

Fulfilling the right to education for minority and indigenous children: where are we in international legal standards?

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Education is the vehicle by which a child grows to be an independent adult. It is also the means by which cultural values are transmitted and the child is bound to his or her family, community and society. The right to education has a special value as it enables children to increase their chances of having their other rights fulfilled. According to Katarina Tomaševski, the former UN Special Rapporteur on the right to education, the right to education 'functions as a multiplier, enhancing all rights and freedoms when it is guaranteed while jeopardizing them all when it is violated'.

The realization of the right to education takes on a double importance for minority and indigenous children. First, because these children are often socially excluded and discriminated against, the 'multiplying' effect of the right to education is of particular relevance to break or perpetuate the cycle of exclusion and marginalization. Second, by enabling the transmission of values and culture, the right to education has a key function in the preservation of minorities' and indigenous peoples' cultures, hence their existence as distinct groups.

Culture indeed plays a defining role in identifying national or ethnic, religious and linguistic minorities, and indigenous peoples. While there is no internationally agreed definition of these terms, it could be argued that the main characteristics of these groups lie not in their numerical inferiority, but in their non-dominant status in national society, their cultural distinctiveness and their members' sense of belonging to the group.

The Convention on the Rights of the Child (CRC) recognizes the primary importance of culture. Under the CRC, states have an obligation to preserve and protect the child's cultural identity, as an essential element for his or her development. The Preamble recognizes the 'importance of the traditions and cultural values of each people for the protection and harmonious development of the child'. Article 8 provides for the right of the child to preserve his or her identity. This provision includes not only the administrative components of identity such as name and nationality, but also cultural ones. Article 20 requires states to pay due regard to the 'desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background'. Furthermore, Article 23 provides for the rights of children with disabilities to achieve the 'full-

est possible social integration and individual development, including his or her cultural and spiritual development'. These provisions complement Article 31 of the CRC, for a child's right to participate in cultural life; and Article 30 for the recognition of the rights of children of minorities and indigenous children to enjoy their culture, practise their religion and use their language. Hence, culture is an essential dimension for the implementation of the CRC, including its guiding principles of non-discrimination; best interests of the child; right to life, survival and development; and right to participate.

It is thus well-acknowledged within the international framework that culture is a key element for the development of the child. The conditions under which cultural identity is protected and promoted and the extent of states' obligations in this regard have been progressively defined in international standards.

Following the Second World War, a restrictive interpretation of the principle of non-discrimination prevailed. At the same time, culture was understood primarily as a private matter. However, international standards have progressively acknowledged the importance of taking positive measures for the recognition of cultural differences in the public sphere, including with respect to the right to education. However, indigenous peoples and minorities exhibit significant differences and have diverse aspirations. For this reason, two separate legal regimes have emerged. While necessary, the recognition of their specific rights includes some risks and challenges. It is therefore equally important to examine how the human rights framework has addressed these concerns.

Cultural differences and the right to education: from formal to real equality

The recognition of special rights for minorities and indigenous peoples in the international framework, particularly in a European context, has always met with suspicion. It has been marked by a tension between three elements: the importance of respect for cultural diversity; understandings of the principle of non-discrimination; and the need to ensure peace and stability within states. This explains why international standards bear the influence of historical events and have evolved over time, depending on the weight awarded to each of these elements.

Starting with the religious wars of the sixteenth century in Europe, religion, and especially its

recognition in the public sphere, has been apprehended as a factor of conflict. A state's neutrality in terms of religion was seen as the primary means of solving and preventing these conflicts. In this way, religion, and more broadly cultural identity, has been considered a private matter of no concern to the state. According to the liberal theory, only one legal regime applies to all. If the state were to allow specific rights to some individuals or groups, it would breach the equality principle, which could potentially threaten peace and stability.

But the liberal theory has faced considerable criticism. What is mainly questioned is the extent to which the state can be culturally neutral. It has been argued that states' cultural neutrality is an illusion. Far from guaranteeing equality among citizens, it often marginalizes and excludes minorities by failing to address their specific rights and needs. According to this view, public institutions necessarily represent a majority culture, putting minority cultures at disadvantage.

