

**Is Nunavut education criminally inadequate?  
An analysis of current policies for Inuktitut and English in education,  
international and national law,  
linguistic and cultural genocide and crimes against humanity<sup>1</sup>**

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## Abbreviations and Acronyms

CO <sub>2</sub>	Carbon dioxide (emissions)
CRC	[the] <i>Convention on the Rights of the Child</i>
CSCE	see OSCE
DEA	District Education Authority
EATEP	Eastern Arctic Teacher Education Program
FTE	Full time equivalent
Genocide Convention	the <i>United Nations Convention on the Prevention and Punishment of the Crime of Genocide</i> 1948
GPE	Global Partnership in Education
ICSU	International Council for Science
ILPA	<i>Inuit Language Protection Act</i>
ICCPR	[the] <i>International Covenant on Civil and Political Rights</i>
ICESCR	[the] <i>International Covenant on Economic, Social and Cultural Rights</i>
ICERD	[the] <i>International Convention on the Elimination of all forms of Racial Discrimination</i>
ILO	International Labour Organization
IQ	Inuit Qaujimagatuqangit
ITM	Indigenous/Tribal, Minority and Minoritised/Marginalised languages/people/children
K-3	from Kindergarten to Grade 3; K-12 – from Kindergarten to Grade 12
L1	First language (mother tongue)
L2	Second language (or foreign language)
LHRs	Linguistic Human Rights
LOI	Language of Instruction (the teaching language)
LWC	Language of wider communication, e.g. English
MAJ	Majority
MIN	Minority (or Minimum, in the Nunavut Immersion Min education model)
MLE	Multilingual Education; Mother-Tongue-Based Multilingual Education (sometimes abbreviated as MTB-MLE)
MT	Mother tongue
NILFA	Nunavut Inuit Labour Force Analysis
NTI	Nunavut Tunngavik Incorporated
OECD	Organisation for Economic Co-operation and Development
OLA	<i>Official Languages Act</i>
OSCE	Organisation for Security and Cooperation in Europe (earlier Conference for Security and Cooperation in Europe)
PISA tests	The Programme for International Student Assessment
TEK	Traditional Ecological Knowledge
TESOL	Teachers of English to Speakers of Other Languages
TRC Report	Truth and Reconciliation Commission of Canada (2015). <i>Honouring the Truth. Reconciling for the Future</i>
UNDRIP	[the] <i>United Nations [General Assembly] Declaration on the Rights of Indigenous Peoples</i>
UNESCO	United Nations Educational, Scientific and Cultural Organization

*We are saying we have the right to determine our own lives. This right derives from the fact that we were here first. We are saying we are a distinct people, a nation of people, and we must have a special right within Canada. We are distinct in that it will not be an easy matter for us to be brought into your system because we are different. We have our own system, our own way of life, our own cultures and traditions. We have our own languages, our own laws, and a system of justice (Andre 1987a).*

## **Chapter 1. Introduction: the task, and how it has been approached**

This report is a result of an approach by the President of Nunavut Tunngavik Incorporated (NTI), Aluki Kotierk. In September 2018 she asked Tove Skutnabb-Kangas whether she would be able to undertake an assessment of Nunavut education. Ms. Kotierk was familiar with expert reports written by Tove Skutnabb-Kangas and Robert Dunbar for the United Nations Permanent Forum on Indigenous Issues in 2008. These reports were expanded into a study entitled *Indigenous children's education as linguistic genocide and a crime against humanity? A global view*, which was published in 2010 by Gáldu, the Resource Centre for the Rights of Indigenous People in Guovdageaidnu/ Kautokeino, Norway. Aluki Kotierk had read that subjecting Indigenous children to 'forms of subtractive education ...results in very serious and often permanent harmful mental and physical consequences' and that 'such education is...in clear violation of a range of human rights standards...'. This report assessed to what extent the evidence in Nunavut of how education functions can be considered as constituting a crime against humanity or as constituting cultural and linguistic genocide.

The present report has been written by Tove Skutnabb-Kangas and Robert Phillipson, who have co-authored and edited many books on Linguistic Human Rights worldwide, multilingual education policy, including mother-tongue-based multilingual education, the role of English in the modern world, and related topics (see our home pages), and Robert Dunbar, a lawyer who specialises in minority rights and particularly in minority language and related human rights.

In the 2016 census, 1.6 million Canadians reported having an Indigenous identity, with only 260,000 reporting the ability to conduct a conversation in an Indigenous language. There are currently 58 distinct Indigenous languages in Canada, comprising more than 90 distinct dialects. Six of the languages had more than 10,000 people who reported that it was a mother tongue: the Cree languages, Dene, Innu, Inuktitut, Ojibway and Oji-Cree. Since at least the 1940s, serious concerns have been expressed by Indigenous organisations in Canada about the decline in the use of their languages.<sup>3</sup> Many Indigenous individuals did so as early as in the 18<sup>th</sup> century (see Chapter 3). A large number of general old and new studies from several disciplines have described the linguistic and cultural decline (e.g. Clark 1996; Chuffart 2017). This decline is continuing to this day (2019), despite many attempts to counter it.

Formal education, earlier and today, is one of the main contributors worldwide to the decline of most marginalised languages. These are called ITM languages: Indigenous/Tribal, Minority, and Minoritized/Marginalised languages.<sup>4</sup> Of the world's over 7000 spoken languages (<https://www.ethnologue.com/statistics>), roughly 85 per cent are Indigenous/tribal (Loh & Harmon 2018, 678). They will become endangered<sup>5</sup>, unless formal education is organised so that it supports both maintenance and the revitalisation of these ITM languages, using them as the primary languages of instruction in schools. Many if not most of these languages might cease

to exist, or at least not be learned by children any longer by the year 2100<sup>6</sup>. Support for these languages in formal education is even more urgent in situations where there is a high proportion of young people, as in Nunavut (and in many African and Asian countries).<sup>7</sup>

It appears that in Nunavut, despite many good intentions and plans, the formal education of Inuit students is not achieving good results, nor does it live up to the wishes of most parents, or follow principles that research has identified as necessary for good results, as explained in Chapter 3

This worry was the background for Nunavut Tunngavik approaching us to explore this issue.

This **Chapter One** is a general introductory chapter on the task assigned to us and how we have addressed it.

**Chapter Two, Social conditions in Nunavut and their impact on educational language policy**, presents demographic data, social conditions in Nunavut, educational and linguistic facts and figures, and some of the myths that serve to maintain the dominance of English, and the consequences of this.

**Chapter Three, Language and education** discusses econocide and historicide, where Indigenous peoples and minorities are seriously harmed through economic means or by excluding them from history. Ecocide harms their environment and the Arctic bears the brunt of it much more than other regions of the world. Linguistic and cultural genocide are presented from a multidisciplinary point of view, drawing on the social sciences rather than law, which is covered in Chapter 4. Also covered are language-related misconceptions, fallacies, and myths, and those results of education which are based on these and other false beliefs. Some research results, old and recent, are discussed: how should Indigenous education be organised for positive results? How can one address the threat for our planet that today's ITM education causes when it is failing to transmit Traditional Ecological Knowledge? Unmet challenges, and reasons for the lack of implementation of what has been proposed in Nunavut are considered. We then discuss some so far unmet prerequisites for full Inuktitut-medium education from kindergarten to grade 12.

**Chapter Four, Domestic and international legal obligations**, summarises national law in Canada and in Nunavut, and relevant international law and declarations on the rights of minorities and Indigenous peoples.

A concluding **Chapter Five, Conclusions** assesses to what extent a case can be made for conclusions on whether the functioning of education in Nunavut can be considered as constituting a crime against humanity and cultural and linguistic genocide. We also consider the extent to which the functioning of education in Nunavut is consistent with Canada's broader international legal commitments and with domestic law, both of Canada and of Nunavut.

There is an Appendix with the **References** used. Initially there is a list of the abbreviations and acronyms used in the report.

*Notes:*

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<sup>2</sup> Professor Robert Dunbar, University of Edinburgh, home page <https://www.ed.ac.uk/profile/rob-dunbar>; Professor emeritus Robert Phillipson, Copenhagen Business School, Denmark, <http://www.cbs.dk/en/staff/rpmssc>; Dr.Phil. Tove Skutnabb-Kangas, Åbo Akademi University, Finland (emerita), <http://www.Tove-Skutnabb-Kangas.org>.

<sup>3</sup><https://www.ourcommons.ca/Content/Committee/421/PROC/Reports/RP9993063/procrp66/procrp66-e.pdf>.

<sup>4</sup> We use the abbreviation ITM throughout the report. It stands for Indigenous/Tribal, Minority, and Minoritized/Marginalised languages and people/s. There are many terms for what is here called Indigenous/Tribal peoples (e.g. First Nations, Aboriginal peoples, etc), but we follow the custom in several international Conventions and Declarations. Minoritized is not a demographic term (for instance Inuit in Nunavut are a demographic majority). It is a relational term about power relations, as is Marginalised. For more, see Annamalai & Skutnabb-Kangas, in press.

<sup>5</sup> See Grenoble (2018), Hinton et al. (eds) (2018), Aikio-Puoskari & Skutnabb-Kangas (2007).

<sup>6</sup> Michael Krauss (1992) started the discussion with the first prognoses. UNESCO uses the figures of both 50% and 90% in various publications. See also Krauss, Maffi & Yamamoto 2004.

<sup>7</sup> In Nunavut the median age was 24,8, compared to Canada's 39,9 (quoted from Nunavut Bureau of Statistics: Nunavut population, October 2015, by Inutic 2016, 4). Statistics Canada, in their latest update, December 20, 2018, estimated Nunavut's population to have increased during the third quarter of 2018 by 0,7, as compared to Canada's 0,5.

<http://www.stats.gov.nu.ca/Publications/Popest/Population/Nunavut%20and%20Canada%20Population%20Estimates%20StatsUpdate,%20Third%20Quarter%202018.pdf>

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## CHAPTER TWO. SOCIAL CONDITIONS IN NUNAVUT AND THEIR IMPACT ON EDUCATIONAL LANGUAGE POLICY

### 2.1 Demographic and social welfare data in the Nunavut context

Canada has experienced a substantial increase in its immigrant population over several centuries, to a land of over 60 Aboriginal (Indigenous) languages. Two immigrant languages have been consolidated as languages of power. Most Aboriginal languages in Canada have succumbed to massive assimilationist pressures. They either no longer exist or are seriously endangered. This is the case even if census data as recently as in 1991 indicated that the linguistic vitality of Inuktitut, with 88 per cent reporting mother tongue use in the home, was uniquely high (Drapeau 1998, 149).

However, *the survival of Inuktitut is at risk* for many reasons: 'Native-language groups form linguistic enclaves, scattered over an immense territory and encapsulated within white society. Geographic isolation no longer protects them and lack of geolinguistic strongholds is a powerful drawback. Likewise, the dearth of written corpora in most aboriginal languages has a profound impact on their survival, and on the types of effort that can be made to strengthen their position. ... Even with increasing control and self-government, aboriginal people nevertheless make up a small minority with only minimal power' (Drapeau 1998, 157).

In Nunavut there is *an increasing shift into English*, corresponding to the pressure on all Canadians to assimilate into one of 'two equally ethnocentric societies', Anglo-Canadian or French-Canadian, in the spirit of the racist myth of two 'founding peoples', whose history dominates the curriculum in schools (Mackey 1998, 25). The progressive shift into English in provinces other than Québec is striking. 'By 1980, for example only 55 per cent of the population of French origin in the provinces of Saskatchewan and Alberta could still claim French as their mother tongue. For other minorities – Ukrainian, German, Italian – the proportion was even less. Most grandchildren of the first settlers from Germany, Italy, the Ukraine and other countries did not preserve their ethnic tongue as their home language' (Mackey 1998, 23). These pressures are also in force and increasingly prevalent in Nunavut.

In the *Annual Report of the Nunavut Languages Commissioner for 2017-2018* the Commissioner, Helen Klengenbergs<sup>8</sup>, states that in Nunavut the use of English is increasing at the expense of both Inuktitut and French.<sup>9</sup> The Languages Commissioner is dissatisfied that Inuktitut is not more widely used throughout the territory. The Commissioner's mandate on language issues - as an advisor, monitor, ombud and advocate - does not explicitly exclude education. However she does not appear to have covered education in detail in this report. The Conclusion of the Executive Summary states:

While respecting the equality of official languages, the *Inuit Language Protection Act* was designed specifically to ensure respect for unilingual Inuit, to reverse language shift among youth, and to strengthen the use of Inuktitut among all Nunavummiut. In order to respond to the pressures confronting Inuktitut, and to ensure that its quality and prevalence are protected and promoted in Nunavut, we intend to place emphasis on the implementation of the Inuit Language Protection Act and the respect of Inuit language rights. Inuktitut should be a language in the day- to-day services provided by governments (territorial and federal), municipalities and private sector bodies to the public in Nunavut.<sup>10</sup>

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*Census data from Statistics Canada* in 2016 reveal that

- 52% of Inuit live in crowded homes;
- income is much lower than the Canadian average;
- life expectancy is 10 years lower;
- infant mortality is three times higher;
- suicide rates are 10 times the national average;
- 70% of Inuit homes are ‘food insecure’;
- 63% of Inuit adults smoke;
- there are high rates of tuberculosis;
- 32% of Nunavut Inuit have a high-school diploma or equivalent, and
- the population growth rate is much higher than in Canada as a whole.<sup>11</sup>

An additional factor is that a high proportion of Inuit children are hard of hearing as a result of vulnerability to chronic otitis media, which adversely affects learning, especially if it is in an unfamiliar language. A similar situation is reported for Australian Aboriginal children.<sup>12</sup>

This stark picture of *inequality and appalling social conditions* is far from comprehensive because ‘there are no recent, national level sources of data for Inuit children. Most indicators included here are not developed by Inuit and do not adequately measure the reality of our people, communities, cultures and histories’ according to the Inuit Tapiriit Kanatami.<sup>13</sup>

Canada is a product of imperialism by both the French and the British. Colonisation imposed territorial dispossession and rapid cultural change, including forced population resettlement schemes and the invidious residential schools for Indigenous children. In addition, recent decades have seen a substantial ecological transformation of the Arctic region due to climate change (see ecocide in subchapter 3.9). Pollution means that Inuit in Canada are ‘identified as having the highest concentrations of heavy metal contamination of any population on the planet ... higher rates of cancer and neurological damage in children’ (Greaves 2016, 43). 85% of suicides are by young men, at a rate that has more than doubled in the past decade’ (Greaves 2016, 47). While there are multiple causes, it is evident that young people have been traumatically wrenched away from the nomadic hunter life of their ancestors, and its cultural norms, social practices, customary diets, and belief systems. The Inuit have been forcibly adapted to urban, capitalist lifestyles that the young cannot readily identify with and that they see no viable future in.

The figures for *language use in Nunavut* are

- 89% are able to converse in Inuktitut
- 58% have Inuktitut as the most used language in the home
- 77% declare Inuktitut as their mother tongue.

A technical note on these figures adds that ‘Language information is based on self-assessment, rather than a formal assessment tool. While information on the percentage of Inuit who can speak Inuktitut well enough to have a conversation is useful, it can hide some important changes. For example, due to ongoing language erosion, it is likely that many younger Inuit who report being conversant in Inuktitut cannot speak the language to the same level of proficiency as older Inuit in either Inuktitut or Inuinnaqtun.<sup>14</sup>

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The Languages Commissioner of Nunavut in the Annual Report for 2017-2018, page 174, states:

Out of a population of 35,695 Inuktitut, (including Inuktitut and Inuinnaqtun) is the mother tongue of 22,565 people (63.2%). The number of Inuktitut mother tongue speakers has increased by 1,050 speakers from 2011, although the overall percentage has decreased by 4.5% throughout the years. Inuktitut is the language spoken most often at home for 25,405 people; this is a 6.7% growth from 2011 to 2016. Inuktitut is the mother tongue of 22,070 Nunavummiut (61.8%) and is the language spoken most often at home of 17,600 Nunavummiut (49.3). It is the mother tongue of 70.9% of Nunavummiut in the Qikiqtaaluk region, of 70.4% in the Kivalliq region and of 22.2% in the Kitikmeot region. Inuinnaqtun is the mother tongue of 495 Nunavummiut (1.4%). Speakers are mostly in Cambridge Bay and in Kugluktuk. It is the language most spoken at home for 110 people.

Being conversant in Inuktitut does not necessarily mean knowing the language well enough for success in the higher grades in school, nor for being able to work in Government jobs in Inuktitut, nor does it indicate high-level literacy in the language.

*Statistics for the school population in Nunavut* are as follows:

On 30 September 2017, there were 10,041 students enrolled in Nunavut public schools.<sup>15</sup> The numbers (including full- and part-time students) were as follows:

Kindergarten: 802

Grade 1: 832

Grade 2: 806

Grade 3: 849

Grade 4: 788

Grade 5: 788

Grade 6: 737

Grade 7: 693

Grade 8: 694

Grade 9: 712

Grade 10: 912

Grade 11: 728

Grade 12: 776

Total: 10,829.

There were 291 graduates from Nunavut public schools, an increase of 39 or 15.5% from the 2016/2017 school year<sup>16</sup>.

Nunavut is home to about 90 French-speaking students, and 430 English mother-tongue students, mostly non-Inuit. Of the 43 schools across Nunavut, one in Iqaluit operates in French.

A minority of schools in Nunavut identify an ability/capacity to use Inuktitut as the medium of instruction in kindergartens and in the first three grades of schooling. To have claimed the capacity does not necessarily mean that the schools in fact use Inuktitut. Far fewer schools claim the capacity to use Inuktitut in higher grades. Chapter 3 presents more details of the policy on language in education. There is considerable regional variation, but the overall picture is that the system cannot live up to the requirements in the laws. This is partly due to the dramatic shortage of qualified teachers. This will be even greater as current Inuktitut speaking teachers retire. A population increase also means that more teachers are needed.

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The Canadian federal government ‘delivers \$8,189 per francophone for language programs in Nunavut, while providing \$186 per Inuktitut speaker, meaning the federal government spends 44 times more on French in Nunavut than it does on Inuktitut’, reports Aluki Kotierk, the President of Nunavut Tunngavik Inc., and the Inuit signatory to the Nunavut Land Claim, in a speech to the Inuit Circumpolar Council Education Summit in Nuuk, Greenland, on February 15, 2018.<sup>17</sup>

In international comparative studies of educational achievement undertaken by the OECD, the PISA tests, which evaluate capacity to contribute to the modern economy, Canada is ranked among the ten best countries (Hanushek & Woessmann 2015). However, the tests are monolingual, meaning that the bilingual and bicultural needs of Nunavut are ignored in such tests. This reduces their relevance.

## **2.2 The geostrategic and economic context**

The subsistence economy of Nunavut has been radically changed by policies that federal Canada has determined and by climate change. The holistic Inuit understanding of cultural maintenance is in marked contrast to the government of Canada’s approach to the Arctic. The Inuit are up against a federal government focus on defence and resource extraction, in a perpetuation of colonial insensitivity to local cosmologies, ecology, cultures and practices. The Inuit are ‘primarily concerned over threats to the Arctic environment, their Indigenous identity, and their political autonomy, but emphasize the interrelated nature of these security issues’, but ‘Canada’s Arctic security discourse and its current Arctic policy framework remain fundamentally colonial’ (Greaves 2016, 53).

This study, by a scholar based at the Trudeau Centre for Peace, Conflict and Justice at the University of Toronto, states that wealthy countries like Canada have ‘strong legal frameworks respecting certain Indigenous rights; certain social benefits including public welfare, employment insurance, health services, and support for Indigenous language and education’. What is notably absent from the study is any consideration of the role of inappropriate education and language policies, and their importance in perpetuating cultural colonisation. It states that as compared with Indigenous peoples elsewhere, ‘Arctic Indigenous peoples enjoy relatively good qualities of life, relatively benign relationships with the settler-colonial governments under whose sovereign authority they live’ (Greaves 2016, 39), a conclusion that does not fit with the realities of Nunavut life, as described earlier.

A second study, by Heather Exner-Pirot on human security in the Arctic, stresses the importance of economic factors in causing poverty, insecurity, and anomie, and potentially in counteracting them (Exner-Pirot 2016.). In this assessment, based on the experience of Alaska, Greenland, and the Canadian Arctic, what is important is to strike a balance between environmental concerns and economic security. This entails, in her view, that Nunavut should be open to investment and resource exploitation and thereby more ecocide, rather than resisting it.

There is detailed statistical information on employment in Nunavut, in all categories, in the quarterly report *Toward a Representative Public Service*, as of 31 December 2018, published by the Minister of Finance for the Government of Nunavut,<sup>18</sup> At present there are major problems of Inuit under-employment, one cause of which is lack of formal qualifications. Of the 16,485 adults aged 25 to 64 in Nunavut, 41% had not completed high school in 2016 (the Canadian average was 8%). If the education system has been insensitive to local needs, and is mainly conducted through the medium of English, it is arguable that Inuit are pushed out rather than drop out. They opt out of what is seen as irrelevant education. 49% of non-

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Inuit adults in Nunavut had a university degree, compared with 3% of Inuit. In Canada as a whole the unemployment rate in 2016 was 7.7%. ‘In Nunavut it was the highest in the country and increased from 17.9% in 2011 to 21.5% in 2016. Inuit had an employment rate much lower than non-Inuit, with 45.0% compared to 88.7%. In Nunavut, Inuit aged 15 and over comprised 80% of the working-age population in 2016, but represented only 67% of the employed people in the territory.’

Analysis of economics, poverty, and resource exploitation is explored in depth by Amartya Sen (see chapter 3 of this report) and Vandana Shiva (1997, 2005).

### **2.3 Residential schools**

*The definitive history of residential schools* by John Milloy records that the fundamental purpose of Canadian residential school education from 1879 onwards was ‘to “kill the Indian” in the child for the sake of Christian civilization’ (Milloy 1999, xv). This entailed a direct attack on Aboriginal languages and cultures. One reason why First Nations children were treated so abominably throughout the entire lifetime of the schools until the 1980s was underfunding by the Canadian government. As early as 1922, the appalling conditions in them were described as ‘*a national crime*’ by the Chief Medical Officer of the Indian Department. The authorities were informed about many children dying from tuberculosis, under-nourishment, insanitary living conditions, as well as humiliating corporal punishment, under-qualified teachers, sexual abuse, all of which resulted in poor academic achievements. These conditions were allowed to continue.

In addition to the indefensibly poor physical conditions, the assault on Aboriginal culture, worldviews and spirituality was devastating, as admitted retrospectively in 1992 by the church organizations that were responsible for the schools: ‘they “shared responsibility with government for the consequences of residential schools,” which included not only individual cases of physical and sexual abuse but also “the broader issues of cultural impacts: ... the loss of language through forced English speaking, the loss of traditional ways of being on the land, the loss of parenting skills through the absence of four or five generations of children from Native communities, and the learned behaviour of despising Native identity” ’.

Schools for Inuit were developed later than elsewhere in Canada. They were supposed to be more culturally sensitive to the way of life in the far north. However, the reality was that ‘the impact of residential education in the north was the same as in the south’. Despite some concern for Inuit languages and work on Inuit orthography, in the 1960s ‘the schools were not bilingual and the language of instruction was certainly not Aboriginal’. The teachers saw their mission as to ‘make the children “white” and able only to take their place in the outside system’, using textbooks that served this purpose. The Canadian authorities were warned by Bishop Marsh, an Anglican, that despite a rhetoric of good intentions, the key institutions, ‘all of them – church, state and industry – were part of a colonizing project that had been “thrust” on Aboriginal communities of the north. ... “We as a nation are responsible for having done this” and we will indeed ‘rue the day to our sorrow and in turn to the sorrow of the Eskimo people” and all Aboriginal people’.

