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# Minority language rights to education in international, regional, and domestic regulations and practices: the case of Frisian in the Netherlands

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## ABSTRACT

This paper examines minority language education in the Dutch province of Fryslân from a rights-based approach. To conduct the analysis, we employed a qualitative (legal) content analysis. We explored minority language rights at different levels to answer the following question: To what extent are international and regional standards on minority-language education applied domestically to education in Frisian and through the medium of the Frisian language? We discuss the historical trends in the international community regarding minority-language education and elaborate specifically on the Netherlands' shifting approach on the matter. Our analysis of international, regional, and domestic regulations shows that the issue of exemptions and the reduction in the Frisian core objectives have weakened the position of Frisian in education. Owing to the lack of proper implementation of the current regulations, the Netherlands has been deficient in fulfilling the right to mother-tongue education in Frisian primary schools. The analysis further shows that the Netherlands do not treat Frisian education as a right. Legal solutions to remedy this situation are discussed.

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Language law; language policy and planning; multilingualism; language contact; human rights

## Introduction

Minority-language education plays a key role in language maintenance in multilingual contexts. It not only improves children's proficiency and facilitates their learning of other languages (Maluch et al., 2015), but it also influences children's language socialization and consequently affects language use in the home and family context (De Houwer, 2007; Ballinger et al., 2020). Moreover, minority-language education can create broader language recognition, both in schools and in society at large (Sallabank, 2012). It has the potential to foster positive attitudes towards minoritized languages and their speakers and to reduce both linguistic discrimination and peer pressure to assimilate linguistically

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(Wang, 2009). Notably, minority-language education does not aim to replace majority languages but to help minoritized languages co-exist alongside dominant languages and/or to gain an equal footing with majority languages (Gorter et al., 2014). Because it is in schools that ‘languages are taught, cultural values are transmitted from one generation to another, [and] newcomers are integrated into a linguistic community’, language policy in education is ‘integrally connected to patterns of language maintenance, shift, and ultimately to group survival’ (Levine, 1990, p. 4).

Despite this, in most countries, it is the majority language that is promoted at different societal levels to maintain national solidarity – and, for a long time, little or no attention was paid to minority languages (Gorter et al., 2014). However, this has changed in recent decades, particularly in the EU, with a growing emphasis on respecting linguistic diversity as expressed in the Treaty of Lisbon (The European Union, 2007). Awareness has grown of the fact that neglecting minority languages affects minorities’ lives in a multitude of ways, frequently leading to their marginalization, institutional segregation, and negative consequences for both physical and mental well-being (Bates et al., 2011). It is now generally acknowledged, therefore, that governments need to strengthen the position of (linguistic and other) minorities (e.g. Social Protection Human Rights, n.d.). This has to be done in a progressive manner, providing specific protection for disadvantaged and marginalised individuals and groups (Committee on Economic, Social and Cultural Rights [CESCR], 2007a). Minority-language education is one way of achieving this (CESCR, 2007b).

In order to support the maintenance of minority languages in multilingual contexts, language planning is essential. As Wright (2004, p. 187) notes:

Laissez-faire policies mean that the languages of power and prestige will eventually take over in all situations of contact. Benign neglect [is] always de facto support for the language of the group that is already dominant.

Protective measures have been enshrined in various international, regional, and domestic documents (Van Dongera et al., 2017).

Following terminology in international law, we define international, regional, and domestic standards as follows. Several parameters are subsumed under the term *international standards*: principles of international law, human rights in general, and/or thematic subjects such as minority rights. Such parameters are mainly adopted by the General Assembly of the United Nations. *Regional documents* have the same parameters but with a focus on a specific geographical region. Such regions have a more limited scope and typically include a number of countries, with examples being Europe (the focus of this paper), South-East Asia, and the Middle East. By contrast, *domestic documents* include any regulations an individual country makes within its sovereign territory, ranging from policies and parliamentary Bills to municipalities’ by-laws and local agreements. Although international and regional documents aim to ensure rights for minority-language education on a larger scale, they cannot coerce countries to comply with such rules. Thus, the implementation of regulations within countries is dependent on domestic practices.

In this paper, we investigate minority-language education in the Dutch province of Fryslân. This case is of particular interest because Frisian has been recognized as the second official language of Fryslân (Ministerie van Cultuur, 1970;

Overheid Wettenbank, 2014) and the Frisian people are recognized as a national minority in the Netherlands (Eerste Kamer, n.d.). A number of domestic regulations have therefore been enacted to preserve Frisian, which provide a legal infrastructure for the Frisian language and education. Yet many Frisians do not seem fully aware of, or entirely satisfied with, the measures that are currently in place – especially with regard to education (Kuipers-Zandberg & Kircher, 2020).

The research question we aim to answer is this: To what extent are international and regional standards on minority-language education applied domestically to Frisian in the Netherlands? We take a *rights-based approach* – that is, an approach which is part of the human rights discourse focusing on the most marginalized and/or vulnerable people (United Nations Population Fund, 2014). This is also in line with *linguistic human rights*, which provide basic language rights that everyone should enjoy without any restrictions. In particular, we focus on the principles of non-discrimination and mother-tongue education (for details, see below).

