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Indigenous Languages in Education - a case study of Bolivia

Graduate thesis for Master of Laws Degree

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Preface

This graduate thesis is written within the Master's of Law Curriculum at the Faculty of Law, Lund University, Sweden. It is based on a Minor Field Study carried out in Bolivia during September and October, 1998. I would like to express my thanks to Sida and the Raoul Wallenberg Institute of Human Rights and Humanitarian Law who, through the Minor Field Study scholarship, made it possible for me to carry out the field work necessary to this thesis.

Abbreviations

APG	Asamblea Pueblo Guaraní
CIDOB	Confederación de Pueblos Indígenas en Bolivia (Confederation of the Indigenous Peoples of Bolivia)
CRC	Convention on the Rights of the Child
DILE	Directorios Locales de Educación
ERL	Ley de Reforma Educativa (Educational Reform Law)
ETARE	Equipo Técnico de Apoyo a la Reforma Educativa (The Development Group of the Educational Reform)
HRC	Human Rights Committee
IBE	Intercultural Bilingual Education
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
IMF	International Monetary Fund
NOU	Norges Offentliga Utredningar
PEIB	Proyecto Educación Intercultural Bilingüe (Intercultural Bilingual Education Project)
SIDA	Swedish International Development Authority
SIMECAL	Sistema de Medición y Evaluación de la Calidad de la Educación
SNE	Secretaria Nacional de Educación (National Secretary of Education)
TEKO	Taller de Educación y Comunicación Guaraní
UDHR	Universal Declaration of Human Rights
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations International Children's Emergency Fund = United Nations Children's Fund
UNPDI	Unidad Nacional de Planificación y Desarrollo Institucional (National Unit for Institutional Planning and Development)
UNST-P	Unidad Nacional de Servicios Técnicos-Pedagógicos (National Unit for Professional-Pedagogical Services)
USAID	United States Agency for International Development

1 Introduction

Education is essential to be able to take active part in the society of today. It is necessary to know how to read and write. The right to education is a human right in itself but it is also vital for the enjoyment of other human rights. It is of importance for maintenance of culture and identity. Education is a tool for improving one's living-conditions. It is a medium to reduce poverty. Education has proved to be one of the most important factors in development, both for children and for countries.¹ Education is a way to change attitudes. In other words, education is in many ways fundamental and important.

It is recognized worldwide that instruction in the mother tongue is the most effective way to instruct pupils, at least at the initial levels of education. Sociologically it is the means of identification among the members of the community to which the child belongs. The mother tongue is the language of the society where the child absorbs the cultural environment. Educationally the child learns more quickly through his or her mother tongue than through another language not so familiar to him or her. Learning a foreign language means adopting to new concepts that may be alien to the culture of which the child belongs and the foreign language may be very different from the mother tongue of the child. Expressing oneself can be difficult in one's own language and especially for a child whose communication skills are not fully developed. To express oneself in a foreign language is even more difficult. Therefore every effort should be made to provide education in the mother tongue of the child.²

For indigenous peoples the right to education in their mother tongue is very important as the mother tongues of the indigenous peoples in a country often are different from the dominating language. In Bolivia approximately 70 % of the population is indigenous and approximately 60 % speak an indigenous language. Not until the educational reform in 1994 did the indigenous population get a legal right to education in their mother tongues. In the past and to some extent still today, the drop-out rates as well as the illiteracy rates are high. The fact that education in the past has been conducted only in Spanish, which is not the original language of the indigenous peoples, has contributed to this. The way to solve these problems is a reformed educational system with instruction in the mother tongues of the indigenous peoples. Of course one should not forget the importance of knowing Spanish in addition to the indigenous language. As Spanish is the dominating language in Bolivia it is necessary to master it to avoid isolation and to have access to higher education and jobs.

Another important fact is that language is an important part of culture. Culture is linked to identity, and considering the repression in the past and also today of indigenous peoples and their ways of life, it is important to try to correct past misdeeds and not repeat them. To restore and preserve the culture of the indigenous peoples is important.

¹ Hodgin and Newell, 1998, p 385.

² UNESCO, 1953, p 11 and 47, UNICEF, 1998, p 41.

Language is vital in this process. Even though the indigenous peoples in Bolivia are not to be compared to linguistic minorities in every way, the quote by Dinstein is relevant, to say the least, considering the vulnerable position of the indigenous peoples: “a linguistic minority cannot retain its special identity unless the use and teaching of its language are guaranteed.”³ Dinstein illustrates the importance of language for identity and culture which are vital for indigenous peoples and minorities and protected in several human rights instruments.

1.1 Purpose and problem

What I intend to do in this thesis is to analyze the right of indigenous peoples in Bolivia to education in their mother tongues. To what extent is education in the mother tongue for indigenous peoples protected in international law? The new educational reform in Bolivia introduces bilingual education. Do the national provisions comply with the international obligations in theory? Compliance in theory is not enough however. Does Bolivia implement the obligations in practice?

After giving a short background necessary to understanding the context in which this thesis is written, I will analyze the international provisions relevant to the right of indigenous peoples to education in the mother tongue. The importance of non-discrimination will be elaborated on. I will discuss the right to education in general and if it covers the right to education in the mother tongue. I will also deal with provisions in instruments directed directly to indigenous peoples and minorities. After the analysis of international law I will discuss the national norms in Bolivia, of importance to the right of indigenous peoples to education in the mother tongue. As a second step I am going to examine the practical implementation in Bolivia. I will describe the steps taken to realize the educational reform and especially bilingual education; the strategies of the government, how far it has come and what problems there are. Lastly I will discuss whether the national provisions are in compliance with international law and if the practical steps taken by Bolivia to implement the reform live up to the international obligations.

1.2 Method

In the process of writing this thesis I have, regarding the part on international law, studied doctrine and the relevant international provisions. I have tried to find and account for different views on different questions.

The field study in Bolivia was carried out in September and October 1998. Any changes that may have happened after that are not accounted for in this thesis. My main tasks in Bolivia were to search for written sources and to obtain information through interviews.

³ Dinstein, 1979, p 71.

I searched and found both laws, decrees and doctrine on the reform.⁴ The literature that I found about the reform was not written from a human rights perspective but rather had an anthropological and linguistic approach. The documents mainly originate from independent academic researchers or from experts connected to development projects. Only a small part of the literature directly discussed the implementation of the educational reform. I tried to get hold of statistical data on the implementation but I was not successful. The authorities that will be responsible for statistics on the educational reform are just starting to be built up and there were problems with collection of data in the rural areas. The data regarding the implementation that I use are estimates by people working with the reform. Demographic data are from written sources originating from the census of 1992.

I have interviewed 16 persons for this thesis. The selection of interviewees has been strategic. I have tried to interview persons with different backgrounds and from different sectors of society. I have talked to people from local and central authorities working with different aspects of the educational reform. I have also talked to international development assistance agencies, to local organizations as well as independent experts, and I have interviewed representatives from indigenous organizations. I tried to interview persons with different approaches to the educational reform to get as broad picture as possible. This I regard as important as the discussion leading to the educational reform was highly politicized and different groups of people involved in the educational reform have different interests. Even though my selection of interviewees was structured there has been a snowball effect: I interviewed persons who in their turn gave me names of other persons to interview etc.

My method is qualitative. The interviews carried out have been of a semi-structured character. The interviewees have mainly answered different questions adjusted to their specific role and to their knowledge of the reform. I have also tried to ask some questions of a more general character to all of them. Most of the time the answers correspond with each other, even though this is not always the case. As I only have interviewed a limited number of persons it is difficult to draw general conclusions from the answers regarding some of the issues. I think that the fact that bilingual education and the educational reform as a whole are very political issues have influenced the answers obtained in the interviews and this needs to be kept in mind. Despite of this I can see clear patterns in most of the answers obtained.

As all interviews but one have been carried out in Spanish, which is not my mother tongue, this has had some restrictive effect on the interview situation. However, I have tried to eliminate difficulties by using a tape recorder, but still it is difficult for me to pick up nuances that might have been evident to persons with better knowledge of Spanish.

⁴ The Constitution and the national laws of Bolivia used in this thesis are available through the author.

1.3 Practical considerations

The focus of the new educational system is interculturality and bilingualism. Intercultural bilingual education (IBE) is not only education in the indigenous languages for people having an indigenous language as their mother tongue. The aim is much broader and it focuses on forming an educational system in concordance with Article 1 of the Constitution,⁵ which says that Bolivia is a multiethnic and culturally pluralistic country. I use IBE when I refer to the new type of education in this broader perspective that the reform introduces. The term intercultural bilingual education is to be kept apart from the terms bilingual model and monolingual model which are both part of IBE. Depending on the mother tongue of the children and if they live in rural or urban areas they will be instructed according to either one of these models. The bilingual model means that instruction will be started in the indigenous language and later the students will be instructed in both the indigenous language and in Spanish. The monolingual model means that the students are instructed in Spanish only and may study an indigenous language as a second language.

I have tried to be consistent in the use of terminology. In a UNESCO report from 1953, *The Use of Vernacular Languages in Education*, the following terms are defined:

- Indigenous language: The language of the people considered to be the original inhabitants of an area.
- Mother tongue: The language which a person acquires in early years and which normally becomes his or her natural instrument of thought and communication.
- Second language: The language acquired by a person in addition to his or her mother tongue.⁶

Even though “indigenous language” and “mother tongue” are not the same by definition, they are often possible to use interchangeably in this thesis as the mother tongue of many people in Bolivia is also an indigenous language. In the case when I do not use the terms above, I use the terms of the author to whom I have referred. This is for example the case when I use the term primary language.

As I write about Bolivia I will not discuss provisions in African or European instruments related to the right of indigenous peoples to education in their mother tongue. I will only deal with international instruments and to some extent provisions in regional instruments on the American continent.

Even though I will discuss general aspects of the right to education I will not discuss the right to establish independent schools and the right of parents to choose other schools than the public ones. These issues are of importance to indigenous peoples and education in indigenous languages, but they are outside the scope of this study as Bolivia has chosen to implement their international obligations mainly through a reform

⁵ Ley de Reforma a la Constitución Política del Estado, Law No 1585, 15 August 1994.

⁶ UNESCO, 1953, p 46.

of the public school system and this is the focus of my study. Consequently I will only mention these aspects of the right to education when they are of relevance to my thesis.

2 Background

2.1 History

The Spanish conquest of Bolivia which began in the 1530s has been decisive for the educational history of Bolivia. An educational system adapted to the needs of the conquerors was established. The cultures of the indigenous peoples living in the area of what today is Bolivia were repressed. The situation was not improved by the declaration of independence from Spain in 1825.⁷

Before 1931 the indigenous peoples in Bolivia did not have access to the educational system. Then the first school for indigenous peoples was established. Until 1994 the educational system has been divided in two, one rural system and one urban. The rural system, in practice inferior and with lesser resources, served the mainly indigenous peoples in the countryside.⁸ In 1955 an educational reform was realized as a result of the 1952 revolution. The number of schools in the rural areas increased and in theory it did not cost anything to go to school. Despite of these improvements the teaching was still in Spanish and based on Spanish traditions. The educational system was a way to Hispanicize the indigenous cultures. The central political aims were to integrate and incorporate the indigenous peoples in the dominating Spanish culture. To some extent indigenous languages were used, but only as a means to Hispanicize.⁹

After the free elections in 1982 the need for educational reform was brought to life, but not until the beginning of the 1990s did this issue start to be discussed seriously. In 1994 the new educational law, Educational Reform Law (ERL) was promulgated and it entered into force 1 January 1995.¹⁰ With this reform, IBE was introduced as an important part of the educational system.

Some attempts at bilingual education have been made in the past but they have been of marginal effect. As early as the 1950s some missionaries organized bilingual education. In the end of the 1970s the Bolivia Ministry of Education with the aid of USAID organized bilingual education in Quechua and Spanish. With help from the World Bank, bilingual education in Aymara and Spanish was attempted in the same period.¹¹ Limited attempts at bilingual education were carried out by the Catholic Church in the 1980s.¹²

In 1990 a project based on an agreement between the Ministry of Education and UNICEF started, the Intercultural Bilingual-Education Project (PEIB). It covered 140

⁷ Olstedt, 1995, p 2.

⁸ Ibid, p 3.

⁹ Ibid, p 3, ETARE, 1993, p 31 and Martinez, 1996, p 53.

¹⁰ Ley de Reforma Educativa, No 1565, 7 July 1994, hereinafter ERL.

¹¹ Albó, 1995b, p 158.

¹² Hyltenstam and Quick, 1996, p 8.

schools and at most the students have received bilingual education for the first five years of primary school.¹³ By September 1998 almost all the schools in this project had been incorporated into the educational reform.¹⁴

2.2 Basic indicators

To understand the educational reality in Bolivia it is important to keep some basic indicators in mind that influence the educational system, the development of the educational reform and the situation of IBE in the country.

According to the census of 1992 Bolivia has 7.3 million inhabitants. The largest ethnic groups as defined by their languages are Quechua (2.4 million), Aymara (1.7 million) and Guaraní (66 000). Other indigenous groups are estimated to number 43 000.¹⁵ Of the remaining 30 % of the population, the majority are of Spanish origin.

Bolivia is a country with a high percentage of indigenous peoples, approximately 70 %. The geographical, cultural and linguistic diversity is great. About 35¹⁶ different peoples live in Bolivia. About 70 % of the population can be said to live in poverty and there is a high correspondence between rurality, indigenous ethnicity and poverty.¹⁷

Only approximately 40 % of the population is monolingual in Spanish and 11.5 % of the population is monolingual in an indigenous language. Almost 88 % of the population know Spanish to at least some degree. Almost 60 % are speakers of indigenous languages. The two largest indigenous languages, Quechua and Aymara, are known by 34.3 % and 23 % respectively. All other indigenous languages are known by 1.6 % of the population and in this group Guaraní is the language spoken by most people. These numbers come from the census of 1992. Compared to the census of 1976 the number of bilinguals in Spanish and an indigenous language has increased and the number of persons being monolinguals in an indigenous language has decreased.¹⁸

Illiteracy is a great problem in Bolivia. About 20 % of the adult population is illiterate in the sense that they never went to school. 37 % of the population is functionally illiterate, which means that they perhaps went to school but that they do not know how to read and write for some reason, for example that they have forgotten it because of lack of use. These dates are based on the census of 1992 and the illiteracy rate is likely higher than indicated above.¹⁹ Some people estimate that the functional illiteracy rate is much higher, perhaps as high as 55 %.²⁰ Of the illiterate population, 70 % live in rural areas

¹³ Ibid, p 9.