The Truth and Reconciliation Commission Report shed some light on these historical scandals (see subchapter 3.1). If Reconciliation is to become a present-day reality, then there needs to be an end to the inequitable treatment of Inuit, their culture and languages.

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Change in the organisation of education is an important way of realizing this, as is recognised in some legislation and in the strong recommendations in the Final Report of the Conciliator, Thomas Berger, in 2006.

#### **2.4 Professional development for Nunavut**

The *Nunavut Inuit Labour Force Analysis* (NILFA) contains over a thousand pages of statistics about the Nunavut population, education, labour force status, training, skills, government job requirements, vacancies, and a profile of Inuit government employees.<sup>19</sup> The overall goal of the analysis is to assess the extent to which governments are moving towards a level of 85% Inuit employees within Nunavut, corresponding to the ethnic demographical profile of the territory. A thorough report on highlights of the NILFA and of preconditions and needs for greater Inuit participation was prepared by Nunavut Tunngavik Inc. in October 2018.

The NILFA presents a comprehensive survey of further education, with facts and figures about participation in a wide range of professional areas. The lengthy chapter 7 describes where Nunavut Inuit have gone for further education, all over Canada, and for what sorts of specialisation. While there is plenty of activity, it is clear that a great deal more remains to be done in efforts to ensure better-qualified Inuit for employment in Nunavut. The system itself needs to be radically changed so as to better meet the needs of Nunavut and to eliminate barriers to access to relevant training. The Analysis reveals that the proportion of Inuit in existing schemes is too low, too few are in teacher training, and even fewer in translation and interpretation. It also indicates that all of the training is being done in English. Even if a reasonable number declare that after getting qualified, they use Inuktitut in their work, and even if the Inuit identity of participants is strengthened in such programmes, the fact that the entire system functions in English strengthens competence in English massively, and not technical or professional operational competence in Inuktitut. This is bound to mean that students internalise English as the language of skills, jobs, success, modernity, and increased opportunities nation-wide. It is difficult to avoid the conclusion that current training represents assimilation to ‘white’ norms.

#### **2.5 The power of English**

The traumatic dispossession of the Indigenous peoples of their lands and cultures also entailed linguistic dispossession. Monolingual residential schools played a key role in achieving this linguistic dispossession. This policy can be traced back to the policy of *terra nullius* and the doctrine of ‘discovery’.

The English philosopher John Locke in 1690 provided a rationalisation for Europeans arrogating to themselves a God-given right to occupy territory elsewhere. Land in what became named the Americas was seen as *terra nullius*, land belonging to no-one, to which its benighted inhabitants had no claim or rights (Locke 1988).

The doctrine of discovery has its origins in common law in the United States (*Johnson v M’Intosh*, 21 US (8 Wheat) 543 (1823)) and can also be seen in Canadian law (*St Catherine’s Milling and Lumber Co v R*, [1888] UKPC 70, 14 App Cas 46). The effect of the doctrine is that upon ‘discovery’ of North America by Europeans, they gained absolute right to the lands, as explained by James (Sa’ke’j) Youngblood Henderson (2017). Europeans thereby acquired sovereignty, legislative power and underlying title, which left Indigenous peoples as occupants on the land, with only some rights of possession and use that could be unilaterally revoked. Underlying the doctrine’s foundation were papal bulls from the fifteenth century that gave Christian explorers the right to claim lands they had discovered on behalf of their monarchs.

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Non-Christian inhabitants of those lands were treated as ‘savages’ who could be converted, or killed.

Linguistic dispossession was widely practiced throughout the British and French Empires. This language policy was already in force in the UK and France, with deliberate attempts to eliminate Welsh, Scots Gaelic, Breton, Basque, and other languages. Banning languages in education, as in residential schools, is *linguicism*<sup>20</sup>, discrimination on the basis of language and their replacement by another. Linguicism combines with racism in installing and reproducing a hierarchical, unequal social structure.

The *structural* processes in linguicism involve the assignment of fewer material resources to marginalised languages. The Inuit languages and their speakers receive less than speakers of English or French. This means smaller school budgets for Inuit children, and less time in the curriculum for Inuktitut languages, cultural history, and functional use. Since English is the dominant language of the administration of Nunavut, of politics, the modern economy, and education, the use of Inuktitut is constrained. It is weakened rather than strengthened.

In addition to structural discrimination, linguicism is established and maintained through *ideological* processes, affecting attitudes to languages, and beliefs about the value and relevance of particular languages. Assumptions about the purported superiority of English, and why it can be seen as ‘natural’ to use it are often internalised subconsciously in a hierarchical ordering of languages. This affects people as much in Ottawa as in Cambridge Bay.

Granting minority or minoritised languages some space in schools, but in a subordinate position to English and French, perpetuates discrimination. Granting no space constitutes linguicide. Linguicist language policy supports the political economy of the dominant group while ensuring control of the mental and intellectual resources of colonised peoples. The structural and ideological force of English can be internalised as inevitable and desirable, and something one should accept voluntarily. This is how oppression and subordination function.

The power of English worldwide is a result of the extent of the British Empire in the 19<sup>th</sup> and 20<sup>th</sup> centuries, and military defeat of the French in Canada, Europe, and India. British power has been eclipsed by American power globally, in military, economic and political affairs. The power of English in Canada is due to its continued membership of the British Commonwealth, and the country’s proximity to the United States, and the influence of US corporations in many spheres of Canadian life, including in education. The impact of English is also boosted by its widespread use in the media, television and radio, the internet, social networks, and youth culture.

## **2.6 The myths of the universal relevance of English**

The globalisation of American culture in a vast set of domains and through McDonaldisation processes – the influence of Hollywood, media products, consumerism, clothing, business practices, business schools, the privatisation of public goods and services, etc. – can be seen as a development from *terra nullius* to a global *cultura nullius*. One interlocking element of this is the expansion of English to most parts of the world (Phillipson 2017, 2019).

English is fraudulently marketed as a universal need, a *lingua nullius* that can be used for all purposes everywhere. This doctrinal myth is that it should be used in all education systems, irrespective of the cultural and linguistic backgrounds of learners, and as though it is equally necessary for the entire globe’s population and ought to replace other languages. English is promoted as though it is the only language you

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need in international affairs, an argument that falsely makes other languages invisible. This pernicious myth is energetically promoted in the UK and USA, and has probably been internalised in all parts of Canada, including in Nunavut, with the exception of Québec, which, as a province in Canada, has rejected the myth.

The myths are unscientific. English is ascribed pride of place in education because it is supposedly needed for ‘development’, as if other languages cannot serve such purposes. Needs should be determined locally. Another common myth is that the professional training in English as a second or foreign language is apolitical, and not connected to the political, economic, and techno-military forces that underpin the dominance of the language.

This is also related to the tests of language proficiency that are in widespread use internationally, as though these are culturally neutral, objective and valid worldwide. Additional myths are that textbooks produced by British and American publishers are universally appropriate, whereas what is essential in education is that textbooks relate to local cultures and needs.

A further myth is that all or most relevant scholarship is written in English, whereas knowledge is embedded and expressed in many languages. Publication is important not only in demographically or politically important languages – including French, Spanish, and Portuguese in the Americas – but it has been and is increasingly being undertaken in minority languages, also because the content is of local importance. Thus in the Saami Arctic areas in northern Europe, academic studies are being written in, or translated into Saami languages. Popularisation for a wider audience, and an international readership, can be undertaken in other languages.

English has even been projected as ‘*the* language of human rights’, in much the same way as the superiority of French was marketed earlier, as though human rights should be intrinsically related to a specific language. In fact, human rights are by definition universal and are being formulated, discussed in, and realized in a very wide range of languages (including Sign languages).

All these examples demonstrate ethnocentricity and Westerncentricity that unjustly privilege certain languages and value systems, while stigmatising and degrading others, and rationalising this unequal relationship as ‘natural’ and ‘beneficial for the ITMs and their languages and cultures’.

#### *Notes:*

<sup>8</sup> Helen Klengenber was appointed as Nunavut Language Commissioner for a five-year period on 15 June 2017.

<sup>9</sup> <http://langcom.nu.ca/2017-2018-annual-report>.

<sup>10</sup> ‘During the 2018–2019 fiscal year, we will continue to inform the public and obligated bodies of their language rights and obligations, respond to concerns received, monitor and examine the progress of obligated bodies in meeting their obligations under the *Official Languages Act* and the *Inuit Language Protection Act*. The official languages need to be considered consistently and the Languages Commissioner will scrutinize and work to influence policies by prioritising territorial issues which will have the most impact on the official languages’ (pp. 166-167).

<sup>11</sup> This information is on *Social and Economic Inequity in Inuit Nunangat*, reported in the *Inuit Statistical Profile 2018* produced by Inuit Tapiriit Kanatami. <https://www.itk.ca/wp-content/uploads/2018/08/Inuit-Statistical-Profile.pdf>.

<sup>12</sup> Reported in *Australia Health 2018*, a report of the Australian Institute of Health and Welfare, <https://www.aihw.gov.au/getmedia/12c11184-0c0a-43ad-8386-975c42c38105/aihw-aus-221-chapter-6-4.pdf.aspx>.

<sup>13</sup> It might be useful to compare these with the Arctic Social Indicators in Larsen et al. 2014, especially the article by Schweitzer.

<sup>14</sup> *Inuit Statistical Profile 2018* produced by Inuit Tapiriit Kanatami.

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<sup>15</sup> Elementary-Secondary Education Survey for Canada, the Provinces and Territories in the school year 2016/2017, released by Statistics Canada, November 2, 2018.

<sup>16</sup> <http://www.stats.gov.nu.ca/en/Social%20education.aspx>

<sup>17</sup> <https://www.macleans.ca/opinion/on-the-inuktitut-language-the-inuit-may-have-been-too-welcoming/>.

<sup>18</sup> <https://www.gov.nu.ca/finance/documents/toward-representative-public-service-statistics-public-service-within-government>.

<sup>19</sup> <https://www.canada.ca/en/employment-social-development/corporate/reports/research/nunavut-inuit-labour-force-analysis-summary.html>.

<sup>20</sup> Linguicism: 'ideologies, structures and practices which are used to legitimate, effectuate, regulate and reproduce an unequal division of power and resources (both material and immaterial) between groups which are defined on the basis of language' (Skutnabb-Kangas 1988: 13). Most education systems worldwide for Indigenous/tribal peoples and minorities reflect linguicism (Skutnabb-Kangas 2000, Skutnabb-Kangas & Dunbar 2010).

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## CHAPTER 3. LANGUAGE AND EDUCATION

*That's the whole reason why the land claims took place, because we were losing our language... a lot of us who went to school, who were the first Inuit going to school, practically lost out on this because we were told not to speak our language and ... I think that that's part of the whole land claims process. Once you have the language the culture is strong.*

(Paul Quassa, in Robinson & Power 2013, 3).

*As long as we have the language,  
we have the culture.*

*As long as we have the culture,  
we can hold on to the land.*

(Manu Metekingi, from Whanganui iwi, Aotearoa/New Zealand)<sup>21</sup>,

*Grandmothers and Grandfathers*

*Thank you for our language  
that you have saved for us.*

*It is now our turn to save it  
for the ones who are not yet born.*

*May that be the truth.*

(from Maliseet Honour Code, written by Imelda Perley, quoted in Kirkness 2002: 23)

*Elders sometimes say that their children have had to learn the Canadian way in order to fight for the peoples' rights, and to resist the expropriation of their lands and culture. Sometimes these elders speak as if it has been necessary to sacrifice much, including their relationships with their own children, to secure the kind of life and future in which they believe. Discontinuity is accepted as a price for continuity. For people who love their children with such passion, and treat them with respect that is underpinned by so many fundamental beliefs, this has been a terrible price to pay (Brody 1987, 146-7).*

How long does it take to kill a language, in a context where the absolute majority of the population speaks it, in an area which is relatively separate from the dominant language speakers? One example is Manx on the Isle of Man,

*a self-governing British Crown Dependency with a population of some 88,000. Manx began to decline for three reasons: from 1765 under the rule by the British Crown and its English-only government administration, the rise of English tourism in the 1830s, and the enactment of the 1870 Westminster Elementary Education Act, making primary education through the medium of English compulsory for the island's children. By 1974, the last first-language Manx speaker reportedly had died. After around 100 years of English-medium education, despite the self-governing status, there were no speakers of Manx left... Today, Manx has been reclaimed, and is again used by 1,800 speakers', Robert Teare (in press) reports.*

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How long have Inuit in Nunavut had English-medium education? They have resisted assimilation for longer than most other ITM people. Resilience!

### 3.1. Introduction

In this Chapter, we discuss the role of language in education, relating it to linguistic and cultural genocide from a historical, sociological, linguistic, psychological, economic, cultural anthropology and political science point of view, i.e. NOT from a legal point of view as in Chapter 4.

Educating a child always happens in a holistic social context, and understanding that context is vital for any educational changes. Unless the explicit and only intention in writing a report is to take a state to court (where a much more ‘technical’ report is required), there is no reason to restrict a discussion of genocide to the discipline of law – genocide has been described and discussed in many scientific disciplines. We start with a short historical summary of Aboriginal education in Canada and relate it to how cultural (including linguistic) genocide in relation to education has been understood in some disciplines.

The Summary of the final report of the *Truth and Reconciliation Commission of Canada* (2015). *Honouring the Truth. Reconciling for the Future* (TRC) shows throughout its almost 400 pages in detailed ways how the Linguistic Human Rights (LHRs) of Inuit and First Nations were constantly and intentionally violated, and uses the concept ‘cultural genocide’ for it. The report does not mention linguistic genocide; ‘language’ seems to be subsumed under ‘culture’.<sup>22</sup> The Report starts (p. 1):

For over a century, the central goals of Canada’s Aboriginal policy were to eliminate Aboriginal governments; ignore Aboriginal rights; terminate the Treaties; and, through a process of assimilation, cause Aboriginal peoples to cease to exist as distinct legal, social, cultural, religious, and racial entities in Canada. The establishment and operation of residential schools were a central element of this policy, which can best be described as ‘cultural genocide.’ *Physical genocide* is the mass killing of the members of a targeted group, and *biological genocide* is the destruction of the group’s reproductive capacity. *Cultural genocide* is the destruction of those structures and practices that allow the group to continue as a group. States that engage in cultural genocide set out to destroy the political and social institutions of the targeted group. Land is seized, and populations are forcibly transferred and their movement is restricted. *Languages are banned* [our emphasis]. Spiritual leaders are persecuted, spiritual practices are forbidden, and objects of spiritual value are confiscated and destroyed. And, most significantly for the issue at hand, families are disrupted to prevent the transmission of cultural values and identity from one generation to the next.

In its dealing with Aboriginal people, Canada did all these things.<sup>23</sup>

Many Indigenous peoples have experienced and continue to experience (linguistic and) cultural genocide in the sense that the Summary above uses the concept. *Linguistic* genocide/linguicide, and the denial of genocide in general have mostly been completely avoided in official reports in most if not all countries.<sup>24</sup> This is the case even when what is described qualifies as linguistic genocide sociologically, educationally, psychologically, linguistically and from the point of view of political sciences. If linguistic genocide has been mentioned at all in reports and legal articles, it has mostly been subsumed under cultural genocide, just as in the Canadian report above. At Rafael Lemkin’s suggestion, both linguistic and cultural genocide were

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separately defined, and forbidden, in Article III.1. of the final draft of what became the *UN Convention on the Prevention and Punishment of the Crime of Genocide* (see e.g. Gromacky 1992/1997). Linguistic and cultural genocide were voted down in the final UN General Assembly meeting and are not part of the final Convention (see Chapter 4).

But this was not the last attempt to include linguistic genocide into the UN system.<sup>25</sup> In a ‘Separate Statement to the Report’ (*Report of the Royal Commission on Bilingualism and Biculturalism, Vol II, Education* (1968), Commissioner Jaroslav Rudnycky – a respected professor and linguist – suggested the need for much more far-going recognition and provisions for Canada’s Indigenous languages. He writes (p. 164) ‘In some cases the public discriminatory attitudes toward languages other than English led to "linguicidal" measures which resulted in the constant decline of the minority languages in Canada’. In a footnote he writes:

The term "linguicide" was defined by a *Special Committee on Linguicide* to be presented to the United Nations on the occasion of the International Year for Human Rights, 1968, as follows:

Any of the following acts committed with intent to destroy in whole or in part or to prevent the natural development of a language or dialect should be considered as a linguicidal act:

- a) killing members of a community speaking a respective language or dialect (genocide);
- b) imposing repressive measures intended to prevent the natural, organic, development of a language or dialect;
- c) forcibly inflicting on a bilingual community conditions of cultural development calculated to transform it into a unilingual group;
- d) against the will of an ethno-lingual group denying the right of a language to be taught in public schools, to be used in mass media (press, radio, television, etc.);
- e) against the demand of an ethno-lingual group refusing moral and material support for its language maintenance efforts and cultural endeavours.

It seems to us that the definitions from b) to e) have applied and may still apply to Inuit in today’s educational system. What happened to the suggestion by the Special Committee on Linguicide, we do not know.

A few countries that have committed large-scale violations of human rights, including (but not restricted to) the linguistic, cultural and educational rights of Indigenous peoples (and also of minoritised people, as in South Africa) have now started to reconsider past policies. Some apologies have been forthcoming (e.g. in Australia, Aotearoa/New Zealand, Canada and South Africa) while other countries (e.g. Denmark in relation to Greenland) refuse to apologise. Many others deny the factuality of genocides altogether (e.g. Turkey, against Kurds, and Armenians a century ago). It remains to be seen to what extent these apologies result in real policy changes, and in a type of compensation that could also contribute to revitalisation in practice.<sup>26</sup>

### **3.2. The role of language in education: econocide**

Econocide as a political science and economic concept has been described, for instance, in relation to slavery (Drescher, 2010, Baugh 1999) and ‘eliminating the

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urban poor' (Skirtz, 2012). Donald Trump's policies of cuts in most allowances to the poor and marginalized people, especially people of colour, and other ITMs, have also been seen as econocide. The concept is especially relevant in relation to Indigenous peoples, also in education. Most ITMs belong to the poorest people in their countries, and the (non-)education that they receive (if they attend school at all) keeps them powerless and promotes their poverty (Mohanty & Skutnabb-Kangas 2013). Often, just like in Nunavut, the funds used for ITM's formal education are much smaller than what schools for non-ITM children receive. An example was differential funding for 'racial' groups in South Africa under apartheid.

Mark Curtis (1995) analyses the intent in how the world's powerful states have *knowingly* pursued policies that *promote* poverty:

One basic fact [is] that the mass poverty and destitution that exist in much of the Third World are direct products of the structure of the international system. Moreover, an elementary truth is that the world's powerful states have *pursued policies* with regard to the Third World *which knowingly promote poverty*. It is clear that the policies they have encouraged or imposed on the Third World - in the earlier postwar period following military intervention and in the later period through the international financial institutions - have betrayed no institutional interest in eradicating poverty or in promoting a form of economic development meaningful to the poor. Rather, policies have been imposed with the understanding that they will not contribute to these ends (Curtis 1995: 236; emphasis added).

Amartya Sen, economics Nobel laureate, has together with Jean Drèze (Drèze & Sen 2014) shown that successive Indian governments also knowingly promote extreme poverty in India - econocide.

Poverty ... lies not merely in the impoverished state in which the person actually lives, but also in the lack of real opportunity - given by social constraints as well as personal circumstances - to choose other types of living. Even the relevance of low incomes, meagre possessions, and other aspects of what are standardly seen as economic poverty relates ultimately to their role in curtailing capabilities (that is, their role in severely restricting the choices people have). Poverty is, ultimately a matter of 'capability deprivation' (Drèze & Sen 1996: 10-11).

The main task of formal education should be to promote children's capabilities. Not teaching tribal/Indigenous children through the medium of their mother tongues is capability deprivation. The capabilities of children to be able to have choices in life are not supported; their potential is not fully developed (see Chapter 4).

Econocide in the above sense can also be applied to Inuit education in Nunavut, both earlier and today. We quote Milloy for stressing that one reason why the residential schools treated First Nations children so abominably throughout the entire lifetime of the schools until the 1980s was underfunding by the Canadian government. This was continuously the case, despite repeated reporting that the schools were seriously dysfunctional. It is also one of the important reasons for Inuit education in Nunavut today not having reached the goals set for it. It can be seen in the resources per child from the federal government for French-speaking pupils as compared to Inuit pupils, and likewise in (lack of) resources for Inuktitut-medium teacher training. The conciliator Judge Thomas Berger stated that the main reason for the Government of Nunavut not providing appropriate education is that the Government '*cannot afford*

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*it*' (2006, viii). By contrast, in relation to French, '...the Government of Canada has acknowledged that such expenditures are a federal responsibility' (ibid.) The same should apply for Inuktitut, which he recommended.

### **3.3. The role of language in education: historicide**

Historicide, as the Maliseet scholar Andrea Bear Nicholas writes (2003, 2017) is a valid term to categorise what many Indigenous peoples have experienced. The phenomenon itself has been well known, but crystallising it in a term akin to other forms of extermination seems to make it easier to recognise and describe, and to resist it.<sup>27</sup>

Historicide makes a group invisible, nullifies them, just as their language(s) are stigmatized, constructed as useless, irrelevant, not fit for a modern world, even non-existent; a people is said not to have any culture, they are primitive, backward, uncivilized.<sup>28</sup> This parallels the way that colonisation was legitimated, by calling Indigenous lands *terra nullius*, an uninhabited space that was there for the taking. In similar processes, a dominant language and culture can replace the invisibilised and nullified languages and cultures. Missionaries saw themselves as 'giving' the dominated what they 'did not have', a language and a culture, and, today 'an education'.<sup>29</sup>

Henry Huttenbach, who, among other achievements, founded the journals *Genocide Forum* and *Journal of Genocide Research*, described historicide (even if he did not use the term) as part of genocide as follows (2003, 15):

There is increasing consensus that conceptually, at its central core, genocide is the thought and act to nullify, to erase absolutely a segment of the human population. In essence it is the act of terminating the existence – to the fullest extent possible – the presence of a targeted population. This can range from the destruction of group-life to the total annihilation of *memory, history* [emphasis added] and culture. Not only can genocide destroy a group's present and future, but it can also erase any sign of its past. Hence the term nullification, the rendering into nothing in all three dimensions of time. It is a return to a *tabula rasa*.

One goal in unearthing historicide, which is complementary to linguicide has also been to develop arguments for strong resistance to genocidal policies in general. Many have learned that their ancestors did not just accept injustice passively. Instead, many resisted, some successfully, and attempted to create alternatives to historicide and its physical, legal and mental consequences.

For many ITMs, a vital moment, often a turning-point in their lives, is experienced when they discover and understand, not only cognitively but also emotionally, what has happened to them and their people (see, e.g. Fontaine, forthcoming).