We begin by providing an overview of the relevant international and regional documents on minority protection regarding language and education, and the international trends regarding minority-related issues. We then provide the necessary background regarding Frisian in the Netherlands and outline the rights-based approach, the method of analysis, and the principles under investigation. This is followed by our analysis of Frisian education based on international, regional, and domestic facts. Finally, we discuss our findings and their possible implications for Frisian language education in the Netherlands.

## International and regional regulations

Various international and regional (in this case European) documents enshrine the regulations regarding minority protection at large, and in particular minority-language protection and education. These documents indicate a slow yet clear upward trend of the international community vis-à-vis minority rights, particularly with a stronger regional impact on Frisian rights. Table 1 provides an overview of the relevant documents from which the analysis is drawn.

Early post-First World War international documents did not explicitly mention minority rights because the war's victorious Western states considered the inclusion of such norms a limitation of their sovereignty (de Varennes & Kuzborska, 2019). It was only after the Second World War that human rights and non-discrimination were widely included in treaties; nevertheless, before 1976, there was no mention of the term 'minorities' (de Varennes & Kuzborska, 2019). For example, the first draft of the Universal Declaration of Human Rights (UDHR) included minorities' rights to educational, religious, and cultural freedoms – but those rights were struck from the record later due to the opposition of certain states (Macklem, 2008). Furthermore, article 27 of the International Covenant on Civil and Political Rights (ICCPR) (1976) provides rights for minority groups but without determining a positive responsibility for states to protect such groups (see Paz, 2013). This ambiguity was resolved in 1994, following the establishment of the Office of the High Commissioner for Human Rights (n.d.) (HCDH) in 1993. The HCDH took an official position on the matter, clarifying that governments indeed have a positive responsibility to protect minority languages and cultures. In The Convention

**Table 1.** The International and Regional documents pertaining to minority-language education. The types of rights that are addressed in each regulation are indicated.

Scope	Regulation	Type of Rights			
		Basic Rights and Freedoms	Anti-discrimination	Minority Rights	Right to Mother-tongue Education
International	United Nations Charter (The United Nations, 1945)	X	X		
	Universal Declaration of Human Rights (UNHR) (The United Nations, 1948)	X	X		
	International Covenant on Civil and Political Rights (ICCPR) (The United Nations, 1966a)		X	X	X
	International Covenant on Economic, Social, and Cultural Rights (ICESCR) (The United Nations, 1966b, 1986)	X	X		
	The Minority Declaration (The United Nations, 1992)		X	X	X
	The Convention against Discrimination in Education (Unesco, 1960)		X	X	X
Regional (European)	European Convention on Human Rights (ECHR) (Council of Europe, 1953)	X	X	X	
	European Charter for Regional or Minority Languages (ECRML) (Council of Europe, 1992)		X	X	X
	Framework Convention for the Protection of National Minorities (Council of Europe, 1998)		X	X	X

against Discrimination in Education (1960), the right of minorities to teach in their own language, but it shouldn't hamper the pupils to understand the language and culture of the community as a whole and should not lower the standard of education. Furthermore, this type of education cannot be obligatory.

These improvements laid the ground for changing the regulations – namely, the adoption of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Minority Declaration). The first draft of the Minority Declaration was composed in 1978 and the final draft adopted in 1992. It was primarily after the adoption of the Minority Declaration (i.e. an international document) that regional authorities started including minority rights in regional documents – for example, the European Charter for Regional or Minority Languages (ECRML). These changes also induced states to implement further legislation to protect their minorities at the domestic level.

### Frisian in the Netherlands

The protection of Frisian in the Netherlands gained most traction in the 1980s and the 1990s, when international and regional regulations for minorities were first adopted. The following paragraph traces the trajectory of the Netherlands in approaching Frisian education in Fryslân.

## **Development of Frisian regulations**

The Province of Fryslân is located in the north of the Netherlands, with Leeuwarden (Frisian: Ljouwert) as its capital. In 2020, the population of the province was 649,944, of whom 93% could understand Frisian, 64% could speak it, 52.4% could read it, and 15.9% could write the language (Provinsje Fryslân, 2020).<sup>1</sup> Fryslân has a long-standing tradition of bilingual education, in particular at the primary-school level. This tradition dates back to 1907, when the province first allocated a budget to support the teaching of Frisian in schools (Ytsma et al., 2007). The modification of the national Primary Education Act in 1937 established a legislative framework for Frisian education. Despite the modified law not being explicit about the use of Frisian as a medium of instruction, several primary schools in Fryslân initiated a bilingual program that employed Frisian as a medium of instruction in 1950. This resulted in the official recognition of Frisian–Dutch bilingual schools in 1955 (Ytsma et al., 2007). Further amendments to the Primary Education Act in 1974 permitted Frisian as a medium of instruction in all grades, and since 1980 it has also been a mandatory subject at primary schools. Moreover, in the 1970s, the Commission on Frisian Language Policy released a report in which it recognized the province as being bilingual (Ministerie van Cultuur, 1970). As it happens, the Constitution of the Kingdom of the Netherlands (2008) makes no mention of the national language Dutch, nor is there any mention of Frisian. Nevertheless, the Constitution lays the foundation for Frisian education by pointing to the principle of non-discrimination and the right to education.