¹⁴ Interview with Carlos Cox.

¹⁵ Albó, 1995a, p 19.

¹⁶ According to José Abiyuna there are 36 peoples but some of these peoples are very small and little known.

¹⁷ ETARE, 1993, p 3.

¹⁸ Albó, 1995a, p 23.

¹⁹ ETARE, 1993, pp 4-5, World Bank, 1994, p 1.

²⁰ World Bank, 1994, p 1.

and 68 % are women. On an average the population has gone only four years to school and in the rural areas the majority of the population do not finish the first three years of school.²¹

There are several other problems with the Bolivian school system. This, just as the political, social and the economic systems, discriminates against the indigenous population.²² The school coverage is poor.²³ The drop-out rates are very high. Only 1.4 % of the male students and 0.7 % of the female students in the rural areas finish 12th grade. In the urban areas 31 % of the men and 26 % of the women finish 12th grade.²⁴ The fact that there hardly has been any education in the indigenous languages in the past contributes to the high drop-out rates.²⁵ The quality of the education is low. The best quality education is found in the schools that students from the upper classes attend. The reasons for the bad quality is that in the past the social, ethnic, cultural and linguistic diversity of Bolivia has not been considered. The methodology has been old-fashioned and as mentioned above almost all teaching has been in Spanish. Further, the teachers have had bad training for their job, if any teacher training at all and there has been a lack of text material and other materials.²⁶ With the new reform these problems are attended to and hopefully they will be overcome in the future.

2.3 Societal context

After 1982 when Bolivia elected the first democratic government for a long time, if not the first ever, the need for reform became evident. The economy was in a bad shape and in 1985 neo-liberal economic reforms were introduced with help from the International Monetary Fund and the World Bank. The economy stabilized and in the beginning of the 1990s it was possible to introduce structural reforms. The most important reforms are those of the educational system, decentralization and capitalization.²⁷ The decentralization reform is designed to change the fiscal and administrative relationships between the capital La Paz and the nine regional departments. Popular participation is also part of the decentralization.²⁸ The capitalization reform aims at capitalizing Bolivia's state-owned companies to finance the creation of a national pension system.²⁹

2.4 Legal context

The Educational Reform Law of 1994 is the legal framework of the reform. It is supplemented by several decrees which expound and develop different aspects of the educational reform. The decrees connected to the reform are the following:

²¹ ETARE, 1993, p 4.

²² Ibid, p 8.

²³ Ibid, p 12.

²⁴ Ibid, p 6.

²⁵ Ibid, p 13.

²⁶ Ibid, pp 12-13.

²⁷ Hyltenstam and Quick, 1996, pp 6-7.

²⁸ Booth, 1996, pp 1-2.

²⁹ Booth, 1997, p 2.

- Decree No 23949, on the organs of the popular participation.³⁰
- Decree No 23950, on the organization of the curriculum.³¹
- Decree No 23951, on the structure of the curricular administration.³²
- Decree No 23952, on the structure of the technical-pedagogical services.³³
- Decree No 23968, on the careers in the public education system.³⁴

The decree on the organization of the curriculum will be the decree mainly discussed in this thesis, as it is the one which primarily deals with the intercultural bilingual education aspect of the educational reform.

2.5 Basic structure of the school system

According to the reform of 1994 the compulsory primary education in Bolivia is eight years. These eight years are divided into three cycles. The first two cycles are three years each and the third cycle is two years. Secondary education is four more years and it is not compulsory. After completing secondary school it is possible to enter university or other higher education. The school years are not fixed, and to repeat a year which was very common before is no longer possible. Instead of the system of repeating years, the students study at their own pace. The students start school when they are six and they finish primary school when they are thirteen.³⁵

The school system is organized in five levels; national, department, district, nucleus and school. The country consists of nine departments. Each nucleus consists of approximately 5-8 schools.³⁶ This five-level structure is the same in the organization of the schools, in the area of popular participation and in the system of school administration.³⁷

The new curriculum consists of one basic part which is common to the whole country. The other part of the curriculum, the complementary part, is adapted to the different socio-economic, socio-cultural and linguistic characteristics of the country and not determined on a central level.³⁸

What I have described above is the structure of the reformed system. This is what the system looks like today in some parts of the country, but in several other parts the reform has not been implemented yet or only in part.³⁹

³⁰ In Spanish Órganos de Participación Popular.

³¹ In Spanish Organización Curricular.

³² In Spanish Estructura Administrativa Curricular.

³³ In Spanish Estructura de Servicios Técnicos-Pedagógicos. All the decrees mentioned above were promulgated 1 February 1995.

³⁴ In Spanish Carreras en el Servicio de Educación Pública.

³⁵ ETARE, 1993, pp 47-49, Decree No 23950, Art 3-4, 6, 29, 31-32 and 39.

³⁶ Interview with Carlos Cox.

³⁷ SNE, 1996, p 4.

³⁸ ETARE, 1993, p 44 and Decree No 23950, Art 8-10.

³⁹ See further chapter 5 about the implementation of the reform and IBE.

3 General legal aspects

3.1 The right to education

Different authors have different views of what kind of right the right to education is; a social or a cultural right? Does it belong only to the second generation of rights or does it have characteristics that connect to other generations of rights as well?

Delbrück considers the right to education both to be a social and a liberal human right. Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) states that education shall enable all persons to participate effectively in a free society. This indicates that the individual is not the focus but that “all persons” and “society”, are the focus. From this perspective Delbrück interprets the right to education to be a social right. On the other hand, education is also fundamental to develop the human personality which is also mentioned in Article 13. Part of this is to develop an ability to critical and open thinking. If this is to be meaningful the state has to refrain from indoctrination. Regarding this aspect Delbrück writes that the right to education is also a liberal human right, protecting the individual freedom from certain infringements by the state.⁴⁰

Nowak writes that the right to education is generally considered to be a cultural right. This implies that it is a second generation right, but Nowak regards the right to education to be a right which can be connected to all three generations of rights. His reasoning when it comes to education as a first and second generation right is similar to that of Delbrück. It is a first generation right as it for example protects the parents’ rights from undue state interference, for example when it comes to their wish to choose other schools than state schools for their children.⁴¹ It is, in his view, a second generation right as it can only be guaranteed by positive state action. The right to education obliges states to develop and maintain an educational system. Finally Nowak links the right to education to the third generation rights or solidarity rights. Support for this is to be found in the Convention on the Rights of the Child (CRC), Article 28.3 where it is stated that international co-operation is important in the field of education and particular account shall be taken to the needs of developing countries. Co-operation and solidarity are important in this regard and he argues that these could contribute to the implementation of the overall collective right to development. Further he writes that according to modern development theories both the right to education and the right to development aim at the same thing; the respect for and protection of all human rights.⁴²

The right to education may have features of all generations of rights. It may also be considered to be both a social and a cultural right. However, generally it is considered to

⁴⁰ Delbrück, 1992, pp 100-104.

⁴¹ ICESCR, Art 14.

⁴² Nowak, 1995, pp 196-198.

belong to the group of economic, social and cultural rights. Like all economic, social and cultural rights, the right to education is a legal right which entitles all individuals to a certain behavior of their respective government. There are the obligations to respect, protect and fulfil. The right to respect requires states to abstain from certain interference. States are for example not allowed to discriminate between different religious, linguistic and ethnic groups, between sexes etc. States are obliged to protect the right to education i.e. to adopt measures necessary to prevent individuals, groups or private institutions from violating this right. Last but not least states are obliged to fulfil the right to education. This implies that they have both obligations of conduct and obligations of result. The government has to take certain action and measures and it has to reach certain results.⁴³ I am aware of that the discussion on generations of rights and on the obligations to respect, protect and fulfill are doctrinal and disputed, but they anyhow illustrate interesting traits and interpretations of the right to education. Non-discrimination and the concept of equal rights are generally considered to be first generation rights and should be implemented immediately.

The basic content of the right to education is that states should provide free education for all at least in the primary stages. Availability and accessibility are prerequisites for this to be possible. The education shall be compulsory. Education shall be directed to the full development of the human person and enable all persons to participate in a free society. It shall promote understanding, tolerance and friendship among nations, racial and religious groups. Secondary school shall be made generally available and accessible to all, by every appropriate means, in particular by the progressive introduction of free education. Higher education shall be made equally accessible to all, on the basis of capacity, also by every appropriate means, and in particular by the progressive introduction of free education.⁴⁴

Another part of the right to education is the right of the parents to be involved in the education of their child. In the Universal Declaration of Human Rights (UDHR) it is expressed as the prior right for the parents to choose the kind of education that shall be given to their children.⁴⁵ In the ICESCR it is stated that the states parties undertake to respect the liberty of parents and legal guardians to choose other schools than the public ones and to ensure moral and religious education of their children in conformity with their own convictions. Those schools that the parents choose that are not public must however conform to such minimum educational standards as may be laid down or approved by the state.⁴⁶ The state is ultimately responsible for implementing human rights and thus the right to education, but the parents cannot be ignored. A balance has to be reached between the parents and the state on what is the role of the respective part. Included in the right to education is also the right of individuals and bodies to establish independent schools. This is not mentioned in the UDHR but it is mentioned in Article 13 of the ICESCR.

⁴³ Nowak, 1991, pp 421-422.

⁴⁴ Universal Declaration of Human Rights (UDHR), Art 26 and ICESCR, Art 13.

⁴⁵ UDHR, Art 26.

⁴⁶ ICESCR, Art 13.

Education has to be of a certain standard. If children in school do not learn how to read and write then the education is hardly living up to the expectations. Education shall be directed to the full development of the human person and it shall enable all persons to participate in a free society. This indicates that education has to be of a certain quality. If education does not reach certain standards the students would not learn all things necessary to participate in a free society. Also the formulation that schools that are not public must conform to minimum standards laid down by the state, clearly indicates that there are certain standards that must be met in private as well as in public schools. In the UNESCO Convention against Discrimination in Education, Article 1.2 states that the term education refers to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given. It is stated that this interpretation of the term education is for the purposes of the convention but it anyhow indicates what should be understood with the term education.

In the provisions on the right to education, the right of indigenous peoples to education in their mother tongue, is not explicitly stated. What relevance the general provisions on the right to education have for the right of indigenous peoples to education in the mother tongue will be discussed in detail below as well as more specific provisions of relevance for this right.

3.2 The right to use one's own language

The right of persons to use their own language includes more than just speaking one's language. According to Tabory it includes the right to state-sponsored education for one's children in their mother tongue.⁴⁷ The right to language as an independent right is, to my knowledge, not referred to in any human rights instrument. Language is mentioned in connection to education in the ILO Convention No 169 on Indigenous and Tribal Peoples (ILO Convention No 169).⁴⁸ In the International Covenant on Civil and Political Rights (ICCPR) and in the CRC, the articles protecting minorities and indigenous peoples mention language. Persons belonging to these groups "shall not be denied" the right to use their own language.⁴⁹ Even if this expression is negative, positive measures of protection are required under the ICCPR.⁵⁰ As mentioned in the introduction language is also important in connection to identity and culture.⁵¹

⁴⁷ Tabory, 1980, p 167.

⁴⁸ See Art 28. This will be elaborated on in chapter 4.

⁴⁹ ICCPR, Art 27 and CRC, Art 30. The ICCPR only mentions minorities but the CRC mentions both minorities and indigenous peoples. This will be discussed further in chapter 4.

⁵⁰ HRC, General Comment No 23, para 6.1.

⁵¹ In the proposed American Declaration on the Rights of Indigenous Peoples, language is suggested to be protected as a part of culture.

3.3 Definition of indigenous peoples

There is no set definition of indigenous peoples. ILO Convention No 169, applies to “peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.” Self-identification as indigenous is regarded as the fundamental criterion for determining what groups fall under the ILO Convention No 169.⁵²

Martínez-Cobo defines indigenous peoples as follows: “Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.”⁵³

Both proposed definitions include historical connection to certain territories, objective characteristics such as cultural and social patterns and the subjective criteria, self-identification. In addition Martínez-Cobo mentions non-dominant position as a criteria. Another criterion that sometimes is mentioned when speaking about indigenous peoples is that they should be numerically inferior to the rest of the population of a state.⁵⁴ I do not agree that this should be a criterion. If the situation were that a group of people constituted more than 50 % of the population of a country but they fulfilled all the other criteria mentioned; objective characteristic, subjective characteristic, historical connection to land and non-dominant position they would not be considered as indigenous at least not in the meaning of international law if they had to be numerically inferior. Hopefully they would not need to use law relating to indigenous peoples because majority rule would prevail. However, considering for example countries such as Bolivia and South Africa, indigenous majorities have been repressed by colonial powers and dominating minorities and majority rule have not been prevailing until recently.

In the case of Bolivia it is not disputed that approximately 70 % of the population is indigenous. These 70 % comprise several different indigenous peoples all numbering less than 50 %. Even if the indigenous population as a whole is a majority they are indigenous and they do need the legislation concerning indigenous peoples.

⁵² ILO Convention No 169, Art 1.

⁵³ Martínez Cobo, 1987, para 379.

⁵⁴ Lecture by Gudmundur Alfredsson, 19 February, 1998, Lund University, Sweden.