### **3.4. The role of language in education: linguistic and cultural genocide**

Skutnabb-Kangas & Dunbar (2010) describe in detail what from an educational, psychological, linguistic and sociological point of view can be seen as linguistic and cultural genocide. It has occurred, and continues to occur in Indigenous/tribal children's education, when the dominant languages are used as the languages of teaching and learning, instead of the children's mother tongues (however these are defined).<sup>30</sup> The results are often disastrous at a group level. Those ITM children who 'succeed' in school, mostly do it not because of how their education is organised, but despite it. We demonstrate how Articles 2b and 2e in the present Genocide

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Convention might be interpreted so as to show in court that these crimes against humanity occur, despite the final formulation of the Genocide Convention that deleted the concepts linguistic and cultural genocide. These were in fact included in final draft of what became the UN Genocide Convention, in its Article III ['Cultural' genocide]. It reads:

In this Convention genocide also means any deliberate act committed with the intent to destroy the language, religion, or culture of a national, racial or religious group on grounds of the national or racial origin or the religious belief of its members such as:

1. Prohibiting the use of the language of the group in daily intercourse or in schools, or the printing and circulation of publications in the language of the group;
2. Destroying or preventing the use of libraries, museums, schools, historical monuments, places of worship or other cultural institutions and objects of the group". <http://www.preventgenocide.org/law/convention/drafts/>

But the draft Article III above, with both linguistic and cultural genocide was voted down by the UN when the final Convention was approved by the UN General Assembly. One obvious reason for many Europeanised states (states colonised from Europe, by Europeans) was that they were concerned to escape conviction for such crimes (and the resulting responsibility for redress). Thus these two types of genocide are not *directly* mentioned in the present Convention.

Chapter 4 of this report looks at linguistic and cultural genocide and crimes against humanity in Inuit education from a legal point of view.

First Nations, Métis and Inuit children in Canada share much experience with other ITM children worldwide. Historically, it is clear that the educational 'treatment' of Indigenous, Métis and Inuit children, mainly in residential schools but also in non-residential day schools in Canada, tried and in many cases succeeded in 'forcibly transferring children of the group to another group' (meaning the schools tried to assimilate them linguistically and culturally to a dominant often colonising group). All this is well documented and includes Inuit. 'The Government of Canada sought to eradicate Inuktitut and culturally assimilate Inuit through the imposition of federal day and residential schooling on our people.'<sup>31</sup>

'Forcibly' above means earlier physical force when children were physically taken away from their parents, often by force. But it also means that attending schools where the teaching language was and is not the children's mother tongue, was not voluntarily chosen by the parents, for at least three reasons. First, attending school was (and is) mandatory by law. Parents (and children) were (and are) punished if the children did/do not attend (including withholding social assistance payments). Secondly, parents did not (and probably do not today either) have enough *research and evidence-based* knowledge about the negative *long-term* consequences of 'choosing' a dominant-language-medium school that often deprived the children of good formal education and high-level knowledge of both languages. And thirdly, there were and still are no alternatives, meaning schools with the children's mother tongues as the main teaching languages from pre-school to grade 12, and further. Of course this kind of mother-tongue-based multilingual schools also teach a dominant language as a second or foreign language, with bilingual teachers responsible for the teaching.

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The kind of ‘education’, using the dominant language as the language of instruction, especially in residential schools, caused serious *physical harm* (tuberculosis, suicides, dying when trying to escape, stunted physical development because of insufficient nutrition, sexual abuse, harsh physical punishment, hard labour, etc). It also often caused long-lasting *mental harm*, including deprivation of the development of high-level cognitive and linguistic capabilities and grave difficulties in intergenerational cultural and linguistic transfer of knowledge.<sup>32</sup> This resulted and may still result in low-level school achievement, low self-confidence, identity problems, and other negative psychological consequences of an unjust society and concomitant education, including loss of in-depth knowledge of language and culture. All this then, together with urbanization and other structural changes often led (and may lead today too) to later negative socio-economic and other consequences, such as unemployment, inadequate housing, suicides, alcoholism, incest, family violence; see Chapter 2). These consequences influenced ITM’s life-chances and often aggravated them for several generations (see Skutnabb-Kangas & Dunbar 2010 for examples from all over the world).

The assimilationist<sup>33</sup> intentions of this kind of education were also clearly expressed. The negative consequences for Indigenous peoples of education of this kind were identified in many North American contexts by educational authorities, including the churches responsible for this education as long as 150 years ago. Econocide aggravated them. Even if there were vague plans, or in some cases regulations to alleviate the worst treatment and/or consequences, almost nothing was done. Where the plans were not implemented or where some attempts at legitimating the lack of implementation were made, the lack of financial resources was almost always referred to, i.e. econocide.<sup>34</sup>

### **3.5. Language-related ideologies and fallacies/myths in education: the maximum exposure fallacy and the subtractive fallacy**

Sandra Inutiq, a former Nunavut Languages Commissioner, wrote (2016, 3) that the first challenge to the language situation in Nunavut seemed to be:

our internalized colonialism and the belief our language is inferior and not worth saving. This is evident in policy directions Nunavut takes on issues related to language, such as education. The sense of urgency of needing to act in Nunavut seems minimal.

Language-related ideologies vis-à-vis ITMs are often guided by beliefs such as described by Inutiq in relation to the Inuit language, and equally dangerous beliefs in relation to a dominant language, such as English. English as a second language teaching worldwide has been influenced by five key tenets. These are

- English is best taught monolingually;
- the ideal teacher of English is a native speaker;
- the more English is taught, the better the results;
- if other languages are used much, standards of English will drop;
- the earlier English is introduced, the better the results;

Research has shown that these ideological tenets are scientifically false and should rather be seen as fallacies:<sup>35</sup>

- the monolingual fallacy;
- the native speaker fallacy;

- 
- the maximum exposure fallacy;
  - the subtractive fallacy.
  - the early start fallacy;

It is more than likely that these fallacies have to a large extent guided the approach to education in Nunavut too. The *monolingual fallacy* and the *native speaker fallacy* are often used to legitimate using monolingual English-speaking teachers in schools, also in Nunavut. The *maximum exposure fallacy* claims that the more the ITM child uses L2 (meaning English for Inuit children), the better she learns it. It may be the intuitively most understandable of the fallacies; for many other skills it is true. If you want to learn to cook or bicycle or play a violin or skin an animal, the more you train, the better you become. But in ITM language learning it has been shown to be a complete fallacy. If the quality of the instruction is the same in two educational models, one with maximum exposure (for instance English medium education for ITMs), and the other with much less exposure to a dominant language, but where ITM children instead receive high quality mother tongue medium instruction (and the teaching of English as a foreign language subject, given by a bilingual teacher), research has shown two types of outcomes.

1. Either there is no relationship between time-on-task and results in the dominant language, meaning both groups perform equally well in the second language, L2, despite the fact that the mother tongue medium group has had much less exposure to English.

2. Alternatively, there is a reverse relationship: the *less* time is used on instruction through the medium of the dominant language, the *better* the results in that language, again provided that the time is instead used on both good mother tongue medium teaching and good subject teaching of L2, given by bilingual teachers. Many publications by Jim Cummins contain overviews of the research findings in relation to maximum exposure.<sup>36</sup>

The *subtractive fallacy* has been explicitly formulated in regulations about ITM education all over the world. We take an Arctic Indigenous example – similar regulations might have guided Inuit education. In the example from Norway that follows, exchange Lappish/Saami and Finnish to Inuktitut, and Norwegian to English. The Norwegian School Law of 1880 (which has been called the 'Magna Carta of Norwegianisation'), paragraph 3, says: 'Instruction in the school is in the Norwegian language. The Lappish [as Saami was called earlier] or Finnish languages are used only as a means of helping to explain what is impossible to understand for the children'. Every paragraph after this contains detailed instructions on how to restrain the use of the children's mother tongues, Saami or Finnish.

Even if the majority of the children in a group do not understand Norwegian, the teacher must always keep the above regulations in mind and remember that it is imperative that the Lappish and Finnish languages are not used more than absolutely necessary ... When the teacher converses with the children to make them understand, use of the Lappish or Finnish language must be avoided as much as possible; it should be noted in particular that whole sentences and continuous passages of the Norwegian text must not be translated into Lappish or Finnish unless it has been shown that this cannot be avoided without harm to comprehension.' (quoted in Lind Meløy 1981: 122-123).

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It is instructive to compare this with the policy offered to children in Africa and Asia some 80 years later, in the pedagogical tradition which still dominates English teaching: 'The teaching of vocabulary should be mainly through demonstration in situations. When, however, a very brief explanation in the mother tongue is sufficient to ensure that the meaning is fully and accurately understood, such explanation may be given.' (Makerere Report 1961: 13). This was a report of a Commonwealth Conference on the Teaching of English as a Second Language, probably the most influential document on policy and methods for teaching English in former British colonies.

It was important for the central and local authorities in Norway to control in a more detailed manner whether the teachers really refrained from the use of Saami and Finnish. According to Karl Aas, Superintendent for Schools, in a communication to the Department of Education in 1899, there were many people who thought that the time had come to completely forbid the use of Saami and Finnish as auxiliary languages. One of the Heads of Department in the Ministry had suggested in 1877 that only 'Norwegian' teachers should be appointed, because 'experience seems to have shown that teachers of pure or mixed Saami or Finnish ancestry are not capable of advancing the Norwegianisation among their compatriots with the success hoped for' (ibid., 21). In 1931 the then Superintendent wrote that it was 'completely unnecessary for teachers in Finnmark to have any education in Saami or Finnish' (Lind Meløy 1981: 27).

These examples demonstrate that all five fallacies have been in force in second language teaching in many contexts for years. That they have been internalized and perpetuated by many teachers or school administrators in Nunavut seems very probable. In most colonised countries and situation (including Nunavut) the speaking of the children's mother tongue in schools, even during breaks, has been not only forbidden but often punished in the most vicious, stigmatizing and shaming ways (Skutnabb-Kangas & Phillipson 1989 has examples from many countries).

### **3.6. Language-related ideologies and fallacies in education: the early start fallacy in models of bilingual education**

The *early start fallacy* is closely connected to the *subtractive fallacy*. Several types of programme have shown, *firstly*, that one can start the teaching of a *foreign language as a subject* early to dominant language speakers, as early foreign language teaching in 'mainstream' programmes shows (for instance teaching French as a subject to English-speaking children in Canada). On the other hand, a large longitudinal Swedish study (Holmstrand 1980, 1982) showed that the gains of starting the teaching of English as a subject for Swedish children early were minimal. If the total number of teaching hours was the same, those who started studying English later got better results in English (see also Curzon's recommendations below). Arlene Stairs showed in empirical studies already over 35 years ago that at both individual and community levels, those students in grade 4 who had higher levels of writing Inuktitut (because Inuktitut was the main teaching language) also had higher levels in writing English. On the other hand, more English medium education 'did not lead to any superiority in either spoken or written English' (1987). The international association of Teachers of English to Speakers of Other Languages, TESOL, has in its *English Language Bulletin* also recently started to report similar results.

Secondly, if teaching *through the medium of a second or foreign language is additive*, it can start early. Additive teaching/learning adds to a student's linguistic

repertoire. In *subtractive* teaching/learning, the new language is learned at the cost of the mother tongue (subtractively), instead of in addition to the mother tongue.

Table 1 shows five teaching models/programmes. The first, submersion (see Note 22), is subtractive for ITMs (called MINorities in the Table; politically dominant groups are called MAJorities). For the purposes of this Table, we call English the dominant language, MAJ, even if in Nunavut Inuit speakers are demographically a majority. Submersion can also be called a *non-model of bilingual education* – it does not lead to (high levels of) bilingualism. The other three are additive, *strong models of bilingual education*:<sup>37</sup> these often lead to high levels of bi- or multilingualism.

Table 1 Models of bilingual education programmes<sup>38</sup>

<b>Programme</b>	<b>Submersion</b>	<b>Immersion for majorities</b>	<b>MIN language maintenance</b>	<b>MIN revital. Immersion</b>
<b>Child's lg</b>	MAJ + MIN	MAJ	MIN	Min? Maj?
<b>Teaching lg</b>	MAJ	Min + bil.later	MIN	MIN
<b>Teacher</b>	Monolingual	Bilingual	Bilingual	Bilingual
<b>Does child know teaching language?</b>	MAJ yes MIN no	MAJ no	MIN yes	MIN? No, or a little
<b>Programme chosen voluntarily?</b>	MIN no	MAJ yes	MIN yes	MIN yes
<b>Are there alternatives?</b>	MIN no	MAJ yes	MIN yes	MIN yes
<b>Results</b>	MIN poor	Good	Good	Good

There are some other programme models too, most importantly a *two-way or dual language model*, with both MAJ and MIN children in the same classroom. The goal is that both become bilingual. Initially, the minority language is the main teaching language, for instance 80% of the time. Ideally, both groups study their mother tongue as a subject, and are taught the other language also, as a (foreign language) subject. The percentage of using the minority language as the language of instruction decreases, and in grade 6 it might only be 50%. The longer the minority language is being used as the main medium of education, the better the results (e.g. Thomas & Collier 2002). A dual language model combines, in the same classroom, a language maintenance programme for the minorities, and an immersion programme for the dominant-language children.

In a Nunavut context, those Inuit children who have more or less lost their Inuit mother tongue, can be labelled 'English-speakers' for the purposes of a dual-language programme, especially in situations where there are not enough of them to form a *revitalisation minority immersion* class. These Inuit children would then be paired in the same dual-language classroom with Inuit children whose mother tongue is Inuktitut, and all of them would be taught through the medium of Inuktitut. This kind of programme can function as a *late-exit transitional model for the minorities*, i.e. the minority children are exited to a majority-language medium education late, preferably not before grade 6, but the later the better.

*Early-exit transitional programmes* where the dominant language becomes the teaching language after the first 2-3 years may psychologically be a bit less harsh than

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clear submersion models, but the results are linguistically and cognitively far from satisfactory, as Inuit experience shows. The early-exit transitional models are called *weak bilingual education* models.

Now we compare these models with what is used in Nunavut. ‘Currently, bilingual education in Nunavut is delivered through three different models: the Qulliq, Immersion and Dual models. The 2008 Nunavut Education Act gives the responsibility to each locally elected District Education Authority (DEA) to choose the language of instruction (Inuit language plus either French or English) and the bilingual education model for the delivery of instruction in both languages for their community. The model must be chosen through public consultation’.<sup>39</sup> Four communities have selected the ‘Immersion’ model, two the ‘Dual’ model, and 20 the ‘Qulliq’ model.

The ideal ‘*Immersion*’ model is supposed to use 85-90% Inuktitut-medium during K-3 and 80-85% during grades 4-6. During grades 7-9 ‘Immersion Max’ is supposed to have 70% in Inuktitut, and ‘Immersion Min’ 30%. Looking at various regions’ capacity to deliver shows that the system cannot/does not provide for human and other resources to enable DEA’s and schools to deliver on chosen model. Especially, there is very little capacity after the first three grades. The corresponding percentages for the ideal *Qulliq* model are 85-90% in K-3, 70-75% in 4-6, 65-30% in grade 7-9. ‘The *Dual* model allows parents the choice between two sub-streams within the same school, with one stream prioritizing instruction in the Inuit language, and the other in the non-Inuit second language.’ We have no information about which sub-streams the parents have chosen in the ‘Dual’ model.

In 2016 (this is the latest information we have received, in April 2019) there were 11 schools that had the capacity to deliver Inuktitut-medium education from kindergarten to Grade 3; seven schools that could deliver it up to grade 4, and one up to grade 5.<sup>40</sup> The rest of the schools were not even delivering the minimum K-3 Inuktitut-medium education required by the Nunavut Education Act.

Looking at the three Nunavut models and the factual situation, we have two observations. Nunavut uses the term ‘Immersion’ for a late-exit transitional programme and ‘Qulliq’ also for a late-exit transitional programme where the exiting happens somewhat earlier. Secondly, looking at the regional capacity to deliver, and the factual situation (unless it has improved massively for the 2018-2019 school year), it seems that most Inuit children are either in submersion programmes, or early-exit transitional programmes (which are weak bilingual education programmes). This means that there are no strong bilingual education models in use in Nunavut.

The Annual Report of the Nunavut Languages Commissioner 2015-2016 describes in Section 8 of the Inuit Language Protection Act the right to ‘receive Inuit language instruction’ as ‘quasi-constitutional’ (p. 181). It also states:

Over the last few years, it was noted on many occasions that the Department of Education was not fulfilling its obligations in terms of the provision of Inuit language instruction as set out in the ILPA and the Education Act, particularly upon the release of the Auditor General of Canada’s report of 2013 and the work of the Special Committee to Review the Education Act in 2014-2015. (ibid.)

The conciliator Judge Berger’s 2006 accurate description of what happens in school when the Inuit children are, after Grade 3, transitioned to an all-English-medium education is similar to literally thousands of sad descriptions from all over the world of early-exit transitional programmes. These ‘reinforce the colonial message of

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inferiority’. The language is eroded. The ‘drop out is linked to Nunavut’s unhappy incidence of crime, drugs and family violence’. Berger calls this ‘social pathology’: schools were ‘... failing. They are not producing graduates truly competent in Inuktitut; moreover, the Inuit of Nunavut have the lowest rate of literacy in English in the country’. Berger states ‘that the status quo is unacceptable’ and ‘a strong program of bilingual education must be adopted’.

This too is what we see all over the world, among many Indigenous children and adults: an overrepresentation of most or all symptoms of gross societal inequality. These are reported in great detail in a 1991 doctoral thesis by Leila Seitamo, *Psychological development in Arctic Cultures*, which analyses multidisciplinary research in the Arctic areas and elsewhere about the consequences of submersion education. She followed all Indigenous Skolt Saami children in Finland for many years, with masses of both statistical test-based and ethnographic data, and interviewed every Skolt Saami adult in the country. Her conclusions were similar to those drawn by Martin and Berger on Nunavut education. In addition, Seitamo showed clearly that those Skolt children whose home language continued to be Skolt did much better in school than those where the parents accepted the use of Finnish in the home.

The strong bilingual models show that additive early start with a ‘foreign’ medium is perfectly possible – for dominant language children, and also in revitalisation immersion programs for ITM children. This is true for *immersion for dominant group children* (for instance the French immersion in Canada for English-speaking children), and *revitalisation immersion for ITM children who have (more or less) lost their mother tongue*. It is also shown in those *dual-language programmes* where the exiting from the minority language happens very late. One can conclude that all English-mother-tongue children in Nunavut could be taught through the medium of Inuktit (an immersion programme for majorities in Table 1). So could Inuit children who no longer know Inuktit (a minority revitalisation immersion in Table 1). Both these groups of children would learn English well anyway; Inuktit would be added to their English instead of replacing English.

On the other hand, if the learning of another language is *subtractive*, as it is in all the non-forms and weak forms of bilingual education, the earlier it starts the worse.

The Nunavut Languages Commissioner’s *Annual Report 2015-2016* shows in its Education section (pp. 181-202) that the knowledge of what should be done has been offered to the education authorities. Despite the serious criticism of what is happening that the Report presents, it also lists many positive attempts that have been made to follow the recommendations from research.

### **3.7. Results of education based on false prerequisites: forced assimilation and serious harm**

What we are seeing in Nunavut today, in 2019, is in fact very much what the earlier education (with negative results, criticised by the Truth and Reconciliation Commission) did, with partially similar results, only with other means. Above we have traced some of the historical evidence for ‘intention to harm’ in the education of ITM children. It is a fact in many countries and areas, including in Nunavut, that the main harmful causal factor in this education, namely the wrong medium of education, has not changed. This is despite strong empirical and research evidence that using the dominant language and excluding the ITM languages, has not worked. Often the wrong medium is used despite declarations and plans to change the educational models. The figures (total numbers and proportions) for children who no longer speak

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Inuktitut either as the main language or at all at home have been growing during recent decades (see Chapter 2). This can be seen as a result of the ongoing forced assimilation that not having had full Inuit-medium education entails.

The negative results apply not only to today's Inuit children but also their parents. The old colonial ideology has often made parents think that the most important language for the children's future to learn is English. There is strong evidence worldwide showing this kind of parental 'preference' for English. The belief is also connected with the mistaken conviction that learning English has to be at the cost of learning the mother tongue well and using it maximally. This is an *either-or ideology*, instead of both-and-and. The myths/fallacies about English learning which are already more than a century old, are very much alive also in Nunavut. The perpetuation of these myths are, as efficiently as in residential schools, attempting, with some success, to forcibly transfer Inuit children to another, mainly English-speaking group, linguistically and culturally, and causing serious harm.<sup>41</sup>

Educational and other authorities have been informed about negative educational results. These have been pointed out in report after report for decades, together with sound, evidence-based recommendations for how to reform the education to produce more positive results. Today, in Nunavut, this has not resulted in changing the system except superficially. In addition, neither the Canadian government nor the Nunavut government (even if there is a majority of Inuit) have ever 'found' or committed the financial means to change the system properly (see Econocide above).

Are today's politicians and other authorities, at both federal and territorial level, 'evil people' then, wanting to harm children? Of course not. There are many positive goals in laws and plans and with the people who make them. If we want to understand the challenges and difficulties when trying to really protect Inuktitut, and to live up to declared goals, it might be helpful to introduce the Finnish lawyer Päivi Gynther concepts of '*evil motive discrimination*' and '*effects discrimination*'. She summarises in her 2003 article the development from more sociologically oriented discussions to more legally oriented clarifications, mainly from the USA and Canada. Structural and ideological factors from these discussions have started to appear also in some other lawyers' interpretations of, for instance, the concept of discrimination in education.<sup>42</sup> Gynther pleads for cooperation between lawyers, sociologists and educationists, and for a broadened analytical framework, in clarifying some of the basic concepts that are used when subjugated minorities are denied access to education. She traces a trend in academic discourses 'from a concern with *evil motive discrimination* (actions *intended* to have a harmful effect on minority group members) to *effects discrimination*' (actions have a harmful effect whatever their motivation)' (Gynther 2003: 48; emphases added). However, she also points to 'a trend from the deconstructive social criticism of the 1960s and 1970s to a watering down of the conceptual framework of systemic discrimination towards the 1990s' (ibid.: 48). When discrimination and racism, including linguicism

permeate society not only at the individual but also at the institutional level, covertly and overtly ... racial control has become so well institutionalized that the individual generally does not have to exercise a choice to operate in a racist manner.

Individuals merely have to conform to the operating norms of the organization, and *the institution will do the discrimination for them*' (ibid, 47; emphases added).

Despite the knowledge in the educational systems of what should and should *not* be done, the lack of real change shows that the linguisticist ideology described above

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permeates parts of educational decision-making bodies. This ideology has for several decades been so well institutionalised in educational structures that no *conscious* intention to harm needs to be overtly or even covertly expressed. The intention is still there, embedded in the way the institution - educational authorities and schools - functions. The institution of formal education will over time do the 'harm' and the 'transfer'. Might this be labelled linguicist/ racialised/ hierarchised discriminatory attitudes, resulting in malpractice and miseducation?<sup>43</sup> Educational **effects-genocide/crime against humanity?** (i.e. not evil-motive genocide/crime).<sup>44</sup>

Other societal factors, such as cramped housing conditions (factors listed in Chapter 2) increase the challenges for Inuit students in the educational system. Being pushed out early from school (see Truancy below) results in the short term in little or no further formal education, often low self-confidence and identity problems and suicides. It may in the longer-term result in alcoholism, unemployment, and other symptoms of deeply unequal societies. These can also be seen as symptoms of serious mental harm for which the educational system can be a vital causal factor.<sup>45</sup> Some of these can still be seen as long-term consequences of how the grandparents were treated; not learning parenting in either Inuit or 'white' ways.

Our conclusion would thus be that what is happening today in Inuit education in Nunavut can be seen as both linguistic and cultural genocide from a historical, sociological, linguistic, psychological, economic, cultural anthropology and political science point of view. To what extent this can be clarified in law is discussed in Chapter 4.

