

(INDIGENOUS) LANGUAGE AS A HUMAN RIGHT

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ABSTRACT

The United Nations General Assembly has proclaimed 2022–2032 as the International Decade of Indigenous Languages. Building on lessons of the International Year of Indigenous Languages of 2019, the Decade will “draw attention to the critical loss of indigenous languages and the urgent need to preserve, revitalize and promote indigenous languages.” These actions are necessary, in part, because existing laws and policies have proven inadequate to redress the legacy of state suppression of indigenous languages or ensure nondiscrimination in contemporary usage. In light of the International Year and Decade, this Article explores the rights of indigenous peoples to “use, revitalize, and transmit their languages,” as recognized in the UN Declaration on the Rights of Indigenous Peoples and other human rights instruments. The Article considers how a better understanding of the human rights dimensions of the problem—and especially a more thoughtful approach to the “implementation” of human rights in both law and society—could

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help to advance remedial and ongoing measures toward the realization of indigenous peoples language rights going forward.

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INTRODUCTION

In some of the world’s most wealthy and powerful countries, indigenous people are dying over language rights. Jakelin Caal Maquin was seven years old in late 2018 when she and her father crossed into the United States from Mexico.¹ After they were taken into custody by Customs and Border Protection Security, Jakelin’s father signed a form attesting to his daughter’s good health,² but the form was not translated into Kekchi, the Maya language that they spoke.³ In reality, Jakelin

1. Amanda Covarrubias, Guatemalan Girl Likely Died of ‘Septic Shock’ After Crossing Border, Hospital Officials Said, NBCNews (Dec. 17, 2018), https://www.nbcnews.com/news/us-news/guatemalan-girl-died-sepsis-shock-hospital-officials-said-n948666 [https://perma.cc/QM7V-EVJQ].

2. David Taylor, Why Did a Little Guatemalan Girl Die?, GUARDIAN (Dec. 17, 2018), https://www.theguardian.com/us-news/2018/dec/17/guatemalan-girl-jakelin-caal-maquin-death-crossing-us-border [https://perma.cc/9WFD-ENLL].

3. See Geoff Nunberg, Migrant Girl’s Death Reveals a Need for More Interpreters Along the Border, NPR (Jan. 3, 2019), https://www.npr.org/2019/01/03/681942831/opinion-migrant-girls-death-reveals-a-need-for-more-interpreters-along-the-borde [https://perma.

was critically ill, with a high fever and infection, but her father could not communicate this in English or Spanish.⁴ By the time authorities realized her condition, it was too late, and Jakelin died in U.S. custody.⁵ The United States denied responsibility⁶ and sent Jakelin's body home to her indigenous community in Guatemala.⁷

Nine months later, across the world in Russia, Albert Razin, a scholar and speaker of the Udmurt language, set himself on fire protesting a new law diminishing opportunities for indigenous language instruction in schools.⁸ He carried a sign with a quote from the Avar

cc/ZMK7-L4BT] ("Seven-year-old Jakelin Caal died in U.S. custody in December. Linguist Geoff Nunberg says her death might have been prevented had border agents spoken the Mayan language Q'eqchi?"); Aaron Montes, *Family of Migrant Girl Disputes Official Version of Her Death*, L.A. TIMES (Dec. 15, 2018), <https://www.latimes.com/nation/la-na-guatemala-mexico-migrant-girl-20181215-story.html> [https://perma.cc/KCE6-QMKF] ("Caal and his daughter came to the U.S. looking to seek asylum, but once in Customs and Border Protection custody, he quickly ran into a language barrier with the agents, the lawyers said. His first language is Q'eqch and Spanish is his second, but all the forms he was asked to sign were in English, the statement read. 'It is unacceptable for any government agency to have persons in custody sign documents in a language that they clearly do not understand,' it said.").

4. For other stories of immigrants to the US facing problems with indigenous language use, see Tom Jawetz, *Language Access Has Life-or-Death Consequences for Migrants*, CTR. FOR AM. PROGRESS (Feb. 20, 2019), <https://www.americanprogress.org/issues/immigration/reports/2019/02/20/466144/language-access-life-death-consequences-migrants> [https://perma.cc/8QBJ-SBZQ]; Shani Saxon, *Students Who Speak Indigenous Languages Disadvantaged in Schools*, COLORLINES (June 18, 2019), <https://www.colorlines.com/articles/students-who-speak-indigenous-languages-disadvantaged-schools> [https://perma.cc/3UTD-JH56].