With the outbreak of the First World War attributed to minority issues, provisions were included in peace treaties in 1919–20 for the protection of minority rights. These treaties emphasize the equality of all citizens before the law. They also recognized the right of minorities to establish and manage at their own expense charitable, religious and social institutions, schools and other educational establishments, as well as the right to use their own language and to exercise their religion freely therein. A similar provision was reviewed by the Permanent Court of International Justice in the *Minority Schools in Albania* case of 1935, which significantly influenced the future regime for the right to education of minorities and indigenous peoples.

In this case, the Greek government was contesting the closure of private schools in Albania, which meant that members of the Christian Greek minority could not retain their schools. The Court stated that this constituted a breach of equality, because it was depriving the minorities of their own schools, while the majority would continue to enjoy the schools provided by the state system. The Court concluded that the treaty stipulation 'ensures that the majority shall not be given a privileged situation as compared with the minority'. Furthermore, the Court recognized the special role of education in the preservation of minority cultures, hence of the group itself. As stated by the Court: 'there would be

Right: Chakma Children at the Motchmara Para centre in Rangamati, Chittagong Hill Tracts, Bangladesh. *Din Mohammad Sibby/UNICEF.*

no true equality between a majority and a minority if the latter were deprived of its own institutions, and were consequently compelled to renounce that which constitutes the very essence of its being as a minority.'

However, it was the liberal approach focused on the rights of the individual which significantly influenced the international human rights system largely defined in the aftermath of the Second World War. On the one hand, the outbreak of the war was associated with the use of minority issues as a pretext for aggression. On the other hand, the Second World War was characterized by genocide and crimes against humanity, by definition aimed at wiping out entire minorities. As a result, there was an imperative that individuals belonging to minorities needed to be protected from discrimination and its possible consequences.

Accordingly, international standards adopted after the Second World War emphasize the state's responsibility to protect individual rights and freedoms, but avoid recognizing special rights for minority groups as such. At the core of this system is the principle of non-discrimination, mentioned in virtually all human rights treaties. This principle has initially been understood as a 'negative' obligation for states, in other terms, an obligation not to intervene. The approach is reflected in provisions on minorities and indigenous peoples. Article 27 of the International Covenant on Civil and Political Rights (ICCPR) states that 'persons belonging to ... minorities shall not be denied the right to enjoy their own culture'. Article 30 of the CRC, on the rights of children belonging to minorities or who are indigenous, also uses a negative construction. Under these provisions, the state has the obligation to make education services available to all children without discrimination.

As a consequence, the recognition of a positive obligation to protect and promote cultural identity in the international legal framework for minorities and indigenous peoples has resulted from the adoption of posterior instruments, as will now be examined. It has also been induced by the proactive position of treaty bodies in charge of monitoring these instruments and guiding their implementation. The



idea was to go beyond formal equality and focus on real equality.

In his book *Multicultural Citizenship*, Will Kymlicka, a political philosopher and authoritative voice on multicultural issues, seeks to reconcile the importance of culture in the individual's development with the recognition that individuals should have the freedom to review their choices, assess their beliefs and question their values. Nevertheless, to be able to make choices, individuals need to have options. As Kymlicka puts it: 'our societal culture not only provides these options, but also makes them meaningful to us'. According to this view, cultural membership is essential to individuals' self-identity. In this context, if a culture is not respected, the dignity of its members is also threatened. At the group level, failure to protect cultural rights can also lead to the disappearance of the group and/or of its distinctiveness.

This is the approach that has progressively prevailed in the interpretation of the principle of non-discrimination, in particular with respect to the right to education by international bodies and in political instruments. Developments in this area were particularly substantial in the 1990s, following the adoption by the UN General Assembly of the

UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UNDM) in 1992.

With the increased recognition that non-discrimination alone is not sufficient in the realization of the rights of minorities and indigenous peoples, international instruments have acknowledged the need to take positive measures to ensure real equality. Notably, however, the provision of culturally sensitive education is not fully recognized as a state obligation under international law. Rather, it is identified as one of the important means to be considered for the realization of the right to education for minorities and indigenous peoples.

The UNDM, in its first article, provides that states should adopt appropriate measures to protect and promote the cultural identity of minorities within their territories. The recognition of the importance of preserving minority cultures and their contribution to enriching the society as a whole has inspired the interpretation of existing treaty provisions. These interpretations highlight states' positive obligations to support minority cultures, including in the area of education.