Regarding minorities there is not a clear definition either. According to Nowak⁵⁵ and Thornberry⁵⁶, Capotorti's definition has found the widest recognition in theory and practice. Capotorti's suggestion to what criteria to use to determine if a group is a minority includes the following: numerically inferior to the rest of the population of a state, non-dominant position, citizenship, objective characteristics such as language, ethnicity or religion differing from the rest of the population and a sense of solidarity which does not have to be explicit.⁵⁷ If citizenship should be a criterion is questionable as it could be misused to exclude certain groups from protection by not giving them citizenship. On the other hand, not to have citizenship as a criterion would mean that groups of migrants could fall under the definition of minorities. Regarding Article 27 in the ICCPR which is a minority provision, the Human Rights Committee (HRC) has expressed that state parties may not restrict the rights under Article 27 to citizens alone.⁵⁸

3.4 Applying minority legislation to indigenous peoples

The UN approach is according to Thornberry that the UN recognizes minorities and indigenous peoples as separate but related. The minority instruments comprehend indigenous peoples because they are usually a numerical minority in states and they are always non-dominant.⁵⁹ Other authors agree that minority legislation can be applied to indigenous peoples under certain circumstances. "When indigenous peoples number less than one half of the state population, they can benefit from minority rights if they so choose, as evidenced by the case-law of the Human Rights Committee under Article 27 of the CCPR."⁶⁰

A fact regarding Bolivia is that the majority of the population is indigenous. This means that all the indigenous peoples together are not numerically inferior. As numerical inferiority is a criterion in the suggested definition of what constitutes a minority, the consequence is that if the criterion numerically inferior is applied to the indigenous population as a whole, the indigenous peoples in Bolivia cannot benefit from minority legislation. The indigenous population in Bolivia does not consist of only one group however, but of several groups with different languages, ethnic origins and cultures. This makes Bolivia a multicultural society where no group of people is in a majority position, but all groups are numerically inferior to the rest of the population. In this situation Capotorti suggests that Article 27 in the ICCPR should be applied to all the groups.⁶¹ Shaw is of a different opinion and writes that it is perverse to regard the oppressed majority as a minority in order to enable it to benefit from the relevant international provisions. These majority groups are protected by human rights

⁵⁵ Nowak, 1993, p 489.

⁵⁶ Thornberry, 1991, p 6.

⁵⁷ Capotorti, 1991, para 568.

⁵⁸ HRC, General Comment No 23, para 5.1.

⁵⁹ Thornberry, 1991, p 13.

⁶⁰ Alfredsson, 1998, p 126. See also Shaw, 1992, p 16.

⁶¹ Capotorti, 1991, para 566.

generally.⁶² Adopting this reasoning on Bolivia makes it impossible for the indigenous population to benefit from minority provisions which might be useful to them. This, of course is the case only if the indigenous population is considered as one group and thus comprising a majority despite them being several different indigenous peoples. I find the reasoning of Shaw illogical considering especially the objective criteria in the suggested definitions of indigenous peoples. My conclusion is that as the indigenous population in Bolivia consists of several different indigenous peoples, each one comprising less than 50 % of the Bolivian population, they can all benefit from minority legislation.

Generally indigenous peoples do not want to be considered as minorities. This is however not an obstacle when it comes to the question whether indigenous peoples should benefit from minority legislation. The indigenous peoples may not want to be regarded as minorities but they have the possibility to use minority legislation if they want to and find it useful. The need to use minority legislation is perhaps not as great any longer as it was before, since the ILO Convention No 169 has entered into force. This Convention is quite far-reaching but it has as of yet not been ratified by very many states. For minorities there is no corresponding binding instrument. Shaw writes that it is “evident that development of law relating to indigenous people and to minorities is diverging.”⁶³ Indigenous peoples already have achieved greater recognition of collective rights than minorities.⁶⁴

⁶² Shaw, 1992, p 26. Shaw gives the example of South Africa. South Africa just like Bolivia has a large indigenous population. These populations are majorities in respective country but they consist of several different peoples none of which constitutes a majority in either country.

⁶³ Ibid, p 15.

⁶⁴ Barsh, 1994, pp 35 and 85.

4 Legislation

4.1 International instruments

In this chapter I will first discuss the international and regional provisions of relevance to the right of indigenous peoples to education in their mother tongue. In the last section of this chapter I will describe the relevant Bolivian legislation dealing with the educational reform in general and intercultural bilingual education in particular.

4.1.1 Universal Declaration of Human Rights

All human beings are born free and equal in dignity and rights. Everyone is entitled to all the rights and freedoms in the UDHR without distinction of any kind.⁶⁵ According to the UDHR everyone has the right to education and the education shall be directed to the full development of the human person. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups.⁶⁶ Language is not protected in the Universal Declaration although it is a ground for which discrimination is expressly prohibited.⁶⁷ Even though more positive linguistic rights were discussed and urged for by some countries in the drafting process, no minority provision was included in the UDHR. The draft article to the UDHR suggested among other things that religious, racial and linguistic minorities should have the right to establish and maintain their own schools and cultural or religious institutions and to use their language in the press, in public assembly and before the courts and other authorities.⁶⁸

4.1.2 International Covenant on Economic, Social and Cultural Rights⁶⁹

Article 2 of the ICESCR is a non-discrimination article. The rights in the ICESCR shall be exercised without discrimination of any kind such as for example language. Language is not recognized as a separate right.

The right of everyone to education is recognized in Article 13. The education shall be directed to the full development of the human personality and the sense of its dignity and shall strengthen the respect for human rights and fundamental freedoms. The education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups. In 13.2 states recognize that, with a view to achieve the full realization

⁶⁵ UDHR, Art 1 and 2.

⁶⁶ UDHR, Art 26.

⁶⁷ UDHR, Art 2.

⁶⁸ Tabory, 1980, p 175.

⁶⁹ Bolivia acceded the ICESCR 12 August 1982.

of this right, primary education shall be compulsory and available free to all; secondary and higher education shall be made accessible to all by every appropriate means, and in particular by the progressive introduction of free education. Higher education shall be made equally accessible on the basis of capacity.

The ICESCR is not very precise in its language regarding minorities and indigenous peoples. Article 13.1 mentions racial, ethnic or religious groups but what does it actually mean that education shall promote understanding, tolerance and friendship among these groups? However, education should be accessible to all. In many cases education is not accessible, for example to the indigenous peoples in Bolivia with their high drop-out rates. If this amounts to discrimination in the meaning of international law will be elaborated on in the next section.

4.1.3 International Covenant on Civil and Political Rights⁷⁰

The ICCPR contains two provisions which are of main interest to this thesis; Article 26 which is a non-discrimination article and Article 27 which protects minorities.

Article 26 reads as follows:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 26 is an independent non-discrimination article meaning that it does not apply only to the rights protected in the ICCPR but it applies in all situations.⁷¹ Hence it is of relevance to the right to education provided for in ICESCR. Article 2 in the ICCPR also contains a prohibition of discrimination but only in relation to the provisions in the covenant. This is of minor importance here as the right to education is not protected in the ICCPR.

The HRC has observed that not every differentiation of treatment constitutes discrimination. If the differentiation is based on reasonable and objective criteria and the aim is to achieve a purpose which is legitimate under the ICCPR, then the differentiation does not constitute discrimination.⁷² What these objective criteria are and what is unreasonable depends on the specific situation. In relation to language, de Varennes mentions several factors that are of importance in the procedure of determining what is discrimination and what is not: size of the language group, the number of individuals who are denied or disadvantaged regarding a benefit or advantage enjoyed by others who may use their primary language, concentration of the individuals that find themselves disadvantaged or denied a benefit, whether they are citizens, residents or aliens, the desirability to have a common national language in a state,

⁷⁰ Bolivia acceded the ICCPR 12 August 1982.

⁷¹ HRC, General Comment No 18, para 12.

⁷² Ibid, para 13.

individual preferences, the degree of disadvantage or the burden a state's preference for a particular language causes those who have a different primary language, practical considerations such as financial and professional resources, traditional concessions, levels and types of services and benefits, social, cultural and religious considerations, legitimacy of goal or objective etc. In the process of determining if a certain differential treatment is discriminatory these criteria must be taken into consideration and there needs to be proportionality and balance between aims and means.⁷³

Non-discrimination is closely linked to the concept of equal rights. States are responsible for guaranteeing "to all persons equal and effective protection against discrimination". Effective protection could imply not only equality in theory (law) but also equality in fact. In that case certain situations would require positive measures for equal rights and effective protection to be a reality. Scholars do not agree on if Article 26 entails positive measures and factual equality.

The HRC states in its General Comment on non-discrimination that "the principle of equality sometimes requires States to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination"⁷⁴. The state should take specific action to correct conditions unfavourable to the enjoyment of human rights for certain parts of the population. This preferential treatment in specific matters is to be interpreted as legitimate differentiation under the ICCPR as long as it is needed to correct discrimination in fact.⁷⁵ That states shall take special measures to eliminate discrimination is clearly stated in the International Convention on the Elimination of All Forms of Racial Discrimination. The language is quite explicit: "States Parties shall ... take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms."⁷⁶

According to Nowak, the prohibition of discrimination for reasons of certain personal characteristics is the most essential element in the principle of equality. If groups of the population traditionally have been subjected to especially serious detrimental treatment, then statutory provisions prohibiting discrimination are not enough to guarantee true equality. In this case positive measures are required. Nowak writes that one type of such positive measures could be appropriate education in elementary school. He writes however, that in view of the relatively unclear meaning of Article 26 and the "potentially great explosive force of the right to substantial equality," it is not surprising that Article 26 is very controversial.⁷⁷

⁷³ De Varennes, 1996, pp 89-105 and 127.

⁷⁴ HRC, General Comment No 18, para 10.

⁷⁵ Ibid.

⁷⁶ International Convention on Elimination of All Forms of Racial Discrimination, Art 2.

⁷⁷ Nowak, 1993, pp 459-461.

De Varennes interprets Article 26 in the light of the right to education in the mother tongue and writes: “What non-discrimination requires from a government is not special privileges for some because they are members of a minority group. Non-discrimination calls instead for the following: if the state provides to some of its inhabitants a service or benefit, such as education in their primary language, then it must do so in a non-discriminatory way. It is not, strictly speaking, a “special right”: the state or government has no obligation to do anything, but if it chooses to provide any benefit or service, it must do so without discrimination. Of course this does not imply ... that everyone has the right to instruction in his or her primary language, since a state may always be justified in limiting the number of languages in which it can respond as long as it is reasonable to do so.”⁷⁸ The level of services provided by public authorities in a given language must reflect the relative numerical strength of the population in question which uses this language.⁷⁹

How is non-discrimination supposed to be understood when it comes to language and education? I agree with de Varennes that if the state offers education in the mother tongue to certain groups of the population, it could constitute discrimination not to provide education in the mother tongue to other parts of the population having another mother tongue. It would not be a question of special measures to provide education in other languages than the dominating language in a country in that situation. I would argue that it would be discriminatory to have instruction in the same language for all children if they have different mother tongues. What is important is the fact that all children are instructed in their mother tongue. They will then be treated equally because they are all instructed in the language which is most favourable to them. The pupils’ opportunity to learn would not be unequal because of language at least.

This reasoning is further supported by de Varennes who writes “it thus appears as a fairly consistent theme in international law and state practice that the exclusive use of a single language constitutes differential treatment which may in some cases be discriminatory.”⁸⁰ To teach children in a language which they do not understand or only understand partially impairs the enjoyment of the right to education of the child. Thus these children are treated differently compared to those whose mother tongue is used for instruction in education. However, any language preference by states favours some and disadvantages others. This is an unavoidable situation since no state has unlimited resources. The question is when the distinctions which are the results of the language policy, become unreasonable.⁸¹ If the number of people speaking a particular language is very small it may be very resource-demanding for the state to provide services in the language of the group such as primary education in the mother tongue. De Varennes argues that the size of the language group in relation to resources is relative depending on if the language group is a minority or an indigenous people. A small indigenous group can demand more from the state compared to a minority of the same size due to

⁷⁸ De Varennes, 1996, p 119.

⁷⁹ Ibid, p 248.

⁸⁰ Ibid, pp 77-78.

⁸¹ Ibid, pp 85-88.

the nature of the relationship between the state and the indigenous people. The threshold for the state to comply with non-discrimination provisions is higher in the case of indigenous peoples than in the case of minorities.⁸² That the size of the group is important is reflected in the European Charter for Regional or Minority Languages which mentions in the area of education that one of the alternative measures should be provided for at least to those whose numbers are considered sufficient.⁸³

De Varennes does not mention factual equality in his reasoning but it is possible to argue that it could constitute discrimination to instruct children in another language than their mother tongue because it would not constitute factual equality. If some pupils were not instructed in their mother tongue the quality of their education would not be as good as that of those with instruction in their mother tongue, because they would not benefit from the education to the same extent as the others. It is a fact that instruction in another language than your mother tongue can cause high drop-out rates as it has done in Bolivia. The result is that the education is not for all as it should be, since some have limited access and are excluded from education because of their language. Instruction in the same language for all could consequently constitute an unreasonable distinction because some children would not be taught in their mother tongue and this would in fact result in an education of inferior quality and they would also have limited access to education.

Even though it may not be clear that the right to special measures flows from Article 26 and that the right to substantial or factual equality could be questioned and is controversial, I agree with the HRC and with what Nowak writes when they state that positive measures may be necessary sometimes to ensure factual equality because equality in law is just not enough considering the disadvantages some people have compared to others. Article 26 does talk about equal and effective protection against discrimination and I think this implies that factual equality is not far-fetched in the context of Article 26, and that the article should not be interpreted restrictively. However, in the case of the right to education in the mother tongue I agree with de Varennes that instruction in the mother tongue, in the situation when the state provides education in the mother tongue to some parts of the population, is not a type of positive measure that Nowak and the HRC write about in relation to Article 26. In this situation I would say that it could be discriminatory, depending on the size of the language group etc, not to provide education in the mother tongue, to groups in society with another mother tongue than the dominating language. This situation falls under Article 26 regardless if this provision entails factual equality or not.

Article 27 reads as follows:

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

⁸² Ibid, pp 97-98.

⁸³ European Charter for Regional or Minority Languages, Art 8.

To be able to benefit from this provision the indigenous people must fall under the interpretation of minority used in this case.⁸⁴ As I have dealt with the aspects of definition and the applicability of minority provisions to indigenous peoples in a previous chapter I will limit the discussion in this section to the other aspects of Article 27. It suffices to say that, as I concluded above, I regard the indigenous population of Bolivia to constitute several groups with distinctive characteristics. These groups separately fall under the generally accepted definition of minority and as such could on this ground benefit from Article 27. This reasoning is supported by what Thornberry writes about Article 27 being applicable to ethnic, religious and linguistic groups in multinational societies. He refers to the standpoint of the governments giving their views in this matter during the drafting process of Article 27. They considered Article 27 applicable in a situation where one group, even though not numerically superior, achieved a predominant position with a tendency to repress other groups.⁸⁵ Capotorti writes that in countries where groups of roughly equal numerical size coexist, Article 27 is applicable to all of them.⁸⁶ Neither from the case law of the Human Rights Committee nor from the state reporting procedure is it possible to draw the conclusion that Article 27 should not be applied to indigenous peoples.⁸⁷

Different authors seem to interpret Article 27 differently. Some suggest that article 27 requires extensive positive measures from states parties and some that it does not. I am aware of that some of these interpretations of Article 27 were written before the HRC's General Comment No 23 concerning Article 27 and that this might imply that the authors have changed their interpretations of Article 27 since then.

