to information in cyberspace. *The Recommendation concerning the Promotion and Use of Multilingualism and Universal Access to Cyberspace* (2003) in its preamble refers to these resolutions.

IMPLEMENTATION OF LINGUISTIC RIGHTS AND MONITORING MECHANISMS

The linguistic rights of minorities have been covered in UNESCO's system of protecting human rights violations, within the framework of the procedure laid down by the Organization for the enforcement of human rights within the field of its competence.³⁹ A large number of communications have been considered and settled by UNESCO's Committee on Conventions and Recommendations (CR). Several of cases relate to the right to education and some of them cover linguistic rights. In many of such cases, the individuals were able to benefit from changes in certain education laws which were discriminatory towards ethnic or religious minorities; they were also able to resume their education.

The linguistic rights have also been covered in monitoring the implementation of the right to education - Articles 13 and 14 of the *International Covenant on Economic, Social and Cultural Rights* - by the United Nations Committee on Economic, Social and

³⁷ "Education in a Multilingual World", UNESCO Education Policy Paper, UNESCO, 2003.

³⁸ As regards the complexity of issues in Africa, see Association for the Development of Education in Africa (ADEA) Newsletter, Volume 17, No. 2, April-June, 2005, ADEA, Paris.

³⁹ This procedure for the enforcement of human rights within the field of UNESCO's competence is rather sui generis. Pursuant to 104 EX/Decision 3.3, adopted by UNESCO's Executive Board in 1978 at its 104th session, the Committee on Conventions and Recommendations (CR) which is a subsidiary organ of the Executive Board considers the communications received by UNESCO concerning cases and questions of alleged violations of human rights within UNESCO's fields of competence. As a result, CR examines all such communications received by the Organization. The Director-General plays an important role in seeking continually to strengthen the action of UNESCO in the promotion of human rights, both through the settlement of cases and the elimination of massive, systematic or flagrant violations of human rights and fundamental freedoms. Consultations are initiated in conditions of mutual respect, confidence and confidentiality to help reach solutions to particular problems concerning human rights. UNESCO acts in a spirit of international co-operation, conciliation and mutual understanding since the complaints on human rights violations can be directed against any Member State; hence the confidentiality of this procedure.

Cultural Rights (CESCR). As a treaty body, CESCR adopts Concluding Observations, following a dialogue with states on the implementation of the right to education, as provided for in articles 13 and 14 of the International Covenant. The linguistic rights have been covered in these Concluding Observations. CESCR has, for instance, recommended that States parties ensure, “to the extent possible,” that *children belonging to minority linguistic groups* have an opportunity to learn their *mother tongue*, including regional dialects, at school⁴⁰ and to take all possible measures to ensure that the *teaching of indigenous languages* in schools is increased.⁴¹ For that purpose, States parties should ensure an adequate number of schools and teachers instructing minority or indigenous languages⁴² and develop *adequate learning materials*⁴³ and allocate sufficient budgetary resources for *bilingual and multicultural education*.⁴⁴ UNESCO collaborates closely with CESCR.

In this respect, it may be mentioned that the Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the Monitoring of the Right to Education has recommended that the issues in providing education in the mother tongue, or bilingual and bicultural education in order to reach linguistic and cultural minorities also need to be examined, bearing in mind recent discussion in the UNESCO International Bureau of Education (IBE) and decision on such questions.⁴⁵

CONCEPT OF LINGUISTIC HERITAGE

The concept of linguistic heritage provides new dimensions for developing normative framework for linguistic rights. This is expressed in the *World Declaration on Education for All*, adopted at the World Conference on Education for All, (Jomtien, 1990), which underlines the basic learning needs, states that “The satisfaction of these needs empowers individuals in any society and confers upon them a responsibility to respect and build upon their collective cultural, linguistic and spiritual heritage, to promote the education of others, to further the cause of social justice, to achieve environmental protection, to be tolerant toward social, political and religious systems which differ from their own ensuring that commonly accepted humanistic values and human rights are upheld, and to work for international peace and international solidarity in an interdependent world.” (Article 1 § 2 Meeting Basic Learning Needs).⁴⁶

In the beginning of the new millennium and the century, the concept of *linguistic and cultural heritage of humanity* was given prominence by UNESCO. This is expressed in the *UNESCO Universal Declaration on Cultural Diversity* (2001). The main lines of an action plan for the implementation of provides that “Safeguarding the *linguistic heritage of humanity* and giving support to expression creation and dissemination in the greatest

⁴⁰ Concluding Observation, Greece (2004), para.50; see also Concluding Observation, Libyan Arab Jamahiriya (2005), para.41.

⁴¹ Concluding Observation, Ecuador (2004), para.58).