After 1992, several treaty bodies have introduced General Comments recognizing the importance

of adopting special measures to ensure the equal enjoyment of rights by members of minorities and indigenous peoples. In its General Comment No. 23 on the rights of minorities, the UN Human Rights Committee states that the rights contained in Article 27 imply safeguarding minority cultures, languages or religions. It therefore recognizes that: 'positive measures by States may ... be necessary to protect the identity of a minority and the rights of its members'. The same document also emphasizes the value of cultural diversity and states' specific obligation to foster it. The position of the Human Rights Committee has influenced the approach of additional treaty bodies in relation to education.

A similar stance is indeed reflected in the UN Committee on Economic Social and Cultural Rights' (CESCR) General Comment No. 13 on the Right to Education. Outlining the essential features of education systems, the CESCR explains that: 'education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings'. Reviewing specific legal obligations, the CESCR asserts that states must: 'fulfil (facilitate) the acceptability of education by taking positive measures to ensure that education is culturally appropriate for minorities and indigenous peoples, and of good quality for all'.

Mother tongue education is considered an essential aspect of high-quality appropriate education and is of concern to both minorities and indigenous peoples. Various studies have shown that children learn better if education is initially provided in their mother tongue, with skills progressively transferred as they learn the dominant language. Furthermore, a UNICEF study has found that when the cultural background of students is integrated into the curriculum and teaching language, children have higher rates of success and enjoy better self-esteem than when they attend schools where only the dominant culture and language are recognized. Intercultural and bilingual education increases community mobilization and participation in children's schooling due to the use of the mother tongue and the emphasis on cultural identity.

Both minority and indigenous rights instruments recognize the value of mother tongue education. The UNESCO Convention against Discrimination in Education mentions the right of national minorities to use or teach their own language, but adds

to this provision a set of strict conditions. With a broader scope, the UNDM provides in its Article 4 that: 'States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.' The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) also specifies that indigenous peoples have the right to establish institutions providing education in their own language.

While the UN International Covenant on Economic, Social and Cultural Rights (ICESCR) does not contain any reference to mother tongue education, the treaty monitoring body has clearly recognized its importance. In its latest reporting guidelines adopted in November 2008 the CESCR requests state parties to 'indicate whether minority and indigenous children have adequate opportunities to receive instruction in or of their native language'. Additional instruments dealing with specific minority groups such as the Roma also mention the importance of mother tongue education.

There is, therefore, a general movement towards the acceptance in international law that the fulfilment of the right to education for children of minorities and indigenous peoples requires special measures. This movement draws from the progressive recognition of the importance of the preservation of cultural differences within a country and the assurance of equality for all members of the society. However, the content of these rights and related state obligations diverge for these two groups.

Minorities and indigenous peoples: different approaches

Although it is now recognized that the realization of genuine equality for minorities and indigenous peoples can imply differentiated treatment to ensure that their specific needs are addressed, the nature of these measures may not be the same for both groups. Minorities and indigenous peoples are diverse categories and this is reflected in different legal regimes developed in international law.

Origin: different aspirations for minorities and indigenous peoples

The international legal framework applicable to each category echoes the various nature and aspirations of indigenous peoples and minorities.

Below: Playtime at a secret school in the Tak Province of Thailand. Buddhist, Muslim and Christian children of various ethnic backgrounds are provided with learning, mentoring and sometimes accommodation by a Burmese exiled women's organization. *Dean Chapman/Panos.*

The fundamental difference between indigenous peoples and minorities lies in indigenous peoples' ties to their territory of origin or specific livelihoods when nomadic. In many indigenous belief systems, land has a symbolic and spiritual value, as well as a social and economic function within the group, even for those who live outside of the homeland. As a consequence, indigenes as defined by the relationship to the land or livelihood for nomadic peoples impinges on all aspects of life. Asbjørn Eide explains in a working paper prepared with Erika Irene Daes for the former UN Sub-Commission on the Promotion and Protection of Human Rights that: 'the underlying assumption is that persons belonging to indigenous peoples have a predomi-

nantly indigenous identity'. From this consideration stem a number of important implications for the respective international legal regimes of both groups.

First of all, while minority rights are solely individual rights that can be exercised in community with other members of the group, indigenous rights also include rights to be exercised by the group itself. In the UNDM, the subject of rights is the individual member of the minority. Consequently, the wording of the Declaration, including its title, repeatedly refers to 'the rights of persons belonging to minorities'. This formulation is consistently used in international and regional instruments related to minority rights. Conversely, indigenous rights instruments principally refer to 'peoples'.