Capotorti argues for a less restrictive interpretation of Article 27. He holds that from the point of effective exercise of rights "neither the non-prohibition of the exercise of ...[such rights]... by persons belonging to minority groups, nor the constitutional guarantees of freedom of expression and association are sufficient for the effective implementation of the rights of members of minority groups to preserve and develop their own culture."⁸⁸ Further he states that adequate cultural development requires considerable human and financial resources. The rights of the members of the minority would lose much of their meaning if there was no government assistance, as many of the minority groups lack these resources. He writes that it is difficult to see how the culture and language of a group can be conserved without for example special adaptation of the educational system of a country. Educational policy is a key factor and special schools for children belonging to minority groups is a fundamental measure for the educational development for persons belonging to minorities. The capacity of the minority group to survive as a cultural group is in jeopardy if no instruction is given in the minority language. For the rights to have anything but theoretical significance, active and sustained intervention by states is required. Capotorti's conclusion is that at least in the

⁸⁴ Nowak, 1993, p 493.

⁸⁵ Thornberry, 1991, p 169.

⁸⁶ Capotorti, 1991, para 566.

⁸⁷ Nowak, 1993, p 494.

⁸⁸ Capotorti, 1991, para 213.

field of culture, states are required to adopt specific measures. Article 27 constitutes a positive and not a negative obligation for the states parties.⁸⁹

In NOU 1997:5, it is suggested that Article 27 requires states to secure that the minorities get active support. It is stated that this interpretation of Article 27 in international practice is in line with the ILO Convention No 169.⁹⁰

Nowak's view is as follows: The formulation in Article 27 is negative; persons "shall not be denied the right". Despite this formulation, Article 27 goes beyond mere non-discrimination and the article contains elements of a right to *de facto* equality, i.e. positive protection against discrimination.⁹¹ States are obliged under Article 2(1) in conjunction with Article 27 to protect the rights of persons belonging to minorities against at least greater threats by other groups of the population. It is largely up to the states how they want to protect their minorities as long as the measures are effective. However, direct, positive duties to guarantee rights can not be inferred from Article 27 if there are no specific threats on the horizontal level from other parts of the population. It would be unrealistic in multiethnic states with perhaps more than 100 linguistic or ethnic groups to guarantee the rights through direct, positive obligations. In the case when states provide active protection of minorities, for example by providing financial support for minority schools, then derivative claims for performance against the state may result from Article 27 in conjunction with the prohibition of discrimination in Article 2(1).⁹²

De Varennes claims that Article 27 should be interpreted in a restrictive way. States have a duty not to interfere in private community activities connected to language, or to religious or cultural usage. The minorities have the right to establish schools with instruction in the minority language but they do not have a right to financial support from the state, for example creation of public schools with instruction in the minority language. Article 27 only requires states to take positive measures to the extent that there is no interference in the use of language by a minority community and its members. De Varennes further writes that this restrictive interpretation appears to prevail, at least in the United Nations system.⁹³

Thornberry refers to and also seems to agree with the views in a memorandum of the UN Secretary-General which clarifies the difference between prevention of discrimination and protection of minorities: "discrimination implies any act or conduct which denies to certain individuals equality of treatment with other individuals because they belong to particular groups in society. To prevent discrimination, therefore, some means must be found to suppress or eliminate inequality of treatment ... aiming at the prevention of any act or conduct which implies that an unfavourable distinction is made

⁸⁹ Ibid, para 213-217, 493, 588 and 598.

⁹⁰ NOU 1997:5, section 3.6.7.

⁹¹ Nowak, 1993, p 500.

⁹² Ibid, pp 503-504.

⁹³ De Varennes, 1996, pp 127 and 172-173.

between individuals solely because they belong to certain categories or groups of society. ... The protection of minorities, on the other hand ... requires positive action: concrete service is rendered to the minority group, such as the establishment of schools in which education is given in the native tongue of the members of the group. Such measures are of course also inspired by the principle of equality: for example, if a child receives its education in a language which is not its mother tongue, this might imply that the child is not treated on an equal basis with those children who do receive their education in their mother tongue. The protection of minorities therefore requires positive action to safeguard the rights of the minority group”.⁹⁴ This distinction between non-discrimination and protection of minorities is made before the ICCPR existed so it is difficult to say how this quote should be interpreted in relation to Article 26 and 27. Thornberry interprets the difference between the articles as follows: “The provisions of Article 27 do not simply duplicate the anti-discrimination provisions of the Covenant; they have a more extensive significance in that in the interests of true equality between members of minority groups and other citizens, they are measures specially directed at a particular population group or groups in order to assist them to maintain their identity. It follows that the rights in Article 27 are additional to, and not a substitute for, guarantees of non-discrimination.”⁹⁵

De Varennes is the only one I have referred to who interprets Article 27 not to entail positive measures. Nowak writes that Article 27 under certain circumstances can imply positive measures. The rest of the scholars that I have referred to interpret Article 27 as an obligation for states to adopt special measures. I am bound to agree with this wider interpretation of Article 27. Protection of minorities seems to be an accepted concept. What is then the role of Article 27 in relation to the right to education in the mother tongue? As I have stated above, I consider that if a state provides education in the mother tongue to some people, it should provide education in the mother tongue to other language groups as well if this is reasonable considering the size of the group etc, otherwise the behavior of the state could constitute discrimination. To provide education in minority or indigenous languages in this situation is not a question of special measures. I am aware of that the quote of the Secretary-General above does not support this interpretation, but I do think that he opens the door to this interpretation when he writes that “such measures are of course also inspired by the principle of equality”.

There are limits to what special measures could be required by states. According to Thornberry resources are limited and the demands placed upon signatories to the ICCPR by Article 27 need to be looked at realistically. Some kind of balance needs to be reached between the minorities’ interests and those of the nation as a whole.⁹⁶ Also Capotorti limits the kind of special measures that fall under Article 27. He writes that at least in the area of culture special measures are required. This limits the application of

⁹⁴ Capotorti, 1991, who cites the memorandum of the Secretary-General, *Main Types and Causes of Education of Discrimination*, in length, para 238. Thornberry, 1991, pp 183-184 cites a shorter passage of this memorandum. Unfortunately I have not been able to get hold of the memorandum itself and am therefore forced to refer to secondary sources.

⁹⁵ Thornberry, 1991, p 184.

⁹⁶ *Ibid*, p 199.

Article 27 to some extent but at the same time he has not closed the door to interpreting Article 27 as to require special measures in other areas as well.

It is difficult to draw some kind of conclusion to what is the respective role of Article 26 and Article 27. What is meant when scholars refer to the principle of equality, equal rights, factual equality, non-discrimination, special measures etc? Capotorti writes that the two concepts, prevention of discrimination and the implementation of special measures, are distinct but also closely linked. The concept of equality and non-discrimination implies a formal guarantee of uniform treatment of all individuals and the protection of minorities implies special measures in favour of members of a minority group. The goal of both concepts is to ensure equal rights to all persons.⁹⁷ I interpret the situation as if at least some scholars have opened the door to interpret Article 26 as to imply factual equality and for this to be a reality special measures are required to some extent. It seems to be more of a consensus that Article 27 obligates states to take special measures. Regardless of Article 26 and Article 27 there seems to be consensus that minorities do have a right to special measures of some kind, either flowing from a wide interpretation of Article 26 or from Article 27.

Education in the mother tongue generally seems to be considered as a special measure. However, I think that the reasoning of de Varennes is more convincing. It could constitute discrimination under Article 26 to provide education in the mother tongue of some people and not to others with a different mother tongue.

Provided that states have ratified the First Optional Protocol to the ICCPR,⁹⁸ which Bolivia has, the victims of discrimination or persons belonging to minorities or indigenous peoples can submit complaints to the Human Rights Committee if they feel that they have been victims of violations of the ICCPR.⁹⁹

4.1.4 UNESCO Convention against Discrimination in Education¹⁰⁰

Article 1 reads as follows:

1. For the purposes of this Convention, the term “discrimination” includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:
 - a) Of depriving any person or group of persons of access to education of any type or at any level;
 - b) Of limiting any person or group of persons to education of an inferior standard;...

⁹⁷ Capotorti, 1991, para 241 and 585.

⁹⁸ Bolivia acceded the Optional Protocol to the ICCPR 12 August 1982.

⁹⁹ To my knowledge there has not been any complaints from Bolivia relating to Article 26 or 27 of the ICCPR as of February 1999.

¹⁰⁰ Bolivia has not ratified the UNESCO Convention against Discrimination in Education. Hereinafter called the UNESCO Convention.

The UNESCO Convention does not add very much to the educational rights of indigenous peoples. Discrimination in education is prohibited through Article 26 of the ICCPR and Article 13 of the ICESCR in combination. The UNESCO Convention however is explicit in some respects that are only implicit in the ICCPR and the ICESCR. Article 13 in the ICESCR is not as explicit regarding the standard or quality of education as the UNESCO Convention is. I argue however that quality is a necessary component of education and included in the concept even if not explicitly stated.

In Article 5.1.c it is recognized that members of national minorities have a right to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each state, the use or teaching of their own language, provided however that the right is not exercised in a manner which prejudices national sovereignty.

States parties to the UNESCO Convention are obliged to develop and apply a national policy which promotes equality of opportunity and of treatment in the matter of education.¹⁰¹

4.1.5 Convention on the Rights of the Child¹⁰²

In Article 28 states recognize the right of the child to education. With a view to achieve this right progressively and on the basis of equal opportunity, states shall make primary education compulsory and available free to all. States shall make available secondary school to every child and take appropriate measures such as the introduction of free education. Higher education shall be made accessible to all on the basis of capacity. According to Article 29 states agree that education of the child shall be directed to: The development of the child's personality, talents and mental and physical abilities to their full potential; The development of respect for the child's parents, his or her own cultural identity, language and values; Friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin. The articles guaranteeing the right to education in the UDHR and the ICESCR do not mention the development of respect for the cultural identity, language and values of the child. One goal of education in the CRC is accordingly to respect and develop the child's cultural identity and language. This is of great relevance to the indigenous peoples. To be able to develop the cultural identity and language of the indigenous children in school, one possibility would be to have the instruction *in* the indigenous language of the child. Another possibility would be to have instruction *of* the indigenous language. Either of these methods would mean that the education was at least to some extent adapted to the language and culture of the indigenous child.

¹⁰¹ UNESCO Convention, Art 4.

¹⁰² Bolivia ratified the CRC 26 June 1990.

Article 30 reads as follows:

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 practise his or her own religion, or to use his or her own language.

This article is very similar to Article 27 in the ICCPR. The differences are that Article 30 is directed to children only and that it expressly covers also persons of indigenous origin. If there is any difference in practice regarding this second point is hard to tell as Article 27 has been applied to persons of indigenous origin and it is not disputed that as long as indigenous peoples fall under the definition of minorities, Article 27 is applicable. In the case of Article 30, the discussion if indigenous groups in a multiethnic society who together constitute a majority, separately can be considered as minorities, is not an issue. Article 30 is applicable to persons of indigenous origin regardless if they can be considered a minority or not.

Are states obliged to take positive measures according to Article 30 in the CRC just as they probably are obliged to do this under Article 27 in the ICCPR? I would say yes as the wording is almost identical in both articles. That the rights are stated in a negative way does not mean that states do not have to take any positive measures. What positive measures can be required is probably difficult to say drawing a parallel to Article 27. Scholars do not agree on how far-reaching positive measures states are obliged to take under this article. In the General Guidelines regarding the periodic reports to be submitted under the CRC, the Committee on the Rights of the Child says that states should provide information on the measures adopted to recognize and ensure the enjoyment of the rights set forth in the Convention, including at the legislative, administrative, educational, budgetary and social levels.¹⁰³ This clearly indicates that positive measures have to be taken by states.

4.1.6 ILO Convention No 169 on Indigenous and Tribal Peoples

So far the ILO Convention No 169 is the most far-reaching binding instrument in the area of indigenous peoples. Only a few states have ratified it, Bolivia is one of them.¹⁰⁴ The predecessor to the ILO Convention No 169 was ILO Convention No 107 of 1957, also protecting indigenous peoples. This earlier Convention had a focus on assimilation and integration which has been abandoned by the new Convention.

Article 2 states that the government shall have the responsibility for developing systematic action to protect the rights in the Convention and this action should include assistance to the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and other members of society. This article does not state that the government has the primary responsibility but that it has *the* responsibility.

¹⁰³ General Guidelines, 1996, para 165-166.

¹⁰⁴ Bolivia ratified the ILO Convention No 169 11 December 1991. As of December 1998 only 13 states had ratified it.

This article affirms that special measures are needed. States are required to take action. Article 3 is a non-discrimination provision. Article 4 requires that special measures shall be adopted. Article 6 states that when applying the provisions in the ILO Convention No 169, the peoples concerned shall be consulted and means shall be established by which they can freely participate at all levels of decision-making in bodies responsible for policies and programs which concern them. In Article 7 the peoples are given the right to decide their own priorities. Improvement in levels of education shall with the participation of the peoples be a matter of priority in plans for the overall economic plans of the areas they inhabit. Article 32 states that appropriate measures on the international level shall be taken to facilitate contacts and co-operation between indigenous and tribal peoples across borders. Articles 26-31 deal with education and means of communication.

Article 26 reads as follows:

Measures shall be taken to ensure that members of the peoples concerned have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community.

The indigenous peoples shall have at least equal opportunity to acquire education compared to the rest of the population of the country. If this were to be interpreted only as formal equality it would not mean much. If this is to be interpreted as equality in fact, it means that education shall be equal at all levels in practice. For this to be possible the pupils must have the same opportunity at lower levels to be able to have equal opportunity at higher levels. Children, for example in Bolivia, not receiving education in their mother tongue, do have a higher illiteracy rate and a higher drop-out rate than children being instructed in their mother tongue. Consequently they are not equal in fact when entering higher education. If the indigenous children had received education in their mother tongue at least in the first years of school, they would probably have a better chance of reaching higher education and would be more equal to those having Spanish as their mother tongue.

