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Arkadas-Thibert, Adem; Ruggiero, Roberta

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Chapter 28

Article 30: Cultural, Religious, and Linguistic Rights of Minority or Indigenous Children



Adem Arkadas-Thibert and Roberta Ruggiero

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.

What Did Children Say?

‘By promoting the differences through accepting their holidays, respecting their important days, celebrating important days connected with their tradition and culture.’ (*Eastern Europe*)

‘Governments should help to support local museums and cultural activities.’ (*Western Europe/Other*)

In the US now, there is a lot of tension about immigration and it seems like a lot of minority children are very anxious and ashamed of their culture, rather than it being celebrated, it is often held against them. (*Western Europe/Other*)

‘Other children are informed about other cultures: through curricula and through classes.’ (*Eastern Europe*)

(continued)

A. Arkadas-Thibert (✉)
Marseille, France

R. Ruggiero
Centre for Children’s Rights Studies, University of Geneva, Geneva, Switzerland
e-mail: roberta.ruggiero@unige.ch

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‘Through schooling they should learn more about their culture and knowledge. One of the children expressed her concern that children make fun when she speaks in her local dialect.’ (*Asia-Pacific*)

Overview

Article 30 of the Convention confers the right of the child who belongs to a minority or indigenous community or group to claim, enjoy, and practice their language, culture, and religion. Integral concepts that must be considered are protection for, measures to support and enable retention of, and the ability of the child to choose, have, adopt, and learn their culture, religion, and language (Office of the United Nations High Commissioner for Human Rights and Rättsvetenskapliga samfundet (Society: Sweden), 2007, pp. 675–682).

The particular rights of minorities and indigenous groups are not addressed within the Convention. However, to properly consider, protect, and respect those rights requires appreciation of the circumstances and conditions of children belonging to these groups or communities, for example, the connection of indigenous communities with their territory and their way of life (United Nations, 2006, pp. 198–200). The right to exercise cultural rights can be regarded as intimately connected to the use of traditional territory and its resources (UN Committee on the Rights of the Child, 2009, para. 16). From this perspective, considerable importance is attributed to traditions and cultural values and they are essential to the individual’s development and enjoyment of culture (UN Committee on the Rights of the Child, 2009, para. 35).

Article 30, while fostering specific protection to minority and indigenous children, also points out the complex relationships behind the protection of cultural, religious, and linguistic rights. In consequence, it raises three main interpretation issues under Article 30:

1. When is the child considered an indigenous person or recognised as belonging to an ethnic, religious, or linguistic minority?
2. What are the States Parties’ obligations to fulfil the rights under Article 30?
3. What are the implications on the child in the exercise of Article 30 as individual and/or collective rights (Harris-Short and Tobin, 2019, p. 1159)?

Unfortunately, the Committee’s own jurisprudence, Concluding Observations to States Parties’ reports, responds only in part to these interpretation issues, but it provides a more detailed, although not exhaustive interpretation, in its General Comment no. 11 on the rights of indigenous children.

Although reference is made throughout the Convention, particularly in articles such as 6, 8, 14, 17(d), 20 (3), 21, 29(c), and 31, for the protection of language, culture, and religion, Article 30 reinforces and underscores that these rights and

protections apply to children of minorities and indigenous peoples (Hodgkin et al., 2007, p. 455).

While affirming the right to the enjoyment and practices of diverse cultures, the Convention safeguards children from possible harm from traditional practices and beliefs that conflict or are not in accordance with human rights. Moreover, 'the Committee underlines that cultural practices provided by Article 30 of the Convention must be exercised in accordance with other provisions of the Convention and under no circumstances may be justified if deemed prejudicial to the child's dignity, health, and development' (2009, para. 22).

With reference to the nature of the obligation of States Parties, the statement 'shall not be denied' underlines that it does not bestow the mere negative obligation of non-interference, but also the positive obligation of undertaking measures that respect, protect, and ensure the fulfilment of the rights identified in Article 30. This positive obligation imposed upon States Parties includes the duty to protect the child from state and non-state actors that might threaten the effective exercise of these rights (Harris-Short and Tobin, 2019, pp. 1159, 1173–1177). This includes actively addressing oppression and discrimination from which vulnerable communities or groups experience disproportionate effects or disadvantages as a result of diminished religious, cultural, or linguistic rights.