In spite of their individual focus, minority rights can be exercised 'in community' with others. Some of these rights are linked to the individual's belonging to a specific group. They are originally not aimed at enhancing the group itself, but rather stem from the recognition that, in order to be enjoyed by individuals, these rights require collective exercise. To the



contrary, for indigenous rights, the subject in most cases is the group. One of the main struggles of the indigenous movement has precisely been the so-called 's' battle, for the recognition of the rights of indigenous 'peoples' – and not 'people', implying that they apply to the group as a whole, and not only to its individual members. This approach has been reflected in International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. The Convention lists a set of peoples' rights while, when relevant, referring specifically to the 'members' of these peoples. Similarly, the subjects of rights in the UNDRIP are in most cases the peoples, rather than the individual. The UNDRIP makes a clear distinction in this regard. In its preamble, it recognizes and reaffirms that: 'indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples'. The recognition of collective rights eventually leads to a higher degree of autonomy for the group.

The right to self-determination of indigenous peoples is understood in international standards within the context of states' sovereignty. However, it is exercised through self-government rights, including with respect to the right to education. The UNDRIP provides in its Articles 3 and 4 that:

'indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.'

As a result, and as reaffirmed in additional provisions of the UNDRIP, indigenous peoples should have control over their institutions and states should obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them. These provisions echo the recognition in ILO Convention No. 169 of the 'aspirations of these peoples to exercise control over their own institutions, ways of life and economic development ... within the framework of the States in which they live'.

Interestingly, this approach has influenced the interpretation of the right to self-determination. The reporting guidelines of the CESCR adopted in November 2008 – i.e. after the UNDRIP – are a case in point. In relation to Article 1 of the ICESCR, the reporting guidelines make specific mention of indigenous peoples. They request information on: 'the ways and means by which the State party recognizes and protects the rights of indigenous communities, if any, to ownership of the lands and territories which they traditionally occupy or use as traditional sources of livelihood'. The guidelines also request states to 'indicate the extent to which indigenous and local communities are duly consulted, and whether their prior informed consent is sought, in any decision making processes affecting their rights and interests under the Covenant'. In contrast, minority rights focus on the right of minorities to manage their own institutions only to the extent that these are linked to the protection of their cultural, religious or linguistic identity, as will be examined in relation to education.

In connection with self-government aspects, one fundamental difference between minority rights and indigenous rights is the question of integration within the society. As Eide says in the working paper previously mentioned: 'Whereas the Minority Declaration and other instruments concerning persons belonging to minorities aim at ensuring a space for pluralism in togetherness, the instruments concerning indigenous peoples are intended to allow for a high degree of autonomous development.'

Consequently, the UNDM focuses on the participation by members of minorities in the larger society. Article 2 (2) provides that: 'persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life'. Another provision indicates that states should take measures: 'so that persons belonging to minorities may participate fully in the economic progress and development in their country'. In contrast, indigenous peoples' rights focus on the right of indigenous peoples to make their own decisions, and participation in the larger society is presented as an option. The UNDRIP specifies that indigenous peoples retain 'their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State'.

With regard to this issue, one characteristic of the minority rights framework is that it explicitly

provides for the possibility of members to opt out, whereas standards related to indigenous rights only implicitly recognize this possibility by reference to general human rights law. The UNDM provides that: 'no disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights' set forth in the Declaration. Similarly, the Council of Europe Framework Convention for the Protection of National Minorities (FCNM) of 1995 specifies that 'every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice'. Conversely, the UNDRIP contains a specific provision regarding the relationship between the individual and the group. Article 35 states that 'indigenous peoples have the right to determine the responsibilities of individuals to their communities'. However, this provision needs to be interpreted and implemented in conjunction with Article 1 of the same Declaration recalling human rights and fundamental freedoms contained in other international instruments (including of course minority rights).

The difference between the nature of individual minority rights and indigenous peoples' collective rights, and the self-government rights recognized with regard to indigenous peoples, affects the exercise of the right to education for both groups.

Effects on the right to education

The implementation of international legal frameworks for the right to education of minorities and indigenous peoples differs in many respects. In line with the above discussions, the right to education of minorities makes a larger space for taking part in the broader society, while education for indigenous children emphasizes separateness and self-government.