Article 27 reads as follows:

1. Education programmes and services for the peoples concerned shall be developed and implemented in co-operation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations.
2. The competent authority shall ensure the training of members of these peoples and their involvement in the formulation and implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to these peoples as appropriate .
3. In addition, governments shall recognise the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples. Appropriate resources shall be provided for this purpose.

The education programs shall be developed in co-operation with the indigenous peoples to address their special needs. One of these special needs could be that education should be in the indigenous language of the people, if this is what the indigenous people wants.

Article 27.2 states that responsibility for the educational system should be progressively transferred to the indigenous peoples. This is in line with what is stated in Article 7 which says that the indigenous peoples shall have the right to decide their own priorities and with their participation improvement in levels of education shall be a priority in overall plans.

Article 28 reads as follows:

1. Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective
2. Adequate measures shall be taken to ensure that these peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country.
3. Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned.

Children belonging to indigenous peoples shall, “wherever practicable,” be taught to read and write in their indigenous language. The article does not specify what is practicable and what is not, it implies that balancing and proportionality legitimately can be considered when deciding what measures should be taken to implement the article. Considerations relevant to this case could be the size of group who should be taught to read and write in their indigenous language and if the language in question has an alphabet or not. If the group is small and the language does not have an alphabet, the costs for teaching these children to read and write in their indigenous language could be considerable and few if any states have unlimited resources. On the other hand, to have this kind of vague expressions in an article can open to abuse. The argument that the measure to teach children to read and write in their indigenous language is very expensive could be misused by states and used as an excuse not to implement the provision. The factors that de Varennes mentions in the context of what constitutes unreasonable distinction could be relevant in the balancing act that legitimately can be performed under Article 28 in the ILO Convention No 169.

Article 28 only mentions that the indigenous children are entitled to learn to read and write in their indigenous language. It does not further mention education in the indigenous language and it does not mention the right to have instruction in general in the indigenous language in the situation when this is the mother tongue of the children. On the other hand the indigenous peoples have the right to establish their own educational facilities and appropriate resources are supposed to be provided by the state for this purpose according to Article 27.3. I interpret the right of the indigenous peoples to get financing to cover all levels of school, if an indigenous people chooses to

establish a system covering all levels. In these educational facilities the indigenous people could of course choose to have all instruction in the indigenous language.

4.1.7 UN Draft Declaration on Indigenous Peoples¹⁰⁵

Suggested Article 15 reads as follows:

Indigenous children have the right to all levels and forms of education of the State. All indigenous peoples also have this right and 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.

Indigenous children living outside their communities have the right to be provided access to education in their own culture and language.

States shall take effective measures to provide appropriate resources for these purposes.

In the discussions leading to the Draft Declaration, the right to indigenous autonomy in matters relating to internal and local affairs has been brought up to encompass, among other things, education. The powers proposed would not be only advisory but legislative and administrative.¹⁰⁶

De Varennes interprets the Draft Declaration as if states are obliged to provide financial and institutional assistance in order to promote and develop indigenous languages. He also writes that even though the language is used by a relatively small number of indigenous people, a state may be obliged to provide resources for its maintenance.¹⁰⁷ Compared to Article 28 of the ILO Convention No 169, Article 15 of the Draft Declaration stipulates that the indigenous children have the right to *all levels and forms* of education of the state. Even though I do not think it is very clear from the wording, de Varennes concludes that Article 15 extends the right to education *in the indigenous language* to all levels and forms of public education, in addition to the right of indigenous peoples to establish their own educational systems. I believe, however unclear de Varennes' wording is, that it is a logical step to extend the obligations of states to include the providing of public education in the indigenous languages on all levels. De Varennes also draws the conclusion from Article 15 that the indigenous children have the right to have instruction in their indigenous language regardless of the number of speakers. I am inclined to agree with this as Article 15 does not say that the right is conditioned to wherever it is practicable to enforce it as in Article 28 of the ILO Convention No 169. The Draft Declaration does not open up for balancing.¹⁰⁸

¹⁰⁵ Hereinafter the Draft Declaration.

¹⁰⁶ Alfredsson, 1998, p 129.

¹⁰⁷ De Varennes, 1996, p 263.

¹⁰⁸ Ibid, pp 267-268.

4.1.8 UN Declaration on Minorities

According to Article 1, states shall protect the linguistic identity of minorities within their territories. Article 4.3 states 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 rights in this declaration are not very extensive. Only when it is possible should states take measures so that minorities may have instruction either in their language or of their language. The provision is very vague and does not add anything to the rights of indigenous peoples to education in the mother tongue.

4.2 Regional instruments

The American Convention on Human Rights does not have a provision on the right to education. Neither does it contain a provision protecting minorities or indigenous peoples. The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Protocol of San Salvador, contains a provision on the right to education but unfortunately the Protocol of San Salvador is not yet in force.¹⁰⁹

There is a Proposed American Declaration on the Rights of Indigenous Peoples. It does not carry much weight as it is not even adopted as a declaration yet. Suggested Article 8.1 protects language. “Indigenous peoples have the right to indigenous languages, ... as a component of national and universal culture”. The proposed declaration does not say anything about states being obliged to provide education in the indigenous languages, but indigenous peoples shall be entitled to establish their own educational institutions and states shall ensure that these systems guarantee equal educational opportunities for the entire population. When the indigenous peoples so decide these systems shall be conducted in the indigenous languages. States shall provide financial and any other type of assistance needed for the implementation of the rights stated above.¹¹⁰

4.3 National legislation

4.3.1 The Bolivian Constitution

In 1994 the Bolivian constitution was amended.¹¹¹ In Article 1 it is now emphasized that Bolivia is a multiethnic and culturally pluralistic country. Article 171 is greatly expanded. Before the reform it only guaranteed the existence of organizations of rural workers. Now it recognizes the social, economic and cultural rights of the indigenous peoples. Among others the rights to language, values, identity, customs and institutions

¹⁰⁹ As of January 1999 the Protocol of San Salvador was not yet in force.

¹¹⁰ Proposed American Declaration on the Rights of Indigenous peoples, Art 9.

¹¹¹ Ley de Reforma a la Constitución Política del Estado, No 1585, promulgated 12 August 1994.

are mentioned. The state also recognizes the juridical personality of indigenous and rural associations and syndicates.

Article 6 contains a prohibition of discrimination. Language is one of the grounds for which discrimination is prohibited. Article 7(e) states that every person has the fundamental right to receive education.

4.3.2 The Educational Reform Law

The ERL is a framework law and does not regulate the school curriculum in detail. The specific rules on intercultural bilingual education are found in the decree on the organization of the curriculum.¹¹²

In the first chapter of the ERL the basis and the goals of the educational system are stated. All Bolivians have the right to equal opportunities within the school system. It should also respond to the vital demands of the different geographical and cultural regions of the country. The school system is intercultural and bilingual because it takes into account the socio-cultural diversity of the country. It should not discriminate because of ethnicity, culture, regional background, social, physical, mental or sensory condition, sex, religion or age.¹¹³ Respect for human rights should be promoted and the national identity should be strengthened by promoting the historical and cultural values of the country and the rich multicultural and multiregional diversity.¹¹⁴ Another objective of the educational system is to create an intercultural and participative system which gives all Bolivians access to education without discrimination.¹¹⁵ It is clearly stated that the system should be non-discriminatory. Even though it is stated in the Constitution that discrimination because of language is prohibited it is not stated in the non-discrimination article in the ERL that language is a ground for which discrimination is prohibited. Article 1 mentions ethnicity and culture but not language. I would despite this say that language is covered, as it is part of culture and also an important characteristic of ethnicity. It would also be a paradox if it was not covered since one of the goals of the new educational system is for it to be intercultural and bilingual. An explicit statement in the ERL that language is a ground for which discrimination is prohibited would, however, have been desirable. It would then harmonize better with the Constitution and the international provisions, such as Article 26 in the ICCPR and Article 2 in the ICESCR, where language is mentioned.

An important part of the structural reforms of the society is popular participation. In the school system it is manifested in Articles 5 and 6 of the ERL where it says that one of the objectives of the popular participation is to respond to the demands of the population and their grass-root level organizations and through these organizations be able to construct an efficient school system and improve the school coverage to give equal

¹¹² See further section 4.3.3.

¹¹³ ERL Art 1.

¹¹⁴ Ibid, Art 2.

¹¹⁵ Ibid, Art 3.

opportunity to all Bolivians. The popular participation structure is adapted to the general structure of the school system. On the national level educational councils represent the indigenous peoples. There are four different councils on this level. Three of them represent only one people each, Aymara, Quechua and Guaraní respectively. The fourth council represents the approximately thirty peoples living in the lowlands. It is called the Amazon-Multiethnic Council.¹¹⁶ These national councils of education exist since approximately 1997.¹¹⁷ Under these are the educational councils on departmental level.¹¹⁸ These councils had not yet been established as of September 1998. Under the departments there are districts and only in a few places in the country there exist educational councils on this level so far. Under the districts there are nucleuses and also on this level there are educational councils. The lowest level is the school level. On the school and nucleus levels the councils exist traditionally, but they have not yet adopted the new ideas and visions of the educational reform.¹¹⁹

On the national level the educational councils take part in forming the educational policy mainly in the area of intercultural and bilingual education, but also regarding teacher training.¹²⁰ On the local level the school councils take part in forming the complementary curriculum.¹²¹ Also the nucleus is involved in developing the complementary curriculum.¹²²

In Article 9 of the ERL the basic structure of the curriculum is described. Regarding language there are two forms of teaching, monolingual and bilingual. The monolingual model means that the teaching is in Spanish and that an indigenous language may be taught as a second language. The bilingual model means that the first language is the original language and that Spanish is the second language at least in the first years of school.

4.3.3 Decrees

In the Decree 23950 on the organization of the curriculum intercultural bilingual education is regulated in detail. If nothing else is referred to, the articles I mention in this section are from this decree.

Articles 11 and 12 deal with the curriculum in general. Article 11 deals with the bilingual model and Article 12 with the monolingual model. Article 11 states that the curriculum of the whole school system is bilingual. The bilingual model will first be introduced in primary education but then successively expanded to the whole system. The curriculum is supposed to be established according to the bilingual model primarily

¹¹⁶ In Spanish these Educational Councils on the national level are called Consejos Nacionales de Educación.

¹¹⁷ Albó, 1998, p 6 and interview with Luis Antonio Rodríguez. See further chapter 5.

¹¹⁸ In Spanish Consejos Departamentales de Educación.

¹¹⁹ Interview with Walter Gutierrez, Aymara Educational Council.

¹²⁰ Ibid.

¹²¹ Decree 23950, Art 14.

¹²² SNE, 1996, p 6.

in the districts and nucleuses where the students speak an indigenous language and ask for teaching in another language than Spanish. The bilingual model aims at the preservation and development of the indigenous languages at the same time as it aims at universalizing the use of Spanish. Preservation and development of the indigenous languages is to be understood as follows: Initially teaching of reading and writing will be in the mother tongue of the students. The development and consolidation of both the oral and written linguistic competence of the students is in their own language. The second stage will be for the students to learn Spanish as a second language, with the methodology of a second language. This will start in the first cycle of primary school. To secure the efficient use of Spanish, the teaching of this will start as soon as the students know how to read and write in their mother tongue. After both languages have been introduced, the parallel process of consolidating the knowledge of both languages will be continued. For students being monolinguals in Spanish and for those who predominantly speak Spanish, the teaching and use of an indigenous language ought to be stimulated and incorporated in the school system. In this case as a second language.

In chapter five of the Decree, primary education is specifically regulated. Among the objectives of primary education is the aim to strengthen the ethnic development of the child and to develop the reading skills of the child through the child's mother tongue. Another objective is to promote individual and social bilingualism by encouraging Spanish-speaking students to learn an indigenous language and to guarantee the right to use and enjoy the indigenous languages for the speakers of indigenous languages, but also to assure that all students in the country possess efficient knowledge of Spanish.¹²³

In the first cycle of primary education the students with an indigenous mother tongue or students predominantly using an indigenous language should, in addition to this language, learn Spanish as a second language. The teaching of Spanish should be introduced from the moment when the students know how to read and write in their mother tongue. For the students having Spanish as a mother tongue, an indigenous language can be introduced as a second language in the first cycle of primary education.¹²⁴ For these pupils it is optional to study an indigenous language. There is a risk that these children choose to study foreign languages such as French and English instead of an indigenous language. Maybe these students live in areas where an indigenous language is spoken by a large percentage of the population and still they do not have to learn it. This is a factor influencing the status and situation of the indigenous languages. It will not contribute to change their position as marginalised languages.

In the second cycle of primary education both the knowledge of the indigenous language and Spanish as a second language should be developed and strengthened. Those having Spanish as their mother tongue or using Spanish predominantly can continue with studying an indigenous language as a second language if this has been introduced in the

¹²³ Decree 23950, Art 30.

¹²⁴ Ibid, Art 33.1.

first cycle. If it has not been introduced the students can begin to study an indigenous language in the second cycle.¹²⁵

In the last two years of primary school, the third cycle, the knowledge of the indigenous language as the first language and Spanish as the second language is deepened. For the students with Spanish as mother tongue the learning of an indigenous language can be continued or introduced depending on if an indigenous language already has been introduced or not.¹²⁶

The curriculum of secondary school is regulated in chapter six.¹²⁷ The articles are not as explicit regarding intercultural bilingual education as the articles regarding primary education are. According to Article 40, one of the objectives of secondary education, just as of primary education, is to promote individual and social bilingualism by encouraging Spanish-speaking students to learn an indigenous language and to guarantee the right to use and enjoy the indigenous languages for the speakers of indigenous languages. According to Article 43.1, the curriculum in secondary education includes, in the area of communication and language, the deepening and development of the communication skills with the appropriate use of the mother tongue of the student and of a second language. This implies that the indigenous languages should be used at least in the area of language and communication together with Spanish. It does not imply that teaching in general should be *in* the indigenous language.¹²⁸

The chapter dealing with higher education does not mention intercultural bilingual education at all or have any other reference to education in the indigenous languages.¹²⁹

¹²⁵ Ibid, Art 33.2.

