

Redressing language-based exclusion and punishment in education and the Language Friendly School initiative

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Abstract: *Despite decades of scientific literature showing the benefits of multilingual programmes that allow children to learn through their mother tongue, millions of children around the world continue to be denied the right to be educated through a language they understand. Not only are home languages largely excluded from the official curriculum, but children belonging to ethnolinguistic minorities often are also prohibited and sometimes even punished for speaking their mother tongue on the school grounds. Contrary to what is generally believed by educators, preventing children from using their home language does not improve their educational performance, but rather has harmful social and emotional effects. After presenting examples of these practices in various countries, this article examines the human rights implications when students are banned from using their home language at school, by referring to the international instruments in force regarding children's rights in education, with a focus on the European context and its relevant framework. We find that such practices violate the right to education, freedom of speech, and the right to be protected against direct and indirect racial and language-based discrimination. The Language Friendly School is introduced as a new initiative with the explicit aim of ending language-based punishment in education by 2030, the 'deadline' of the Sustainable Development Goals. While schools are the primary location where these practices take place, tackling the deep inequalities in education cannot be left to schools alone. We end our analysis with a call to action on governments to redress these violations of children's rights, and to human rights educators, advocates and lawyers to hold them accountable.*

Key words: *right to education; language-based exclusion and punishment; ethnolinguistic minorities; racial discrimination; mother tongue education; multilingual education*

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1 Introduction

In every part of the world, children belonging to indigenous groups, linguistic minorities and migrant communities have been and continue to be prohibited from and punished for using their mother tongue in classes or on school grounds. Punishments may be physical, including beatings, being placed outside the classroom or made to wear a sign around the neck indicating the transgression. They may also be psychological, for example rewarding children for not speaking their mother tongue.

Although quantitative data is lacking, there are strong indications that the practice of prohibiting students (and their parents) from speaking their home language¹ in classrooms, in school hallways, on school playgrounds, when dropping off and picking up children, or conversing with other parents, is widespread. The Rutu Foundation has undertaken qualitative research, collecting anecdotal, scholarly and legal evidence – current and historical. We believe that the suppression of home languages, at best, is internalised due to the persistent belief that ‘forgetting’ one’s mother tongue and speaking the dominant language is the only way to achieve economic and social success. At worst, it is a manifestation of contemporary colonialism. In all cases, it is a form of discrimination. Children’s rights to education, identity and language on the basis of non-discrimination and equality are protected under multiple international instruments.

When children are discriminated against at school, humiliated by teachers and bullies, or regularly punished, their social, economic, cognitive and emotional development is greatly hindered. They feel greater shame for who they are, and feel even more like outsiders at school. A Belgian study found that they also perform worse academically than children in schools where such practices do not occur (Agirdag 2017: 44-52). These students drop out at higher rates, or sometimes are even literally forced out of educational institutions. This significantly reduces their future earning potential, and deepens the inequities between dominant and minority groups.

By using French to teach literacy to children who speak only Kreyòl, Haitian schools for example have created generations that cannot read fluently and who have been accustomed to being silenced from their first day in school. Research shows that among ten Haitian children who enter

1 In this article ‘home language’ and ‘mother tongue’ are used interchangeably. The extensive literature and debates on the terminology, particularly around ‘mother tongue’, are acknowledged, but we agree with Skutnabb-Kangas & Heugh (2012: xvii) that the term ‘mother tongue’ is used broadly by ordinary people in most parts of the world and that it is important to work with ‘practical notions of what languages are and how they function inside educational institutions and how they may be used to facilitate the best possible access to quality education’.

the first grade, only one of them (10 per cent) will finish school (DeGraff 2016: 2-3).

Literacy levels for linguistically minoritised children often are lower than average. These students are disadvantaged when entrance examinations for higher education are only in the national language, which is relatively common. As a consequence, fewer minorities progress to higher education, resulting in a cycle of socio-economic disadvantage, including in education for the next generation.

Decades of academic research across continents support findings that multilingual programmes that encourage the development of students' mother tongue as part of their learning experience improves their well-being as well as their academic performance. Among the outcomes are that students complete more years of education; they repeat classes less often; they feel more comfortable and more confident; and they learn better and faster, including the dominant language (Collier & Thomas 2017; Herzog-Punzenberger, Le Pichon-Vorstman & Siarova 2017; UNESCO 2016; Skutnabb-Kangas & Heugh 2012; Cummins 2001 and 2019).