At the domestic level, the Covenant on Frisian Language and Culture (Bestjoersôfspraak Fryske Taal en Kultuer [BFTK]) (Rijk & Provincie, 1989, 1993, 2001, 2005, 2009, 2013, 2019), among other things, deals with Frisian education.<sup>2</sup> The BFTK is a signed agreement between the province<sup>3</sup> and the state in which the two entities share responsibilities in considering Frisian issues. The rationale for the BFTK was the government's attitude towards the Frisian language – that is, the fact that the state considered the policy-driven expansion of Frisian rights as a privilege rather than a right (Gorter, 2008). This situation prompted the province, which hitherto had very little legal and practical authority over Frisian issues, to claim more authority and start negotiating with the national government (Gorter, 2008). In 1989, after a decade of negotiations between the province and the state, the first BFTK was signed in which responsibilities are more clearly defined. In the following paragraphs, we consider Frisian teaching and its implementation.

## **Core objectives**

In the Netherlands, there are set goals – referred to as *core objectives* – for different levels of education. The core objectives for Frisian are enumerated in articles 17 through 22 in the core objectives handbook (Varkevisser & Walsweer, 2018). They range from speaking skills and building up positive attitudes, to reading and writing skills (Varkevisser & Walsweer, 2018). Until 2006, the Frisian core objectives (FCOs) were the same as those for Dutch, including 12 detailed points on speaking, writing, reading, and linguistic skills relating to grammar, syntax, the role of language in relationships, the role of context and gestures in meaning change, and flexibility in language use (see Official Gazette of the Kingdom of

the Netherlands, 1998). However, a revision in 2006 (Ministry of Education, Culture and Science, 2006) resulted in the reduction of the FCOs to only six points (Varkevisser & Walsweer, 2018). There are no exemptions or restrictions on learning Dutch, nor were the core objectives for Dutch reduced (see Official Gazette of the Kingdom of the Netherlands, 1998; Varkevisser & Walsweer, 2018). However, full exemptions applied to Frisian primary schools until 2014. According to the report of the Inspectorate of Education conducted in 2006 ‘... of all the primary schools that are obliged by law to teach Frisian, about one in twelve (8%) does not fulfil its legal obligation (only another 2% have a legal exemption)’ (Gorter, 2008, p 508). Below, we elaborate on the relationship between the FCOs and exemptions from existing regulations as well as on the role of the province regarding the teaching of Frisian.

### ***The province and exemptions***

In 1989, the new Primary Education Act introduced the notion of exemptions. If a school is exempt from existing Frisian teaching regulations, this inevitably entails its inability to meet some or all of the FCOs (see below). In the BFTKs, the province holds the main responsibility for Frisian issues, including the provision of education and the granting of exemptions. However, the province holds no direct legislative or executive power over Frisian matters since the state has the main role in the domain of policy-making (Ytsma et al., 2007).<sup>4</sup> Nonetheless, the province has some authority according to the BFTK such as formulating the long-term vision for the Frisian language and consulting with the relevant administrative bodies to fulfil this goal (Rijk & Provincie, 2019). However, the national government remains the main authority. Furthermore, provincial contributions exist, for instance in the form of budgetary contributions to the advancement of Frisian education and culture (Provinsje Fryslân, 2007).

### ***Evaluation and current practice of schools***

The legal status of Frisian education has changed over time. Until the 1990s, it enjoyed an upward trend – but since then, this has given way to a downward trend. This is evidenced by section 9(4) of the new Primary Education Act of 1998, which stipulates exemptions to Frisian teaching. In practice, the majority of primary schools in Fryslân spend on average 45 min per week teaching Frisian as a subject (Council of Europe, 2020), while this short period of Frisian teaching time must be substituted with Frisian as a medium of instruction (Council of Europe, 2003, p. 36). Only 15–20% of primary schools use Frisian as a medium of instruction – and even those schools use it for a limited range of subjects (Inspectie van Het Onderwijs, 2006, 2017).

## **Methodology**

### ***Rights-based approach***

We analyze the government’s accountability for Frisian education from a rights-based perspective. This approach is part of the human rights discourse, whose main purpose is to protect the most marginalized and vulnerable individuals by employing

international human rights standards (United Nations Population Fund, 2014). Notably, this approach does not consider minority-related issues as needs but as rights to which minorities are entitled. Therefore, fulfilling minorities' rights is not an act of charity on behalf of governments but a duty they are obliged to pursue (Social Protection Human Rights, 2015). Ultimately, the rights-based approach seeks to resolve (power) inequalities and rectify discriminatory measures (United Nations Sustainable Development Group, n.d.; UNICEF, n.d.; Skutnabb-Kangas, 2012).

### **Sources**

To examine the extent of the Netherlands' compliance with their obligations to provide education of and in Frisian, we examine policy documents pertaining to minority-language education – and in particular that of Frisian – at the international, regional (European), and domestic levels. These policy documents include the Netherlands' Constitution, the Primary Education Act (Overheid Wettenbank, 2021), the ECRML, the reports of the Netherlands on the ECRML, and the feedback provided by the Council of Europe. We also examine human rights standards such as non-discrimination and the prohibition of retrogressive measures.

### **Analytical procedure**

We conducted a qualitative content analysis to assess the application of international, regional (European), and domestic rules on minority-language education in the Netherlands. In these regulations, we isolated the sections pertaining to Frisian primary education and examined the government's response (or lack thereof).