Minorities. International standards related to minorities tend to consider culture as one aspect of the identity of individuals belonging to these minorities. As a result, minorities' autonomy to manage their institutions is strictly related to the protection of their cultural, religious or linguistic identity – while for indigenous peoples self-government applies to all spheres. Because minority rights are individual, a number of global and regional instruments containing provisions on the right to education consistently place under the scope of the rights of individuals, in particular parents, the possibility

to manage and choose educational institutions for children. Consequently, while recognizing the right of minorities to manage their own educational institutions, this right is framed by several conditions. It is limited to the institution itself with due respect to standards applicable in the broader society; it should remain optional; and it does not imply any financial obligation on states. For example, the UNESCO Convention Against Discrimination in Education, in its Article 2, provides for the establishment of separate educational systems for religious or linguistic reasons, provided that: 'attendance at such schools [be] optional' and education respects national standards.

These educational institutions are understood as belonging to the private sphere, hence not entitled to public funding as of right. First World War peace treaty provisions specified that the minorities' right to establish and manage institutions was 'at their own expense'. This has been reiterated in the European context. While recognizing the right to freedom of thought and religion including teaching, the European Convention on Human Rights (ECHR) does not provide for the right to mother tongue education. The European Court has clearly stated that this right could not be inferred from existing provisions, as several studies have shown. In an important case regarding language education in Belgium, the Court has underlined that the Convention does not require that, in the sphere of education or teaching, states respect parents' linguistic preferences. This right has only been recognized to some extent in relation to continuation of education in the mother tongue when it had been available in the past. Furthermore, there is neither an obligation on states parties to subsidize private educational establishments, nor to create or subsidize schools which are in conformity with particular religious or philosophical convictions. However, if providing subsidies, the state cannot discriminate between various types of schools. This approach is reflected in other international instruments adopted by the Council of Europe. The FCNM, for example, recognizes the right for persons belonging to a national minority to set up and manage their own private educational establishments, but stipulates that the exercise of this right shall not entail any financial obligation for states parties.

Indigenous peoples. The recognition that indigenous peoples have a general right to control their



Left: Garífuna children outside their home on the Mosquito coast, Santa Rosa de Aguan, Honduras. *Neil Cooper/Panos.*

one hand to the definition of minorities and indigenous peoples, and on the other hand to its effect on children's right to education.

Identifying persons belonging to minorities and indigenous peoples. As previously mentioned, international law does not provide a definition of minorities and indigenous peoples. Yet, since group recognition is associated with specific rights, identification processes have a particular importance. Traditionally, groups have been defined by their members' 'sense of belonging' and 'self-identification'. Accordingly, it is for the individual or, as the case may be, for the group to identify oneself as a member of a minority or an indigenous people. Translated from the individual level to the society level, the issue of definition has intricate implications for states' policies and processes. States' obligations tend to be more complex in relation to the realization of the right to education of indigenous peoples than that of persons belonging to minorities, for whom this right falls under the scope of the private sphere. Beyond financial implications previously examined, the establishment and management of education systems imply the full involvement and consent of indigenous communities. This requires specific decision making processes that take into account indigenous traditions within the process itself. Conversely, for minorities, states' obligations focus on ensuring proper consultation, but education standards for minorities need to conform with national standards. Consequently, even if the rights of indigenous peoples and persons belonging to minorities are clearly spelled out, making them meaningful in practice requires being able to identify each category.

However, states' recognition of the existence of minority groups and indigenous peoples, and its implications for education policies, present additional challenges.

Challenges associated with separate education systems. The provision of culturally sensitive education for children of minorities and indigenous children can lead to the development of separate education systems. In these systems, children may have better opportunities to learn, think and thrive in an environment suited to their cultural needs. At the same time, it may reinforce separateness and has been

used in some extreme cases to carry out segregation policies. Challenges associated with separate education systems therefore take place both at micro and society level.

One issue is the fact that identity has several facets. Individuals have various identities such as gender, disability, etc., which can lead them to feel connected to one group or another. By reinforcing a sense of cultural belonging, culturally sensitive education privileges a specific aspect of individual identity. As a result, it contributes to immobilizing the boundaries of a certain group and can in some instances limit the ability of individuals to opt out. Connected to this topic is the question of dissent within a community. In the context of education, this issue takes on a particular significance. Education should help challenge and re-examine social norms if these do not respect human rights, such as gender biases for instance.