The right to be educated in and through one's mother tongue is fundamental to the enjoyment of the right to education. The United Nations Educational, Scientific and Cultural Organisation (UNESCO) has stated that without mother tongue-based multilingual education neither Sustainable Development Goal 4 on Quality Education nor any of the other 16 goals will be achievable (UNESCO 2017). However, in this article we consider the right to be educated in a minoritised language a related but separate matter. Here we examine the right of students (and their parents) not to be discriminated against, excluded, restricted or punished for using their mother tongue on school grounds, including in the classroom, an issue that has received far less attention from language and education experts or children's rights advocates.

Using examples from around the world, we first discuss the concept of language-based exclusion and punishment in education: what it is, when it occurs and what the impacts are. We then address the human rights implications when students are banned from using their home language at school, by referring to the international instruments in force regarding children's rights in education. In this regard, we focus on the European context as it provides the most extensive framework of protection of linguistic rights. Finally, we present the Language Friendly School, a new initiative explicitly designed to create language-friendly learning environments for all children, and to ban the practice of punishing children for using their mother tongue at school by 2030, the 'deadline' of the Sustainable Development Goals. While schools are the primary location where these practices take place, tackling the deep inequalities in education cannot be left to schools alone. We end our analysis with a call

to action on governments to redress these problems, and to human rights educators, advocates and lawyers to hold them accountable.

2 What is language-based punishment and exclusion in education?

All children run around and release tension on playgrounds, in lunch rooms and other places on school grounds using the language that is most comfortable and familiar to them. Yet, indigenous and minoritised children are routinely singled out and punished for speaking their home language to their friends. In this part we discuss some examples from different parts of the world.

Miranda Washinawatok, a 12 year-old member of the Menominee Tribe in Wisconsin, USA, was harshly reprimanded by a teacher for using her native language at school. She had translated the words 'hello', 'I love you', and 'thank you' when talking to two girls in class. The teacher 'slammed her hands on the desk and stated: 'You are not to speak like that. How do I know you're not saying something bad? How would you like if I spoke in Polish and you didn't understand?' The girl was benched from a basketball game later that day for having 'an attitude problem'. Her mother explained that this issue 'is sensitive, because tribal members used to be beaten for speaking their language in schools, which is part of the reason they are losing their language' (NY Daily News 2012).

In 2012, Belgian children were reportedly punished with detention and language lessons if caught speaking French rather than Dutch on the playground of Sint-Pieters college, a primary school in a Dutch-speaking suburb of Brussels. One father attacked the policy 'because it threatened to punish children, too young to choose their mother tongue, for a conflict being fought out between French and Dutch-speaking adults tussling for political control of Belgium' (Waterford 2012).

In Haitian classrooms Kreyòl-speaking students are punished and humiliated, and even expelled for speaking Kreyòl – outside of the few classes where they are taught about Kreyòl. Ironically, 'Haiti stands out as one of the rare nations in which there is one language spoken by all citizens, yet the school system, by and large, does not use that language as the main language of instruction and examination' (DeGraff 2016: 2).

As recently as 2016 the students of a Catholic school in Assam (India) were barred from having their lunch and made to stand for 90 minutes for breaking the institution's rule of speaking only in English (Karmakar 2016). Elsewhere in India, teachers at a Catholic school put a board around the neck of students violating a standing order to 'speak only in

English in the school'. The board read 'I never speak in Telugu' (India Study Channel 2009).

This does not apply only to students. In The Netherlands parents are also told not to speak their home language with their children when they come to school. They may not speak the dominant language well or at all, yet these adults must refrain from communicating with their children in their mother tongue – even if they need them to interpret what the teachers are saying.

Dr Emmanuelle Le Pichon-Vorstman, a French national, completed her doctoral thesis in The Netherlands on plurilingual children in international schools, measuring the benefits on their intellectual, emotional and social health. In 2011 she was an assistant professor at the University of Utrecht, and leading a project on children with a migration background. One day, picking her children up from school, a teacher at the Dutch school asked her with some embarrassment not to speak French to them in the school yard or classroom. When Dr Le Pichon-Vorstman enquired as to the reason, the teacher hesitantly said that the same request was being made of the Moroccan parents. They felt it was unfair that they could not speak their language to their children if she was allowed to speak French. The school administration told her: 'You are the guests, we are the hosts. You have to abide by our rules' (Rutu Foundation 2020: 7-8).