⁴² Concluding Observation, Uzbekistan (2005), para.67; Serbia and Montenegro (2005), para.64; Greece (2004), para.50.

⁴³ Concluding Observation, Uzbekistan (2005), para.67.

⁴⁴ Concluding Observation, Mexico (2006), para.45.

⁴⁵ Final Report on the Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the Monitoring of the Right to Education (2006), Document 175 EX/28 (para11), UNESCO Paris.

⁴⁶ The World Declaration on Education for All, adopted at the World Conference on Education for All, Jomtien (Thailand), 1990.

possible number of languages.” (paragraph 5). UNESCO's action aimed at promoting respect for linguistic diversity is part of its efforts to protect the world's oral and intangible heritage, including traditional popular music, dances, festivals, customs, traditional knowledge, oral traditions and local languages.⁴⁷ The Organization encourages the international community to take steps to protect *intangible heritage, including languages*, in the same way natural and cultural treasures of tangible heritage are protected. (emphasis added).

The normative basis of the concept of linguistic heritage has evolved from ‘soft law’ towards ‘hard law’. The *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, adopted by UNESCO, reinforces this concept, expressed previously in the *UNESCO's Universal Declaration on Cultural Diversity*. The Convention states that cultural diversity must be considered as a “common heritage of humanity” and its “defense as an ethical imperative, inseparable from respect for human dignity”.

CHALLENGES AND PERSPECTIVES

Two areas are of critical importance as regards current developments of normative framework for the linguistic rights.

The first one relates to the preservation of linguistic diversity and languages as heritage of humanity. Many languages are becoming endangered species. About half of the 6,000 or so languages spoken in the world are under threat - seriously endangered or dying in many parts of the world. Moreover, the language survival in cyberspace has become a critical issue. In this respect, there is much more need for understanding of and clarifying contents of linguistic rights and providing normative basis for various dimensions of linguistic rights, such as multicultural, intercultural education and the rights involved, the right to learning in mother tongue in a multicultural social and cultural setting, norms to guide bilingual educational programs that take into account cultural differences etc. Normative action for equal respect among cultures and languages in a world characterized by cultural and linguistic diversity must enable to promote values and norms which are universally shared.

The second relates to multilingualism in cyber space. The main lines of an action plan for the implementation of the UNESCO Universal Declaration on Cultural Diversity (2001) underlined the need for “Promoting linguistic diversity in cyberspace and encouraging universal access through the global network to all information in the public domain.” (paragraph 10). Its importance was recognized by a series of resolutions adopted by UNESCO's General Conferences, and in 2003, the General Conference the *Recommendation concerning the Promotion and Use of Multilingualism and Universal Access to Cyberspace* (2003).

⁴⁷ *The Recommendation on the Safeguarding of Traditional Culture and Folklore*, adopted by the UNESCO General Conference in 1989, considers that the folklore forms part of the universal heritage of humanity and that it is a powerful means of bringing together different peoples and social groups and of asserting their cultural identity. It constitutes the main source of contemporary creation. The Recommendation calls upon the Member States to take legislative measures or other steps required to give effect within their territories to the principles and measures defined in it.

Issues involved as regards normative framework for multilingualism in cyber space are very complex. They relate to public and private partnerships, to the copy right laws, including rights of translation of authors, to the rights relating to cultural expressions in all its diversity, to the access to materials on research and development etc. They also involve the challenging tasks of elaborating regulations and technical recommendations.⁴⁸ The *Recommendation* stipulates development of normative framework in all such areas.

⁴⁸ With respect to development of multilingual content and system, the *Recommendation concerning the Promotion and Use of Multilingualism and Universal Access to Cyberspace (2003)* provides that:

“The public and private sectors and the civil society at local, national, regional and international levels should take the necessary measures to alleviate language barriers and promote human interaction on the Internet by encouraging the creation and processing of, and access to, educational, cultural and scientific content in digital form, so as to ensure that all cultures can express themselves and have access to cyberspace in all languages, including indigenous ones.” (Article 1).

“Member States should formulate appropriate national policies on the crucial issue of language survival in cyberspace, designed to promote the teaching of languages, including mother tongues, in cyberspace. International support and assistance to developing countries should be strengthened and extended to facilitate the development of freely accessible materials on language education in electronic form and to the enhancement of human capital skills in this area.” (Article 3).

“Member States, international organizations and information and communication technology industries should encourage collaborative participatory research and development on, and local adaptation of, operating systems, search engines and web browsers with extensive multilingual capabilities, online dictionaries and terminologies. They should support international cooperative efforts with regard to automated translation services accessible to all, as well as intelligent linguistic systems such as those performing multilingual information retrieval, summarizing/abstracting and speech understanding, while fully respecting the right of translation of authors.” (Article 4).