### **Principles under examination**

#### ***Non-discrimination***

The principle of non-discrimination is the backbone of all international human rights documents. The underpinning of the prevention of unfair discrimination is the idea that human beings are equal in dignity (Kotzman, 2018). The non-discrimination principle posits that, in equal circumstances, people have to be treated equally both before the law and in practice (McCrudden & Prechal, 2009). Without everyone being equal before the law, the concepts of law and justice would have no meaning (Ross et al., 1980). The legal grounds on which discrimination can occur are 'race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status' (UDHR, art. 2, 1948).

Based on various court judgements,<sup>5</sup> discrimination occurs when the same cases are treated differently, when there is no justifiable rationale for a difference in treatment, or if the end is not commensurate with the means.

#### ***Right to mother-tongue education***

In linguistic and educational contexts, a person's *mother tongue* is defined as the first language they learn to speak (Bloomfield, 1933; Skutnabb-Kangas, 1981). A person can have more than one mother tongue (Baker, 1996; Kircher, 2019).



There is no definition of *mother-tongue education* in international law, but it is generally taken to refer to teaching through the language children are most fluent in before they go to school (Skutnabb-Kangas, 1981). Mother-tongue education helps minority children enjoy education in the way the majority children do, and it provides equal access to education for minorities (Ozfidan, 2017). Similar to the non-discrimination principle, the right to mother-tongue education falls under the concept of human rights and it is underpinned by the non-discrimination principle (UDHR, art. 26, 1948). Mother tongue is one of the factors that helps individuals to communicate, socialize, and learn effectively (Stoop, 2017; Byram, 2006). Moreover, the Convention against Discrimination in Education (1960) stipulates that there should be no discrimination in the right to use one's language in education. Yet, a number of factors can impede the practice of mother-tongue education: for instance, insufficient funding, a lack of skilled educators, and insufficient resources. However, these factors should not be used as a justification for the non-implementation of this right (Stoop, 2017).

## The Netherlands' approach to Frisian education rights

In this section, we provide an evaluation of Frisian education in primary schools in the Netherlands from international, regional (European), and domestic (Dutch national government, Frisian provincial government, local entities) perspectives. The domestic part focuses on the reduction of core objectives and exemptions, the role of the province in Education, and the reaction of non-governmental entities to Frisian education.

### *International level*

At the international level, there are several principles that, either explicitly or implicitly, pertain to minority-language education, namely, the non-retrogressive principle and the principle of non-discrimination. When dealing with the right to (mother tongue) education, international law prohibits retrogressive measures – that is, measures which hold a state back from realizing its conventional commitments (Kotzman, 2018). According to the CESCR:

There is a strong presumption of impermissibility of any retrogressive measures taken in relation to the right to education [...]. If any deliberately retrogressive measures are taken, the state party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the state party's maximum available resources. (1999, General Comment 13: The right to education, art. 13, para. 45)

For instance, if the purpose of a convention is to promote minority-language education via schooling, a member state cannot exempt its schools from minority-language teaching. Retrogressive measures are considered a violation of the ICESCR (CESCR General Comment No. 3, para. 9, 1990; Limburg Principles, 1986).

Similarly, according to the Vienna Convention on the Law of Treaties (The United Nations General Assembly, 1969), a reservation is not valid if 'the reservation is prohibited by the treaty [and if] the reservation is incompatible with the object and

purpose of the treaty' (art. 19). The Netherlands are party to the international documents listed in [table 1](#), under which it has some commitments. In the Frisian context, the soul of such documents is to respect, protect, and promote rights to mother-tongue education and non-discrimination in education. However, Frisian exemptions and the reduction of the FCOs can be considered to be an example of both an unjustified retrogressive measure and an invalid reservation to the international documents the Netherlands are party to. Furthermore, both measures violate the non-discrimination principle. For example, discrimination occurs when same cases are treated differently and/or when there is no justifiable rationale for a difference in treatment. Frisian is the second official language of the province; thus, it should be treated equally with Dutch in education (see more details below). We should note that teaching Frisian to Dutch-at-home speaking children does not mount to discrimination, nor does it pose a threat to their home language as the amount of Frisian teaching established by the law is minimal and is limited to teaching Frisian as a subject only.

At the international level, the UN Human Rights Council (UNHRC) installed the Universal Periodic Review (UPR), an international mechanism monitoring states' human rights performance. The UPR requires the member states to report on their practice of human rights to the HCDH every four-and-a-half years and to receive an *outcome report* as feedback (Charlesworth & Larking, 2014). Stakeholders in a country – for example, NGOs – provide a part of the state's report, called a *stakeholders report*. Although the outcome reports for the Netherlands report on the under-representation and segregation of ethnic and religious minorities (e.g. Muslim communities) in the educational realm (Human Rights Council, 2017a, 2017b), there is no mention of Frisians or their language except in one of the stakeholder's reports of 2017. This UNHCR report refers exclusively to the feedback of the Council of Europe's Committee of Experts (COMEX) on the low degree of Frisian teaching (Human Rights Council, 2017a, 2017b). But there was no reaction to the issue raised. Considering that the member states compile the outcome report and the Netherlands did not react, we infer that, compared to other human rights matters, issues relating to language or regional minorities are not yet considered a priority for the government.