Other examples of parents being told not to speak their home language to their children at school include a Turkish-speaking parent 'who [after participating in a bilingual education programme] felt welcome at the school, being allowed to use her own language, which had not been the case in the past' (Kambel 2019: 21). Also, a case cited by Smits (2018: 57):

Teacher Marianne mentioned that ... the parents of the children with an ethnolinguistic diverse background speak a different language than Dutch at school. She mentioned the lunch committee, [which consists] of Turkish women, as an example. She asked the women to talk Dutch with the children at school ... This means that even parents should obey the rule when they are at school.

Inside the classroom, linguistically minoritised children may be lost or confused. School books, lessons, homework are all in the dominant language, and children are expected to catch up quickly. If they do not, they are treated as if they are stupid or lazy for not keeping up. In fact, schools expect minoritised children to fall behind if they speak in their mother tongue.

Born in Guerrero, Mexico, the author Reyna Grande came to the United States as an undocumented child immigrant. On her first day at school in 1985, realising that she did not speak a word of English, the fifth-grade

teacher pointed to the farthest corner of her classroom and sent her there. She ignored Grande for the rest of the year. Grande (2019) said:

The message I received was that if I wanted to be seen and heard, I'd have to speak English. As I sat in that corner day after day, invisible, the trauma of realising that I spoke the "wrong" language weighed on me and my head swam with debilitating thoughts: I am broken. I am wrong. I am not enough.

Schools use various techniques of humiliation, restriction, or exclusion to pressure children to forget their mother tongue language and assimilate. In Haiti the punishment for children caught speaking Kreyòl is called a 'symbol'. Students must affix a symbolic item such as a tag on their shirt or hang something around their neck. A student who is given the 'symbol' will then have to catch another student speaking Kreyòl, and pass it to the next victim. This practice was inherited from the French who used it in the nineteenth and twentieth centuries in various regions to eliminate local languages, such as Basque, Provençal, Breton and Occitan (DeGraff 2016: 3).

In Uganda punishment included putting children outside wearing dirt sacks, sometimes filled with dead animals. As in Haiti, children will have to find someone else speaking their mother tongue and pass the sack to them. They are also tasked with compiling lists of fellow pupils speaking in their mother tongue for the teacher to punish (Bwesigye bwa Mwesigire 2014).

Stories of harsh beatings are common from indigenous residential schools in, for instance, Canada, the United States and Australia. Among others, in Fournier & Crey (1997: 62):

Sister Marie Baptiste had a supply of sticks as long and thick as pool cues. When she heard me speak my language, she'd lift up her hands and bring the stick down on me. I've still got bumps and scars on my hands. I have to wear special gloves because the cold weather really hurts my hands. I tried very hard not to cry when I was being beaten and I can still just turn off my feelings. And I'm lucky. Many of the men my age, they either didn't make it, committed suicide or died violent deaths, or alcohol got them. And it wasn't just my generation. My grandmother, who's in her late nineties, to this day it's too painful for her to talk about what happened to her at the school (Musqueam Nation former chief George Guerin, Kuper Island school).

Unfortunately, corporal punishment is not a relic of the past, but continues in several countries.

Bwesigye bwa Mwesigire (2014) from Uganda related that 'whenever Evas Kwarisiima, 13, speaks Runyankole, her native language, at school, she's forced to lie down while a teacher beats her backside'. 'I feel sad when that happens, and I cry', says the student at Mbarara Mixed Primary School. 'But I also know that I have broken the school rules, so I try to speak

English, but sometimes I slip into Runyankole because [it] comes easily to my tongue'. 'Such punishments occur because the school wants students to have a good understanding of English, especially as they prepare to be tested in the language', says Esau Gariyo, a teacher at Mbarara Mixed Primary School.