While political and economic entitlements are not the focus of this right, recognition of how these circumstances impinge on the enjoyment of this right is important (Hodgkin et al., 2007). States Parties are recognised as playing an instrumental role in safeguarding the rights of all children in their jurisdictions and ensuring equality before, and protection of, the law (UN General Assembly, 1966, Article 26; United Nations, 2006, p. 198). Harris-Short and Tobin assert that these positive States Parties' obligations to respect, protect and fulfil, as indicated by the Committee in General Comment no. 11, paragraph 19, are justified by the intention to ensure the survival of minority and indigenous groups through the empowerment of indigenous children and their effective exercise of the rights to culture, religion and language (2019, p. 1159). With the same intention, Article 29 (1), among the aims of education lists respect for human rights, cultural identity, language and values.

On this aspect, Article 28 of ILO Convention 169 on Indigenous and Tribal Peoples, and Article 14 of United Nations Declaration on the Rights of Indigenous Peoples, significantly call upon states to take effective measures to ensure indigenous children have access to education in their own language and culture. There is recognition for the group or the communities' role in establishing and controlling education and institutions but also regarding the need for state support to enable children's access to such programmes. Compulsory education, therefore, cannot prohibit a child from learning to adopt or have the culture of their parent, community, or group to which they belong (Office of the United Nations High Commissioner for Human Rights and Rädga barnen (Society: Sweden), 2007, pp. 675–682).

Article 45 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families supports facilitating integration of migrant workers' children into local education, emphasising teaching local

language, teaching about the respective workers' language and culture, and making teaching available in their mother tongue. Here again, the state is necessary to provide support and resources.

In relation to the issue pertaining to the individual or collective nature of the rights enshrined by Article 30, the content of Article 30 remains true to the text of Article 27 of the International Covenant on Civil and Political Rights (ICCPR) with one noteworthy exception, which is the addition of indigenous rights (Hodgkin et al., 2007, p. 456; Office of the United Nations High Commissioner for Human Rights and Rädga barnen (Society: Sweden), 2007, pp. 679–680). Particular reference to the 'child' differing from the language of 'persons' contained in Article 27 of ICCPR signals recognition of both the individual and collective nature of rights, which may or may not happen in community with other members of their group (UN Office of the High Commissioner for Human Rights (OHCHR), 1997, p. 489). The Committee has made clear that the best interests of the individual child cannot be diminished or neglected by giving preference to the best interests of the group. As a consequence, 'the rights under Article 30 belong to the individual child,' to underline once more that the child is an autonomous right holder, 'rather than a mere instrument of parental, community, cultural, or state preferences' (Harris-Short and Tobin, 2019, p. 1160).

Again, with reference to Article 27 of the ICCPR, it is worth noting the need to distinguish the right to freedom of expression from the right to use minority language (United Nations, 2006, pp. 198–200). The right to minority language is a separate right. It connotes a cultural right of children of minority groups who must not be denied the freedom to speak their language in community with members of their group. As a cultural right, it should be distinguished clearly from the freedom of expression and other civil-political rights.

General Principles

Article 2 This article secures the right to be free from any kind of discrimination irrespective of a child's parent or guardian's, 'race, colour, . . . language, religion, . . . national, ethnic or social origin . . . or other status.' The prohibition of discrimination must be enshrined in domestic legislation. This should be strengthened with legislative and administrative measures to guarantee the freedom to exercise rights based on children's respective origins and identities. States Parties should develop initiatives that ensure greater access to culturally relevant services that foster respect and understanding amongst indigenous and minority peoples, as well as promoting positive regard for their contributions by society at large (UN Committee on the Rights of the Child, 2009, paras. 23–27).

Article 3 In determining the best interests of the child with regards to Article 30, consideration must be given to the child's choice and evolving capacity, as well as their well-being and development. This should be assessed in a broadly

participatory way that includes the child and their views, leaders and members of the community, parents, professionals, and other relevant stakeholders, to better understand the living reality of the child or the group of children (UN General Assembly, 2010, para. 62). The need to provide distinct consideration of the collective cultural right is important in the application of these rights of indigenous children. Care must be taken to ensure individual rights are not neglected in favour of group rights (UN Committee on the Rights of the Child, 2009, paras. 30–32).

Article 6 There is a relationship between the right to survival and the right to culture that requires appreciation and protections for the collective traditions and values that sustain and preserve communities of minorities and indigenous groups (UN Committee on the Rights of the Child, 2009, para. 16). Article 30 is contingent on the ability to claim religious, cultural, and linguistic rights. It has implications for the preservation of identity, history, values, familial, and communal ties, which bond an individual to the group to which they belong. States Parties are responsible for the provision of culturally appropriate material supports and assistance programmes that ensure an adequate standard of living, encompassing economic, social, and cultural rights. Significantly, the United Nations Sustainable Development Goals will be advanced with States Parties' active engagement of indigenous individuals, including children and communities (UN Committee on the Rights of the Child, 2009, paras. 34–36).