### **Regional level**

At the regional level, we discuss the ECRML (Council of Europe, 1992) or, more specifically, the reports that the Netherlands submitted to the Council of Europe on its performance in the area of minority-language education. The ECRML stipulates that, every three years,<sup>6</sup> the member states have to submit a report to the Council of Europe. COMEX then provides feedback and evaluates their performance. The report on the Netherlands for 1999–2019 to COMEX informs about both improvements and shortcomings on Frisian teaching. The former are summarized in the following: the amendment to the Primary Education Act by which Frisian became a compulsory subject in primary schools (2003), introducing new FCOs, developing Frisian textbooks for schools, launching a trilingual teaching model (2007), the allocation of a subsidy of EUR 100,000 to primary schools (2011)<sup>7</sup>, an increase in the province's authority to set the FCOs (2015), introducing the new Frisian language plan of 2018, and eliminating all exemptions by 2030 (2019). There were some shortcomings as well. For example, insufficient

Frisian teaching at schools (1999), introducing exemptions, a lack of guidelines in the Primary Education Act (1998) on Frisian teaching (2003), the disproportionality of teaching Frisian and the demand for it (2011), and the shortage of qualified Frisian teachers (2015). Table 2 summarizes COMEX'S feedback on this.

As to COMEX's feedback, a few issues are repeated in all the reports, namely, the number of Frisian teaching hours and unfulfilled commitments on the part of the Netherlands, requiring a substantial increase in Frisian content at primary schools. Until 2019, the Netherlands failed to respond to COMEX regarding certain issues, namely, providing a justified reason for not fulfilling the commitments, presenting details of methods of education at schools, or submitting a detailed plan of how it would respond to the issues raised. One of the positive points that COMEX did acknowledge is the budget allocated to Frisian education. However, this did

**Table 2.** The COMEX's feedback on the Netherlands' ECRML Reports (1999–2020).

First (2001)

Despite the existing regulation on teaching Frisian, only a limited number of primary schools teach Frisian for a limited time.

The Netherlands obligation towards the primary education is 'unfulfilled'.

COMEX recommends that the Netherlands increase substantially the Frisian content in primary school.\*<sup>8</sup>

Second (2004)

Based on the 2001 BFTK, the two entities are responsible for promoting the position of Frisian in primary schools.

Introducing exemptions from teaching Frisian and reducing Frisian core objectives undermine the position of Frisian in primary education.

Undertakings are not fulfilled.\*

Third (2008)

Acknowledging the new developments.

Repeating the concern about reducing FCOs, considering it as 'a step backwards' which could further weaken the Frisian position in education.\*

Fourth (2012)

Dutch government has to provide more detailed information about the model employed in primary education as well as the strategy the government would adopt to accommodate Frisian education in the future.

Two issues of concern about trilingual schools:

- Despite an increase in such schools, they cannot keep up with the demand for Frisian education.
- A lack of special funds for trilingual schools to support or implement their teaching models. They have only the regular subsidy granted for Frisian as a subject.

Fifth (2016)

Recommending that the Netherlands 'continue strengthening the teaching of and in Frisian at all levels of education'. Once more, emphasis on strengthening Frisian teaching at all levels of education (Recommendation of the Committee of Ministers, 2014, p. 36).

COMEX finds the information limited. It reminds the Netherlands that the government is the responsible entity to provide the information and not the province. If the Netherlands finds the province responsible for such information, it does not mean that it has no responsibility to provide information to COMEX.

Asking the country to implement in detail the previous recommendations.

Requiring the Netherlands to provide specific details of the measures it has taken toward the improvement of the Frisian language.

Adding that the country, instead of being committed, diverts the responsibility, under part II of the Charter, to the provincial government.

Sixth (2020)

There is a great deal of leeway as to whether to choose minority languages either as a subject or as a medium of instruction.

Insufficient Frisian teaching: 45 min per week.

Despite the obligatory nature of Frisian teaching, schools can apply for exemptions.

A shortage of teachers of Frisian, despite the teacher training program at NHL Stenden. Thus, more pro-active measures are required to guarantee the Charter obligations.

not entail any changes regarding the quality of Frisian teaching as the issue of qualified teachers, among other matters, remains unresolved. Even the legal and administrative infrastructure ‘does not guarantee that the citizen has the full support of the state in respect of minority language use without let or hindrance’ (Williams & Walsh, 2019, p. 101).

## **Domestic level**

### ***Reduction of core objectives and exemptions***

Two issues regarding Frisian primary education could in fact violate the international standards on minority education: the reduction of the FCOs and the exemptions from teaching Frisian.

As noted above, in 2006, the initial FCOs were replaced by new ones. This substitution – which was effectively a reduction – affected reading, writing, speaking, and linguistic skills in Frisian (further details follow below). We argued that minorities need (and are entitled to) more protection of their language than majorities. Thus, governments must not only put in place regulations for minorities but also take compensatory measures with respect to their disadvantaged status (Skutnabb-Kangas, 2012). In this regard, reducing the FCOs cannot be considered an effective measure since it weakened the position of Frisian at schools and consequently in society.