¹²⁶ Ibid, Art 33.3.

¹²⁷ Ibid, Art 38-48.

¹²⁸ This interpretation is supported by what Tomás Robles said at one of the interviews.

¹²⁹ Decree 23950, Art 49-57.

5 Practical steps to implement the reform

The ERL was promulgated in 1994. Since then, and on the planning stage before, there has been intensive work to implement the reform. The reform changes the whole educational system: administration, teachers' situation, curriculum and popular participation structure etc. Many actors are involved in the implementation process: the international community, the Bolivian state, regional and local authorities, regional and local organizations, foreign and national experts, NGOs, unions, the church and of course teachers and students.

Intercultural bilingual education is only one part of the reform, more specifically part of the transformation of the curriculum. This means that within the transformation of the curriculum is included, in addition to IBE, transformation of the school structure, transformation into cycles, new pedagogic, new material, reformed teacher training, transformation into the new language models etc. I concentrate on the implementation of IBE and I will deal with the implementation of other parts of the reform only when they are of relevance for the implementation of IBE.

The state is responsible for implementing human rights and the state consequently has the overall responsibility for the implementation of the right to education. In Bolivia the authority responsible for implementing the educational reform is the Vice Ministry of pre-, primary and secondary school.¹³⁰ Under the Vice Ministry, the National Unit for Professional-Pedagogical Service (UNST-P) and the National Unit for Institutional Planning and Development (UNPDI) both work with the educational reform.¹³¹ UNST-P is the organ responsible for the implementation of IBE.¹³² The school system is decentralized to a great extent and the departments and all the municipalities are much involved in implementing the ERL.

5.1 Plans for implementation

It is estimated to take twenty years to implement the educational reform. As the process is slow and it will take time before it has reached all areas and all levels, there is an improvement program parallel to the reform to attend to the most urgent needs. The purpose of this improvement program is to enhance the immediate teaching and learning conditions. Through the improvement program, the didactic materials, the infrastructure and the teacher training will be attended to. This temporary program was planned to

¹³⁰ Viceministerio de Educación Inicial, Primaria y Secundaria, Albó, 1997, p 4.

¹³¹ Unidad Nacional de Servicios Técnicos-Pedagógicos and Unidad Nacional de Planificación y Desarrollo Institucional.

¹³² Albó, 1998, p 1.

start 1994 and is supposed to last until 2000. It will gradually lose significance as the actual reform becomes more and more implemented.¹³³

According to the strategy of implementation of the actual reform, the first stage of implementation is 1994-2000. During this period, curricular transformation will be initiated in the first cycle of primary school all over the country. In 2006 all the eight years of primary education are supposed to have been reformed. Transformation of the curriculum in secondary school is supposed to start 2003. It will take many years to fully implement the curricular transformation in secondary school as the coverage on this level is very bad. In many areas of the country secondary education does not exist at all at the moment.¹³⁴

5.2 Actual situation

As mentioned above, the ERL provides for two different ways to transform the curriculum regarding language. There is one monolingual model and one bilingual one. The monolingual model means teaching in Spanish with the option of learning an indigenous language as a second language. The bilingual model means teaching in both an indigenous language and in Spanish.¹³⁵

So far the reform has focused on the rural areas. The strategy is to start with the bilingual model in these areas as the need for transformation is greater there than in the urban areas.¹³⁶

Because of the linguistic situation, the plan for the cities is that the monolingual model will be applied there. People are speaking many different languages but most people speak Spanish to some degree. Even if their mother tongue is not Spanish, Spanish is most of the time the language used to communicate between people from different linguistic groups.¹³⁷ The loyalty towards the indigenous languages is also lower in these areas than in the rural areas.¹³⁸

As of yet only the bilingual model has been introduced. Nowhere in the country has the monolingual model been introduced systematically.¹³⁹ There are only some sporadic initiatives.¹⁴⁰ Luis Antonio Rodriguez, working with IBE in UNST-P, estimates that the teaching of indigenous languages as second languages will be started in 2000. According to Tomás Robles¹⁴¹ this delay of the introduction of the monolingual model

¹³³ ETARE, 1993, pp 79-83.

¹³⁴ Ibid, p 54.

¹³⁵ ERL, Art 9.

¹³⁶ Albó, 1996, p 4.

¹³⁷ Interview with Tomás Robles.

¹³⁸ Albó, 1996, p 21.

¹³⁹ Interview with Carlos Cox, interview with Luis Antonio Rodriguez and Albó, 1998, p 5.

¹⁴⁰ Interview with Carlos Cox.

¹⁴¹ Tomás Robles is the Director of the Department for Decentralization and Institutional Strengthening within UNPDI.

is caused by technical problems. It is difficult as it is to implement the bilingual model and should the monolingual model be introduced now, it would jeopardize the bilingual model and there would be a risk of endangering the whole IBE project.

As the monolingual model has not yet begun to be implemented, the students in the cities only have access to education in Spanish, regardless of their mother tongue. In the future when the monolingual model has been introduced, the teaching will still be in Spanish but it will be possible to study an indigenous language as a second language. It is very important to expand IBE to the urban areas as it is there the multiethnic focus is needed, considering the mix of people living there. The intercultural focus is fundamental to create a more equal society without discrimination between the ethnic groups. In the end of 1997 there were no structured ideas on how to develop the intercultural climate and attitudes in these areas.¹⁴²

5.2.1 Nuclearization

The whole country is to be divided into nucleuses. The purpose of this system is to have units with a population which is more or less homogeneous in respect of ethnic, cultural and linguistic characteristics.¹⁴³ The objective of the nucleus is to assure the pedagogical quality. This is done through a pedagogical advisor in each nucleus. Another purpose of the nucleus is to strengthen the ethnic, cultural and linguistic identity of the local socio-cultural groups through the school system.¹⁴⁴

The organization of the school system in nucleuses is a precondition for starting with curricular transformation and the introduction of IBE. It is supposed to simplify the transformation. Through the nuclearization process it becomes visible what languages are spoken in the different schools in a nucleus. To have homogeneous nucleuses naturally helps, when it comes to distributing materials and trying to find a pedagogical advisor speaking the right languages.¹⁴⁵ Nucleuses which are trilingual exist but are not very common. In a trilingual nucleus there is education in Spanish and in at least two indigenous languages in at least one of the schools in the nucleus.¹⁴⁶ The vast majority of the nucleuses in the rural areas is linguistically homogeneous. If this is not the case, Xavier Albó¹⁴⁷ considers it reasonable either to reorganize the nucleus or to have a multilingual focus.¹⁴⁸

Nuclearization can be done in a few different ways. The first method is to consolidate an already existing nucleus which fulfills the requisites needed for the reform. The second method is to reorganize already existing nucleuses if they do not fulfill the criteria. If

¹⁴² Albó, 1996, pp 4-5 and Albó, 1997, p 22.

¹⁴³ SNE, 1996, p 6 and interview with Carlos Cox.

¹⁴⁴ Ibid, pp 6-7.

¹⁴⁵ Ibid, p 11 and interview with Carlos Cox.

¹⁴⁶ Interview with Carlos Cox.

¹⁴⁷ Xavier Albó is an expert on bilingual education.

¹⁴⁸ Albó, 1997, p 8.

there are no existing nucleuses in an area, new ones have to be created.¹⁴⁹ This process of nuclearization can be difficult, especially in the urban areas as traditionally there are no nucleuses as in the rural areas.¹⁵⁰ The process was supposed to be finished in the rural areas in 1997 and in the urban areas in 1998.¹⁵¹ According to Carlos Cox, who is working with the nuclearization process, it will not be finished in areas with dispersed population until the end of 1998, and in densely populated areas not until 1999. He also says that according to the proposition, the goal is to form approximately 1700 nucleuses in the country.

5.2.2 Curricular transformation

The curricular transformation started in 1996 in the classrooms.¹⁵² It was supposed to start in 1995.¹⁵³ Statistics on the national level on how many schools or students that have IBE was not yet available when this field study was carried out in Bolivia in September and October 1998.¹⁵⁴ What is known is how many nucleuses have started the curricular transformation. In September 1998 the number was 785. Of these it is difficult to estimate how many nucleuses that have IBE. Carlos Cox estimates that 65% of the nucleuses in transformation have introduced IBE, that is the bilingual model as the monolingual model is not put in practice as of yet. This means that they have a pedagogical advisor in the nucleus and that material for bilingual education is used. For a nucleus to be considered bilingual it is enough that only one school in the nucleus has introduced the bilingual model. Consequently it is impossible to say how many of the schools in the 65% of the 785 nucleuses that have instruction in the indigenous languages.¹⁵⁵

Because of the nature of these statistics it is difficult to draw a conclusion on how far the implementation process has come in exact figures. It is not known how many schools that have education in the indigenous languages and neither is it known how many students are instructed in their mother tongue. As the nuclearization process is not finished it is not possible to know anything about how many schools and nucleuses will have instruction in one of the indigenous languages when the whole country is reformed. What exists is information about what languages the children speak but from this it is impossible to draw conclusions as to what language is used for teaching. Several criteria need to be fulfilled if the education should be in an indigenous language; the children must speak an indigenous language, the teacher must be able not only to speak but also to read and write the same indigenous language as the children. The third criterion is that the pedagogical advisor should also be able to speak, read and write the indigenous

¹⁴⁹ SNE, 1996, p 8.

¹⁵⁰ Interview with Carlos Cox.

¹⁵¹ SNE, 1996, pp 9 and 27.

¹⁵² Interview with Tomás Robles.

¹⁵³ ETARE, 1993, p 54.

¹⁵⁴ According to the *Programa de Reforma Educativa, Programación Operativa Anual, Gestión 1998*, para 1.5, elaborated by the Vice Ministry of pre-, primary and secondary school, statistics on pre-, primary and secondary school will be available during 1999.

¹⁵⁵ Interview with Carlos Cox.

language in question. The last thing is that the parents must accept that their children are taught in their indigenous language.¹⁵⁶ Problems connected to these criteria are elaborated on below.

In the Guaraní area the numbers of how many schools that have IBE are available. I do not dare say that this area is representative of other areas in the country. It is a smaller linguistic group than the Quechua and Aymara groups and it is not as diverse as the Amazon-Multiethnic area with its many different linguistic groups. Furthermore several of the Guaraní schools have been part of PEIB, which means that they have had education in the indigenous languages since the beginning of the 1990s. In the Guaraní area there are 300 schools. Of these 200 have started to be reformed. 120 schools are officially bilingual schools but in reality only 60 schools are truly bilingual and these truly bilingual schools are the schools who were part of PEIB. In the end all 300 schools will have IBE, either the monolingual model or the bilingual model. In October 1998 only the bilingual model existed. The monolingual model is not functioning yet, just as in other parts of the country.¹⁵⁷

As the reform started in the classrooms in 1996, the students who were involved from the beginning are in their third year of IBE. The schools involved in the PEIB have at the most had five years of bilingual education since that was how long the project existed before it was terminated and the PEIB schools were incorporated into the educational reform.¹⁵⁸

Part of the aim of the transformation of the curriculum is to use new teaching material. For the bilingual model material has been produced for the first three years in three languages, Aymara, Quechua and Guaraní, by the central authorities responsible for the implementation of IBE.¹⁵⁹ New material is elaborated each year successively.¹⁶⁰ The process of elaborating and distributing this new material has been slower than planned and it is still not working as it should.¹⁶¹

Part of the bilingual model is to learn Spanish as a second language. As stated above this starts in the first few years of primary school. Because Spanish is now taught as a second language, compared to before when it was the primary language of instruction, a new methodology must be used and new materials need to be elaborated. As of September 1998, Spanish as a second language had not started to be taught with the new material anywhere in the country.¹⁶² Some materials have been printed during 1998 but as of September 1998 nothing had been distributed to the schools.¹⁶³ The production and

¹⁵⁶ Interview with Carlos Cox.

¹⁵⁷ Interview with Silvia Chumira, President of the Guaraní Educational Council and Enrique Camargo, President of the Indigenous organization for the Guaraní people, (Asamblea del Pueblo Guaraní, APG).

¹⁵⁸ Interview with Luis Antonio Rodriguez and interview with Tomás Robles.

¹⁵⁹ World Bank, 1997, p 20 and interview with Tomás Robles.

¹⁶⁰ ETARE, 1993, p 55.

¹⁶¹ Albó, 1997, p 4 and Albó, 1998, p 7.

¹⁶² Interview with Tomás Robles and Luis Antonio Rodriguez.

¹⁶³ Albó, 1998, p 8 and interview with Luis Antonio Rodriguez.

distribution of the materials and didactic suggestions for Spanish as a second language is going slower than planned. The teachers usually use the old methods and materials which existed before the reform because of the delays. The reasons for this delay are mainly financial and administrative. Not having materials adapted to the new system could have adverse effects.¹⁶⁴

In the other indigenous languages, i.e. not Quechua, Aymara, and Guaraní, the authorities responsible for implementing the reform have not been involved directly in developing materials. They have only helped with technical assistance and some financial assistance. In the areas represented by the Amazon-Multiethnic Educational Council the languages are small and according to José Abiyuna¹⁶⁵, CIDOB, which is an indigenous organization representing many of these peoples, has started to elaborate material in some of the more than 30 languages in this area with some technical and financial assistance from the authorities.

The curricular transformation has not yet started in the classrooms in the Amazon-Multiethnic area as of October 1998. As the socio-linguistic situation is different in different places within the area, both the bilingual and the monolingual model will be used.¹⁶⁶

The explanation from the authorities why they focus on the implementation of bilingual education for only the three largest language groups is that the situation is more difficult regarding the other indigenous languages because they are very small. It is a costly process to implement bilingual education for all these groups. Furthermore they claim that there is no socio-linguistic diagnosis for these areas and that most of the people from these groups speak Spanish. The authorities recommend other strategies of implementation: NGOs, churches, international organizations and other private initiatives. They consider this to be in line with the educational reform.¹⁶⁷ That the situation is very complex in these areas is agreed upon by Albó, but he also stresses that these areas are symbolically very important for the struggle towards a multicultural society.¹⁶⁸

5.2.3 Teachers' situation

An important part of implementing IBE is to make sure that there are enough teachers educated in teaching according to the transformed curriculum and in the indigenous languages. The teachers need to adapt to the new methodology and the new pedagogy,

¹⁶⁴ Albó, 1997, p 19.