Children may even be expelled from school (DeGraff 2016: 3). In 2013 a high school student in The Netherlands was expelled for hanging up an invitation to a party in the Turkish language, and for speaking Turkish at school. The student filed a lawsuit, invoking the prohibition of discrimination contained in the Constitution and in international human rights law. The school argued that allowing students to use their home language would result in closed groups, which would harm the social cohesion of the school. Fostering mutual respect within the school community, according to the school, means 'that one communicates as much as possible in the language that everyone knows ... Only in this way, contradictions can be bridged, differences can be grasped, and this is how different cultures actually come into contact with each other' (Amsterdam District Court 2013: para 3.3). The Court agreed with the school that, given its vision of world citizenship, 'it is essential that pupils use Dutch as a language both inside and outside the classroom so that there is as little seclusion as possible by origin. At a school with many pupils with different origins this is to be seen as a legitimate interest' (Amsterdam District Court 2013: para 3.3). According to the Court, the right of each person to speak their mother tongue should, in principle, weigh heavily. 'However, this does not mean that it is an absolute right to do so under all circumstances, certainly not at school where education is taught in Dutch' (para 4.5). The Rutu Foundation (2020: 9-10) has provided a more extended discussion of the case. Having won the case, the school in question currently maintains its official policy that only Dutch is allowed to be spoken 'in the school building, in the schoolyard and near the school' (Rutu Foundation 2020: 10).

Restrictions on speaking minoritised languages inside school buildings may be by explicit fiat, for instance, that notifications must be in official school languages only. Or, they may be passive, for example, where no other language is visible anywhere, and it is not questioned – regardless of the number of minoritised speakers in the school community.

Another example of passive discrimination is the lack of interpretation provided to parents during parent-teacher meetings. In some cases, teachers even prohibit parents from translating for each other (Bezcioglu-Göktolga & Yagmur 2018: 10):

Most parents are critical that teachers are intolerant of parents who have poor Dutch skills. They do not want Turkish parents to interact in Turkish among themselves, not even to translate what the teacher says; as a result,

the possibility of parental involvement decreases. One mother ... criticised teachers because they 'turn to English easily when somebody does not understand them, but they do not let me do Turkish translations when a mother does not understand what the teacher says.

Finally, a more pernicious form of language-based exclusion, restriction and punishment in education occurs in the curriculum, for instance, with textbooks that ignore the other languages spoken by students; when students are not permitted to discuss subject matter amongst one another in their home language, or when they are denied access to translation tools, for example during mathematics or science classes.

Despite the lack of data showing the extent to which these practices occur, language-based exclusion, restriction and punishment in education are far more common than schools will admit. A recent study about teacher beliefs and attitudes on multilingualism in three Dutch cities found that 'the vast majority of teachers would not allow their pupils to speak their mother tongues in class' (Di Maio 2019: 37). Even where it is illegal, the state often does not intervene, and state actors are rarely penalised. There is little or no recognition of the human rights issues at play.

Policies behind language exclusion are not necessarily motivated by an intent to annihilate cultural identity. The policy is often pursued in the purported best interests of the child. There is a persistent belief among educators, policy makers, as well as many parents, that immersion in the dominant language and 'forgetting' one's mother tongue is the only way to achieve economic and social success. Leaving aside the inherent biases in this view, as mentioned in the introduction, research simply does not support this position. Indeed, studies consistently reveal the opposite. Students who are allowed to learn through their mother tongue in multilingual education programmes better understand academic concepts, possess greater confidence, and have improved learning outcomes.

3 Rights of the child and aims of education

Looking at the international instruments in force regarding children's rights in education, the United Nations Convention on the Rights of the Child (CRC) is a source of legal obligations for the vast majority of states (with 196 state parties, except the United States). It encompasses four core principles under articles 2, 3, 6, 12 respectively: non-discrimination; the best interests of the child; the right to life, survival and development; and the right to express one's views and have them count. The right to education on the basis of equality is fundamentally protected under article 28, and similar safeguards are to be found in several other core human rights treaties as well as other international instruments. In particular, article 26 of the Universal Declaration of Human Rights (Universal Declaration);

article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR); article 5(e)(v) of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD); article 10 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); and the UNESCO Convention Against Discrimination in Education (CADE).