Turning to exemptions, teaching Frisian is a legal obligation for Frisian primary schools. This means that FCOs have to be taught at every primary school (Overheid Wettenbank, 2015). If primary schools have a justified reason to be exempt from the FCOs, they need to apply to the province for an exemption (Primary Education Act, art. 9(6), 2021). However, until 2012, the majority of schools not offering Frisian education had not applied for such an exemption (Inspectie van Het Onderwijs, 2006). Those schools considered themselves exempt from the legal obligation simply for reasons such as not having any teachers of Frisian (Gorter, 2008). We should note that, before 2014, schools could not apply for partial exemptions as only full exemptions would be granted. This changed in 2014, when partial exemptions were recognized (Overheid Wettenbank, 2015). Ever since, primary schools have been categorized according to their profiles. The number of exemptions each school has determines their profile, which can range from A to G – A being schools with no exemptions and G being fully exempt schools (Overheid Wettenbank, 2015; Taalplan Frysk, 2018)). In terms of numbers, Taalplan Frysk (2018) reports that only 31.7% of primary schools in Fryslân have an A profile, that is, they have no exemptions; While 21.3% have a B profile with an exemption on writing, and 5% have a G-profile with full exemptions. The rest fall under C-E profiles with partial exemptions.

The very notion of exemptions goes against the main principles under examination, i.e. non-discrimination, right to mother-tongue education, as well as prohibition of non-retrogressive measures. In addition, exemptions go against the purpose of protecting minorities’ rights. They violate the Netherlands’ legal commitments at all three levels, in particular at the domestic level. The fact that Frisian is an official language in the province should have not permitted the exemptions in the first place.

With that said, a comparison between the old (Overheid Wettenbank, 1998) and the new FCOs (Greven & Letschert, 2006) follows to demonstrate how the new amendments have affected Frisian education at primary schools. Table 3 summarizes the differences between the two sets of FCOs.

**Table 3.** Comparison of the old and the new FCOs.

Skills	The Old FCOs (1998)	The New FCOs (2006)
Speaking	<ol style="list-style-type: none"> <li>1. Students know that one can listen and speak for different purposes.</li> <li>2. Students can: <ul style="list-style-type: none"> <li>- understand the content and the purpose of what is said to them;</li> <li>- ask questions to gather information on a topic of their choice;</li> <li>- report and explain something.</li> </ul> </li> <li>3. Pupils can use the means of communication in different situations.</li> </ol>	<ol style="list-style-type: none"> <li>1. Students develop positive attitudes to use of Frisian.</li> <li>2. Students learn to acquire information from spoken Frisian on subjects familiar to them.</li> <li>3. Students learn to express themselves in content and form in Frisian on familiar subjects in daily life situations.</li> </ol>
Reading	<ol style="list-style-type: none"> <li>4. Students know that one can read for different purposes.</li> <li>5. Students can: <ul style="list-style-type: none"> <li>- distinguish between informative and demonstrative texts, stories, poetry and dialogues for radio play, puppet theater, or theater;</li> <li>- adapt their way of reading to a reader's goal set by themselves or by the teacher;</li> <li>- display the essence of a text;</li> <li>- demonstrate through text the main line of the argument and make a link between their opinion and those in the text.</li> </ul> </li> <li>6. Students are able to use commonly used written sources.</li> </ol>	
Writing	<ol style="list-style-type: none"> <li>7. Students know that writing is done for different purposes.</li> <li>8. Students can: <ul style="list-style-type: none"> <li>- express their thoughts, experiences, feelings and intentions, for example, in a story, a poem, and in dialogue for a radio play, puppet theater, or theater;</li> <li>- write texts in which they clearly express their experiences, opinions, appreciation, or disapproval;</li> <li>- write a letter based on mail-writing rules;</li> <li>- create a piece of work based on their knowledge, experience, or obtained information.</li> <li>- use writing to organize their thoughts, experiences, feelings, and intentions.</li> </ul> </li> <li>9. Students can design and present their texts by correct spelling, legible handwriting, sentence structure, page layout, visual elements, and color.</li> </ol>	<ol style="list-style-type: none"> <li>4. Students learn to acquire information from Frisian texts in frequently occurring text types (such as articles in youth sections, songs, stories).</li> <li>5. Students learn to write simple texts about everyday subjects in Frisian with the aim of communicating with others about those subjects.</li> </ol>
Linguistic skills	<ol style="list-style-type: none"> <li>10. Students can indicate with examples: <ul style="list-style-type: none"> <li>- how languages and language variants can determine relationships between people and how those relationships are related to cultural similarities and differences;</li> <li>- that the meaning of a language utterance is also influenced by the situation, the form, unspoken</li> </ul> </li> </ol>	<ol style="list-style-type: none"> <li>6. Students acquire a vocabulary of frequently used Frisian words and strategies to understand unfamiliar words.</li> </ol>

*(Continued)*

**Table 3.** Continued.

Skills	The Old FCOs (1998)	The New FCOs (2006)
	intentions, posture, facial expression, and gestures; - that a language or language variant can be used in different ways; - that oral and written communication benefit from rules.	
	They can give examples of situations where such rules are functional.	
	11. Students know a number of linguistic principles and rules.	
	- They can distinguish the subject and the verbs in a sentence. - They know rules of: - verb and word spelling - punctuation marks.	
	12. Students can use concepts that enable them to think and speak about language:	
	- meaning, imagery, literal and figurative language, expression, proverb, verb, emotional value, symbol; - mother tongue, second language, foreign language, dialect, multilingual, formal, and informal use of language; - spelling, pronunciation, subject of a sentence, personal form, participle, indefinite mood, verb tenses, singular, plural; - poem, story, drama, play, children's book, monologue, dialogue; - sentence, structure, stress, syllable, punctuation marks.	