¹⁶⁵ José Abiyuna is the president of the Amazon-Multiethnic Educational Council and Secretary of Education in CIDOB (Confederation of the Indigenous Peoples of Bolivia). CIDOB is an organization representing many of the smaller indigenous peoples in the lowlands.

¹⁶⁶ Interview with José Abiyuna.

¹⁶⁷ Interview with Tomás Robles.

¹⁶⁸ Albó, 1996, p 13.

and of course they need to master the languages they are teaching. The authorities are aware of the fact that the teacher training is important for the reform to be successful.¹⁶⁹

Generally there is a lack of educated teachers in the Bolivian school system. In some places as many as 70 % of the teachers do not have any formal teachers' training.¹⁷⁰ The situation with teachers without formal training is especially serious in the most peripheral rural areas.¹⁷¹ To solve this problem of lack of teachers, special education on the level of secondary school with a specialization in pedagogy has been established.¹⁷² First it was only planned that this education should be available in the smaller indigenous languages in the lowlands¹⁷³ but now it exists in Quechua as well.¹⁷⁴ In this pedagogical education on secondary level, education of IBE is an important part.¹⁷⁵ This pedagogical training on secondary level is not to be seen as a second-rate education for the most peripheral rural areas, but as a first step within a much bigger process to professionalize the teachers.¹⁷⁶

There are also plans in some areas to start a special education for teachers without any formal training to give them the opportunity to get a formal degree while working as teachers.¹⁷⁷

Of the 24¹⁷⁸ schools for the training of teachers that functioned before the reform in 1994 it was planned that six of these would be transformed into schools specialized in IBE.¹⁷⁹ Two would be in the Quechua area, two in the Aymara area, one in the Guaraní area and one for the Amazon-Multiethnic area.¹⁸⁰ At the moment the four schools in the Aymara and the Quechua areas are in transformation but the process has just started.¹⁸¹ Two of the schools in these areas have the potential of being trilingual in Spanish, Aymara and Quechua.¹⁸² In the Guaraní area the school for the training of teachers has had education with specialization in bilingual education since 1995. This is the school which has come the furthest in the process of educating teachers for the new system. This school does not only educate teachers for bilingual education in Guaraní, but also

¹⁶⁹ Albó, 1998, p 11.

¹⁷⁰ Interview with Oscar Aramayo.

¹⁷¹ Albó, 1997, p 25.

¹⁷² This type of education on secondary level with a specialization in pedagogy is called *bachillerato pedagógico* in Spanish. Interview with Tomás Robles.

¹⁷³ In the Amazon area there are three schools on secondary level with a specialization in pedagogic. Albó, 1998, p 14.

¹⁷⁴ Albó, 1997, p 6.

¹⁷⁵ Albó, 1996, p 18.

¹⁷⁶ Albó, 1998, p 13.

¹⁷⁷ According to Oscar Aramayo, director of the teacher school in Camiri, this is planned to start in the Guaraní area in 1999.

¹⁷⁸ ETARE, 1993, p 57. According to Tomás Robles there were only 23 functioning teacher schools before the reform started.

¹⁷⁹ Before the reform, the schools for the training of teachers were called "Escuelas Normales" and now they are being transformed into Normal Superior Institutes "Institutos Normales Superiores", some of which are being transformed into institutes specialized in IBE.

¹⁸⁰ ETARE, 1993, p 57.

¹⁸¹ Interview with Luis Antonio Rodriguez.

¹⁸² Albó, 1998, p 11.

in four other smaller indigenous languages. This school is growing all the time. In October 1998 the school had 172 students.¹⁸³ The school for the training of teachers in the Amazon-Multiethnic area does not have any students yet studying to obtain a teacher's degree on the higher level. The lack of students who have finished secondary school is a problem and therefore are not qualified to start teachers' training at a higher level. What exists at this school is teachers' training at the level of secondary school to be able to get teachers with some sort of pedagogical training.¹⁸⁴

According to Tomás Robles there are new plans for the education of teachers already, even if the transformation described above is not at all concluded. The new idea is that it will be possible to study bilingual education in all schools for the training of teachers. It will be compulsory to study bilingual education a little bit and then it will be possible to specialize in bilingual education for those who have that wish. The reasoning behind this is that all teacher schools are supposed to be equal and to avoid segregation.¹⁸⁵

The teachers are fundamental factors in implementing the reform. Without their cooperation, implementation would be very difficult. There are however problems with the teachers' situation and the transformation process. These problems need to be solved to secure the success of the reform.

The attitude among the teachers and their unions has been negative regarding the reform. The teachers are badly paid and their status is low. They are afraid of losing their work stability. Some teachers are forced to have other jobs parallel to being a teacher to be able to support themselves and their families. The teachers are also badly informed about what the reform actually is about and they have practical problems adapting to the new didactic skills that are needed.¹⁸⁶

One of the most recurrent problems with IBE, in improving the teaching situation in rural areas, has been the lack of stability of personnel in the same school and in the same classroom. A reason for this instability is the absence of basic services and basic conveniences and the generally difficult living situation in the peripheral rural areas. It is in these rural areas that the lack of teachers educated on a higher level is the greatest. The teachers change to schools closer to the cities. To solve this problem it is suggested that the teachers in these rural areas get a bonus. Another way to improve the situation is to establish possibilities to study pedagogy on secondary level for the students from the same community. Hopefully they are inclined to stay in their own community or in the proximity and teach and in this way it is possible to increase the stability. In the schools where the teacher has worked with the same students for the first three years of primary school the results are better. It has been observed that there is a growing difference between the traditional schools and schools in transformation. In the schools in

¹⁸³ Interview with Oscar Aramayo.

¹⁸⁴ Interview with Luis Antonio Rodríguez.

¹⁸⁵ Albó, 1996, p 10 and interview with Tomás Robles.

¹⁸⁶ Albó, 1997, p 15.

transformation the students are more creative, active and happy, especially in the classes where the students have had the same teacher all first three years of primary school.¹⁸⁷

A major problem with the teacher training is that there is a lack of qualified professors teaching in the schools for the training of teachers. Other problems are lack of human resources and lack of material for the training of the professors. One suggestion to increase the quality of the teachers' training is to reduce the number of schools in order to be able to increase the quality of the remaining ones.¹⁸⁸

According to Tomás Robles the teachers do not work enough hours and he considers it a political problem to get the teachers to work more hours. He also thinks that to get the system of the teachers to work a new law needs to be elaborated, concerning the teacher occupation. The whole administrative system regarding teachers also needs to be changed. Among the unions there is resistance towards these changes.¹⁸⁹

5.3 Problems with the implementation

There are other problems with implementing the reform than the ones mentioned above.

5.3.1 Socio-linguistic situation

In preparation for the reform an "education map" was produced in 1993. This map contains basic information about the communities in the country. Among other things it contains information on the linguistic situation. The country has been divided into zones based on the linguistic structure in the different areas. Another source of information regarding the linguistic situation in the country is the census carried out in 1992.¹⁹⁰ When elaborating the structure of the bilingual education system the education map has been used. The way this has been done has been criticized. The situation is much more complicated than the education map makes pretence of. The zones must not be trusted blindly and the situation needs to be discussed with the parents in the area in question. The census contains much more sophisticated information regarding the linguistic and educational situation in the communities than the education map. Mistakes have been made in the process of implementation because the zones have been trusted to give the whole picture of the linguistic situation.¹⁹¹

5.3.2 Attitude problem

One problem with implementing IBE and specifically education in the indigenous languages is that many people do not want education in the indigenous languages. Some teachers and also parents consider it to be going backwards to teach in these

¹⁸⁷ Albó, 1998, pp 3-5.

¹⁸⁸ Ibid, p 11.

¹⁸⁹ Interview with Tomás Robles.

¹⁹⁰ Albó, 1995a, p 11.

¹⁹¹ Albó, 1995b, pp 139-140, interview with Tomás Robles and interview with Walter Gutierrez.

languages.¹⁹² Some people even consider it as repression to have education in the indigenous languages.¹⁹³ The parents want their children to learn Spanish which has better status than the indigenous languages. Some of this resistance is founded on the misconception that the children will not learn any Spanish at all in the reformed system.¹⁹⁴ There are other reasons why people are suspicious towards IBE. If the new system with teaching in the indigenous languages is not successful and give immediate results, this augments the resistance towards it. Good quality of the IBE, which is very dependant on the particular teacher, is decisive for the attitude towards IBE.¹⁹⁵

Representatives from the indigenous educational councils that I spoke to, i.e. the Aymara, the Guaraní and the Amazon-Multiethnic Councils, all agree that education in the indigenous languages is an important part of the struggle for the indigenous organizations, even though there is some resistance towards it among the people.¹⁹⁶

It is agreed that one of the basic reasons for the negative attitudes towards IBE is lack of information. Not everyone is aware of the fact, that the bilingual model which has the indigenous language as the main language of instruction also has the goal to teach Spanish to the students so they finally will master it very well.¹⁹⁷ It has been observed that in schools where it has been possible to verify that the teaching is truly bilingual and where the teacher has been the same for the first three years of primary school, there is a higher acceptance of the indigenous language. The indigenous educational councils on local level have been important in explaining to parents resistant to IBE, that bilingual education does not eliminate the teaching of and in Spanish.¹⁹⁸ The fact that the new materials for teaching Spanish as a second language has not yet come into use, does not lessen the suspicion and misconception that the new school system does not teach Spanish.¹⁹⁹

5.3.3 Role of the pedagogical advisor

The pedagogical advisor is an asset in each nucleus and the purpose of this advisor is to help the teachers.

The pedagogical advisors are not always accepted by the teachers and the director at the district level.²⁰⁰ There have been problems with the co-ordination between the district directors and the pedagogical advisors.²⁰¹ In some instances there have been errors in

¹⁹² Albó, 1997, p 16.

¹⁹³ Interview with Walter Gutierrez.

¹⁹⁴ Albó, 1997, p 16.

¹⁹⁵ Interview with Silvia Chumira and Enrique Camargo.

¹⁹⁶ Interview with Walter Gutierrez, interview with Silvia Chumira and Enrique Camargo and interview with José Abiyuna.

¹⁹⁷ Albó 1997, p 16 and interview with Walter Gutierrez.

¹⁹⁸ Albó 1998, p 5.

¹⁹⁹ Ibid, p 7.

²⁰⁰ Albó, 1996, p 10.

²⁰¹ Albó, 1997, p 15.

assigning pedagogical advisors to the nucleuses. The languages of the pedagogical advisor have not corresponded to the languages spoken by the pupils in the nucleus.²⁰²

5.3.4 Political will

I asked several of the persons I interviewed if there is a political will in the society and among politicians to implement the educational reform and IBE. The answers were diverse and generally vague. One view expressed is that the political will was generally better in the previous government, but that it depends very much on the specific persons in the leading positions and that the attitudes can differ from person to person within the same government.²⁰³

Some people doubt the existence of a political will from the government, concerning the implementation of IBE. In the Guaraní area, the president of the Guaraní indigenous organization, APG, Enrique Camargo, and the president of the Guaraní Educational Council, Silvia Chumira, and also Xavier Guillaumet, director of Teko²⁰⁴, an NGO working with education in the Guaraní area, all doubt the intentions of the government. They claim that the real aim of the IBE is to Hispanize and not to strengthen the indigenous cultures. The educational reform is a result of international pressure and not a result of the political will among the politicians in the country.²⁰⁵ The reason for this view is perhaps that the people that expressed this opinion all work in an area that has been struck extra hard by the instability of personnel and the many changes of persons in leading political positions.²⁰⁶

Albó writes that the most restrictive result of IBE should be that the number of persons with an indigenous language as their mother tongue should at least remain at the same levels and percentages when they learn Spanish as a second language. At the same time the population monolingual in Spanish should not increase. If the population speaking an indigenous language decreases when learning Spanish as a second language and the number of monolinguals in Spanish increase, then the result is Hispanisation.²⁰⁷

5.3.5 Other problems

In 1997 elections were held in Bolivia and there was a new government elected, with implications for the implementation of the educational reform and IBE. On national level the reform has been able to consolidate. It has survived three subsequent and different governments. On departmental level and also on lower levels the situation has been different. The changes there have been considerable and the IBE aspect as well as

²⁰² Ibid, pp 12-13, and interview with Tomás Robles.

²⁰³ Interview with Tomás Robles.

²⁰⁴ Taller de Educación y Comunicación Guaraní. The organization is a non governmental organization connected to the Catholic church.

²⁰⁵ Interview with Silvia Chumira and Enrique Camargo and interview with Xavier Guillaumet.

²⁰⁶ See further below.

²⁰⁷ Albó, 1995b, p 125.

the general advancement of the reform have suffered from these major changes.²⁰⁸ The unjustified changes of personnel on the lower levels of the system are based on political considerations rather than academic ones.²⁰⁹ In the Guaraní area the assignment of politicians with a negative view of IBE has made the process of implementation of IBE there more difficult.²¹⁰

On the district level local educational boards called DILE²¹¹ have been introduced and this was not accounted for in the ERL. They have been introduced through a decree. These boards substitute the role of the indigenous educational councils on district level to some extent, and in a way abort or diminish the participatory function of the indigenous councils in the educational reform as stipulated for in the ERL. The purpose of the DILEs was to make the decision-making process more efficient but the DILEs are not functioning as of October 1998 and there are already ideas about eliminating them.²¹² A representative of the Aymara Educational Council expressed the opinion that the idea of the DILEs was to replace the participative organs on district level and to break up the participatory structure of the indigenous educational councils. He further argued that this was wrong because the status of the decree is lower than the status of the ERL, and the educational councils were established by the ERL and the DILEs only by a decree.²¹³

Another problem is the reduction of the budget for 1998 for the educational reform. It has resulted in slowing down various activities of the reform, for example the nuclearization process.²¹⁴ It has also resulted in the reduction of the number of pedagogical advisors.²¹⁵

Part of the aim of the reform is to organize libraries in schools. Libraries are important to strengthen the role of the indigenous languages. A problem regarding this is that there are not very many titles in the indigenous languages.²¹⁶

Of course the general problems of poverty, health, nutrition and infrastructure also affect the implementation in a negative way. As stated above the poor conditions in the peripheral rural areas are part of the reason why teachers move from these areas to more central ones. The academic results of the pupils are also affected by the fact that they are undernourished and need to work to help support their families. Another problem connected to poverty is the high illiteracy rates. Many parents are illiterate and they can

²⁰⁸ Albó, 1997, p 3.