The aims of education – expressly articulated in article 29(1) of CRC and in other treaties (for instance, article 13(1) of ICESCR) – are directed to the holistic development of the child's full potential. Specifically, article 29(1)(c) provides that education shall be directed to developing 'respect for the child's parents, his or her own cultural identity, *language* and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own' (emphasis added). Rooted in the mentioned four core principles, the aims of education complement and reinforce various other rights, including the rights and responsibilities of parents (articles 29(1)(c), 5 and 18 of CRC); freedom of expression (article 13 of CRC; article 5(d)(viii) in conjunction with articles 1 and 7 of CERD; article 19 of the International Covenant on Civil and Political Rights (ICCPR); and the linguistic and cultural rights of children belonging to indigenous and minority groups (article 30 of CRC).²

According to the United Nations (UN) Committee on the Rights of the Child, the aims of education must be 'child-centred, child-friendly and empowering' and 'educational processes must be based upon the very principles enunciate[d] in the CRC' (CRC/GC/2001/1: para 2).³ Inasmuch as

[t]he goal is to empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence, '[e]ducation ... goes far beyond formal schooling to embrace the broad range of life experiences and learning processes which enable children, individually and collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society' (CRC/GC/2001/1: para. 2).

CRC acknowledges that linguistically minoritised and indigenous children face significant challenges in exercising their rights. Article 30, thus, makes it clear that a child belonging to a linguistic minority or indigenous group has the right 'to enjoy his or her own culture, to profess and practice his or her own religion or to use his or her own language', and requires states

² See also CRC/GC/2001/1, paras 6 & 11; CRC/C/GC/11, paras 48 & 67.

³ See also E/C 12/1999/10, on the aims of education under art 13(1) of ICESCR.

to ensure that this right is protected against denial or violation (CRC/C/GC/11: para 17).⁴

To be meaningful, effective, and consistent with international human rights law, education has to be comprehensible to the child. To fulfil the right to an education of good quality without discrimination of any kind, the state must ensure that the learning environment, as well as the teaching and learning processes, are consistent with human rights (CRC/GC/2001/1: para 22). Children have a right to be heard, have their views respected, and be consulted on matters affecting them (CRC/C/GC/11: paras 38 and 39). The UN Special Rapporteur on Minority Issues, Fernand de Varennes, has noted that ‘teaching children in a language other than their own is not education of the same quality as that of children who are taught in their mother tongue’ (De Varennes 2020: para 48). These disadvantages constitute direct discrimination on the ground of language, or indirect discrimination on the grounds of ethnicity or race (De Varennes 2020: para 53). Likewise, prohibiting the use of home languages anywhere on school grounds constitutes both direct and indirect forms of discrimination.

4 European context and its legal framework regarding language-based exclusion in schools

The European context provides the most extensive framework for the protection of minority languages in education. Unfortunately, as discussed below, none of the instruments directly addresses language-based exclusion in schools. When it comes to education, the focus is on the right of minorities to receive instruction in their own languages.

Most of the regional instruments and policy directives that constitute the core of this framework derive from the Council of Europe (CoE), whose mission is to promote human rights, democracy and the rule of law and to develop common responses to political, social, cultural and legal challenges in its member states. Within this system, the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (European Convention) can play a relevant role. Additionally, core instruments of the CoE relating to language rights of minoritised students include the (Revised) European Social Charter (1996); the European Charter for Regional or Minority Languages (1992); the Framework Convention for the Protection of National Minorities (1994); and the European Convention on the Legal Status of Migrant Workers (2007).

It should be noted that there is a dichotomy between protections that apply to migrants and those that apply to national or historical minorities

4 Noting also the similarities with art 27 of ICCPR, CCPR/C/21/Rev.1/Add.5, paras 6.1 & 6.2; and CRC/C/GC/11, para 18, A/52/18, annex V.

(including, for example, Roma and Sinti). McDermott (2017: 605) has written about the 'remarkable lack of engagement with the position and status of immigrant languages' in Europe. The nature of this disparity has been framed in terms of 'tolerance oriented rights' (of migrants) versus 'promotion oriented rights' (of national minorities) (McDermott 2017: 608).