At the society level, the strengthening of groups has significant repercussions. While cultural bonds can create solidarity and opportunities, they can also perpetuate social exclusion. This is especially true for poorer groups. Theories of social capital, as presented in particular by political scientist Robert Putnam, argue that the existence of networks based on shared values creates opportunities for individuals and communities. However, strong cultural ties within one group are also likely to reduce cooperation among groups. As some studies have pointed out, social capital can hinder the economic and social development of groups that are isolated or parochial. Accordingly, in developing separate education systems for children of minorities and indigenous peoples, the risk of aggravating social exclusion should be addressed.

As mentioned above, one of the challenges in the existence of different groups within a state is the risk of fragmentation. In some cases, fragmentation has led to ethnic and international conflicts. States' cautiousness in recognizing minority and indigenous rights stems from the fear that specific rights could exacerbate divisions between groups. These could in turn pave the way for secessionist claims. Education contributes to forming a common cultural identity for group members. It thus plays an important role in reinforcing various cultural identities. However, as will be seen below, education also bears the potential to help overcome these biases and promote peace and stability.

development has a significant impact on the exercise of the right to education by indigenous children. International instruments related to indigenous peoples' rights lay the emphasis on the responsibility of indigenous peoples to manage their own education programmes. For instance, ILO Convention No. 169 highlights the fact that education programmes and services shall be developed and implemented in cooperation with indigenous peoples and provides for the training of their members: 'with a view to the progressive transfer of responsibility for the conduct of these programmes to these peoples as appropriate'. Likewise, Article 14 of the UNDRIP provides that: 'indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning'.

The prevailing framework for minorities is that they can have their own educational institutions, as opposed to 'systems' for indigenous peoples. Nevertheless, these do not have a right to state subsidies (although, as noted above, the UNDM does recognize a positive obligation on states to ensure that minorities have opportunities to learn their mother tongue). In contrast, states' duty to allocate resources for indigenous education is explicitly

recognized in a number of instruments, including ILO Convention No. 169 and the recently adopted General Comment of the Committee on the Rights of the Child on the rights of indigenous children.

In summary, the implementation of the right to education for minorities and indigenous peoples is framed by the diverse international legal frameworks applicable to them. While education is part of a broader approach for indigenous peoples, for minorities it is more strictly linked to the protection of their cultural, religious or linguistic identity, with concrete implications in the exercise of this right and states' obligations. However, the recognition of these rights and its implications raises several issues. These challenges have been addressed in the human rights framework, as defined in particular by the CRC.

A child rights approach to minorities' and indigenous peoples' right to education

Challenges associated with the recognition of differentiated rights and separate education systems

The recognition of differentiated rights for persons belonging to minorities and indigenous peoples raises a number of questions. These relate on the

In conclusion, there are many challenges in the recognition of minority and indigenous rights, in particular with respect to education. Children are likely to be particularly affected for two reasons. First, children are more vulnerable to having their rights violated and have less access to effective remedies. Second, they are generally perceived by their communities as representing the future, hence the main vehicles for cultural survival, potentially leading to some tensions.

Responses by international standards

International standards, and primarily the CRC, provide a framework in which the challenges faced by indigenous and minority groups can be addressed. Certainly, they provide a balance between respect for minority and indigenous rights and the need to protect the child's right to grow and thrive in an open society. The best interests principle is also a primary consideration.

The supremacy of individual human rights and freedoms. The human rights framework consistently reaffirms the supremacy of individual human rights and freedoms, advocating against the misuse of these rights. The two International Covenants (the ICCPR and ICESCR) contain a common Article 5 stating that:

'nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.'

Similarly, the UNDM stipulates that 'the exercise of the rights set forth in the present Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedoms'. The UNDRIP reaffirms this principle in its first article. In its preamble, the UNDRIP also expressly recognizes 'in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child'. More generally, the overarching obligation in the CRC to give 'primary consideration' to the best interests of the child ensures the primacy of the best interests principle over cultural traditions when the two are in conflict. Hence, the

promotion of the cultural identity of children should not hinder the realization of other rights.