There are five points where the former and the new FCOs differ markedly with regard to the various skills. First, speaking skills: Compared to the former ones, the new FCOs confine these skills to speaking on issues pupils are familiar with; they say nothing about listening skills. Second, reading skills: Contrary to the former FCOs, the new FCOs do not have a separate section on reading skills; instead, they allude to them under the rubric of writing skills. Third, the new FCOs lack the wide span of writing skills and reduces writing skills to spelling and composing simple texts. Fourth, developing positive attitudes towards Frisian: Unlike their predecessors, the new FCOs do not provide any details on building positive attitudes. The last striking difference between the two sets of FCOs is that the new set says nothing about educating pupils about the purpose and the function of each skill.

To conclude, reducing the FCOs further weakens the position of the language at schools and has negative implications, including demotivating children from learning Frisian, lowering the status of Frisian at schools, and eventually resulting in more

inequalities – in the same way that has been observed in many other contexts (Skutnabb-Kangas, 1981; Wang, 2009; Santos Rovira, 2015). Furthermore, these measures stand in contrast to the recognized status of Frisian as the second official language in Fryslân. The official status of Frisian requires the national government to treat Frisian on an equal footing with Dutch at schools. Based on national and international regulations on minority-language education, exemptions are illegal as there is no acceptable justification behind them. Thus, exemptions show that Frisian is treated differently from Dutch, which results in a violation of the principle of non-discrimination.

### *The province and Frisian education*

According to the BFTKs, the national and the provincial governments share responsibilities on Frisian matters. The 2013–2018 BFTK considers the Provincial Executive of Fryslân responsible for setting the exemption criteria. This BFTK indicates further that the budget provided for primary schools was not sufficient and did not cover the early grades of primary schools. In order to facilitate Frisian-related communications between the government and the province, an entity called Dingtiid was established in 2015. Dingtiid advises both the national and the provincial government on Frisian education. To this end, in 2015, Dingtiid made the case that despite the adequate legal infrastructure for Frisian, the implementation is insufficient and there is a lack of guidance on compliance with the regulations. Therefore, Dingtiid recommended that a firm plan be developed together with a ‘long-term vision’ for achieving and furthering Frisian goals (Dingtiid, 2015). Dingtiid also stated in 2017 that.

a number of [primary] schools feel pressured to increase the focus on Dutch at the cost of Frisian due to the underlying language ideology that Dutch is the more important language, or because of a lack of instructors’ teaching skills in Frisian. (Jensma et al. 2020)

In 2016, a new role was given to the province: It was granted new responsibility and more authority to implement the BFTKs fully (Ministry of the Interior, 2018). After assigning this new role to the province, the 2019–2023 BFTK held the province accountable for teaching Frisian as a subject at primary schools. This BFTK also states that ‘there are sufficient training opportunities [...] for teachers of Frisian in primary [...] education’ (section 2.1). Although this is a newly assigned role requiring time to produce results, it still lacks the authority the province needs.

The 2019 BFTK (Rijk & Provincie, 2019) aims to remove all exemptions by 2030 – by means of teacher training, in-service training, improving the teaching methods, and providing educational support (Ministry of the Interior, 2019). Similarly, a Frisian Language Plan (2018) aspires to remove all exemptions and to provide Frisian education at all levels, from pre-school to higher education. However, there are no clear details of, or instructions on, how this has to be achieved.

To conclude, the main responsibility for protecting Frisian lies with the Dutch government. If the Province is the main body responsible for Frisian education, the national government has to divest that authority to the province. Despite having some authority, the province lacks the required power to set policies for Frisian language and culture as it cannot even act independently on granting exemptions. In order to grant exemptions to schools that apply for them, the provincial executive has to consult with representatives of Frisian primary education pending the approval of the Ministry of Education,

Cultured and Science. The ultimate granting of an exemption is subject to the approval of the Ministry (Primary Education Act 2021, art. 9(6)). More importantly, the province's authority to grant exemptions does not contribute to Frisian education but to its deterioration.

### *Reactions to the practice of Frisian education*

Having considered the issues affecting Frisian education and the role of the government entities tasked with education, the reactions from outside the government entities are worth reviewing to provide a holistic picture of the situation of Frisian education.

Thomas Dijkstra, the chair of the *Frisian Education Association*, released a statement regarding the status of Frisian in primary schools, the performance of the government regarding Frisian education (Dijkstra, 2019) in which he evaluates these reports as repetitive and offering no improvements. He adds that the content of the reports does not contribute to the status of Frisian in primary schools and that the inspectorate advised the exempt primary schools to do nothing, or less, about Frisian in order to avoid becoming 'weak'; moreover, the inspectorate advised that Frisian teaching time be allocated to the Dutch language and mathematics instead (Dijkstra, 2019).

The Young Frisian Community also objects to the government's stance on Frisian education. They (De Jongfryske Mienskip, 2021) allude to the fact that there are no proactive Frisian translations of government publications – whereas such translations do exist for other languages.

The civil pressure group *Sis Tsiis* (Say Cheese) also reacted to the exemptions. They argued that granting exemptions to the mandatory subject of Frisian is a violation of human rights (Sis Tsiis, n.d.).