Focusing on the European Convention, the European Court of Human Rights has been more active than any other regional human rights body regarding language-related cases, and has a significant number of opinions relating to minority language instruction (Paz 2013: 157-218). While language rights are not explicit in the European Convention, general principles of non-discrimination on the basis of language are safeguarded under article 14 and also, for example, under articles 8, 9, 10 and 11. As such, language rights have been discussed in connection with the prohibition of discrimination, the right to respect for private and family life, freedom of expression, freedom of thought, freedom of assembly, the right to education, and the right to a fair trial (Schmalz 2020: 20 101-119). Nonetheless, describing 'a regime of linguistic tolerance' that focuses on civic, and not cultural, rights, McDermott (2017: 610) identifies the greatest flaw in the European Convention, namely, that '[i]t takes the majority culture, including the linguistic culture, of each signatory state as a given "norm" and fails to engage adequately with the role that cultural and linguistic exclusion can have on an individual's ability to contribute to wider civil and political life'.

The European Charter for Regional or Minority Languages (ECRML) provides the legal protection of languages and multilingualism as cultural heritage, and was the first document to approach language as a human rights issue in itself. It openly supports the elimination of any distinction, exclusion, restriction or preference intended to discourage or endanger the maintenance or development of a regional or minority language (article 7(2)). Article 8 calls for state parties to make available at all levels education in the relevant regional or minority languages, to train teachers, and to establish monitoring bodies to supervise and track progress towards these undertakings, and to draft public reports. The ECRML, however, expressly excludes the languages of migrants (article 1(a)); thus, having a historical tie to the territory is the criteria for recognition as a minority (McDermott 2017: 611). It also requires states, upon ratification, to declare the languages that they recognise and the level of support for each. This sets up 'a pecking order of minority languages within states' (McDermott 2017: 611).

The Framework Convention for the Protection of National Minorities (FCPNM) promotes the rights of national minorities, and expressly recognises the right to use one's mother tongue in public and private life

(article 10). Despite its limitations (its lack of a core definition leads to confusion as to who it is designed to protect, and its ‘claw-back clauses’ – for instance, article 12 which promotes the fostering of education and research on minority cultures and languages, to be provided ‘where appropriate’), McDermott considers the FCPNM the most effective of the three instruments thus far discussed, because it has opened the space for gradual recognition of migrants’ languages (2017: 614, 616). While he notes that the related Advisory Committee has been reluctant to comment explicitly on the status of minority languages (McDermott 2017: 615), it has published two relevant Commentaries, one in 2006 on Education and the other in 2014 on Language Rights.

Finally, the European Convention on the Legal Status of Migrant Workers (ECSMW) has a strong provision on teaching migrant workers’ children in their mother tongue (article 15), requiring state parties to ‘take actions by common accord to arrange, so far as practicable ... special courses’, although this Convention is limited to migrant workers from CoE member states.

In addition to these regional instruments, there are various policy directives and recommendations, issued by the CoE’s constitutive bodies or in the context of the European Union (EU), which are relevant to linguistic rights in education.⁵ In the context of the Organisation for Security and Cooperation in Europe (OSCE), the High Commissioner of National Minorities does important work to promote the preservation of national minority languages, *inter alia*, through multilingual education projects. In particular, we note the Hague Recommendations Regarding the Education Rights of National Minorities (1996) and the Oslo Recommendations Regarding the Linguistic Rights of National Minorities (1998).

These are all constructive in urging states to call attention to inequalities and disparate treatment of minoritised language groups, and to enhance measures to improve language learning in and the teaching of minority languages (even if non-European migrant languages are largely excluded). None, however, specifically addresses the problem of language-based exclusion or punishment in education.

5 CoE Parliamentary Assembly Recommendation 1740 (2006) on the place of mother tongue in school education. CoE Recommendation CM/Rec(2014)5 on the importance of competences in the language(s) of schooling for equity and quality in education and for educational success. EU Council Directive 77/486/EEC on the education of migrant children (1977). EU Council Directive 2000/43/EC on implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (2000). European Commission, Green Paper, Migration & Mobility: Challenges and Opportunities for EU Education System (2008). EU Council Recommendation (2019/C 189/03) on a comprehensive approach to the teaching and learning of languages (adopted on 22 May 2019).

5 Relevant state obligations under international human rights law

Accessibility in education is recognised as a critical element of the right to education. The first UN Special Rapporteur on the Right to Education (1998-2004), Katarina Tomaševski, emphasised that the challenge of access from a rights-based policy perspective 'requires halting and reversing exclusionary policies and practices, not only countering their effects' (Klees & Thapliyal 2007: 497-510). Also, the third UN Special Rapporteur on the Right to Education (2010-2016), Kishor Singh, highlighted that '[c]oncerns relating to equality of opportunity in education are understood as relating both to guaranteeing equal opportunities in access to different levels of education as established by human rights norms, as well as equal opportunities to evolve within education systems' (Singh 2011: para 8).