### **3.8. Older and recent research results about how Indigenous education SHOULD be organised for positive results**

The negative results of subtractive teaching through the medium of a dominant language have in fact been known by Indigenous peoples for a long time, and documented at least since the mid-1700s. For instance, Handsome Lake, a Seneca in the USA born in 1735, knew the devastating results of submersion programmes. He recommended that children should be educated in their own language and culture (Chief Jacob Thomas, 2001). The churches and educational authorities in Canada likewise knew the negative results.<sup>46</sup> Colonial educational authorities (including churches) in most parts of the world have also had the knowledge about positive results of mother tongue medium teaching at the latest since the end of the 1800s. An example from India: Curzon, the British Viceroy in India, wrote in a government resolution in 1904:

As a general rule the child should not be allowed to learn English *as a language* [i.e. as a subject] until he has made some progress in the primary stages of instruction and has received a thorough grounding in his mother-tongue. It is equally important that when the teaching of English has begun, it should not be prematurely employed as the medium of instruction in other subjects. Much of the practice, too prevalent in Indian schools, of committing to memory ill-understood phrases and extracts from text-books or notes, may be traced to the scholars' having received instruction through the medium of English before their knowledge of the language was sufficient for them to understand what they were taught. The line of division between the use of the vernacular and of English as a medium of instruction should, broadly speaking, be drawn at a minimum age of 13. No scholar in a secondary school should, even then, be allowed to abandon the study of his

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vernacular, which should be kept up until the end of the school course.” (quoted in Skutnabb-Kangas 2009, 42-43).

‘Modern’ research results about how ITM education should be organised have been available for over 60 years, since the UNESCO expert group book *The use of vernacular languages in education*:

On educational grounds we recommend that the use of the mother tongue be extended to as late as possible. In particular, pupils should begin their schooling through the medium of the mother tongue, because they understand it best and because to begin their school life in the mother tongue will make the break between home and school as small as possible (UNESCO 1953, 47).

UNESCO's latest recommendations<sup>47</sup> strongly recommend mother-tongue-based multilingual education. There has for several decades been a consensus in academic circles, that has been confirmed in many studies, including in Arctic regions, about what works.<sup>48</sup> Large-scale overviews and studies (e.g. May & Hill 2003, Ramirez et al., 1991, Thomas & Collier 2002) show the importance of mother tongue medium teaching, and the disastrous results when it is not done. In both Ramirez' and Thomas & Collier's studies, **the duration of mother tongue medium education was more important than any other factor in predicting the educational success of bilingual students**. It was also much more important than socio-economic status, something extremely vital in relation to dominated/oppressed ITM students. **The worst results were with students in regular submersion programmes where the students' mother tongues (L1s) were either not supported at all or where they only had some mother-tongue-as-a-subject instruction** (as is the case in most of Nunavut). **This is a subtractive learning situation where the learning of a dominant language subtracts from the child's linguistic repertoire**, i.e. the dominant language is learned at the cost of learning the mother tongue, instead of learning it in addition to the mother tongue, as in MLE. Dominant-language-only submersion programmes “are widely attested as the least effective educationally for minority language students” (May & Hill 2003: 14, study commissioned by the Māori Section of the Aotearoa/New Zealand Ministry of Education).

In Thomas & Collier's longitudinal study with some 210,000 students (2002), they found that ‘the strongest predictor of L2 student achievement is the amount of formal L1 schooling. The more L1 grade-level schooling, the higher L2 achievement.’ So, the number of years the minority child with English as the second language was taught through the medium of the mother tongue, the better the results both in the English language, and in school achievement in general that was measured through English. In terms of both general school achievement and the learning of the dominant language, those students were best who had the longest number of years of learning content in their mother tongue, taught by bilingual teachers and with a good curriculum. This is what MLE can do.

The model programmes in Table 1 above are based on large-scale empirical evidence from all continents. Of course there is no ‘one-model-fits-all’ – local circumstances decide. Still, it is impossible to claim that educational authorities and politicians did not or do not know what to do, and what *not* to do.

Nunavut decision makers have in fact tried to become better informed, much more so than decision makers in many other countries. The Government of Nunavut asked Professor Ian Martin from York University, Glendon College, Canada, to write a

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research report about the language of instruction for Nunavut (see his reports 2000a, 2000b; see also his 2003 and 2017). Building on massive research evidence and applying it to the situation in Nunavut schools at the beginning of the 2000s, he showed very clearly what the consequences would be if the language of instruction did not change from mainly English for Inuit pupils to mainly using Inuk(tit)uk, and if Inuk(tit)uk did not get proper legal protection. We quote extensively from Martin's Executive summary:

This Discussion Paper has been commissioned to offer Education Nunavut a number of options for discussion on the topic of language of instruction (LOI) in Nunavut schools. The main option which the paper advocates is a major twenty-year effort to develop a strong bilingual (Inuktitut/Inuinnaqtun - English) education system for the territory [...] In our judgement, the main option facing the Department is to evolve beyond the weak bilingual model inherited from the NWT - a model which almost by definition cannot produce confident bilingual, biliterate speakers, which seriously infringes on young people's linguistic human rights (which we define), and which fails to respond to the present and future human development needs of Nunavut.

The present model - an early-exit transitional model - requires Inuit students to become English-speakers if they wish to continue their education beyond the Grade 4-5 "transition point", since the only language of instruction in Nunavut schools thereafter is English. In our judgement, the ideological orientation of this system is seriously flawed, for four main reasons:

1. It is not a true bilingual system; it replaces the child's first language with an imperfectly learned second language, and rather than allowing both languages to develop to a high level, too often neither language develops to its full potential. This is typically the case for "weak models" of bilingual education, including the "early-L1 exit" type dominant in Nunavut schools.<sup>49</sup>
2. It is an infringement upon the individual and collective linguistic human rights of the Inuit people. Many other rights are accessible only through the guarantee of linguistic rights. The right, for example, of access to the cultural resources of one's group - the heritage of Inuit Qaujimaqatuqangit is primarily accessible only to those who command a sophisticated knowledge of Inuit language.
3. It does not respond to the present and future human resource needs of Nunavut, which will require an educated, bilingual population able to exercise all available means of self-determination, both in Nunavut, and in Nunavut's relations with Canada and the outside world.
4. Language loss is connected to a whole web of social and economic problems, and language promotion and revitalization are as much a part of a holistic community wellness strategy as health, economic development, self-esteem and identity, and a clean environment - to which language and education are intimately connected [...]

Consequently, the Discussion Paper offers the following options for discussion:

- that the Government re-affirm and clarify for the field of education the commitment made in the Bathurst Mandate, that by 2020 Nunavut will be a "fully functional bilingual society, in Inuktitut and English".
- and that, recognizing that Nunavut schools have an important role to play in building this bilingual society, the Government mandate, through a new Education Act, that the schools put in place a "strong" model of bilingual

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education, the only model which is likely to ensure that the 2020 goal be reached.

- that the Department engage in a consultation process on a limited set of “strong” options (we offer four, and propose Nunavut applications of each). Since there are a variety of community language situations, there won’t be a single model for every situation. Yet, the long-term outcome of every model would be comparable in terms of preparing young people for a bilingual society, where Inuktitut in all its forms would be the main working language of government (and consequently the main language between the government and its citizens). [...]

Our strong bilingual education system option would go through these stages:

Stage I: (2000-2003) Preparation period. Consultations, community planning, promotion and information campaign on community-based bilingual education, focus on teacher development and other infrastructural components.

Stage II: (2003-2010) Selection of a community-appropriate model and building toward implementation and first delivery of strong model in elementary school (K-7) by 2005; in Grades 8-12 by 2007. The strong model would be in place, properly staffed, and with infrastructural support no later than 2010.

Stage III: (2010-2020) Ten-year stable implementation of the strong bilingual system, with assessment procedures at territory and community levels, evolution of a Nunavut high school matriculation programme.

Martin’s paper ‘offers options for new language in the Education Act with respect to language of instruction, which would set out in a preamble the vision for a bilingual society; state the joint responsibility of schools, with other elements in society to build toward that bilingual society and to preserve and promote the Inuit language for future generations.’

But this is not going to happen. ‘Nunavut’s celebrated 2008 Education Act promised to deliver fully bilingual education to students by 2019. Due to the fact that we have been short of Inuktitut teachers and [a] lack of resources, this is something that we have not been able to meet’, Education Minister Paul Quassa told reporters shortly after introducing a bill to update the act in the legislature [November 2017]. The proposed changes would push the deadline for offering bilingual education forward to 2029 for Grades 4 to 9, and postpone the deadline for Grades 10 to 12 indefinitely. Inuit parents are angry, and worried about this.<sup>50</sup>

Another important actor with recommendations was the Conciliator Thomas Berger whose final report was published in 2006. The last 20 years have considerably strengthened the research base that Martin and Berger used for their proposals. There is no serious research that would in any way have faulted their suggestions (or those in Skutnabb-Kangas & Dunbar 2010, pp. 99-103).<sup>51</sup> The quotation from Curzon in 1904 above is likewise fully relevant today, and ‘perhaps suggests that postcolonial education and most minority education *has failed to learn from earlier experience*’ (Phillipson 2006).

### **3.9. Transmission of Traditional Ecological Knowledge (TEK) to the next generations is necessary in fighting ecocide**

There is only one detail in Berger’s 2006 report that we might question. He suggests (p. vi) that English may be the best choice for teaching science and mathematics in higher grades. This reflects an underlying, maybe unconscious belief that only scientific concepts that are expressed in English are valid. Today’s research has

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shown that many Indigenous people have their own counting systems and mathematical structures<sup>52</sup> which may be better adapted to traditional hunting, gathering and trapping lives. Many Australian Aboriginal peoples differentiate between “white knowledge” (which could, later on in school, be taught in English) and their own knowledge that should be taught in their own languages and be transmitted to the new generations. And it is exactly this transmission process that is at grave risk as soon as Indigenous children attend schools where their languages are not the main teaching languages and where their cultural practices do not permeate the learning processes.

At an important Symposium in 2002<sup>53</sup>, the representatives of the International Council for Science, ICSU - see [www.icsu.org](http://www.icsu.org)) and ICSU's 2002 report, *Science, Traditional Knowledge and Sustainable Development* showed clearly that Traditional Ecological Knowledge, TEK, contains a great deal of knowledge unknown to and of the utmost importance for (Western) science. This knowledge may be vital for our whole planet when biodiversity and linguistic diversity decrease at alarming rates (Loh & Harmon 2018) and the climate crisis worsens.<sup>54</sup> Scientists are worried about the diminishing intergenerational transmission of TEK<sup>55</sup> Inuit parents are also worried about possible partial ‘removal of traditional knowledge, Inuit Qaujimaqatunqangit (IQ), from the new [Education] act.’<sup>56</sup> Likewise, people are worried about many of the either/or paradigms where they are told that they ‘must be one or the other... This imposition of a traditional-modern dichotomy is irrational’, Hugh Brody writes (1987, 175).

George Monbiot writes in *The Guardian* of 28 March 2019<sup>57</sup> about attempts to include ecocide in the Rome Statute on Crimes Against Humanity.<sup>58</sup> ‘Until 1996, drafts of the Rome Statute which lists international crimes against humanity, included [the crime of ecocide](#).<sup>59</sup> But it was dropped at a late stage at the behest of three states: the UK, France and the Netherlands’. As we (TSK and RD) wrote in our 2010 book with respect to genocide, international law is made by states, and until such time as the international community can be convinced to make ecocide an international crime, it is not one *from a legal perspective*. If something appears at one stage in the drafting process (as ecocide did many times), and is then eliminated because of the opposition of some states, it does not form part of the treaty, just as happened with linguistic and cultural genocide in 1948.

Much of Indigenous knowledge about how to live sustainably, without harming the environment, is necessarily encoded into the local languages of the peoples whose knowledge it is. ‘Hunting and trapping depends on technology, wisdom and experience that are carried in the brain’, Brody writes (1987,183). When the languages are killed off, the knowledge also disappears – it is not transferred to the replacing dominant languages.<sup>60</sup> Partly the dominant languages do not have the vocabulary needed, partly this knowledge is not learned in ‘modern’ formal classrooms. Earlier it was learned in the education that children got in their communities, but it can still be learned if formal education is saturated by the Indigenous people’s culture. Some of this is starting to happen in Nunavut<sup>61</sup> - but it is impossible in English-medium classrooms.<sup>62</sup>

The learning of the natural sciences in Nunavut should ideally combine local and Western knowledge in ways that only mother-tongue-based bilingual, bicultural education can facilitate.

The melting of the ice in the Arctic happens fast; much of it is caused by human action. A study in the journal *Environmental Research Letters* in April 2019, based on 47 years of data reports about the fast increasing temperatures (the average

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temperature has increased by 2,7 degrees since 1971; 2,4 times more than in the northern part of the globe). The ecocide is described as follows: there are fundamental changes among nine key elements of the Arctic system. We find that, coherent with increasing air temperature, there is an intensification of the hydrological cycle, evident from increases in humidity, precipitation, river discharge, glacier equilibrium line altitude and land ice wastage. Downward trends continue in sea ice thickness (and extent) and spring snow cover extent and duration, while near-surface permafrost continues to warm.... We find a correspondence between air temperature and biophysical indicators such as tundra biomass and identify numerous biophysical disruptions with cascading effects throughout the trophic levels. These include: increased delivery of organic matter and nutrients to Arctic near-coastal zones; condensed flowering and pollination plant species periods; timing mismatch between plant flowering and pollinators; increased plant vulnerability to insect disturbance; increased shrub biomass; increased ignition of wildfires; increased growing season CO<sub>2</sub> uptake, with counterbalancing increases in shoulder season and winter CO<sub>2</sub> emissions; increased carbon cycling, regulated by local hydrology and permafrost thaw; conversion between terrestrial and aquatic ecosystems; and shifting animal distribution and demographics. The Arctic biophysical system is now clearly trending away from its 20th Century state and into an unprecedented state, with implications not only within but beyond the Arctic (Box et al. 8 April 2019).

Arctic cultures are adapting (have to adapt) to this ecocidal climate crisis; education has to change too. Traditional knowledge and skills need to be maintained, and extended so that Inuit are qualified to address the dramatic changes in their environment. Today's education is not equipping them for this.

### **3.10. Unmet challenges and reasons for lack of implementation**

We have in earlier sections already analysed many of the reasons for the lack of success in reaching the goals that Nunavut has set for Inuit in formal education. The use of either submersion programmes where all formal education is in English, or early-exit transitional programmes where the children are transitioned from mother tongue medium to English medium education at the latest after grade 3 is one of the worst culprits, as evidence from all over the world shows. Many social and cultural factors that are not conducive to school achievement in Western-type schools also play a major role. Relative poverty, a long-term result of colonisation and its ideological non-power-sharing concomitants; complete change of lifestyle connected to 'urbanisation'; the climate crisis, etc (see Chapter 2) are other factors.<sup>63</sup>

It is difficult for outsiders, though, to touch on the issues about the lack of implementation of the many good plans. Why are there so many challenges that have so far been unmet? Inuktitut has progressively been weakened. What are the other causal factors for this, in addition to the language policy in education?

One problem is the *shortfall of Inuit school principals*. 'Thirty-seven out of 42 school principals are English-speaking non-Inuit; almost all of them are from southern Canada. Nunavut has 452 English-speaking teachers, so there are actually more English teachers than there are English students in our schools' (Kotierk 2018). In

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2006, only 35% of teachers spoke Inuktitut (Berger 2006, vii). By 2016, that percentage dropped to only 22% of Nunavut teachers (125 out of a total 579) capable of teaching in Inuktitut, all of whom were only instructing in the early primary grades (Nunavut Dept. of Education, 2016).<sup>64</sup> The *shortfall of teachers* and some of challenges Inuit teachers face are discussed further in 3.11.

A second problem is *truancy*. Truancy is defined as the percentage of school days with pupils staying out of school without an acceptable excuse. The latest statistics for truancy for all grades, including kindergarten are from 2001/2002 until 2010/2011. The total has grown during this period from 16.3 to 22.4 per cent. Hall Beach is the community with the highest percentage, 41.8. The absolutely lowest, far lower than any other community (0.9 percent), is the French-medium school, *Commission scolaire francophone du Nunavut*.

Aluki Kotierk (2018), analyses the reasons for the truancy:

So the reality is that our children do not see themselves reflected in the majority of the curriculum. Our children do not see themselves reflected in the majority of the teachers. Our children do not hear their language in the majority of their classrooms.

Our parents are being punished and not given enough money for food if they don't ensure their children attend a school system that does not recognize who they are as Inuit: Last month, the government cut off an Inuit family's food allowance because the daughter wasn't attending at least 80 per cent of school classes. Our parents get painted as bad parents for not waking up their kids and sending them off to a school where for the most part they will be indoctrinated into English. And if a parent does go into the school to speak to the principal, they will most likely be spoken to in English. Is it any wonder Inuit parents resist sending their kids to these schools?

The hope is expressed that 'addressing the Inuit education deficit will fulfill the goal of graduating bilingual Inuit students, grounded in Inuit culture, history and world view who have the skills and knowledge to contribute to Inuit Nunangat, Canada and the world with pride and confidence.' (<https://www.itk.ca/wp-content/uploads/2018/08/Inuit-Statistical-Profile.pdf>, p. 18).

### **3.11. Prerequisites for full Inuktitut-medium education**

What are the prerequisites for full Inuktitut-medium education - or rather, mother-tongue-based bi/multilingual education - in 2019?<sup>65</sup>

Many *Inuit parents* are aware of the long-term consequences of English-medium education, even if access to more detailed information about causal factors might still be helpful, both for them and for teachers – and politicians (see 3.4. above). So are many researchers, Indigenous or not.<sup>66</sup>

In Martin's view 'the most critical constraint of all is the development of a strong new generation of *Inuit teachers*', in order to meet NIC hiring targets of 85% Inuit staff in the schools by 2020. The 'strong model' presented in this report is entirely in harmony with this goal. 'In order to deliver an increased presence of Inuit language teaching and subject teaching through the medium of Inuktitut/Inuinnaqtun, major reform and significantly increased funding will be needed'.

Today's situation was described at a consultation meeting in November 2018 as follows: 'The deputy minister of Education, Pujjuut Kusugak, said at least 450 Inuktitut-speaking teachers are needed for bilingual education. Currently, there are 140,

out of the 705 teachers in the territory. NTI says 450 Inuktitut teachers is too low of a goal, and noted that at the moment Nunavut is only adding about 2.4 Inuktitut-speaking educators a year. That's a lower rate than when Nunavut became a territory. At that rate, it would take Nunavut about 129 years to fill the number of Inuktitut speaking teachers it needs, not accounting for teachers retiring or population growth'.<sup>67</sup> It seems it is difficult to get the exact numbers, though.

Table 2. A breakdown of the number of teachers, by teaching category, as of November 2018<sup>68</sup>.

Title	Inuit	Non-Inuit	Total
<b>Principals</b>	7	36	43
<b>Vice Principals</b>	4	28	32
<b>Language Specialists</b>	84	0	84
<b>Teachers</b>	181	429	610
<b>Learning Coaches</b>	2	40	42
<b>Student Support Teachers</b>	4	35	39
<b>Total</b>	282	568	850

Karla Jessen Williamson describes in her 1995 article the history of Inuit teacher training in great detail, including the Eastern Arctic Teacher Education Program (EATEP), with course descriptions etc. Most of the training was supposed to be through the medium of Inuktitut. In light of this, it seems surprising that there are no more trained teachers. We can also compare this with the very large numbers of people who have graduated between 1959 and 1995 from the teacher training seminar Ilinniarfissuaq in Nuuk, Kalaallit Nunaat (Greenland) (see Ilinniarfissuaq 1995; just the list of the graduates is 16 pages, 451-468).

Stephen Walter (see below) concludes from his many studies that even if the language of instruction is the most important factor in explaining student school achievement, it cannot by itself make poor teachers into good teachers. And 'poor' here means not only teachers who are not well trained, but, most importantly, teachers who do not speak the children's language and know their culture, even if they might be otherwise well trained.<sup>69</sup> In addition, as Dawn Fyn sums up in her empirical PhD (2014), Inuit teachers have to struggle with the consequences of 'a "master narrative" that frames them in a deficit perspective... a Eurocentric focus on education (bound within a goal of English or French competence in Canada) has eroded the educational, cultural, and linguistic roles that Inuit educators play within the schooling of Inuit students in Nunavik. These factors, coupled with pervasive systemic racism, create a challenging environment for Inuit educators.'

A different, urgent plan is needed to ensure more qualified Inuit teachers.<sup>70</sup> Likewise, culturally appropriate teaching materials in all subjects in Inuktitut are vital. Some work has been done in this area.

Appropriate *funding* for Inuktitut-medium education has never been allocated in the same way as it is met for other Canadian children. The Federal government must meet this need. Inadequate funding has served to impose - and legitimate - English-medium education for ITMs in Canada for more than 150 years. This raises the question of whether the costs would be excessive.

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Stephen Walter studied the consequences and costs of mother-tongue based multilingual education in several countries.<sup>71</sup> In a large-scale study, based on national education statistics from 1991-1999 in Guatemala, Walter compared over 200,000 Indigenous Mayan background students, with half of them having a Mayan language as the language of instruction in the *first 6 grades*, whereas the other half had Spanish. The push-out was larger in the Spanish-medium classes, i.e. fewer children graduated from grade 6; they left school earlier. Comparing the cost per student for the first 6 years, it was cheaper to get a student up to graduation in the Mayan medium schools; the cost per student was higher in Spanish-medium schools (Walter & Benson 2012).

Another smaller-scale study among Mayan *secondary* school students showed that many more of them had had Mayan-medium rather than Spanish-medium education. The numbers of each group were also compared with the statistical probability of each group attending secondary education. The students who had earlier had Mayan-medium education were doing much better, i.e. they attended secondary education more than the statistical probability would have predicted.

François Grin, among many others, has shown that the *costs of good minority education* are either marginal, or even lower than for submersion education. Grin asks both what the costs and benefits are if minority languages *are* maintained and promoted, and what the costs (and benefits) are if they are neither maintained nor promoted. Some of Grin's conclusions are as follows:

- diversity seems to be positively, rather than negatively, correlated with welfare
- available evidence indicates that the monetary costs of maintaining diversity are remarkably modest;
- devoting resources to the protection and promotion of minority cultures [and this includes languages] may help to stave off political crises whose costs would be considerably higher than that of the policies considered;
- therefore, there are strong grounds to suppose that protecting and promoting regional and minority languages is a sound idea from a welfare standpoint, not even taking into consideration any moral argument (Grin 2003: 26).

Annamalai & Skutnabb-Kangas (in press) summarise Grin's economic arguments:<sup>72</sup>

... simulation results comparing education through MT versus education through some LWC [language of wider communication, e.g. English] show that under plausible assumptions (which would also be testable with suitable data), offering MT-medium education "pays for itself", because it tends to result in lower class *repetition* rates, thus reducing the average per-student cost [as shown by Walter above] – and thus freeing up communal resources. ...The positive net effect of offering MT education is further reinforced if one takes into account higher average skills, which gives people access to better jobs – and better jobs, which usually are not just more interesting and more empowering for individuals, but also tend to generate higher market value, which in turns gives rise to higher tax revenue. In other words, through this channel too, offering MT-medium education is a sound economic investment, even if you put aside linguistic human rights (LHR) considerations. Putting it another way still, a properly conducted economic analysis of MT education would generally dovetail with, and reinforce LHR-based recommendations.

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In addition, the global wastage when children do not attend school or are pushed out early is enormous, also economically.<sup>73</sup> All these arguments are relevant for Nunavut.