The recognition of the role of parents and the child's evolving capacities. Article 5 of the CRC recognizes the role of parents, or, where applicable, the extended family or community, and legal guardians in providing direction and guidance to the child in the exercise of his or her rights. These terms are reiterated in relation to the right to freedom of religion. Interestingly, several provisions related to the right to education in other human rights instruments contain an analogous recognition of the rights of parents to choose an educational institution for their children in line with their moral and religious convictions. Regional instruments have also included similar provisions. The rationale is to strike a balance between the view that children's upbringing is a private matter and the fact that education systems are provided by the state. These provisions also usually underline that parents' right to choose children's educational institutions should not lead to a lower standard of education.

However, the CRC also provides that such guidance should be provided 'in a manner consistent with the evolving capacities of the child'. This addition is one of the most important elements of the child rights framework defined by the CRC and ensures a space for children's agency in exercising their rights. The African Charter on the Rights and Welfare of the Child uses a similar wording in its education provision. This dimension has been analysed in depth in an Innocenti Insight publication on *The Evolving Capacities of the Child* issued in 2005 by UNICEF and Save the Children. In this context, the rights of parents, extended families and communities as may be relevant, are not unbound. These must respect the extent to which the child is capable of exercising those rights on his or her own behalf. This element should be understood in conjunction with Article 12 of the African Charter regarding the right of the child to express views in all matters affecting him or her, 'the view of the child being given due weight in accordance with the age and maturity of the child'. These provisions also apply to decisions on the child's education.

The aims of education: promoting interculturalism and tolerance. In virtually all international standards starting with the Universal Declaration of Human Rights, and in particular those dealing with indigenous and minority rights, specific provisions are

included with a view to promoting intercultural understanding and tolerance, identified as key components for peace, democratic stability and respect for human rights in the society. These provisions are precisely included in provisions related to education and its goals, highlighting once again the importance of education in promoting a culture of human rights. They aim on the one hand to address the possible discrimination members of these groups experience, and on the other hand to ensure that minority and indigenous children have the opportunity to learn about the dominant and other cultures. Consequently, the onus of knowing other cultures is equally on dominant and minority groups.

Article 29 of the CRC captures many dimensions for the fulfilment of the right to education of indigenous and minority children. Importantly, it lists among the aims of education:

'The development of 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 civilizations different from his or her own.'

In its General Comment No.1 on Article 29, the Committee on the Rights of the Child stated that:

'Part of the importance of this provision lies precisely in its recognition of the need for a balanced approach to education and one which succeeds in reconciling diverse values through dialogue and respect for difference. Moreover, children are capable of playing a unique role in bridging many of the differences that have historically separated groups of people from one another.'

Interestingly, instruments dealing with minority rights and indigenous rights, including the two UN Declarations, contain stipulations in the same spirit, in relation to the right to education. Article 29 of the CRC is supplemented by Article 17 on the right of children to access to information, which also contains a strong cultural component and requires that attention be paid to the special linguistic needs of minority or indigenous children.

Conclusion: lessons for public policies and best interests of the child

The international legal framework for minorities and indigenous peoples aims to balance several

imperatives. It addresses states' concern for unity and sovereignty over their population. It aims to preserve cultural pluralism. It also protects and respects the rights of minorities and indigenous peoples, including that of their children, to equal access to quality education that takes into account their culture and language. In recent years, the international legal system has been leaning towards a proactive interpretation of treaty provisions in favour of the recognition of cultural differences in the public sphere, particularly through the adoption of Declarations on minority and indigenous rights respectively. This recognition implies increased state obligations to take positive action, including and especially in the area of education. Furthermore, minorities and indigenous peoples have different legal regimes, revolving around the recognition of far-reaching self-government rights to indigenous peoples and more limited autonomy to minorities, thereby implying the need for different approaches in supporting the implementation of this right.

Importantly, the principle of the child's best interests has to remain at the centre of strategies for the promotion of the right to education. While the value of cultural continuity is specifically recognized in the CRC, the Convention also requires a space for openness to knowing other cultures and promoting tolerance among peoples. The purpose of culturally sensitive education should remain to increase the child's opportunities, self-confidence and ability to develop in a harmonious environment, as well as build his or her own evolving capacities to define his or her best interests. As the Committee on the Rights of the Child said in its General Comment No. 1 on the Right to Education:

'Basic skills include not only literacy and numeracy but also life skills such as the ability to make well-balanced decisions; to resolve conflicts in a non-violent manner; and to develop a healthy lifestyle, good social relationships and responsibility, critical thinking, creative talents, and other abilities which give children the tools needed to pursue their options in life.' ■