Under international human rights law, states have the freedom to designate their national language, to put in place policies aimed at teaching all students the national language(s) and ensuring education in that language. Nonetheless, as highlighted by the former UN Special Rapporteur on Minority Issues, Rita Izsák-Ndiaye, a

human rights approach focuses on the differences in treatment between individuals, not languages. It is therefore the potential negative impacts, such as disadvantage or exclusion, on individuals rather than languages that are considered in assessing the reasonableness of any language preference in the policies, support or services provided at all levels by State authorities and actions (Izsák 2017: 13).

For the most part, unfortunately, states have failed to address the critical role that the suppression of home languages plays in the perpetuation of these disparities in education. International (human rights as well as historical peace) treaties and norms recognise that respecting language rights is key to promoting equality and non-discrimination, identity, dignity and the development of the child's full potential (Izsák 2017: 4, 6, 18; De Varennes 2020: paras 34-40). Yet, it has been estimated that 200 million children are educated in a language that they do not understand (UNESCO 2016). In the context of the EU, only six European countries provide mother tongue education to newly-arrived migrant children (European Commission 2017: 12) and countless others are prohibited from speaking their home language on a daily basis, instilling lifelong shame and embarrassment for what, in fact, is an advantage and an enrichment.

Article 4 of CRC requires states to adopt positive measures for the implementation of the rights enshrined in the Convention. In relation to the non-discrimination obligation, the Committee on the Rights of the Child has highlighted, in particular, the need for the collection of disaggregated data that identifies vulnerable children (individually and in groups) and discrimination or potential discrimination (CRC/C/GC/11: para 24).

Moreover, the UN Sustainable Development Goals Thematic Indicator 4.5.18 calls on states to report on the percentage of primary school pupils who speak the school's language of instruction as their first language or mother tongue (UNESCO Institute for Statistics 2016). It is worth noting that statistical data obtained by the People's Ombudsperson's Office on the number of Roma and non-Roma children in four schools was an important piece of evidence and key to the decision of the European Court of Human Rights in *Oršuš & Others v Croatia* (European Commission Network of Legal Experts in Gender Equality and Non-Discrimination 2020: 69).

Therefore, one action that states should take immediately is to collect data on the linguistic demography of their populations. With such data, states will not as easily ignore the sizeable linguistic communities in policy decisions, and will be better able to identify and plan for the needs of particular language communities (McDermott 2017: 618). Further, and more importantly, states must collect data on the *lived experiences* of linguistic minoritised groups – including national minorities, indigenous peoples, and migrants – in the education system. This is an important means of identifying *de facto* discrimination: acts and patterns of exclusion, and prevention and punishment of linguistic minorities who speak their mother tongue on school grounds.

6 Changing the tide: The Language Friendly School initiative

The Language Friendly School was initiated by the Rutu Foundation and developed in collaboration with Dr Emmanuelle Le Pichon-Vorstman (University of Toronto) in 2019. Its dual objectives are to (a) eradicate the practice of punishing school children for using their home language at school and (b) create language-friendly learning environments for all children.⁶ Because language exclusion and suppression is so widespread globally, a concept was developed that could be applied to all types of schools, regardless of their geographic location, pedagogic strategy, (religious) affiliation, or status as a public or private school.

The Language Friendly School is a whole school approach requiring the active participation of all school community members: students, parents and staff. Within a Language Friendly School, everyone welcomes and values all languages spoken by the students, the parents, teachers, teacher assistants and administrators, including the supporting staff. Schools are free to decide how they want to reach this goal. At the very minimum, Language Friendly Schools commit to not punishing children who speak their mother tongue. For some schools this may already be a significant step. By connecting with other Language Friendly Schools, educators

6 See <https://languagefriendlyschool.org>

can share good practices and teachers can be inspired to take a next step forward (see Le Pichon-Vorstman, Siarova & Szőnyi 2020: 40) on the Language Friendly School and other examples of cross-border school networks to build and sustain innovative learning environments).