²⁰⁹ Albó, 1998, p 1.

²¹⁰ Albó, 1997, p 9 and Albó, 1998, p 2.

²¹¹ Directorios Locales de Educación. DILEs consist of three persons and they are not representatives of the indigenous peoples or linked to the popular participation. Interview with Walter Gutierrez.

²¹² Albó, 1997, p 8 and Albó, 1998, p 6.

²¹³ Interview with Walter Gutierrez.

²¹⁴ Albó, 1998, p 2.

²¹⁵ Ministerio de Educación, Cultura y Deportes, 1998, para 2.5.

²¹⁶ Albó, 1996, p 23.

not help their children with the homework. In bilingual schools at least the parents can help to some extent when it comes to the indigenous language.²¹⁷

5.3.6 Solutions to the problems?

There is a central plan to strengthen the reform and solve the implementation problems. Part of the central plan is the organization of the indigenous educational councils. They were recognized formally by a decree in 1998 but to some extent they have existed before. The Amazon-Multiethnic Council was established in 1996, the Guaraní Council was established some time before that but it was institutionalized in 1997. The Aymara and the Quechua Councils were established in 1997. The educational councils are important in the work to strengthen the reform. They all work to defend IBE and their work to organize the educational councils on lower levels is very important.²¹⁸

Another part of the central plan is to strengthen the administration on district level. This is very important because the district directors are key persons in the implementation process and they need a framework within which they can operate. In October 1998 there was a new decree to decentralize the administration even more and to strengthen the districts. The purpose of this is to be able to solve the problems closer to where they occur.²¹⁹

Many people see a need to normalize the indigenous languages. The status of the indigenous languages is low. The mentality of the Bolivian people needs to change. The indigenous languages need to be incorporated in all parts of society. Why study an indigenous language when everything is in Spanish anyway? Perhaps the negative attitudes towards bilingual education would change if the indigenous languages had a better status and were used by for example government officials.²²⁰

5.4 Perspectives for the future

Just as in primary school the curriculum of secondary school will be transformed. This process has not yet started. Regarding IBE in secondary school there are no decisions or tangible propositions at the moment. It is not agreed upon if it is at all possible to expand the bilingual model to secondary school. Problems raised are for example that the indigenous languages do not have enough vocabulary, that there are not enough human resources and that there is a socio-political problem. The people speaking the indigenous languages are poor and the prestige of the indigenous languages is not so high.²²¹ Some people think it is possible to have instruction in the indigenous languages

²¹⁷ Interview with Renato Martinez.

²¹⁸ Albó, 1998, p 6 and interview with Luis Antonio Rodriguez.

²¹⁹ Interview with Tomás Robles. Unfortunately I do not know the number of this new decree as it was not available at the time when I left Bolivia.

²²⁰ Interview with Walter Gutierrez and Luis Antonio Rodriguez.

²²¹ Interview with Tomás Robles.

in secondary school and even at university. They argue that the problems are only technical and possible to solve.²²² De Varennes writes that a language may be ill-equipped to be used in the classroom. It may not have been reduced to writing or it may lack vocabulary. A state may therefore validly claim that it is reasonable not to provide teaching in this particular language.²²³ However, this can not be justified in any situation as any language can be reduced to written form and be developed and consequently used as a vehicle in modern society, provided that it gets sufficient resources. The view of a UNESCO meeting of specialists in 1951, was that if the mother tongue is adequate in all respects to be used as the language of instruction in university and other higher education, it should be used.²²⁴

As some material for Spanish as a second language has been elaborated it is just a matter of time before the material will be distributed. Hopefully this will be done in time for the next school year.

The monolingual model is estimated to be introduced in 2000. If this is possible so soon is difficult to know since the educational reform was allocated less money than expected in the 1998 budget and this has slowed down parts of the implementation, among other things the nuclearization process. This is not good as nuclearization is a precondition for curricular transformation. If the nuclearization is slowed down many other parts of the reform, including the introduction of IBE, are slowed down as a consequence.

²²² Interview with Luis Antonio Rodriguez and interview with Erwin Melgar.

²²³ De Varennes, 1996, p 97.

²²⁴ UNESCO, 1953, p 68.

6 Concluding analysis

In this chapter I am going to try to answer the questions asked in the beginning of this thesis that have not been answered already. Firstly I will discuss whether the Bolivian law is in conformity with international law. Secondly I will discuss whether the practical steps taken by Bolivia to implement education in the indigenous languages comply with relevant international obligations.

6.1 Obligations according to international law

In the chapter on international legislation regarding the right of indigenous peoples to education in the mother tongue, it is possible to discern two different ways to approach the problem. Implementation can be evaluated by looking at non-discrimination and also by trying to establish what the core of the right is. These aspects can be evaluated on two levels: theory and practice.

In international law there exists some kind of right of indigenous peoples to education in or of their mother tongue. It is, however, a bit difficult to establish how far-reaching this right is. According to the ILO Convention No 169, which is binding on Bolivia, the indigenous peoples have a right to learn to read and write in their indigenous languages wherever practicable. Under certain circumstances, for example when a language group is very small or a language does not exist in writing, it may not be feasible for the state to provide education in the indigenous language primarily because of the costs involved. Under the ILO Convention No 169 this balancing act is legitimate. Where the line is supposed to be drawn in general I can not say. The most practical solution would be to look at each specific case and take into consideration, among other things, the factors that I just mentioned. Considering other instruments in the area of indigenous peoples, such as the UN Draft Declaration on Indigenous Peoples, which talks about education at all levels and does not open up for balancing, I would say that the trend is to widen the responsibility of states regarding the providing of education in the indigenous languages.

I have mentioned several non-discrimination provisions; the ICCPR, the ICESCR, the CRC and the UNESCO Convention against Discrimination in Education. My interpretation is that for an educational system to be non-discriminatory regarding language, all children should have instruction in their mother tongue as the mother tongue is the most effective way to instruct pupils at least in the primary stages of education. If the state provides education in the mother tongue for some, it could be discriminatory not to provide education in the mother tongue to others with a different mother tongue. As the HRC has stated, not every differentiation is considered as discrimination. In relation to this de Varennes mentions several factors that could be relevant in determining what is discrimination and what is not. What this entails in reality is that also in this situation a balancing of interests is legitimate. Not in all cases

would it be discriminatory not to provide education in all the mother tongues in a country. With this interpretation of the prohibition of discrimination in the context of the right of indigenous peoples to education in the mother tongue, it is not necessary to discuss if non-discrimination also implies a right to substantial equality.

I consider special measures of little relevance in the case of education in the indigenous languages in Bolivia. Even though several scholars consider education in minority languages a special measure, I do not agree. Generally education is provided by states in the mother tongue of the majority. In this case education should also be provided in the mother tongues of the minorities, according to the reasoning above, and it would not be a case of special measures but rather a question of equal rights.

I find two aspects of the right to education in the indigenous language especially interesting. Firstly if it gives a right to instruction in the indigenous language or if it only entails a right to education of the indigenous language. Secondly, to what level the right to instruction in or of the indigenous language extends.

According to the ILO Convention No 169, children do not have a right to be provided with instruction in the indigenous language. They can be taught to read and write in the indigenous language as a second language. The indigenous peoples can themselves establish school systems with instruction in the indigenous languages, but this is generally not the case in Bolivia as their system is formed for the state to provide education. The non-discrimination in combination with the right to education provisions, I interpret as obliging Bolivia to provide education in the mother tongue to the indigenous peoples but it would not necessarily constitute discrimination not to, if the language group is very small for example. Consequently Bolivia should provide instruction in at least the larger indigenous languages in the country.

The ILO Convention No 169 states that children have the right to be taught to read and write in their indigenous language. This implies that when the children know how to read and write they do not have any right to further instruction in or of the indigenous language. My interpretation of the prohibition of discrimination does not give much help regarding to what level instruction in the mother tongue should be provided. Again it depends on the specific situation. Some languages may not have vocabulary sufficient for higher education and in this case the burden on the state would be great and the burden would be even greater if the language was small.

A problem is that it is not clear in international law exactly at what pace a country has to realize certain rights. In Article 2 of the ICESCR the states undertake to take steps to the maximum of their available resources. The aim is to progressively achieve the full realization of the rights in the covenant of which the right to education is one. This should be done by all appropriate means, including particularly the adoption of legislative measures. The ILO Convention No 169 gives examples of measures to be taken. The government should, with the participation of the peoples concerned, promote the full realization of economic, social and cultural rights. This is very vague. In the

paragraphs on education the wording is more specific. Education programs shall be developed and implemented. Education measures shall be taken among all sections of the national community. Even though these provisions say shall, they do not clarify in what pace states should progress in realizing these rights and they do not give a specific time limit to when the rights have to be fully realized. However, non-discrimination and the principle of equal rights should be applied immediately.²²⁵ Equality in theory might be possible to realize immediately. Regarding factual equality, however, the situation is more complicated and it is not realistic to expect states to be able to implement an educational system which is non-discriminatory in fact immediately.

6.2 Bolivia's compliance in theory

Bolivia has ratified the major international instruments of relevance to the right of indigenous peoples to education in their mother tongue. They have also changed the Constitution and implemented national laws introducing bilingual education. Further they have allocated resources and developed a strategy to implement education in the indigenous languages.

The ERL contains a non-discrimination provision and even if this does not comprise language I think it is inherent that discrimination because of language is prohibited. In any case, it would be desirable if it was expressly stated.

The Decree on the transformation of the curriculum provides for education in the indigenous language on the level of primary school when the indigenous language is mother tongue or the language predominantly used by the child. The rules on bilingual education in secondary schools are vague. I interpret them as providing for instruction of the indigenous language but not for instruction in the indigenous language. The Decree does not mention bilingual education in higher education.

I would say that the national provisions live up to international obligations. The whole school system is bilingual. Those with an indigenous language as their mother tongue will have the opportunity to get instruction in this language in at least primary school. After this the pupils will have at least the opportunity to study indigenous languages as second languages. This complies with the provisions in the ILO Convention No 169. It is difficult to determine to what level education in the mother tongue should be provided, both under the ILO Convention and under the different instruments prohibiting discrimination in education in combination with the right to education. If the reformed system functions ideally then the students will have acquired sufficient knowledge of Spanish at lower levels to have equal access to education in secondary school and at higher levels where the instruction is in Spanish. The system is hence not discriminatory in theory. My conclusion is that the national legislation in Bolivia is in compliance with international law.

²²⁵ Conversation with Gudmundur Alfredsson, 23 February, 1999.

6.3 ...and in practice

International law does not indicate clearly at what pace the right to education should be realized. The ILO Convention No 169 does not give much of a hint. Legislative measures shall be taken and this has been done by Bolivia. Education programs shall be developed and implemented. Bolivia has a strategy for implementing education in the indigenous languages, authorities on different levels work with implementation and instruction in the indigenous languages has started. There are however problems with the implementation. It has been slower than planned. According to the original plan the whole country should have been nuclearized by the end of 1998 but this has not been achieved. The curricular transformation started one year later than planned. Regarding materials there have been problems with the production and distribution. Materials for Spanish as a second language was not in use as of September 1998. The reformation of the teacher training is slow and this has put the brakes on the introduction of IBE. The reduction in the 1998 budget for the educational reform has slowed down the implementation further. It is not strange that a large reform involves problems, especially in a poor country with a lack of human and material resources. However, it is worrying that the budgetary allocations for the reform were reduced in the 1998 budget. Two things regarding the implementation of IBE I find questionable and will hence discuss in more detail.

So far the Bolivian state has only initiated instruction in the indigenous languages Quechua, Aymara and Guaraní. The other smaller indigenous languages have in principle been left to themselves so far. The authorities claim that the practical problems are great and the costs would be considerable if instruction in these languages were to be introduced. They trust private initiatives will solve the situation. CIDOB, representing many of these smaller indigenous peoples, have started to develop material in some of these languages. The question is if the government has a duty to provide education in or of these small indigenous languages. As stated above I do not interpret international law as to oblige states to do that in this situation. The Bolivian state has helped with some financial and technical assistance regarding these smaller indigenous languages. Of course it would be desirable if the Bolivian government took responsibility for providing education in or of these smaller languages but I cannot see that by not doing so Bolivia does not live up to the obligations in international law regarding implementation.

As mentioned above the bilingual model will be the prevailing one in the rural areas. In the urban areas the monolingual model will be introduced. This means that pupils with another mother tongue than Spanish will not have the possibility to get instruction in their mother tongue in the urban areas. They will have to do with instruction of this language as a second language. It may be in conformity with the ILO Convention No 169 but it is questionable if it is in accordance with the non-discrimination provisions in

combination with the right to education. It is legitimate to balance different factors and the situation is in one way more complex in the urban areas than in the rural areas, considering the mix of people living there resulting from people migrating from rural areas. The language situation may not be very homogeneous. Further, Spanish is more dominating in the big cities. This may mean that most people already speak Spanish and do not have the same need for instruction in the indigenous language to benefit from education. On the other hand it is a greater risk in the urban areas that the number of people speaking indigenous languages decreases. Materials in the three largest indigenous languages is not an obstacle since that already exist. It may be a little more complicated to provide instruction in the indigenous languages in the urban areas but it should not be insurmountable. Bolivian legislation is clear in this case. Pupils should be instructed in their mother tongue in the primary years of school regardless of their mother tongue is Spanish or an indigenous language and if they live in rural or urban areas. My conclusion regarding this problem is that it is questionable if Bolivia lives up to the international obligations in practice when it comes to instruction in the indigenous languages only as second languages in the urban areas.

It is desirable that all indigenous peoples get instruction in or of their indigenous languages. Children benefit most from education in their mother tongue and language is vital in protecting indigenous cultures. The right of indigenous peoples to education in their mother tongues may not be absolute, but within certain limits states should provide education in the indigenous languages to the indigenous peoples in the country.

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