### **3.12. To conclude**

In Eritrea, the two main challenges when attempting to use the various mother tongues as teaching languages were very similar to Nunavut:

When the government of Eritrea is determined that all children should receive their elementary education in their mother tongue, there was a lack of qualified teachers, and of textbooks in the local languages. Teachers also lacked the pedagogy training to teach in local languages or were not familiar with the orthography system of the ethnic languages. Global Partnership in Education (GPE) supported the country's efforts with a US\$25.3 million grant, and helped train 186 teachers on mother tongue education to enhance their competencies. GPE also financed ... the reprinting and distribution of over 1 million textbooks and teachers' guides; these included materials for math, science, English, and mother tongue studies in nine languages. Nearly 214,000 children have benefitted from this initiative, which also contributed to reducing the high student-textbook ratio.<sup>74</sup>

Eritrea, one of the poorest countries in the world, succeeded, in a very short time, in having over 200,000 children benefit from mother-tongue-medium education. Compare this to the number of Inuit children in Nunavut. If Norway has succeeded in organising North Saami medium education up to and including university education<sup>75</sup>, and Finland has succeeded in organising mainly Aanaar Saami medium education up to grade 9 (when the Aanaar Saami population total is under 400)<sup>76</sup>, it should have been possible for Nunavut to organise Inuktitut medium education for all Inuit children who wished to have it, throughout their whole formal education by 2020. In Kalaallit Nunaat (Greenland) the first two teacher training seminaries were started in 1845 and they used from the beginning the Greenlandic language as the medium of education (Petersen 1995). Several textbooks in Greenlandic, especially for use in educating Greenlandic teachers were published, including a geography book (1858), a world history (1859) and a zoology book (1863) (Kleivan 1995). There are no convincing educational or economic arguments in Nunavut for not having succeeded to train enough Inuit medium teachers over the last 20 years, and then claiming that Inuit medium education throughout the whole schooling cannot be organised for all today because of a lack of trained teachers. Could it be that the political will has been lacking, at both federal and territorial Nunavut levels?

#### *Notes:*

<sup>21</sup> Manu Metekingi, a Māori man from the Whanganui iwi (tribe), said this in a film shown at the Whanganui Iwi Exhibition, at Te Papa Tongarewa Museum of New Zealand, Wellington, 29 November 2003 - May 2006. The Exhibition told about 'our heartland, the Whanganui River, and our place within it'. The Whanganui iwi write: 'The well-being of our river is intertwined with its people's well-being' (from the brochure describing the exhibition, with the theme: 'Ko au te awa, ko te awa ko au. I am the river, the river is me'. Thanks to the staff at Te Papa for identifying the person for me - neither the quote nor his name is in the brochure, only in the film.

<sup>22</sup> The UNESCO Universal Declaration on Cultural Diversity 2002 considers multilingualism as an aspect of cultural diversity.

<sup>23</sup> [http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Exec\\_Summary\\_2015\\_05\\_31\\_web\\_o.pdf](http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Exec_Summary_2015_05_31_web_o.pdf)

<sup>24</sup> Fur 2016 gives examples for Sweden. See Skutnabb-Kangas, in press, for more

<sup>25</sup> Thanks to Derek Rasmussen for finding the quotes below. We were not aware of the Separate Statement.

- <sup>26</sup> See Skutnabb-Kangas & Phillipson, eds, 2017, volume 3. See also McCarty et al., eds, 2019, and McCarty et al.'s introduction in the book.
- <sup>27</sup> See also Chrisjohn et al., 2001, 2008, Skutnabb-Kangas, Bear Nicholas & Reyhner 2017.
- <sup>28</sup> These terms are still used in the Constitution of India. ([http://www.india.gov.in/govt/constitution\\_of\\_india.php](http://www.india.gov.in/govt/constitution_of_india.php)).
- <sup>29</sup> İsmail Beşikçi's articles, e.g. 2017, from all parts of Kurdistan (now occupied by Turkey, Iran, Iraq and Syria) about the language(s) and culture(s) of the Kurds show historicide very clearly. In addition to forbidding the use of Kurdish in all official contexts, including schools, several professors also claimed that Kurdish (an Indo-European language, unlike Turkish) was 'mountain Turkish'; see Skutnabb-Kangas & Fernandes 2008 for examples. Kathleen Heugh provides examples of historicide, historical amnesia, Africa 'forgetting' its past, for instance the fact that African languages were used for educational and scientific purposes already from the 12<sup>th</sup> century onwards, as the rediscovery of the thousands of manuscripts in Timbuktu has shown (Heugh 2009: 95-96). There are hundreds of examples in Massad (2016) of historicide from European writings about the 'Arab world'.
- <sup>30</sup> See Kontra, Lewis & Skutnabb-Kangas 2016 for the latest definitions; these include a language that one identifies with, even if one no longer knows it; very relevant for some Inuit children.
- <sup>31</sup> *ITK Submission to the House of Commons Standing Committee on Canadian Heritage, Bill C-91: An Act respecting Indigenous Languages*, February 21, 2019, quoting *We were so far away: The Inuit experience of residential schools* (Ottawa, ON: Legacy of Hope Foundation, 2010).
- <sup>32</sup> Capabilities in Amartya Sen's sense, see above; see also Misra & Mohanty 2000.
- <sup>33</sup> See Milloy 1999, Chapter 11, for assimilation of Northern and Arctic children through education. Even when schools in these areas started much later than in the southern parts, many Inuit children were from early on sent to southern schools.
- <sup>34</sup> See e.g. Milloy 1999, pp. 55-56, 62-67, 75, 103-105, 192-193, 241-242, 269-272.
- <sup>35</sup> Skutnabb-Kangas and Phillipson 1989, Phillipson 1992, chapter 6
- <sup>36</sup> The concept maximum exposure fallacy comes from Jim Cummins; go to <http://www.tove-skutnabb-kangas.org/en/Tove-Skutnabb-Kangas-Bibliography.html> and search for Cummins.
- <sup>37</sup> See Colin Baker's various editions (the latest is from 2011) of his book *Foundations of Bilingualism and Bilingual Education*.
- <sup>38</sup> Skutnabb-Kangas has used this Table in dozens of lectures since the early 1990s.
- <sup>39</sup> Nunavut Department of Education Language of Instruction: *Territorial capacity. Executive summary*. 6.07.2016. The description of the models is based on Government of Nunavut, Dept of Education, November, 2018, provided by Nikki Egeesiak, from the Coalition of Nunavut DEAs.
- <sup>40</sup> Nunavut Department of Education Language of Instruction: *Office of the Languages Commissioner Request*, 6.6.2016, pp. 1-2.
- <sup>41</sup> See Phillipson 2019 on the myths of English, Professionalism and myths in TESOL. Video presentation at TESOL 2019 in Atlanta. <https://www.youtube.com/watch?v=KPwUVhE0XKE>.
- <sup>42</sup> See also Gynther 2007.
- <sup>43</sup> See Baugh 1999, 2000, 2018.
- <sup>44</sup> Since the 1970s, when ecocide – see subsection 3.9 – has been discussed in various UN contexts, there have been several suggestions that 'intent' should not necessarily be part of a definition of the crime of ecocide. See <https://eradicatingecocide.com/summary/> for a summary of the discussions.
- <sup>45</sup> Inuitq 2016, Kotierk 2018. In fact, most of those items in the References list that are about Inuit and other Arctic people/s testify to this; likewise, there are several medical studies.
- <sup>46</sup> See Milloy 1999, TRC 2015; for 'international' results, including conclusions for how the educational system should be organised, see Skutnabb-Kangas 1984, 2000, Skutnabb-Kangas & Dunbar 2010.
- <sup>47</sup> See UNESCO 2003a, b.
- <sup>48</sup> This is what Cummins, and Skutnabb-Kangas & Toukomaa did in the 1970s, Thomas & Collier, Snow, etc, in the 1990s, and Martin and Berger in the 2000s (see below). There are thousands of research articles and books about all this, including results from the Arctic areas.
- <sup>49</sup> See Skutnabb-Kangas & McCarty 2008 for definitions.
- <sup>50</sup> <https://www.cbc.ca/news/canada/north/bill-37-nunavut-education-act-language-protection-act-1.4020945>.
- <sup>51</sup> See also the literature review by Abele & Graham 2010.
- <sup>52</sup> See, e.g. Panda 2006, 2007, Panda & Mohanty 2009 for India.
- <sup>53</sup> Full-day symposium, August 2002, at the Johannesburg World Summit on Sustainable Development (WSSD) *Linking Traditional and Scientific Knowledge for Sustainable Development* organised by International Council for Science (ICSU - [www.icsu.org](http://www.icsu.org)) together with UNESCO's Local and Indigenous Knowledge Systems Project (LINKS).

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<sup>54</sup> For an example, see [https://www.yesmagazine.org/people-power/after-thousands-of-years-western-science-is-slowly-catching-up-to-indigenous-knowledge-20180226?fbclid=IwAR0vWpybBx\\_Yy40RYJqCCAt3gTLhYFYlr3YfB3FBn9MrkIP2W30CJFVO-GM](https://www.yesmagazine.org/people-power/after-thousands-of-years-western-science-is-slowly-catching-up-to-indigenous-knowledge-20180226?fbclid=IwAR0vWpybBx_Yy40RYJqCCAt3gTLhYFYlr3YfB3FBn9MrkIP2W30CJFVO-GM).

<sup>55</sup> ‘Universal education programs provide important tools for human development, but they may also compromise the transmission of indigenous language and knowledge. Inadvertently, they may contribute to the erosion of cultural diversity, a loss of social cohesion and the alienation and disorientation of youth. [...] In short, when indigenous children are taught in science class that the natural world is ordered as scientists believe it functions, then the validity and authority of their parents’ and grandparents’ knowledge is denied. While their parents may possess an extensive and sophisticated understanding of the local environment, classroom instruction implicitly informs that science is the ultimate authority for interpreting ‘reality’ and by extension local indigenous knowledge is second rate and obsolete. [...] Actions are urgently needed to enhance the intergenerational transmission of local and indigenous knowledge. [...] Traditional knowledge conservation therefore must pass through the pathways of conserving language (as language is an essential tool for culturally-appropriate encoding of knowledge)’ (from various pages in ICSU 24).

<sup>56</sup> <https://www.cbc.ca/news/canada/north/education-act-consultations-nunavut-1.4928172>

<sup>57</sup> [https://www.theguardian.com/commentisfree/2019/mar/28/destruction-earth-crime-polly-higgins-ecocide-george-monbiot?utm\\_term=RWRpdG9yaWFsX0Jlc3RPZkd1YXJkaWFnT3BpbmlvblVLLTE5MDMyOA%3D&utm\\_source=esp&utm\\_medium=Email&utm\\_campaign=BestOfGuardianOpinionUK&CMP=opinionuk\\_email](https://www.theguardian.com/commentisfree/2019/mar/28/destruction-earth-crime-polly-higgins-ecocide-george-monbiot?utm_term=RWRpdG9yaWFsX0Jlc3RPZkd1YXJkaWFnT3BpbmlvblVLLTE5MDMyOA%3D&utm_source=esp&utm_medium=Email&utm_campaign=BestOfGuardianOpinionUK&CMP=opinionuk_email)

<sup>58</sup> [http://legal.un.org/icc/statute/99\\_corr/cstatute.htm](http://legal.un.org/icc/statute/99_corr/cstatute.htm)

<sup>59</sup> See <https://eradicatingecocide.com/summary/> for the various phases of attempts to include ecocide in the Genocide Convention, including definitions of ecocide.

<sup>60</sup> See, e.g. [www.Terralingua.org](http://www.Terralingua.org).

<sup>61</sup> Sandra Inuitiq (2016) gives some encouraging examples in her subchapter Language Revitalization and Protection. Likewise, Lees et al. 2010 and Walton & O’Leary have many examples and suggestions. There are many others, also internationally – see, e.g. Person 2018.

<sup>62</sup> For some suggestions, see, for instance, <https://www.cbc.ca/news/indigenous/first-nations-canada-education-aboriginal-language-1.3636675>.

<sup>63</sup> Hugh Brody (1987) describes all of this elegantly.

<sup>64</sup> Nunavut Department of Education (2016); Language of Instruction, PowerPoint Presentation, Jesse Jacobs, July 2016. Thanks to Derek Rasmussen for this reference.

<sup>65</sup> Capacity building has been discussed in many reports, e.g. Lees et al. 2010.

<sup>66</sup> See Fontaine 2017, Fontaine et al. 2017; see also Stairs 1987, 1988.

<sup>67</sup> <https://www.cbc.ca/news/canada/north/education-act-consultations-nunavut-1.4928172>

<sup>68</sup> ‘The numbers presented in the Table are the headcount, and not the full time equivalent (FTE) for staffed positions. This means every staff member is counted as one position even if their position is half-time. Individuals who are on leave from their position (maternity leave, education leave, etc.) are included in these figures. In addition, some Principals and Vice Principals are also Student Support Teachers. Those individuals have been counted in their more senior role’.

<sup>69</sup> Many teachers know themselves what should be done (see, e.g. Aylward 2010).

<sup>70</sup> Bear Nicolas 2017 describes a Maliseet teacher training programme.

<sup>71</sup> E.g. Eritrea, the Philippines, Guatemala, and Cameroon; Walter 2008, 2010, Walter & Chuo 2013a,b.

<sup>72</sup> These are partially presented in Grin 2006; here they come from Grin’s email to TSK 15 January 2019.

<sup>73</sup> George Monbiot (2018), discussing Universal Basic Income trials in several countries notes that in ‘Madhya Pradesh, India – whose levels of poverty ensure that even small payments can make a big difference - strong improvements were seen after six months in health, nutrition and school attendance’ (p. 109; see SEWA Bharat). *If parents can afford it (“small payments”) and if they see that children understand what is said in schools and can participate, ITM children attend school and stay there.* (emphases added).

<sup>74</sup> In addition, a *peoples’ language committee* or respective native languages was established to ensure the effective application of mother tongue instruction. The committee is in charge of conducting public campaigns to raise awareness on the importance of learning in mother-tongue languages; gathering technical terminology, vernacular sayings, grammar and new words, as well as studying differences in dialects in the languages to name a few. <https://www.globalpartnership.org/blog/3-examples-mother-tongue-education-improve-learning?audience-profile=international-organization>.

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<sup>75</sup> See Allaskuvla, the Sámi University College, [sammas.no/en](http://sammas.no/en) and references to Aikio-Puoskari in <http://www.tove-skutnabb-kangas.org/en/Tove-Skutnabb-Kangas-Bibliography.html>

<sup>76</sup> See Olthuis, Kivelä & Skutnabb-Kangas 2013. A follow-up book is forthcoming. See <https://casle.fi/>

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## CHAPTER 4. DOMESTIC AND INTERNATIONAL LEGAL OBLIGATIONS

### 4.1 DOMESTIC LEGAL OBLIGATIONS

#### 4.1.1 Constitution of Canada and Canadian Federal Legislation

The most significant provision in domestic law, aside from the provisions in the law of Nunavut, described in Part 1.2, below, is set out in section 35, in Part II of the Constitution Act 1982, entitled 'Aboriginal and Treaty Rights'. Section 35(1) provides that the 'existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed', section 35(2) makes clear that the term 'aboriginal peoples of Canada' includes the Inuit. Although section 35 has generated a large amount of important case law, there have not yet been any cases in which the issue of whether language is covered by aboriginal or treaty right, although this issue has been considered by legal scholars. David Leitch (2006: 108) notes that education of Aboriginal children has generally not been mentioned at all or mentioned only in the vaguest terms in the various treaties between Canada and Aboriginal people, and therefore any right to education in an Aboriginal language would have to be based on the concept of aboriginal rights rather than treaty rights.

With regard to aboriginal rights under section 35, Leitch notes the leading case on the definition of 'Aboriginal rights' is the decision of the Supreme Court of Canada in *R. v. Van Peef*<sup>77</sup>. He notes that the Supreme Court defined 'Aboriginal rights' as 'the practices, traditions and customs central to the Aboriginal societies that existed in North America prior to contact with Europeans',<sup>78</sup> and that the activity had to be integral to the distinctive culture of the Aboriginal society.<sup>79</sup> Furthermore, the pre-contact practice, custom, and tradition had to have continuity with present-day practice, custom and tradition.<sup>80</sup> Leitch argues that Aboriginal societies certainly 'educated their children in their own languages in their own ways, successfully transmitting those languages from generation to generation prior to European contact'; although the methods that are now employed to do so differ, Leitch notes (2006: 112) that the decision in *Van Peet* recognised that Aboriginal societies were entitled to adapt such practices, customs and traditions without losing their Aboriginal rights. Leitch argues that therefore Aboriginal rights under section 35 include language rights, including the right of Aboriginal peoples to educate their children in their Aboriginal languages. It has also been noted that the Supreme Court has indicated that the purpose of section 35 is to promote reconciliation between Aboriginal and non-Aboriginal people in Canada (Drake 2016), and that the Truth and Reconciliation Commission of Canada concluded that reconciliation requires the preservation and revitalisation of Aboriginal languages, and issued numerous calls to action on this matter, including the assertion that the federal government has a responsibility to provide sufficient funds for Aboriginal language preservation and revitalisation (ibid.).

These arguments in support of the notion that section 35 Aboriginal rights include language rights, and specifically a right to state-supported Aboriginal language education, are interesting, but have not been tested in the courts. Therefore, it is difficult to say whether such rights would be sustained by the courts. Even if they were, it is unlikely that the courts would specify what sorts of Aboriginal language education would flow from any such rights. As just noted, the Truth and Reconciliation Commission of Canada stressed the importance of preservation and

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revitalisation of Aboriginal languages as part of the process of reconciliation. In particular, the Commission noted that in interpreting Aboriginal and Treaty rights under section 35(1) of the *Constitution Act, 1982* (just referred to), the Supreme Court of Canada has stressed the relation of those rights to the preservation of distinct Aboriginal cultures, and the Commission stressed that the preservation of Aboriginal languages is essential to this and must be recognised as a right. Therefore, one of its ‘calls to action’ was that the federal government of Canada must acknowledge that Aboriginal rights include Aboriginal language rights. Another ‘call to action’ was for the federal government to enact an Aboriginal Languages Act.<sup>81</sup> Yet another ‘call to action’, in relation to Aboriginal education, was for the federal government to draft new Aboriginal education legislation with the full participation and informed consent of Aboriginal peoples, incorporating a number of principles, including ‘[p]rotecting the right to Aboriginal languages, including the teaching of Aboriginal languages as credit courses. (ibid., 149).

While in opposition, Justin Trudeau’s Liberal Party of Canada committed themselves to fully implementing the calls to action of the Truth and Reconciliation Commission.<sup>82</sup> On 5 February 2019, Trudeau’s Liberal government introduced Bill C-91 into the Canadian House of Commons, ‘An Act respecting Indigenous languages’. In section 6 of the Bill, the Government of Canada ‘recognizes that the rights of Indigenous peoples recognized and affirmed by section 35 of the *Constitution Act, 1982* include rights related to Indigenous languages’. However, the Bill does not go on to set out what these rights might include, and makes no provision for any rights or, indeed, any substantive obligations of the state, including in relation to Aboriginal language education. The most significant aspect of the Bill is that it proposes the establishment of an Office of Commissioner of Indigenous Languages; it remains unclear what the proposed Commissioner is meant to enforce.

Aside from these provisions, there is relatively little in Canadian federal law with respect to Aboriginal languages or Aboriginal language education. The main federal legislation on Aboriginal peoples—and under Canada’s federal system, Aboriginal peoples are within the jurisdiction of the federal government, not the provinces—the *Indian Act* is essentially silent. The *Official Languages Act, 1988* only applies in respect of English and French. In June 2018, the Standing Committee on Procedure and House Affairs of the House of Commons produced a report on the use of Indigenous languages in proceedings of the House of Commons and its Committees in which it recommended that the use of Indigenous languages be recognised in the House of Commons; however, the report did not touch on broader questions of Indigenous rights or Indigenous education rights.

#### **4.1.2 Nunavut Legal Jurisdiction**

Nunavut was created in 1999 as a result of the Agreement Between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada of 25 May 1993 (the ‘Nunavut Agreement’). The Preamble to the Nunavut Agreement sets out four objectives on which the agreement is based, including the objective of encouraging ‘self-reliance and the cultural and social well-being of the Inuit’. Part 1 of Article 2 of the Nunavut Agreement formally recognises that the agreement as a whole is based on and reflects the principles and objectives set out in the Preamble, and in Article 37 of the Nunavut Agreement, Part 1, the ‘Guiding Principles’—the principles which are required to guide the implementation of the agreement as well as the implementation plan to be developed under Article 37 by the Tunngavik

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Federation of Nunavut, the Canadian Federal Government, and the Territorial Government. Given that, as demonstrated elsewhere in this report, cultural and social well-being are intimately linked to the state of the languages of aboriginal peoples, it follows that the well-being of the languages of the Inuit are a fundamental aspect of the creation of Nunavut which should be considered, as part of the Nunavut Agreement, in understanding and interpreting all other obligations which flow from the creation of the Territory of Nunavut. Indeed, as we shall see, the Nunavut *Official Languages Act, 2008* explicitly recognises the link between language and cultural and social well-being.

The Territory of Nunavut was formally created by the *Nunavut Act, 1993*<sup>83</sup>. Amongst the legislative powers conferred on the Legislature of Nunavut is included the power to make laws in relation to ‘the preservation, use and promotion of the Inuktitut language’, to the extent that such laws do not diminish the legal status of or any rights in respect of the English and French languages.<sup>84</sup> While this provision does not require the Legislature of Nunavut to make such laws, it anticipates that where the Legislature does make such laws, they will aim at the ‘preservation, use and promotion’ of the Inuktitut language. Once again, this provision forms part of the context of any legislation relating to the Inuktitut language, and should be considered when interpreting any such legislation.

The *Nunavut Act, 1993* provided that laws of the Northwest Territories became laws of Nunavut, with the result that the *Official Languages Act, 1988*<sup>85</sup> of the Northwest Territories became part of the law of Nunavut; the *Nunavut Act, 1993* specifically provided that this legislation could not be repealed, amended or otherwise rendered inoperable by the Legislature of Nunavut without the concurrence of the Parliament of Canada.<sup>86</sup> Under the *Official Languages Act, 1988*, English, French, and nine aboriginal languages, including Inuktitut, Inuinnaqtun, and Inuvialuktun, were designated official languages,<sup>87</sup> although under the legislation, English and French enjoy a privileged position.<sup>88</sup> In 2008, the Nunavut Legislature passed the *Official Languages Act, 2008* (‘OLA 2008’)<sup>89</sup>, which received the required approval of the federal Parliament in 2009 and came into force on 1 April 2013.

The preamble to the OLA 2008 is very significant. It affirms that, ‘contrary to past practice in which the Inuit Language was legally, socially and culturally subordinated in government and elsewhere,’ it is desirable that the Inuit Language be recognised as the Indigenous language of Nunavut, ‘the spoken and preferred language of a majority of Nunavummiut’, and ‘a defining characteristic of the history and people of Nunavut, and of the Inuit as a people of the wider circumpolar world.’ Significantly, the preamble also affirms that it is desirable that the Inuit Language be recognised as a necessary element in ‘(i) the improvement of Inuit social, economic and cultural well-being, as contemplated by the Nunavut Land Claims Agreement’ and ‘(ii) the development of the public service, and of government policies, programs, and services.’ The preamble further affirms that ‘the Inuit of Nunavut have an inherent right to the use of the Inuit Language in full equality with other Official Languages, and that *positive action is necessary to protect and promote the Inuit Language and Inuit cultural expression*’ (emphasis added). The preamble also expresses that the Legislature is ‘committed to the protection, promotion and revitalization of the Inuit Language, Inuit identity and Inuit cultural expression’.