## **Discussion**

This study of Frisian education rights in the Netherlands based on international, regional, and domestic regulations is not without its limitations. For example, it focuses on the analysis of legal texts and does not consider other potentially relevant sources – such as transcripts of parliamentary discussions, as this would have gone beyond the scope of the study. Yet, despite its limitations, the study provides meaningful insights into the extent to which international and regional standards on minority-language education are applied domestically to promote Frisian in the Netherlands.

We found instances of the violation of the regulations, namely, exemptions and the reduction of the FCOs. We infer from our analysis that the Netherlands do not treat Frisian education as a right, for the following reasons: First, the government adopted measures to weaken the position of Frisian in education rather than promoting it. Second, the new set of rules, agreements, policies, and budgets did not result in a shift in the status of Frisian education. These rules only made promises and created redundant administrative work without paying attention to the purpose and the soul of the regulations, that is, the protection and promotion of Frisian in education. Third, since 2001, the Netherlands have not responded to the ECRML's repeated recommendations on Frisian education. We thus conclude that some of the existing regulations are vague, there is a problem with implementing such rules, and the national government can be considered neglectful, if not dismissive, of Frisian education issues. This last point is reminiscent of 'the classic liberal response to the problem of language minorities [which is] to practise benign neglect' –



that is, to allow minority groups ‘to organise their group life in the language that they choose’ while not providing sufficient active support (Wright, 2016, p. 231).

However, according to the rights-based approach and the position of the HCDH, national governments are responsible for guaranteeing minority rights, meaning that they cannot leave the protection of a minority language to the community who speaks it. Additionally, we argue that minorities require more protection compared to a majority; thus, positive measures on the part of governments are imperative if minorities are to be empowered. Consequently, although the Netherlands did not overtly suppress Frisian speakers nor denied their rights, it is important to bear in mind that neglecting minority languages results in strengthening dominant language (Wright, 2004).

At the national, regional, and international level one could take legal procedure to improve the implementation of the existing regulations on Frisian education. For instance, individuals or groups can lodge complaints about Frisian education to certain bodies at the domestic, regional, and international levels – including the Inspectorate of Education at the domestic level, the Strasbourg court at the regional level, and the Special Rapporteur of the United Nations at the international level.

Adhering to this hierarchy is imperative at the domestic and the regional levels. This means that the regional body will receive a complaint only after the plaintiff has exhausted the domestic procedure (European Commission, n.d.). At the international level, however, one can refer directly to the Special Rapporteur without having to approach the first two levels. Regarding the Strasbourg court, only direct victims of the violation of the ECHR can file a complaint (ECHR, art. 34): The court examines only those cases containing a violation of rights inscribed in the ECHR (ECHR, art. 34). Thus, it is crucial for the plaintiffs to formulate their complaints in compliance with the content of the ECHR. It is important to note that, owing to the complex legal procedure and the technical language of the law, it is imperative for plaintiffs to engage the services of a lawyer who is experienced in minority-language education matters in order to avoid as far as possible the rejection of their complaints.

To conclude, the government has not treated Frisian education as a right. This is evidenced by the shortcomings raised in reports, by entities, and by individuals. The government’s response to the issues raised has been either engaging in an endless cycle of making new laws with no concrete implementation guidelines or deeming the province responsible for the shortcomings. The spirit of the right to mother-tongue education is to protect and promote languages, and in that way cultures, through education. However, the Dutch government seems to have downplayed the existing shortcomings in Frisian education such as the shortage of qualified Frisian teachers, the reduction of FCOs, the exemptions, and their detrimental effects. Our analysis provides a good legal ground for policy-makers, education providers, and the Frisian community to help identify and tackle the existing problems on Frisian education. This can potentially prevent repeating the same patterns by addressing the problems through alternative legal solutions.

## Notes

1. The variety of Frisian spoken in the Netherlands is also called West Frisian. Other Frisian varieties, namely North Frisian and East (Sater) Frisian, are spoken in Germany. In this paper, we use the common form ‘Frisian’ to refer to West Frisian.

2. The Covenant on Frisian Language and Culture contains chapters on: education; legal authorities, administration and public services; media; cultural activities and facilities; economic and social life; cross-border collaboration.
3. The Netherlands is divided into 12 provinces, each possessing some degree of authority in regulating their internal affairs (The Constitution of the Kingdom of the Netherlands, 2008, Chapter 7).
4. The province cannot act independently on granting exemptions. Upon schools' application for exemptions, the provincial executive has to consult with representatives of Frisian primary education pending the approval of the Ministry of Education, Culture, and Science. That is to say, the ultimate granting of the exemption is subject to the approval of said Ministry (Overheid Wettenbank, 2021, Article 9 (6)).
5. See, for example, the European Court *Marckx v. Belgium*, Human Rights Committee, General Comment 18, Non-discrimination (Thirty-seventh session, 1989), and *Jacobs v. Belgium* Communication No. 943/2000, U.N. Doc. CCPR/C/81/D/943/2000 (2004).
6. In 2018, the Committee of Ministers of the Council of Europe changed this to every five years (CM/Del/Dec(2018)1330/10.4e).
7. Considering that there are around 500 primary schools in Fryslân, each school receives only 200 Euros of the total subsidy.
8. The asterisk indicates the repetition of the same recommendation in the next COMEX report.

## Disclosure statement

No potential conflict of interest was reported by the author(s).

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