Article 12 The need for qualified representatives, interpretative services, and materials in the language of the child's choosing facilitates the child's right to choose and participate in their communities and associated activities and broader society (UN General Assembly, 2010, paras. 6, 88). This assures continuity in socialisation and development (UN General Assembly, 2010, para. 158). For example, this will include efforts meant to support the participation and inclusion of indigenous and minority children at all levels of education, including preschool education, and the promotion of cultural awareness (UN Committee on the Rights of the Child, 2016, 2017, para. 55 (e)).

Articles Related or Linked to Article 30

Articles 7 and 9 prevent the unnecessary or unreasonable separation of indigenous and/or minority children from their parents.

Article 8 secures the child's right to preserve their indigenous and/or minority identity.

Article 14 safeguards freedom of religion recognising the parents' role in this respect. It should be noted that Article 14 brings focus to the individuality of the child in relation to the community or group to which they belong, whereas Article 30 sees the child as a member of the broader community and group to which they are a part of, therefore impressing the right of the child in a community context and

representing the child as a representative of it (Harris-Short and Tobin, 2019, p. 1160)

Article 16 prevents arbitrary or unlawful interference of the indigenous and/or minority child's family.

Article 17 prompts States Parties to encourage mass media regard linguistic needs of children from minority and/or indigenous groups.

Article 20 ensures that where children are removed from their families, consideration is given to continuity of the child's upbringing and to their ethnic, religious, cultural, and linguistic background.

Article 21 recognises the circumstances of inter-country adoption reaffirm the need for due regard to the child's indigenous and/or minority background.

Article 28 requires education to be provided on the basis of equal opportunity and to enable participation of indigenous and/or minority child in greater society.

Article 29 ensures the aims of education instil respect for the child's language, culture, and values, the promotion of a culture of human rights, and affirms the right to be educated outside the state system in a manner that promotes individual empowerment and self-determination

Article 40 requires the use of interpreters when an indigenous and/or minority child is unable to understand the proceedings within the context of the administration of juvenile justice.

Relevant Instruments

International Covenant on Civil and Political Rights (1966), Article 27, guarantees the rights of ethnic, religious, or linguistic minorities to enjoy their own culture, to profess and practise their own religion, and to use their own language.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), Article 45, supports facilitating integration of migrant workers' children into local education emphasising teaching local language and teaching about the respective workers' language and culture.

UN Declaration on the Rights of Indigenous Peoples (2007), Article 11, addresses the right to practice and revitalise cultural traditions and customs and have access to education in their own language and culture, Article 14. Significantly, the community takes the lead, self-determining the preservation of culture and community from a historical perspective and as its shape evolves. The state is a supportive actor in this process.

ILO Convention 169, Indigenous and Tribal Peoples (1989), Article 2, mentions not only protection of rights but also guarantees respect for their integrity.

Attributes

Attribute One: The Right of the Child Who Belongs to an Ethnic, Religious, or Linguistic Minority or Indigenous Group to Enjoy Their Own Culture

This attribute focuses on how children from an early age are made aware of and induced to appreciate cultural rights and prepared for participation in cultural life in society. It also deals with how textbooks and educational materials kindle in children the spirit of learning to live together, respecting diverse cultures and cultural identities, especially cultural rights of children who belong to ethnic, religious, or linguistic minorities or indigenous groups. To that end, school environments should foster cultural pluralism, intercultural dialogue, and rapprochement of cultures with the overarching framework of human rights.

This attribute is also linked to freedom in education. Compulsory education should not prohibit a child from learning, adopting, or having the culture of their parent or community or group to which they belong.

The Committee, in its General Comment no. 11 on indigenous children, asserts that:

- Indigenous children and minority children are to effectively enjoy their rights on an equal level with non-indigenous children (2009, para. 1)
- There must be reflection of indigenous and minority groups and communities in pedagogy and curricula, that situates the experiences, contributions, and legacies of the groups in building the social fabric of society (2009, para. 27)
- Experiences, circumstances, and conditions of disadvantage and discrimination that disproportionately affect or cause de- facto discrimination based on religion, cultural and language must be identified and addressed. This includes educational and awareness initiatives countering negative attitudes towards individuals and groups (2009, paras. 23–29)
- Resources, training, and staff to sufficiently enact programmes and policies that promote and protect these rights must be allocated. This includes trained teachers capable of delivering the national education curriculum as well as education specific to communities or groups, in the desired language and in a culturally appropriate manner (2009, para. 71)
- There must be accessible health, social welfare services, and education that sustains respect for language, culture, and practices of the community or group (2009, paras. 49–55)
- The quality of education should enable the participation, contribution, and enjoyment of economic, social, and cultural aspects of life and community, achieving individual empowerment and self-determination. Particular efforts are required to improve access to education for indigenous children, recruit teachers from within the communities, and support the development of culturally relevant curricula in partnership with communities that promote instruction in the respective language

and consistent with culture and traditions (2009, paras. 56–63). Policy and program development, including monitoring and evaluation efforts, in all areas should be done in direct cooperation with indigenous communities and in consultation with indigenous children (2009, paras. 80–82).