After signing up for the Language Friendly School label, schools have two years to develop, implement and evaluate their language-friendly school plan. Relevant steps are suggested to the schools in this regard, including making an inventory of the languages spoken at school and appointing a language policy coordinator. Also, an optional menu of strategies and approaches is provided in the form of a Language Friendly School Roadmap. As of June 2020, there are three schools that have formally received the Language Friendly label (two in The Netherlands and one in Canada) while 12 other schools are in the process of becoming Language Friendly Schools. They include small schools in culturally diverse neighbourhoods; elite international schools; large public schools, both primary and secondary education. What all have in common are school leaders who recognise the importance of creating inclusive schools where all children with their full identities are welcomed. As one principal stated, 'I may not understand everything about multilingual education, but I just look at the kids. When I see how they radiate when they are asked to say something in their mother tongue, I know enough.'⁷

7 Conclusion

The exclusion of mother tongue languages is rationalised on various grounds. One is that it hinders students' integration into mainstream society. Another is that competition between languages and continuing to use the mother tongue language in school or at home reduces students' exposure to the school language. There is no validity in these theories, according to Jim Cummins, renowned expert on literacy development in multilingual school contexts (Cummins 2019: 1):

In a large number of contexts, schools ... systematically and intentionally undermine the potential of immigrant-background and minoritised students to develop multilingual abilities. This undermining of multilingualism operates either by explicitly prohibiting students from using their home languages within the school, or through ignoring the languages that students bring to school (benign neglect).

Cummins argues that the research reveals no consistent relationship between minoritised students' academic achievement in the dominant/school language and use of their mother tongue in the home or in the school. On the contrary, 'several research syntheses have highlighted the

7 Statement of Jan Bakker, Principal, St. Janschool, Amsterdam (2019) 14 November, at the formal ceremony to become the first Language Friendly School together with the DENISE school.

positive academic outcomes of bilingual programs for minoritised students, as well as the feasibility of implementing multilingual or translanguaging pedagogies in the mainstream classroom' (Cummins 2019: 1).

Another rationalisation for mother tongue exclusion is that, in the interests of national identity and citizenship, multilingualism and civism are at odds, mutually exclusive (May 2014: 222-223). Civic education focusing on diversity, democratic values and the rule of law, as enshrined in national constitutions and international human rights instruments, is highly important. However, civic integration is sometimes used as a justification against inclusion. Schools and states have an ideological blind spot in failing to understand how the emphasis on a dominant national language to the exclusion of all other mother tongues ultimately undermines the very objective of integration.

If children are ostracised, excluded or punished because they have not fully learned the dominant language, they internalise the notion that they are slow or poor learners. It is well settled that children learn best in their home language and, when allowed to do so, can more easily learn other languages and subjects. The UN Special Rapporteur on Minority Issues, Fernand de Varennes (2020: para 52), has emphasised just this point in a recent report:

If persons belonging to linguistic minorities have a responsibility to integrate into the wider society, then it would seem that this can be best achieved through effectively teaching them in their own language because of generally better outcomes from education in one's language, even in acquiring fluency in the official language.

One of the impediments to realising this in education policy is that the practices are so ingrained that parents and students have come to believe this is the 'normal' way of doing things at school. The impacted group, of course, is either newly arrived, or part of severely marginalised communities, who lack information and lack the language tools to express themselves. Parents especially may feel helpless to take action, fearing retaliation from teachers or the school administration. Because parents do not notify institutions (state and civil society) charged with protecting children's and minorities' rights, these organisations and state agencies may be unaware that such practices occur. Parents generally have little knowledge of states' legal obligations to pursue policies and take concrete measures to ensure the development and protection of all persons against language-based punishment and exclusion in education.

Unfortunately, there also is little awareness among teachers and school administrators that such incursions of the rights of students and their parents may inflict harm. Many teachers are genuinely convinced that they are acting in the best interests of the child.

Language-based exclusion has a long history. It is deeply rooted in colonialism and nation building on the basis of notions of class and racial superiority. This continues today, but remains unrecognised as a human rights problem. The Language Friendly School initiative has emerged as a way to redress the deep inequalities in education and help bringing the Sustainable Development Goals a little closer. However, this cannot be left only to schools. Governments need to fulfil their international human rights obligations, and human rights advocates need to hold them accountable.

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