The OLA 2008 specifies that the Inuit Language,<sup>90</sup> English and French are the Official Languages of Nunavut, and that they have equality of status and equal rights and privileges as to their use in territorial institutions ‘to the extent and in the manner provided under this Act’.<sup>91</sup> Everyone has the right to use any of the three Official

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Languages in the Legislative Assembly of Nunavut, although records and journals of the assembly, as well as laws passed by the assembly, are only required to be printed and published in English and French.<sup>92</sup> In proceedings of judicial or quasi-judicial bodies<sup>93</sup> of Nunavut (but not federal courts), any of the three official languages can be used by any person, whether or not the person can understand or communicate in any other language.<sup>94</sup> Every territorial institution—defined as the Government of Nunavut, the Legislative Assembly of Nunavut, a judicial or quasi-adjudicative body, and any public agency established by the laws of Nunavut—is required to display all public signage in all three official languages, and to make and issue written instruments directed to the public in all three official languages.<sup>95</sup> A member of the public has the right to communicate with and receive the services of the head or central service offices of territorial institutions in any of the three official languages. A member of the public has the same right with respect to other offices of territorial institutions ‘if there is a significant demand for communications with and services from the office in an Official Language’, as evidenced by the percentage of the population served by the office who have that particular official language as their first or preferred language, and the volume of communications or services between the office and members of the public using an official language.<sup>96</sup> The member of the public also has that right if, due to the nature of such other offices, it is reasonable that communications and services from that office be available in ‘any of the official languages, as evidenced by the scope, impact or importance of the services in question for members of the public’ or by the relevance of the services in question to the health, safety, or security of members of the public.<sup>97</sup>

The Minister of Languages of Nunavut, who is made responsible for the administration of the OLA 2008, is required to ‘promote and advocate the equal status’ of all three official languages and ‘the full realization and exercise of the rights and privileges’ as to the use of all three official languages set out in the OLA 2008.<sup>98</sup> The Minister is required to develop and maintain a comprehensive plan for the implementation of the language obligations, policies, programs and services by the public sector in Nunavut.<sup>99</sup> This plan must include measures to evaluate and ensure that members of the Nunavut public service who are engaged with dealing with the public ‘have an acceptable level of oral and written proficiency and skill’, must designate a sufficient number of staff positions in the public service for the discharge of the obligations and duties set out in the act, and ‘to review the laws of Nunavut and the policies of the Government of Nunavut to ensure their consistency, compliance and effectiveness in implementing and promoting’ the objectives of the OLA 2008 and of the *Inuit Language Protection Act*.<sup>100</sup> **In practice, it is difficult to see how the Minister could ensure the implementation of any such plan if children are not being equipped through the education system with the requisite levels of skills in Official Languages, and as we have seen ample evidence of, elsewhere in this report, at present the school system is failing to do this in relation to language skills in Inuit languages.**

The *Inuit Language Protection Act, 2008* (the ‘ILPA 2008’)<sup>101</sup> is a particularly important piece of legislation. Generally, language legislation is directed at clarifying the obligations of the public sector in relation to service provision through the medium of different languages. However, like a very small number of jurisdictions—most notably Quebec, under its *Law 101, the Charter of the French Language*—the ILPA 2008 imposes obligations on actors in the non-state sector with regard to language use. As with the OLA 2008, the preamble is particularly notable. It makes extended reference to the importance of the Inuit Language, linking it to the

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advancement of ‘the reconciliation contemplated by the Nunavut Land Claims Agreement’ and ‘as a foundation necessary to a sustainable future for the Inuit of Nunavut as a people of distinct cultural and linguistic identity within Canada’. The preamble speaks of the determination ‘to respond to the pressures confronting the Inuit Language by ensuring that the quality and prevalent use of the Inuit Language are protected and promoted’, and then affirms it as

a language of education, in a system that in both its design and effect strives to equip Inuit children to enter adult life as world citizens *having a rich knowledge of the Inuit Language and full ability to participate in the day-to-day life, development and cultural vibrancy of their communities and homeland* [...].

The Inuit Language is also affirmed in the preamble as ‘a language of work in territorial institutions’, and as ‘a language used daily in services and communication with the public throughout all sectors of Nunavut society’. The preamble also emphasised that the effective teaching and transmission of the Inuit Language, especially during early childhood and in communities or age groups for which there are special concerns about language loss or assimilation, are now critical’ for both improved Inuit educational achievement but also ‘for Inuit Language protection, promotion and revitalization in Nunavut.’ Based on our discussion in other chapters, it is difficult to conclude that any of these preambular goals are being achieved, and in many cases, failures in the education system are working against the accomplishment of these goals.

Space does not permit a detailed analysis of the *Inuit Language Protection Act, 2008*,<sup>102</sup> but it generally creates very significant obligations for public sector bodies, municipalities and private sector bodies in relation to the provision of services to the public through the medium of the Inuit Language. It creates particular obligations in relation to education. Specifically, section 8(1) of the act specifies that every parent whose child is enrolled in the education program in Nunavut ‘has the right to have his or her child receive Inuit Language instruction’. Section 8(2)(a) provides that the Government of Nunavut must ‘design and enable the education program to produce secondary school graduates fully proficient in the Inuit Language, in both its spoken and written forms’. Section 8(2)(b) then provides that the Government of Nunavut must develop and implement appropriate Inuit Language competency target necessary for the achievement of full proficiency for all stages of learning within the education program, consistent with section 8(2)(a) (just described). Section 8(2)(d) requires the Government of Nunavut to develop and provide curriculum, classroom materials and programs in the Inuit Language relating to the objectives and competency targets of section 8(2)(b), and to develop and provide the training, certification and professional development for educators and others, including Inuit Language training and upgrading, that are necessary to produce the number, type and quality of educators required to implement section 8. Section 9 requires the Government of Nunavut to promote early childhood Inuit Language development and learning, and to develop and provide early childhood education materials and programs in the Inuit Language. Under section 24(1), the Minister of Languages is responsible for coordinating, administering and advocating the full, efficient and effective realisation and exercise of the rights and privileges established under the act, and under section 24(2), is specifically charged with the responsibility of developing policies or programs intended to promote the use and development of the Inuit Language so that it can be

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used in the full range of activities and sectors of Nunavut society, and ‘increased learning, proficiency and linguistic vitality of the Inuit Language’.

Crucially, section 49(4) of the *Inuit Language Protection Act, 2008* provides that section 8 came into force for Kindergarten and grades 1 to 3 on July 1, 2009, but that section 8 would not come into force for grades 4 to 12 until July 1, 2019. On 12 March 2019, the Legislature of Nunavut passed the *Interim Language of Instruction Act*, which received assent on the same day, and which provides that section 8 of the *Inuit Language Protection Act* would not come into force until an as-yet-undetermined date in the future, when a Bill to amend the *Education Act* and the *Inuit Language Protection Act* comes into force, which Bill will presumably amend these various obligations and further extend the date of their implementation. The reasons given for the introduction of this act are that ‘at the present time, insufficient numbers of certified teachers [are] available to provide Inuit Language instruction in grades 4 to 12’, and ‘the Government of Nunavut does not have the ability to provide Inuit Language instruction in grades 4 to 12 commencing on July 1, 2019’ These statements can only be interpreted as an abject admission of failure on the part of the Nunavut authorities in respect of the obligations which they imposed upon themselves in 2008. Section 8 was presumably included in the *Inuit Language Protection Act, 2008* because its implementation was presumably considered of fundamental importance to the accomplishment of the goals of the legislation as a whole. It could therefore be argued that **the *Interim Language of Instruction Act* compromises and for that reason is inconsistent with the *Inuit Language Protection Act*.**

The final piece of Nunavut legislation which is of particular relevance is the *Education Act, 2008*<sup>103</sup>. As with the other Nunavut legislation, the Preamble is of importance because, although preambular statements do not create legal obligations in and of themselves, they do inform the interpretation of the legislation. The preamble to the *Education Act, 2008* begins by recognising that public education needs to focus on students, their intellectual development, and ‘their physical, emotional, social, intellectual and spiritual well-being’. The preamble asserts the belief that ‘high quality education’ is necessary for the implementation of the Nunavut Land Claims Agreement ‘and to support Inuit culture’—which must surely include Inuit language. It also asserts the belief that ‘bilingual education’—and the meaning of this term has been discussed in earlier chapters of this report—‘can contribute to the preservation, use and promotion of Inuit language and culture and provide students with multiple opportunities’. The preamble recalls the establishment of Nunavut and reaffirms ‘the remedial objectives, obligations and guidance expressed by the Nunavut Land Claims Agreement’ (emphasis added), making particular reference to, among other things ‘the stated objectives and positive obligations of government concerning Inuit self-reliance, Inuit cultural and social well-being and Inuit participation in the governance and economic development of their homeland’. The word ‘remedial’ is notable; in relation to Inuit language and culture, it implies the negative impact and results of past policies and the need to implement policies which will reverse such impacts and results.

Part 4 of the *Education Act, 2008*, sections 23 to 29, entitled ‘Language of Instruction’, sets out most of the obligations in relation to the teaching of and through the medium of Inuit language, but there are other provisions in the act which are of importance. Section 1(1), in Part 1, which sets out ‘Fundamental Principles’, provides that the public education system in Nunavut ‘shall be based on Inuit societal values and the principles and concepts of Inuit Qaujimajatuqangit’. These are set out in section 1(2), using the Inuktitut term for each principle and concept with an English

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summary of its meaning in brackets. Although this section does not mention explicitly Inuit language, it is inconceivable that Inuit societal values and the full understanding of these terms themselves can be dissociated from the Inuit language, and that therefore the **Inuit language is essential to the achievement of the fundamental principles on which the public education system is meant to be based.**

Part 3 of the act, ‘School Program’, is also of importance. Section 7(1) provides that district education authorities must provide a school program for kindergarten and for grades 1 to 12 (that is, primary and secondary education). Section 7(3) requires district education authorities to ensure that the school program ‘is founded on Inuit societal values and the principles and concepts of Inuit Qaujimajatuqangit and *respect for Inuit cultural identity*’ (emphasis added). Section 8(1) provides that the education for every school in Nunavut consists of the delivery of the curriculum established by the Minister of Education, as modified by any local program developed by the district education authority, although such modifications require ministerial approval<sup>104</sup>. Section 8(2) requires the Minister of Education to establish the curriculum for kindergarten and for grades 1 to 12, and under section 8(3) this curriculum must also be in accordance with and based on ‘Inuit societal values and the principles and concepts of Inuit Qaujimajatuqangit and respect for Inuit cultural identity’. Significantly, section 8(4) provides that the curriculum must ‘promote fluency in the Inuit Language<sup>105</sup> and an understanding of Nunavut, including knowledge of Inuit culture and of the society, economy and environmental characteristics of Nunavut’. This is a fundamentally important obligation, as it sets the overall goal for what the school curriculum, and therefore the education program for each school, is required to achieve in terms of Inuit language competence. With regard to pre-school, section 17(1) provides that district education authorities must provide an early education program ‘that promotes fluency in the Inuit Language and knowledge of Inuit culture’. Section 17(3) provides that the program must be developed in accordance with and be based on ‘Inuit societal values and the principles and concepts of Inuit Qaujimajatuqangit, particularly the principle of Pilimmaksarniq’. The latter concept is defined in section 1(2)(e) as the development of skills through practice, effort and action.

As noted, Part 4 of the *Education Act, 2008* deals with the language of instruction in Nunavut schools. Section 23(1) provides that every student must be given a bilingual education and the languages of instruction must be the Inuit Language and either English or French, as determined for particular areas by the district education authority. Thus, the school system must not only teach the Inuit language, but that language must be one of the languages of instruction, the language through which students are taught. The term ‘bilingual education’ is not defined in the act itself, but is given meaning in the *Language of Instruction Regulations*<sup>106</sup> (the ‘Regulations’). Of fundamental importance is section 23(2), which describes the purpose of bilingual education under section 23(1) to be ‘to produce graduates who are able to use both languages [i.e. Inuit Language and either English or French] competently in academic and other contexts’. This, it is suggested, must be the yardstick by which school education and, indeed, the Regulations must be judged. **If the school system, based on the Regulations and other provisions of the act, is not producing graduates who are able to use the Inuit Language ‘competently in academic and other contexts’, the requirements of the act are not being complied with.** As we have detailed in other sections of this report, **it is our strongly held view that the system at present is failing comprehensively in producing graduates having these skills, meaning that the act is being fundamentally breached.** Section 24(1) provides that

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the district education authorities are required to decide as to whether English or French will be used with the Inuit Language as a language of instruction, and these authorities must also choose the bilingual education model or models that will be followed in delivering the education program in their areas. These models are set out in the Regulations.

Section 25 is also of fundamental importance. Section 25(1) provides that the Minister of Education is ultimately responsible for ensuring that the duties of the Government of Nunavut in relation to education in the Inuit Language are fulfilled. Section 25(2) provides that in administering the *Education Act, 2008*, the Minister must ‘ensure that the educational program [i.e. the curriculum, set out in section 8, which was discussed above] supports the use, development *and the revitalization* of the Inuit Language’ (emphasis added). This is once again a yardstick by which school education and the Regulations must be judged. As we have detailed in other sections of this report, **it is our strongly held view that the system at present is failing comprehensively in supporting the use, development and particularly the revitalisation of the Inuit Language and that therefore the *Education Act, 2008* is being breached.**

The act recognised that a period of transition was needed in order to fully implement these obligations. Section 28 provided that the obligations of Part 4, including those with respect to bilingual education, applied immediately—at least, in the 2009-2010 school year—in relation to kindergarten and grades 1 to 3, and that those obligations would be phased in for other grades in the manner set out in the Regulations for all other grades, but that the provisions of Part 4 would apply to all grades by the 2019-2020. However, as was noted above in relation to the *Inuit Language Protection Act, 2008*, on 12 March 2019 the Legislature of Nunavut passed the *Interim Language of Instruction Act*, which received assent on that same day. It provides that Part 4 will now not apply to grades 4 through 12 by the 2019-2020 school year, but will only do so at a later date—essentially, some as yet to be determined date in the future on which a bill which the government of Nunavut to amend both the *Education Act* and section 8 of the *Inuit Language Protection Act* becomes law. This act effectively suspends the full application of Part 4 as well as section 8 of the *Inuit Language Protection Act* for all grades other than Kindergarten and grades 1 to 3. As was noted earlier, in the preamble to the *Interim Language of Instruction Act*, the reasons given for the introduction of the act are that ‘at the present time, insufficient numbers of certified teachers [are] available to provide Inuit Language instruction in grades 4 to 12’, and ‘the Government of Nunavut does not have the ability to provide Inuit Language instruction in grades 4 to 12 commencing on July 1, 2019’. As was also noted above, **these statements can only be interpreted as an abject admission of failure on the part of the Nunavut authorities in respect of the obligations which they imposed upon themselves in 2008.**

The Regulations play an important role in providing meaning to the Part 4 obligations. Section 3 of the Regulations sets out the models of bilingual education from which district education authorities are required to choose under section 24(1) of the *Education Act, 2008* (as discussed above). Section 3 provides for three models, the Quilq Model, the Immersion Model, and the Dual Model, all of which are described in more detail in the Table of Bilingual Education Models in the Schedule to the Regulations. Section 4 of the Regulations provide that each district education authority must follow the model which it has chosen, as must the principal teacher of each school within the district education authority. Under the Schedule, the Immersion Model provides for the greatest amount of use of Inuit Language as the

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medium of instruction. It requires that the Inuit Language be used between 85 and 90% of the time in Kindergarten and grades 1 to 3, 80 to 85% of the time in grades 4 to 6, and 65 to 70% of the time in grades 7 to 9. The Qulliq Model requires that the Inuit Language be used between 85 and 90% of the time in Kindergarten and grades 1 to 3, 70 to 75% of the time in grades 4 to 6, and 55 to 65% of the time in grades 7 to 9. The Dual Model is more complex, and provides for two streams, an ‘Inuit Language Stream’ and a ‘Non-Inuit Language Stream’, and pupils are assigned to the stream by the school team in consultation with the pupil’s parents. In the Inuit Language Stream, the Inuit Language must be used between 85 and 90% of the time in Kindergarten and grades 1 to 3, 70 to 75% of the time in grade 4, 60 to 70% of the time in grade 5, and 55 to 60% of the time in grade 6, and 50 to 60% of the time in grades 7 to 9. In the Non-Inuit Language Stream, in Kindergarten and grades 1 to 3 the Inuit Language is taught only between 10 to 15% of the time, and then only as a subject (which can be taught through the medium of the non-Inuit language); in grade 4, the Inuit Language must be used between 25 and 30% of the time, in grade 5 between 30 and 40% of the time, in grade 6 between 40 and 45% of the time, and in grades 7 to 9, the Inuit Language must be used between 40 and 50% of the time. For grades 10 to 12, the requirements are the same for all three models: in grade 10, at least 15 credits must be taken through the medium of the Inuit Language and at least 15 credits through the non-Inuit language, and in grades 11 and 12, at least 10 credits must be taken through the medium of the Inuit Language and at least 10 credits through the medium of the non-Inuit language, thereby leaving a fair amount of choice to pupils as to the balance between education through the medium of the two languages.

Section 28 of the Regulation is particularly important, because it provides for the phased implementation of these obligations, as provided for in Section 28 of the *Education Act, 2008* itself. Under section 28 of the Regulation, Part 4 applied to grade 4 in 2013-14 grade 5 in 2014-15, grade 6 in 2015-16, grade 7 in 2016-17, grade 8 in 2017-18, grade 9 in 2018-19, and grades 10 to 12 in 2019-20. As noted, the *Interim Language of Instruction Act, 2019* has effectively suspended the application of Part 4 of the *Education Act, 2008* to grades 4 to 12 until a later, as-yet-undefined date. As also already noted, it also effectively suspended the application of section 8 of the *Inuit Language Protection Act, 2008*. However, section 28 of the *Education Act, 2008* provides that Part 4 was to be phased in in accordance with the Regulation, and as the Regulation provided that Part 4 applied to grades 4 to grade 9 on a phased basis between 2013 and 2019, it could be argued that Part 4 was in force in relation to those years from the school year designated in the Regulation, and that failures to comply with the Regulation during those years could still be considered to be in violation of the law. It must also be emphasised that the *Interim Language of Instruction Act* does not affect the application of other legislative provisions discussed in this section, including, significantly, the ‘Fundamental Principles’ in Part 1 of the *Education Act, 2008* on which education in Nunavut must be based, and the general obligation under section 8(4) of the *Education Act, 2008*—which is Part 3 of that act—that the curriculum must promote fluency in the Inuit Language, something which, as already noted, we have suggested elsewhere in this report the curriculum has persistently failed to do. **We would also suggest that the indefinite suspension of section 8 of the *Inuit Language Protection Act, 2008* fundamentally compromises the ability to implement that act, as that entire act is premised on the notion that there will be sufficient numbers of people in Nunavut who are capable of providing the Inuit Language services anticipated by that legislation—presumably, it was for**

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this very reason that the education commitments in that act, including those in section 8, were included in the first place.

## 4.2 INTERNATIONAL LEGAL OBLIGATIONS

### 4.2.1 International Human Rights Law

Canada has a number of international legal obligations of relevance to the education of Inuit children in Nunavut, including the International Covenant on Civil and Political Rights ('ICCPR'),<sup>107</sup> the International Covenant on Economic, Social and Cultural Rights ('ICESCR')<sup>108</sup> the Convention on the Rights of the Child ('CRC'),<sup>109</sup> and the International Convention on the Elimination of all forms of Racial Discrimination ('ICERD'),<sup>110</sup> all of which are United Nations treaties which create binding international legal obligations for Canada. The ICCPR contains an article, Article 27, which specifically addresses the rights of minorities. This will be discussed in section 4.2.2., below. Aside from that, the ICCPR does not contain any provision of direct relevance to the education of indigenous children—as we shall see, other international human rights instruments do—although the ICCPR does contain provisions, such as those which protect individuals against various forms of discrimination, which may have indirect relevance. Also, the prohibition in Article 7 of the ICCPR on subjecting persons to torture or to cruel, inhuman or degrading treatment or punishment may certainly be of direct relevance in relation to the type of treatment to which indigenous children have been subjected to in the school system, such as the experience of many indigenous children in residential schools. This is a matter which shall be explored in section 3, below. Here, a range of provisions of direct relevance to the education of indigenous children, but which are not explicitly directed at minorities or indigenous peoples will be explored.

Article 13, paragraph 1 of the ICESCR provides that States Parties recognize the right of everyone to education, and that education 'shall be directed to the full development of the human personality and the sense of its dignity'. The paragraph also provides that education must "enable all persons to participate effectively in a free society". The Committee on Economic, Social and Cultural Rights—the body created under the treaty to oversee its implementation—has noted that States must facilitate the acceptability of education "by taking positive measures to ensure that education is culturally appropriate for minorities and Indigenous Peoples".<sup>111</sup> The Committee did not make explicit reference to the language of instruction. However, in a territory such as Nunavut, the majority of the population speaks an indigenous language. As we have seen in section 1 of this chapter, that language is both an official language and one which receives significant protection through a statute which effectively mandates its use in both the public and private sector.