In line with the rationale of Article 30, it is worth recalling that in adopting the 2030 Agenda for Sustainable Development, governments pledged themselves ‘to foster inter-cultural understanding, tolerance, mutual respect and an ethic of global citizenship and shared responsibility,’ and acknowledged ‘the natural and cultural diversity of the world’ and recognised that ‘all cultures and civilizations can contribute to, and are crucial enablers of, sustainable development’ (UN General Assembly, 2015).

Attribute Two: The Right of the Child Who Belong to an Ethnic, Religious, or Linguistic Minorities or Indigenous Groups to Profess and Practice Their Own Religion

Freedom of religion or belief is a universal human right. Any expression or manifestation of disrespect or hatred towards others because of their religion or belief, and incitement to discrimination, hostility, or acts of violence, constitutes an affront to the principle of freedom of religion or belief. Special consideration must be given to ethnic, religious, or linguistic minorities or indigenous groups to profess and practice their own religion or beliefs. Article 30 has its *raison d’être* in that perspective, bearing in mind Article 14 of the Convention as regards a child’s freedom of thought and conscience in education settings, and of manifesting their beliefs or religion.

Hence, it is important to teach children to respect everyone’s right to exercise their religion or belief freely and to offer the opportunity to access faith-based education. This would make the school environment conducive to pluralism and promote interreligious and intercultural dialogue so that children belonging to ethnic, religious, or linguistic minorities or indigenous groups can profess and practice their religion with due respect and in a spirit which is respectful of human rights.

The key role of education is underlined as to be particularly relevant in a large array of United Nations Resolutions on freedom of religion or belief, for example, Resolution 72/177 on the Freedom of religion or belief adopted by the General Assembly on 19 December 2017. The resolution stipulates that governments should ‘promote, through education and other means, mutual understanding, tolerance, non-discrimination and respect in all matters relating to freedom of religion or belief by encouraging, in society at large, a wider knowledge of the diversity of religions and beliefs and of the history, traditions, languages and cultures of the various religious minorities existing within their jurisdiction’ (UN General Assembly, 2018, para. 13 (1)). Accordingly, the fulfilment of the right of the child who belongs

to an ethnic, religious, or linguistic minority or indigenous group to profess and practice their religion also requires:

- Health and education delivered in a manner that does not infringe on or prohibit choice of learning or adopting the culture, religion, or language of the community or group to which the child belongs
- Protection from traditional practices that pose risks or are prejudicial to ones' health and well-being
- Investment in and developing resources for the protection and promotion of religious, linguistic, and cultural rights as well as measures that enable the equal participation in broader society
- Limiting recognition of groups can create and entrench discrimination and inequality
- Organisations, professionals, and individuals working with children, particularly those responsible for their direct care, should be properly sensitised to cultural, social, gender, and religious issues that impact children belonging to minority and indigenous communities and groups (UN Committee on the Rights of the Child, 2009).

Attribute Three: The Right of the Child Who Belong to an Ethnic, Religious, or Linguistic Minorities or Indigenous Groups to Use Their Own Language

A growing body of evidence points to the fact that children learn better in their first language (Bühmann and Trudell, 2008). Therefore, it is important for children to receive early education in their first language. This raises a number of issues regarding facilities for the use of their language, such as availability of textbooks, qualified teachers, and other resources, in the language(s) of ethnic, religious, or linguistic minorities or indigenous groups, particularly considering the large number of vernacular languages and dialects among minority communities in some regions. Reasonableness and feasibility are other criteria for the steps taken in this direction.

Accessibility to media and communication that enable participation in public life in their respective communities and broader society need to be ensured by States Parties. This includes translation and dissemination of the Convention and other human rights instruments and documents in a format that is child friendly and in the minority and indigenous languages, in order to develop, respect, and promote a culture of human rights.

States Parties should ensure the exposure to and instruction in one's own language as an important tool towards the preservation of identity and psychological integrity, and to the academic achievement of marginalised, vulnerable, disadvantaged, and disproportionately represented groups, including children who have been displaced.

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