**The failure of the education system in Nunavut to ensure full written and oral fluency and high levels of competence in the languages of Inuit arguably compromises the ability of the state to deliver education that is 'culturally appropriate' to the context of Nunavut, which enables children to 'participate effectively' in Nunavut society, and which therefore limits the 'full development of the human personality and the sense of its dignity'.**

Article 15, paragraph 1(a) of the ICESCR is also of relevance; it provides that everyone has the right to participate in cultural life. The Committee on Economic, Social and Cultural Rights has noted the following:

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The right of everyone to take part in cultural life is also intrinsically linked to the right to education (arts. 13 and 14), through which individuals and communities pass on their values, religion, customs, language and other cultural references, and which helps to foster an atmosphere of mutual understanding and respect for cultural values.<sup>112</sup>

Furthermore, the Committee has made it clear that ‘culture’ encompasses, amongst other things, ways of life, *language*, oral and written literature, and song.<sup>113</sup> The Committee also notes that the concept of ‘participation’ in cultural life has various aspects, one of which is access, which covers the right of everyone to know and understand his or her own culture through education and information, and to receive quality education with due regard for cultural identity.<sup>114</sup> **Where, as with the Inuit, culture and cultural identity are deeply entwined with and embedded in language, this, it is argued, implies the fundamental importance of equipping children with extensive language skills in the indigenous language.**

The Committee also noted that children require special protection, and that children ‘play a fundamental role as the bearers and transmitters of cultural values from generation to generation’ and that education must be culturally appropriate, and must enable children to develop their personality and cultural identity and to learn and understand cultural values and practices of the communities to which they belong, among other things.<sup>115</sup> They also recalled that educational programmes of States parties ‘should respect the cultural specificities of national or ethnic, linguistic and religious minorities as well as indigenous peoples’, and that

States parties should adopt measures and spare no effort to ensure that educational programmes for minorities and indigenous groups *are conducted on or in their own language*, taking into consideration the wishes expressed by communities and in the international human rights standards in this area.<sup>116</sup> (emphasis added)

The Committee also referred to minorities and indigenous peoples as groups which require special protection. They noted that minorities have the right to their forms of education, their *languages*, and other manifestations of their cultural identity and membership,<sup>117</sup> and that any programme intended to promote the constructive integration of minorities into the society of a State party should be based on inclusion, participation and non-discrimination, ‘with a view to preserving the distinctive character of minority cultures’.<sup>118</sup> Clearly, the preservation of the Inuit language is absolutely fundamental to the preservation of the distinctive character of Inuit culture. Education policy in Nunavut should therefore be aimed at this particular end. **Among the minimum core obligations for States is that of eliminating any barriers or obstacles that inhibit or restrict a person’s access to the person’s own culture or to other cultures.<sup>119</sup> It is suggested that an education which does not equip an Inuit student in Nunavut with high degrees of competence in the Inuit languages constitutes such a barrier, and that a policy which fails to address this barrier and in fact exacerbates it constitutes a breach of the minimum core obligations.**

Under Article 2, paragraph 1, States Parties to the ICERD undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms. Racial discrimination is defined in Article 1, paragraph 1 to include any distinction, exclusion, restriction or preference based on race, colour, descent, or

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national or ethnic origin. Article 2, paragraph 2 of the ICERD provides that States Parties shall, when the circumstances so warrant, 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, although for only so long as is necessary to achieve the objectives for which such measures were meant to achieve. The Committee on the Elimination of Racial Discrimination, the body created under the treaty to oversee its implementation, has made a general recommendation on the rights of indigenous peoples in which it notes that ‘the situation of indigenous peoples has always been a matter of close attention and concern’.<sup>120</sup> The Committee noted that it was conscious of the fact that ‘in many regions of the world indigenous peoples have been, and are still being, discriminated against and deprived of their human rights and fundamental freedoms’, and that consequently ‘the preservation of their culture and their historical identity has been and still is jeopardized’.<sup>121</sup> The Committee then called upon States Parties to recognise and respect ‘indigenous distinct culture, history, *language* and way of life as an enrichment of the State’s cultural identity *and to promote its preservation*’<sup>122</sup> (emphasis added), to provide indigenous peoples with “conditions allowing for a sustainable economic and social development *compatible with their cultural characteristics*’<sup>123</sup> (emphasis added), and to ensure that indigenous communities ‘can exercise their rights to practice and revitalize their cultural traditions and customs *and to preserve and to practise their languages*’<sup>124</sup> (emphasis added). It is very difficult to see how States can achieve these objectives without ensuring through the education system that members of indigenous communities attain high degrees of oral and written proficiency in their languages. Indeed, in the context of Nunavut, where speakers of Inuit languages constitute a large majority, but where, partly because of existing educational provision, the language is weakening, especially among younger people, it could be said that such educational provision is frustrating these goals.

Canada is also party to the CRC. Important general principles are set out in Article 3. Specifically, paragraph 2 of that article provides that in all actions concerning children, including actions taken by the public administration and legislative bodies, ‘the best interests of the child shall be a primary consideration’. Paragraph 2 of the article provides that states parties such as Canada ‘undertake to ensure the child such protection and care as is necessary for his or her well-being’. As we have shown elsewhere in this report, mother-tongue-medium education throughout primary and secondary education contributes to the well-being of Inuit children, and failure to implement such a policy endangers that well-being. Canada is also committed under Article 8, paragraph 1 to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference; identity would surely include the linguistic and cultural identity of the child.

Under Article 29, paragraph 1 Canada agrees that the education of the child must be directed to the development of the child’s personality, talents and mental and physical abilities to their fullest potential (subparagraph (a)), and to the development of respect for the child’s own cultural identity, *language* and values, among other things (subparagraph (c)). As we have demonstrated elsewhere in this report, mother tongue-medium education throughout primary and secondary education greatly promotes these objectives, and the failure to provide such education significantly threatens their accomplishment. The Committee on the Rights of the Child, the body

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established under the CRC to monitor its implementation, has noted that Article 29, paragraph 1 requires that the school curriculum ‘must be of direct relevance to the child’s social, cultural, environmental and economic context and to his or her present and future needs’ and that education ‘must also be aimed at ensuring that essential life skills are learnt by every child and that no child leaves school without being equipped to face the challenges that he or she can be expected to be confronted with in life’.<sup>125</sup> As has already been noted, a large majority of the population of Nunavut speak Inuit languages. As we have seen in section one of the chapter, Inuit languages are official languages of Nunavut, and under the Inuit Language Protection Act 2008, it is intended that the public, private and voluntary sectors in Nunavut are capable of functioning through Inuit languages. In this context, it seems obvious that a high degree of literacy and oral communication skills in Inuit languages constitute ‘essential life skills’ which are necessary to allowing Inuit children to face the challenges that they may be expected to be confronted with in life. As such, **it is suggested that Article 29 requires education policies which provide Inuit mother tongue-medium education through secondary school as the evidence adduced elsewhere in this report demonstrates that such education is necessary to impart such levels of skills in students.**

Article 30 essentially encapsulates the ‘minorities article’, Article 27 of the ICCPR, which will be discussed below:

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.

Finally, Article 37, paragraph (a) provides that Canada must ensure that no child is subjected to torture or other cruel, inhuman or degrading treatment or punishment. **Given the very adverse effects produced by some forms of education inflicted upon indigenous children, it is possible that such forms of education may constitute inhuman or degrading treatment,** an issue we consider in somewhat more detail in section three of this chapter, below.

#### **4.2.2 International Law relating to Indigenous Peoples and Minorities**

The most important international instrument in relation to the rights of Indigenous Peoples is International Labour Organisation (‘ILO’) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries<sup>126</sup> of 1989, which entered into force on 5 September 1991, as it, together with the older ILO Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries<sup>127</sup> of 1957, which was meant to replace, create binding international legal obligations on states which have signed and ratified it. However, Canada has not signed or ratified either treaty, and therefore the provisions of both treaties do not create any obligations for Canada or, by implication, for Nunavut.

The other very important international instrument of relevance is the UN General Assembly Declaration on the Rights of Indigenous Peoples.<sup>128</sup> Strictly speaking, UN General Assembly resolutions such as this do not create binding international legal

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obligations, although they are of considerable political and indeed moral value. Initially, Canada was one of only four states which voted against the declaration in the General Assembly in 2007;<sup>129</sup> 143 states voted in favour, and eleven others abstained. In May 2016, however, Canada reversed its position and has now officially adopted the declaration,<sup>130</sup> thereby agreeing in effect to honour it.

Article 3 of the Declaration provides that Indigenous Peoples have the right to self-determination. Article 4 specifies that Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs—such as, in the case of Nunavut, school education—as well as ways and means for financing their autonomous functions. This right to have autonomous functions of the autonomous institutions of Indigenous Peoples adequately funded is a particularly important one in relation to matters such as the funding of the teaching of and through the medium of indigenous languages.

Article 8, paragraph 1 provides that Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture. Article 8, paragraph 2 provides that States shall provide effective mechanisms for prevention of, and redress for (a) any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities, and (d) any form of forced assimilation or integration. The phrasing here is crucial—even if the aim of the state is not to deprive Indigenous Peoples of their cultural values or ethnic identities, if state policies have this effect, the state is in breach of its obligations. This issue of intent of the State on the one hand and the effect of State policy on the other is discussed below. This provision also requires the state to provide ‘redress’ for past actions which has had the effects described. As the education system has been used to produce these effects, it is now necessary that the education system be deployed to redress those effects. If the education system is not yet doing so—which, in the case of Nunavut, as we have shown elsewhere in this report, it is not—then the state is in breach of its obligations under this Article.

Article 13, paragraph 1 provides Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, *languages*, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons. Paragraph 2 requires that States take effective measures to ensure that this right is protected. Thus, States must ensure that Indigenous peoples are able to revitalize their languages and where the state has not done so effectively—and as we have documented elsewhere in this report, Nunavut has not yet created an education system that will ensure the maintenance and revitalisation of the Inuit languages—then the state is in breach of this obligation. Paragraph 2 also requires that States ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means—in principle, the Nunavut Official Languages Act and the Inuit Language Protection Act promote the achievement of this obligation, but in practice it is not at all clear that these pieces of legislation are yet having their intended effect. The failure of the Nunavut education system to produce sufficient graduates with requisite language skills to ensure that implementation is possible is a serious problem.

Article 14 explicitly addresses education. Paragraph 1 provides that Indigenous peoples have the right to establish and control their educational systems and institutions *providing education in their own languages*, in a manner appropriate to their cultural methods of teaching and learning. **Paragraph 3 provides that States shall, in conjunction with indigenous peoples, take effective measures, in order**

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**for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and *provided in their own language*.** The fundamental importance of providing education—not only in early years but throughout the process of education—in the languages of indigenous peoples is very clear. The reference in paragraph 3 to the provision of such education ‘when possible’ recognises that challenges may exist in making such education possible, but this qualification is clearly not intended to allow the authorities to engage in foot-dragging. Indeed, given the overall thrust of the declaration, which is strongly in support of the urgent revitalisation of indigenous languages, resort to this qualification should be used sparingly if at all.

#### 4.2.2.1 Minority Rights

In international law, the Inuit would also be considered to be a minority,<sup>131</sup> and would therefore benefit from any international legal obligations which Canada has in relation to the protection of minorities. The most important commitment, in terms of creating binding obligations in international law, is Article 27 of the ICCPR, which provides 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 practise their own religion, or to use their own language.

This provision has been subject to a large amount of commentary. It clearly does not explicitly address the question of education of minority children or the language of instruction. However, the Human Rights Committee, the body created under the ICCPR to oversee its implementation, has noted that although the rights protected under Article 27 are individual rights, they depend on the ability of the minority group to maintain its culture, language or religion and that therefore ‘positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practice their religion, in community with the other members of the group’.<sup>132</sup> Furthermore, the Committee has noted that the article ‘relates to rights whose protection imposes specific obligations on States parties’ and that the protection of these rights ‘is directed to ensure the survival and continued development of the cultural, religious and social identity of the minorities concerned’.<sup>133</sup> In spite of the absence of a direct reference to education and in particular to mother tongue-medium education, given the critical importance of mother tongue-medium education to the maintenance of indigenous and minority speech communities, demonstrated later in this report, we suggest that **it is not possible to ensure the survival and continued development of the cultural identity of the Inuit without strong mother tongue education programmes throughout primary and secondary education.**

Explicit obligations in relation to the teaching of and through the medium of minority languages in primary and secondary education have been developed under two important Council of Europe Treaties, namely the Framework Convention for the Protection of National Minorities, and the European Charter for Regional or Minority Languages. However, Canada is not a party to either of these treaties. Canada did,

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however, support the United Nations General Assembly Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities,<sup>134</sup> Article 1, paragraph 1 of which requires States to ‘protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity’, and paragraph 2 of which requires States to adopt ‘appropriate legislative and other measures to achieve those ends’. Article 4, paragraph 2 requires States to ‘take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, *language*, religion, traditions and customs’. Article 4, paragraph 3 provides 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’. Finally, Article 4, paragraph 4 provides that States should, ‘where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, *language* and culture of the minorities existing within their territory’. Once again, given what we know, discussed above in this report, about the fundamental importance of both primary and secondary education in equipping indigenous children with their language, it is difficult to see how these obligations could adequately be addressed without the provision of such mother-tongue education.

Canada is also a participant in the Organisation for Security and Cooperation in Europe (‘OSCE’) and although the organisation does not produce standards which are, strictly speaking, legally binding in international law, they are, like UN General Assembly resolutions, of considerable political force and moral value. Part IV of 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE<sup>135</sup> set out a range of standards with respect to the protection of minorities. Under paragraph 33 of that document, participating states of the CSCE undertook to protect the ethnic, cultural, *linguistic* and religious identity of national minorities on their territory and create conditions for the promotion of that identity. Thus, as a general matter, Canada, and by necessary implication Nunavut, has committed itself not only to protecting the linguistic identity of minorities such as the Inuit, but to create conditions which *promote* that identity. Forms of education which do not protect and promote Inuit language and linguistic identity are therefore not consistent with this commitment. Paragraph 34 of the document deals specifically with education, and provides the following:

The participating States will endeavour to ensure that persons belonging to national minorities, notwithstanding the need to learn the official language or languages of the State concerned, have adequate opportunities for instruction of their mother tongue or in their mother tongue, as well as, wherever possible and necessary, for its use before public authorities, in conformity with applicable national legislation

While Inuit languages are not official languages of the Canadian state, they are official languages of Nunavut, and in the context of the Official Languages Act and the Inuit Language Protection Act, the need to learn Inuit languages is clear. In spite of the various qualifications, the thrust of this paragraph is also clear: the State is obliged to ensure that Inuit have adequate opportunities to learn Inuit languages, not only in the early years of education but throughout the process of education.

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The OSCE High Commissioner on National Minorities has published several sets of thematic Recommendations and Guidelines. Although these do not create any binding obligations in international law, they provide advice on common challenges faced by OSCE participating states and best practice for those states. These could be understood as yardsticks by which to measure how well participating states are doing in relation to the standards set by the OSCE and under international law more generally. The first of these were the Hague Recommendations regarding the Education Rights of National Minorities of October 1996.<sup>136</sup> In paragraph 1, the Recommendations recognise as a general principle that ‘the right of persons belonging to national minorities to maintain their identity can only be fully realised if they acquire a proper knowledge of their mother tongue during the educational process’. The recommendations suggest that States should create conditions at pre-school and kindergarten level which enable parents to have their children taught through the medium of the indigenous language, that at primary level the curriculum should ideally be taught through the medium of the indigenous language, and that at secondary level a substantial part of the curriculum should be taught through the medium of that language.<sup>137</sup> These recommendations represent international best practice in relation to the satisfaction of State obligations regarding the education of linguistic minorities, including indigenous children. **At present, as we have documented elsewhere in this report, present practice in Nunavut falls well below such best practice.**

### 4.2.3 International Criminal Law

In spite of the fact that, as noted elsewhere in this report, the concept of ‘cultural genocide’ is now widely used in a variety of disciplines and increasingly in more general discourse in relation to the sorts of assimilative policies which have been and are still being applied to indigenous peoples and minorities, as we shall see, the term has not found much support in international law or international legal discourse, something which remains true concerning the notion that such assimilationist policies could amount to international crimes. It is, of course, important that a Chief Justice of the Supreme Court of Canada, the Honourable Beverley McLachlin used the term ‘cultural genocide’ in relation to Canada’s treatment of its Aboriginal peoples, although at least one leading Aboriginal Law scholar, John Borrows, was reported as saying that the term, and the Chief Justice’s use of it, was unlikely to have legal consequences.<sup>138</sup> Although, as we shall see, from a strictly legal perspective, the application of international criminal law in relation to the subject matter of this report is highly problematic, the Chief Justice’s comments are a reminder that the law is itself not static, and is shaped in both its construction and interpretation by the evolution of wider social views and understandings.

#### 4.2.3.1. Crimes Against Humanity

The concept of crimes against humanity is a relatively recent development in international law, and many aspects of what constitutes criminality are unclear and are still being developed. Indeed, unlike genocide, the concept has never been codified into a single convention or treaty—although, as we shall see, below, an initiative is now under way to develop such a convention—and many aspects of what constitutes a ‘crime against humanity’ remain unclear.

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The term ‘crime against humanity’ was first used in the modern context in respect of the massacres of Ottoman Turkey’s Armenians from 1915, and it was translated into international legal principle in 1945, following the second World War, in the London Agreement embodying the Charter of the International Military Tribunal (under which the Nuremberg Trials were conducted) (Cassese, 2008: 101-8). Although long associated with armed conflict, this is no longer necessarily the case; it is now accepted that they can also be perpetrated in times of peace. Antonio Cassese, one of the foremost scholars of international criminal law, has suggested that the category of crimes against humanity has now become part of customary international law, and that while the concept is “sweeping”, it has a number of common features. First, they are “particularly odious offences in that they constitute a serious attack on human dignity or a grave humiliation or degradation of one or more persons”. Second, they are not isolated or sporadic events, but “are part of a widespread or systematic practice of atrocities that either form part of government policy or are tolerated, condoned, or acquiesced in by a government”. Third, such crimes can be perpetrated in time of war or in peace. Fourth, they are committed against civilians or, under customary international law (but not under the Statute of the International Criminal Court), enemy combatants in armed conflicts (Cassese, 2008: 101-8).

The most complete definition of what constitutes ‘crimes against humanity’ is now set out in the Rome Statute of the International Criminal Court of 17 July, 1998 (the “Statute of the ICC Statute”). Article 7, paragraph 1 of the Statute of the ICC defines “crime against humanity” as any of a number of acts set out in paragraph 1, “when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”. Subparagraph 2 (a) of Article 7 defines “attack directed against any civilian population” to mean a course of conduct involving the commission of multiple acts referred to in paragraph 1 against any civilian population. Furthermore, subparagraph 2 (a) also provides that the multiple commission of such acts must be “pursuant to or in furtherance of a State or organizational policy to commit such attack”. While this language suggests that the acts must be accompanied with physical violence, it is not clear that that this is necessarily the case, as the case law of certain special international criminal tribunals has indicated that physical violence may not be necessary (de Guzman, 2011: 11).

The acts enumerated in paragraph 1 of Article 7 of the ICC Statute which can give rise to a crime against humanity are:

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportation or forcible transfer of population;
- (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) torture;
- (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender [...], or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) enforced disappearance of persons;
- (j) the crime of apartheid;

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(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Clearly, virtually all of these acts would not apply in the context of the practices considered in this report. The only possibilities which may offer any hope are paragraphs (h) and (k).

With regard to paragraph (h), paragraph 2(g) of Article 7 of the Statute of the ICC provides that ‘persecution’ means “the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity”. The Statute of the ICC does not, however, define what is meant by ‘fundamental rights’. In one case<sup>139</sup> in which the concept was considered, as part of a detailed consideration of the crime of persecution (under the International Criminal Tribunal for the former Yugoslavia), the Trial Chamber noted that, although the realm of human rights is dynamic and expansive, not every denial of a human right may constitute a crime against humanity. The Trial Chamber also made the following comments:

The only conclusion to be drawn from its application is that only gross or blatant denials of fundamental human rights can constitute crimes against humanity [...] in order to identify those rights whose infringement may constitute persecution, more defined parameters for the definition of human dignity can be found in international standards on human rights such as those laid down in the Universal Declaration on Human Rights of 1948, the two United Nations Covenants on Human Rights of 1966 and other international instruments on human rights or on humanitarian law. Drawing upon the various provisions of those texts it proves possible to identify a set of fundamental rights appertaining to any human being, the gross infringement of which may amount, depending on the surrounding circumstances, to a crime against humanity. Persecution consists of a severe attack on those rights, and aims to exclude a person from society on discriminatory grounds [...]  
[...]

The Trial Chamber therefore defines persecution as the gross or blatant denial, on discriminatory grounds, of a fundamental right, laid down in international customary or treaty law, reaching the same level of gravity as other acts prohibited in Article 5 [the equivalent of Article 7 in the ICC Statute] [...]<sup>140</sup>

One problem is that, as we have seen in sections 2.1 and 2.2, above, while there are a variety of obligations of relevance in international human rights law, and in the international law on minority rights and the rights of indigenous peoples, most of the most important international human rights instruments say very little about mother tongue education. It is therefore very difficult to conclude that, at present at least, inadequate provision of mother tongue education, or even its outright denial, would constitute a denial of a ‘fundamental right’ within the meaning of paragraph (h). Another problem is that, as is noted in the above passage, discrimination needs to be involved. In the context of Nunavut, this may be particularly difficult to demonstrate. As we have seen in section 1 of this chapter, education is ultimately a matter for the Legislature of Nunavut, for which a majority of the voters are themselves Inuit and in which a majority of the members are Inuit. It would be unprecedented, and arguably

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highly unlikely, for an international tribunal to find that a body comprised largely of members of a particular group and who are themselves democratically elected by a population that is also comprised largely of members of that group have engaged in acts of discrimination against that group. Finally, as a technical matter, the final clause of paragraph (h) is also highly problematic, as it requires that the persecution must be in connection with one of the other acts listed above, or another crime within the jurisdiction of the ICC (genocide, war crimes, and the crime of aggression). Cassese has noted, however, that this final requirement is not a requirement of the concept of “crimes against humanity” as understood in customary international law (Cassese, 2008: 125-6). However, it may be necessary to demonstrate that the acts reach the same level of gravity of other acts which are considered in customary international law to be crimes against humanity, and this would, again, be a very significant hurdle, as most such acts involve significant physical violence. By the same token, in an important recent monograph, the question of whether ‘cultural persecution’ could amount to a ‘crime against humanity’ was considered at length (Novic, 2016: chapter 5, 142-168). Novic notes that at the moment, it remains to be seen whether the crime of ‘persecution’ could form the basis of what she describes as “a holistic approach to crimes against culture” (Novic, 2016: 154), although she notes that of the case law that does exist, there is at present somewhat more possibilities in relation to tangible cultural heritage than intangible cultural heritage.

The second sort of act enumerated in Article 7, paragraph 1 of the Statute of the ICC that may be relevant here is that set out in subparagraph (k), effectively a catch-all provision which refers to “other inhumane acts of a similar character [to those set out in paragraph 1] intentionally causing great suffering, or serious injury to body or to mental or physical health”. Like the category persecution, however, this category has a number of definitional uncertainties which have not yet been clarified by courts and tribunals. A particularly difficult challenge is the requirement that the acts be of a similar character to other acts set out in paragraph 1; as noted in respect of persecution, this may imply that such acts must involve significant physical violence, and this could potentially limit its application. Significantly, Novic, who considered the question of the crime of ‘persecution’ at length, dismissed summarily the possible application of ‘inhumane acts’ in a cultural context, on the grounds that the crime against humanity of inhumane acts has thus far never been used to address the types of issues that she was considering (Novic, 2016: 145).

Finally, it should be noted that in 2013, at its sixty-fifth session, the International Law Commission decided to place the topic of ‘crimes against humanity’ on its long-term programme of work, and that its sixty-sixth session in 2014, it moved the topic onto its current programme of work, and appointed a Special Rapporteur, Sean D. Murphy. Work is ongoing, but in 2015 the Special Rapporteur issued the First Report on Crimes against Humanity,<sup>141</sup> in which the Special Rapporteur included two draft articles for an eventual convention on crimes against humanity, one of which, Draft Article 2, was the definition of ‘crimes against humanity’. Essentially, it reproduces the definition of ‘crimes against humanity’ in the Statute of the ICC.<sup>142</sup> However, these are, as noted, only draft articles; it is therefore impossible to say what the definition in any future convention will ultimately include.

**In conclusion, the law at present is not very favourably disposed to the application of the concept of crimes against humanity in the context of the sorts of policies and practices we are looking at in this report. This is to a very significant degree due to the existing international law definitions in relation to**

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**crimes against humanity, and the significant ambiguities and indeed obstacles in the small number of acts which may potentially apply.**

#### **4.2.3.2. Genocide**

Rafaël Lemkin, who conceived of the term genocide, was of the view that it should encompass not only the physical destruction of what he termed “national groups”, but also “the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves”, and he made reference to the “disintegration of the political and social institutions of *culture, language*, national feelings, religion and the economic existence of national groups” (Lemkin 1944: 79; emphasis added). This concept of cultural genocide was considered at length during the drafting of the *United Nations’ Convention on the Prevention and Punishment of the Crime of Genocide* (the ‘Genocide Convention’).<sup>143</sup> Indeed, in the initial draft of the Human Rights Division of the Secretariat of the UN (UN Doc. E/447), genocide was defined as a criminal act directed against any racial, national, linguistic, religious or political group of human beings “with the purpose of destroying it in whole or in part, *or of preventing its preservation or development*” (Article 1.II). The criminal acts which gave rise to genocide were, following Lemkin (1944), divided into three categories, physical, biological, and cultural. This third category involved “destroying the specific characteristics of the group”, by one of the following means:

- (a) forcible transfer of children to another human group;
- (b) forced and systematic exile of individuals representing the culture of a group;
- (c) prohibition on the use of the national language even in private intercourse;
- (d) systematic destruction of books printed in the national language or of religious works or prohibition of new publications;
- (e) systematic destruction of historical or religious monuments or their diversion to alien uses, destruction or dispersion of documents and objects of historical, artistic, or religious value and of objects used in religious worship (UN Doc. E/447).

The concept of cultural genocide was carried forward in the draft of the Genocide Convention prepared by the *ad hoc* drafting committee created by the UN Economic and Social Council. What constituted the crime of genocide was set out in two articles, Article II, which dealt with ‘physical and biological’ genocide, and Article III, which dealt with ‘cultural’ genocide. Article III provided that genocide also meant “any deliberate act committed with the intent to destroy the language, religion, or culture of a national, racial or religious group on grounds of the national or racial origin or the religious belief of its members such as:

1. Prohibiting the use of the language of the group in daily intercourse or in schools, or the printing and circulation of publications in the language of the group;

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2. Destroying or preventing the use of libraries, museums, schools, historical monuments, places of worship or other cultural institutions and objects of the group.” (UN Doc. E/AC.25/12).

When it came to the final draft of the Genocide Convention, however, the concept of cultural genocide was not included, due to opposition from several, mostly western States. Among the justifications for this opposition were that the physical destruction of groups was more serious than the destruction of their culture, that cultural genocide could result in “spurious claims” being brought, and that the inclusion of cultural genocide could inhibit the assimilation of cultural or linguistic groups. Ironically, delegates from some countries, including the United States and Canada, were also apparently concerned that the inclusion of cultural genocide could lead to claims by indigenous groups.<sup>144</sup>

The exclusion of cultural genocide from the final text of the Genocide Convention has the effect of greatly restricting the application of that treaty to the sorts of policies and practices described in the previous part of this paper. As Schabas notes, “in light of the *travaux préparatoires* of the Genocide Convention, it seems impossible to consider acts of cultural genocide as crimes if they are unrelated to physical or biological genocide.” (Schabas 2000: 187).

Article II of the Genocide Convention defines genocide to mean the commission of any of the acts set out in paragraphs (a) to (e) of the article—the list is meant to be exhaustive—with the intention “to destroy, in whole or in part, a national, ethnical, racial or religious group, as such”. There is no doubt that indigenous peoples such as the Inuit would be considered to be a protected group, for example on the basis of their ethnicity. The acts of genocide in Article II are the following:

- (a) Killing of members of the group;
- (b) Causing serious bodily harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

Not surprisingly, given the drafting history of the Genocide Convention as just outlined, most of the acts set out in paragraphs (a) to (e) of Article II of the Genocide Convention concern the physical destruction. However, paragraph (b) of Article II refers not only to causing serious bodily harm to members of the group, but also to causing serious mental harm to them. Paragraph (e) is particularly interesting, as it was one of the acts which constituted cultural genocide in the initial draft of the Secretariat working group, described above, and it did not form part of the definitions of physical or biological genocide that had been developed during the preparation of the convention. It has been noted that paragraph (e) was added to the Genocide Convention “almost as an afterthought, with little substantive debate or consideration.” (Schabas 2000: 175). Likewise, the inclusion of the concept of “mental harm” under paragraph (b) was a late addition to the convention, and although it attracted more debate—and initial opposition by some States—its meaning and consequences also did not receive a great deal of attention (Schabas, 2000: 159-160).

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With regard to Article II, paragraph (b), what constitutes causing “serious bodily or mental harm” is not altogether clear. Rape or other acts of sexual violence would appear to be covered; interestingly, it seems that the level of harm required, though high, need not be permanent. The scope of “serious mental harm” is, however, and remains problematic (Schabas 2000: 161). The paragraph contemplates that mental harm can exist independently of physical harm—“serious physical or mental harm”—and it must therefore be possible that the infliction of serious mental harm in the absence of physical harm can, potentially, constitute an act of genocide within Article II. The difficulty is that acts which have been considered to come within paragraph (b) by tribunals such as rape and sexual violence have a clear physical as well as mental element. Very serious levels of mental harm—serious enough to cause similar levels of suffering as is caused by rape and sexual violence, for example, would likely have to be demonstrated, establishing a very considerable threshold.

Paragraph (c) is even more problematic. While the reference to ‘conditions of life’ could be interpreted broadly, the infliction of those conditions has to be directed at the physical destruction of the group. In practice, such conditions usually involve physical deprivation of things necessary to sustain life, such as subjecting members of the group to a reduced diet, provision of medical services which are below a minimum standard, withholding adequate accommodation, and so forth.

With regard to paragraph (e), although the wording is ambiguous, “forcibly transferring children of the group to another”, seems to imply the physical transfer of children, rather than their alienation from the language and culture of the group to which they belong. The use of the adverb “forcibly” is strongly suggestive that what is anticipated here is the physical transfer of children.

In addition to establishing that one of these acts of genocide have been committed, it is also necessary to establish that there is the requisite intent, and this is a further significant obstacle to the application of the Genocide Convention to the sorts of practices considered in this report. This is because there is widespread scholarly agreement that the intention to physically or biologically destroy the group is essential to any genocide claim under the Genocide Convention. This is based on the decision to exclude “cultural genocide” from the scope of the treaty. The International Law Commission has expressed the position in the following terms:

As clearly shown by the preparatory work for the Convention, the destruction in question is the material destruction of a group either by physical or biological means, not the destruction of the national, linguistic, religious, cultural or other identity of a particular group. . . . [T]he text of the Convention, as prepared by the Sixth Committee and adopted by the General Assembly, did not include the concept of ‘cultural genocide’ contained in the two drafts and simply listed acts which come within the category of ‘physical’ or ‘biological’ genocide.

In particular, it is commonly assumed that the concept of ‘destruction’ is limited to physical destruction of the group, based once again on the drafting history, and international tribunals seem to continue to be wary of expanding the nature of the intent required for a finding of genocide beyond the physical or biological destruction of the group. While some prominent scholars, such as William Schabas, has noted that the reference to ‘destruction’ could bear a wider ‘socio-cultural’ interpretation, and while recent scholarship has shown some considerable sympathy to such an expanded interpretation (Novic, 2016: 239), one such scholar has concluded that such

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a move “is unlikely to happen”, for a variety of reasons (Novic, 2016: 239). The present state of the law is summarised by another recent scholarly consideration of the concept of cultural genocide. After reviewing recent case law which have involved claims having a cultural element, Gilbert concludes as follows: “it appears that although judges are clear that cultural genocide is not part of the [Genocide] convention text, cultural attacks against a specific group can serve as evidence to prove the intent to physically destroy a group” (Gilbert, 2018: 328).

It is arguable that the substantial social problems in Nunavut, with suicide as an extreme symptom of alienation, are indicative of residential schools and present-day ‘white’ schooling causing physical and mental harm. While this very probably cannot in the current state of international law be seen as entailing criminal liability, there is a strong case for seeing the current situation in Nunavut education as morally, socially, financially, and politically indefensible and requiring firm action to remedy the many problems that have been identified in this report.

*Notes:*

<sup>77</sup> [1996] 2 S.C.R. 507.

<sup>78</sup> *Ibid*, at para. 44.

<sup>79</sup> *Ibid*, para. 56; Leitch, 2006: 112.

<sup>80</sup> *Ibid*, paras. 60-67; Leitch, 2006: 112.

<sup>81</sup> Truth and Reconciliation Commission of Canada, 2015: 152-7.

<sup>82</sup> See: <https://www.liberal.ca/liberals-call-for-full-implementation-of-truth-and-reconciliation-commission-recommendations/>.

<sup>83</sup> S.C. 1993, c. 28.

<sup>84</sup> Section 23(1)(n).

<sup>85</sup> R.S.N.W.T. 1988,c.O-1.

<sup>86</sup> Section 38.

<sup>87</sup> Section 4.

<sup>88</sup> For example, while members of the public are entitled to communicate with central or head offices of governmental institutions in English or French, they are only entitled to communicate with regional, area or community offices of such institutions through one of the other official languages, and even then only where there is sufficient demand for services in one of those official languages, and it is reasonable, given the nature of the office, that communications with it be available in one of those languages: sections 11(1) and (2).

<sup>89</sup> S.Nu. 2008, c. 10.

<sup>90</sup> Defined by reference to the definition of ‘Inuit Language’ in the *Inuit Language Protection Act, 2008*, which provide that Inuit Language means Inuinnaqtun in or near Kugluktuk, Cambridge Bay, Bathurst Inlet and Umingmaktuq, and Inuktitut in or near other municipalities (section 1).

<sup>91</sup> Sections 3(1) and (2).

<sup>92</sup> Sections 4(1) and (2), and section 5(1).

<sup>93</sup> Defined as the Nunavut Court of Justice, the Court of Appeal of Nunavut, and all bodies established by Nunavut for the exercise of an adjudicative function: section 1.

<sup>94</sup> Sections 8(1) and (2).

<sup>95</sup> Sections 11(1).

<sup>96</sup> Sections 12(1)-(3).

<sup>97</sup> Section 12(4).

<sup>98</sup> Section 13(2).

<sup>99</sup> Section 13(3)(a).

<sup>100</sup> Section 13(3)(b).

<sup>101</sup> S.Nu. 2008, c. 17.

<sup>102</sup> For a detailed discussion of the legislation and the constitutionality of some of its provisions, see Robinson and Power, 2013.

<sup>103</sup> S.Nu. 2008, c. 15.

<sup>104</sup> Section 9(4).

<sup>105</sup> ‘Inuit Language’ is defined in the *Education Act, 2008* as Inuinnaqtun in or near Kugluktuk, Cambridge Bay, Bathurst Inlet and Umingmaktuq, and elsewhere as Inuktitut.

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- <sup>106</sup> R-014-2012.
- <sup>107</sup> Adopted and opened for signature, ratification and accession by UN General Assembly resolution 2200A (XXI) of 16 December 1966, and entered into force 23 March 1976.
- <sup>108</sup> Adopted and opened for signature, ratification and accession by UN General Assembly resolution 2200A (XXI) of 16 December 1966, and entered into force 3 January 1976.
- <sup>109</sup> Adopted and opened for signature, ratification and accession by UN General Assembly resolution 44/25 of 20 November 1989, and entered into force on 2 September 1990.
- <sup>110</sup> Adopted and opened for signature and ratification by UN General Assembly resolution 2106 (XX) of 21 December 1965, and entered into force 4 January 1969.
- <sup>111</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 13, The Right to Education (Article 13 of the Covenant), Twenty-first session, 15 November 3 December 1999, E/C.12/1999/10, 8 December 1999, para. 50.
- <sup>112</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 21, Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights), Forty-third Session, 2-29 November 2009, para. 2.
- <sup>113</sup> *Ibid.*, para. 13.
- <sup>114</sup> *Ibid.*, para. 15(b).
- <sup>115</sup> *Ibid.*, para. 26.
- <sup>116</sup> *Ibid.*, para. 27.
- <sup>117</sup> *Ibid.*, para. 32.
- <sup>118</sup> *Ibid.*, para. 33.
- <sup>119</sup> *Ibid.*, para. 55.
- <sup>120</sup> Committee on the Elimination of Racial Discrimination, General recommendation XXIII on the rights of indigenous peoples, Fifty-first session (1997), document A/52/18, annex V, para. 1.
- <sup>121</sup> *Ibid.*, para. 3.
- <sup>122</sup> *Ibid.*, para. 4(a).
- <sup>123</sup> *Ibid.*, para. 4(c).
- <sup>124</sup> *Ibid.*, para. 4(e).
- <sup>125</sup> Committee on the Rights of the Child, General Comment No. 1 (2001), Article 29(1): The Aims of Education, UN document CRC/GC/2001/1, 17 April 2001, para. 9.
- <sup>126</sup> Available on-line at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C169](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169). This treaty has been signed and ratified by twenty-three countries.
- <sup>127</sup> Available on-line at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312252:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312252:NO). This treaty entered into force on 2 June 1959, but continues to apply to only seventeen states.
- <sup>128</sup> UN General Assembly Resolution 61/295 of 13 September 2007.
- <sup>129</sup> The others were all English-language dominant settler states, the United States, Australia and New Zealand.
- <sup>130</sup> <https://www.cbc.ca/news/aboriginal/canada-adopting-implementing-un-rights-declaration-1.3575272>.
- <sup>131</sup> See, for example, Human Rights Committee, General Comment No. 23(5) (art. 27), CCPR/C/21/Rev.1/Add.5, 26 April 1994, para. 7, which clearly recognises that Article 27 of the ICCPR, in relation to the rights of minorities, applies also to indigenous peoples.
- <sup>132</sup> *Ibid.*, para. 6.2.
- <sup>133</sup> *Ibid.*, para. 9.
- <sup>134</sup> Adopted by UN General Assembly resolution 47/135 of 18 December 1992.
- <sup>135</sup> Available on-line at: <https://www.osce.org/odihr/elections/14304?download=true>. The CSCE—the Conference on Security in Co-operation in Europe—was renamed the OSCE on 1 January 1995.
- <sup>136</sup> Available on-line at: <https://www.osce.org/hcnm/32180?download=true>.
- <sup>137</sup> Paragraphs 11-13.
- <sup>138</sup> John Lehmann, ‘Chief Justice says Canada attempted ‘Cultural Genocide’ on Aboriginals’, The Globe & Mail, May 28, 2015, available at: <https://www.theglobeandmail.com/news/national/chief-justice-says-canada-attempted-cultural-genocide-on-aboriginals/article24688854/>.
- <sup>139</sup> The Trial Chamber of the International Criminal Tribunal for the former Yugoslavia, in Kupreškić and others, ICTY, Trial Chamber, judgment of 14 January, 2000 (case no. It-95-16-T).
- <sup>140</sup> *Ibid.*, paras. 616-27.
- <sup>141</sup> International Law Commission, Sixty-seventh Session, 4 May-5 June and 6 July-7 August 2015, Doc. No. A/CN.4/680.

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<sup>142</sup> *Ibid*, paras. 176-7.

<sup>142</sup> (1951) 78 UNTS 277. Adopted by the UN General Assembly on 9 October, 1948, and came into force in January, 1951.

<sup>144</sup> Sautman, 2003: 183; see also Churchill 1997: 409-413). Some parties to the deliberations on the Genocide Convention felt that the appropriate way in which to deal with policies which aim at the destruction of cultures and languages was through the development of standards of minority protection, rather than through the Genocide Convention; for a discussion of the failure of the United Nations to deal with such destruction at all, see Morsink, 1999.

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## CHAPTER 5. CONCLUSIONS

Our study analyses education in Nunavut by studying a wealth of local reports and analysis, evidence of successful and less successful education of Indigenous peoples and minorities worldwide, and by drawing on many relevant scholarly disciplines. In Australian Northern Territories, ‘most education for Indigenous people failed to impart control over western academic knowledge and skills while also excluding their distinctive cultures and languages, thereby entrenching intergenerational inequality and, in remote areas, abject poverty’ (Oldfield and Lo Bianco, in press). Our report shows that education in Nunavut has a history of *cultural genocide, linguicide, econocide and historicide*, and this continues. Education does not prepare Nunavut youth for fighting the very serious *ecocide* in the Arctic.

We describe the evolution and definitions of what actions (or lack of action) in education might be considered to constitute linguistic and cultural genocide. We describe principles established in the elaboration of international law, including international criminal law that are directly relevant for assessing what took place earlier in Nunavut, and still does, even if the forms for implementing this discrimination and structural violence are changing. We propose that it is valid to move from assessing the intent or aim of various actions by political and educational authorities (or lack of them) in education (evil motive discrimination) to assessing the effects/results (effects discrimination). We also present some key fallacies that education in English as a second or foreign language builds on (monolingualism, native speakerism, an early start, maximum exposure, etc.), which have presumably been influential in Nunavut. The consequence of the policies now in place is subtractive language learning, meaning that English expands at the expense of Inuktitut.

We report on the importance of local ecological knowledge that is necessarily coded and embedded in the languages that it has been developed in, Inuktitut. This is knowledge that is not present in English and much of it cannot be learned in English. The inter-generational transmission of this knowledge, for learning and internalising ancestral cultures and activities and developing and successively adapting them to today’s world is seriously endangered through the present-day education system in Nunavut. This knowledge is increasingly relevant for combating the ecocide that is involved in the present climate crisis.

We also present a range of ways of organising bilingual education. The three types of ‘bilingual’ education currently functioning in some schools in Nunavut are all at best weak forms of bilingual education, and therefore do not lead to successful bilingualism and academic and other learning. In many schools there is no teaching through the medium of Inuktitut. The current system is failing the students.

Today’s education is, in our view, inconsistent with obligations in domestic law. In particular, it is failing to provide children with the sort of education necessary to achieve the basic objectives set out in the Agreement Between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in Right of Canada of 25 May 1993, it is fatally compromising the ability of Nunavut to effectively implement both the *Official Languages Act, 2008* and the *Inuit Language Protection Act, 2008*. Crucially, today’s education is failing to comply with the requirements of the *Nunavut Education Act, 2008*.

If the school system, based on the Regulations and other provisions of the Act, is not producing graduates who are able to use the Inuit Language ‘competently in academic

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and other contexts’, the requirements of the Act are not being complied with. It is our strongly held view that the system at present is failing comprehensively in producing graduates having these skills, meaning that the act is being fundamentally breached. In addition, the recent *Interim Language of Instruction Act* compromises and for that reason is inconsistent with the *Inuit Language Protection Act*.

The system at present is failing comprehensively in supporting the use, development and particularly the revitalisation of the Inuit Language. The *Education Act, 2008* is therefore being breached.

Today’s education also violates Canada’s international commitments. For example, Canada has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR). The failure of the education system in Nunavut to ensure full written and oral fluency and high levels of competence in the languages of the Inuit arguably compromises the ability of the state to deliver education that is ‘culturally appropriate’ to the context of Nunavut, to enable children to ‘participate effectively’ in Nunavut society, and which therefore limits the ‘full development of the human personality and the sense of its dignity’. These are required by ICESCR.

Among the minimum core obligations for States under the ICESCR is that of eliminating any barriers or obstacles that inhibit or restrict a person’s access to the person’s own culture or to other cultures. An education which does not equip an Inuit student in Nunavut with high degrees of competence in the languages of the Inuit constitutes such a barrier: a policy which fails to address this barrier and in fact exacerbates it constitutes a breach of the minimum core obligations.

Canada has ratified the International Convention on the Elimination of all forms of Racial Discrimination (‘ICERD’). In Nunavut, where speakers of Inuktitut constitute a large majority, the language is weakening, especially among younger people. Educational provision which does not strengthen Inuktitut is frustrating the goals listed by The Committee on the Elimination of Racial Discrimination.

Canada has ratified the Convention on the Rights of the Child (‘CRC’). A high degree of literacy and oral communication skills in Inuktitut constitutes ‘essential life skills’ demanded by the Convention. Canada has ratified the International Covenant on Civil and Political Rights (‘ICCPR’). Canada has also endorsed the UN Declaration on the Rights of Indigenous Peoples (‘UNDRIP’). The education system in Nunavut is in breach of several Articles in these international instruments.

With regard to the question of international criminality, we have considered how the concepts of genocide and crimes against humanity might be applied to the forms of education practised in Nunavut. From a narrowly legal perspective, although arguments on both counts can be advanced, based on the current state of the law, they would be very speculative. The Genocide Convention remains highly problematic from the perspective of claims based solely on cultural grounds. Acts of genocide, as defined in the Genocide Convention, do include forcibly transferring children of the group to another group and causing serious mental harm to members of the group. Such acts must be committed with the intent of destroying in whole or in part a group; destruction has generally from a purely legal perspective been understood to mean the actual physical destruction of the group. The Truth and Reconciliation Committee’s interpretation, by contrast, considers that there has been a history of cultural - including linguistic - genocide. Other scholarly disciplines support this analysis.

The concept of ‘inhumane acts’ which might constitute a crime against humanity is similarly problematic, based on the law as it now stands. Although the International Law Commission has since 2014 been examining the concept of Crimes against Humanity with a view to the development of an international convention, it does not

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appear at this stage that the concept will be expanded sufficiently to unambiguously address measures which do not involve some form of physical attack.

As the education system has been used to produce many of the negative social effects documented in this report, it is now necessary that the education system be deployed to redress those effects. If the education system is not yet doing so—which, in the case of Nunavut, as we have shown in this report, it is not—then the state is in breach of its international obligations. Adequate financial support is imperative.

There is evidence from other parts of the world that even demographically small communities can succeed in creating effective mother-tongue based multilingual education. Mother-tongue-medium education has been shown in large-scale studies to be more important than any other factor, including the students' socio-economic conditions, in predicting and assuring the educational success of bilingual students. This ought in principle to have been possible in Nunavut, but has so far not been achieved.

We conclude:

- Despite the immediate impact of climate change being much greater in the far north of Canada than elsewhere;
- Despite abundant evidence that the quality of life in Nunavut is unacceptably low as compared with the rest of Canada;
- Despite the evidence that most of the symptoms of unequal and oppressed neo-colonial societies are present in Nunavut;
- Despite the Truth and Reconciliation Commission Report determining that there is a history of cultural genocide in Nunavut, and recommending changes that can lead to greater social justice;
- Despite warnings and evidence that Inuktut and the culture that it embodies are at grave risk of not surviving; and
- Despite measures taken to strengthen Inuktut in the education system in Nunavut:

- Inuit language is essential to the achievement of the fundamental principles on which the public education system is meant to be based;
- the use of Inuktut in the wider Nunavut society is declining, especially among the children and young people;
- the goals for protecting and promoting Inuktut embodied in laws are not being achieved;
- the Nunavut legal requirements to implement bilingual instruction throughout all nine school grades has not been achieved;
- Inuktut is not used extensively as a medium of instruction in education in Nunavut, especially not after Grade 3;
- The *Interim Language of Instruction Act* compromises and for that reason is inconsistent with the *Inuit Language Protection Act*;
- recommendations in reports illustrating how bilingual education could optimally be organized have not been followed;
- the vast majority of teachers are unable to teach in Inuktut; a majority of teachers (almost 80% in 2016) are non-Inuit;
- most further training after basic education takes place outside Nunavut and entirely in English, which fails to strengthen Inuktut;
- Inuit youth do not attain the linguistic or educational competencies needed for achieving the official targets of having 80% of jobs filled by Inuit;

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- Inuit youth are not supported in the present education system in developing their capabilities to the full; there is capability deprivation;
  - the federal government spends 44 times more per child on French in Nunavut than it does on Inuktitut;
  - fraudulent myths that only English is necessary for ‘development’ and that English is universally relevant and neutral are still largely guiding the education system;
  - Canada violates in the education of Inuit children in Nunavut many of its obligations in international law instruments which Canada has signed and ratified or otherwise accepted,
  - seen from an educational and psychological point of view, and from the social consequences of current practices, there is *prima facie* evidence of education in Nunavut being involved in processes and practices of linguistic and cultural genocide,
  - urgent action will need to be taken to address the deficiencies we have identified here and in particular to ensure that Canada and Nunavut are in compliance with the various domestic and international legal obligations which we have outlined in these conclusions and in this report.

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