5. See Nick Miroff, *Hours Before Her Collapse in U.S. Custody, a Dying Migrant's Condition Went Unnoticed*, WASH. POST (Dec. 18, 2019), <https://www.adn.com/nation-world/2018/12/15/for-hours-before-her-collapse-in-us-custody-a-dying-migrant-childs-condition-went-unnoticed> [https://perma.cc/2Z7G-EZPV].

6. For the government's account of these events, see *Statement by U.S. Customs and Border Protection on the Death of a Seven-Year-Old Female Child*, U.S. CUSTOMS & BORDER PROTECTION (Dec. 14, 2018), <https://www.cbp.gov/newsroom/speeches-and-statements/cbp-statement-death-custody-7-year-old-guatemalan-el-paso-tx> [https://perma.cc/PM2Z-XDTX].

7. Joshua Barajas, *Body of Jakelin Caal, 7 Year Old Migrant Girl Who Died in U.S. Custody Back in Guatemala*, PBSNEWS HOUR (Dec. 24, 2018), <https://www.pbs.org/news-hour/world/body-of-jakelin-caal-7-year-old-migrant-girl-who-died-in-u-s-detention-back-in-guatemala> [https://perma.cc/ZAY4-L2CN] ("The tiny white coffin with the body of the 7-year-old Guatemalan girl who died while in U.S. in the custody ended its heartbreaking journey home in the pre-dawn hours Monday in a tiny hamlet 220 miles north of the capital."); Sofia Menchu, *Guatemalan Girl's Christmas Funeral Too Much for Grieving Mother*, REUTERS (Dec. 25, 2018), <https://www.reuters.com/article/us-usa-immigration-border-guatemala/guatemalan-girls-christmas-funeral-too-much-for-grieving-mother-idUSKC-N1OP03A> [https://perma.cc/22TJ-4DEZ].

8. Volga Desk, *Hundreds Bid Farewell To Udmurt Scholar Who Immolated Himself Protesting Russia's Language Policies*, RADIO FREE EUR. RADIO LIBERTY (Sep. 12, 2019), <https://www.rferl.org/a/hundreds-bid-farewell-to-udmurt-scholar-who-immolated-himself>

poet Rasul Gamzatov reading: “If my language dies tomorrow then I’m ready to die today.”⁹ Razin did, in fact, die that day from injuries caused by his burns. Local officials reportedly urged journalists “not to cover the farewell ceremony to avoid speculation.”¹⁰ Yet hundreds attended Razin’s funeral and carried his message that Russia and the world must pay attention to the catastrophic situation of indigenous languages.¹¹

These are among the most poignant examples of indigenous peoples’ recent experiences with the denial of language rights. Yet they reflect trends that are pervasive with respect to the discrimination, suffering, and struggle that indigenous peoples experience when they try to speak their languages or keep them alive.¹² In our view, the problem of indigenous languages has at least two main facets: the vulnerability of indigenous language speakers and the vulnerability of the languages themselves. Across the globe, indigenous peoples often cannot use their own languages—and are denied translation services—in legal processes as well as voting, education, employment, health, and media.¹³ Language discrimination in these realms limits the ability of indigenous peoples to participate in government, express themselves, or receive services available to others. Beyond discrimination against speakers, the languages themselves are also at risk, such that approximately 40 percent of the estimated 6700 languages now spoken around the world are in danger of disappearing.¹⁴ Of those, the languages spoken by indigenous peoples are the most vulnerable to death or dormancy,

protesting-russia-s-language-policies/30160616.html [https://perma.cc/W3RT-HQER].

9. *Russian Scholar Dies From Self-Immolation While Protesting to Save Native Language*, MOSCOW TIMES (Sep. 10, 2019), <https://www.themoscowtimes.com/2019/09/10/russian-scholar-dies-from-self-immolation-during-protest-to-save-native-language-a67229> [https://perma.cc/NT7E-4ENR].

10. Desk *supra* at 8.

11. *Id.*

12. See Silvia Quattrini, *Celebrating Languages on Indigenous Peoples Day*, MINORITY RIGHTS GROUP INT’L (Aug. 9, 2019), <https://minorityrights.org/2019/08/09/celebrating-languages-on-indigenous-peoples-day-2019> [https://perma.cc/3YNV-M48L] (“[S]imply being a native speaker of a minority or indigenous language may lead to discrimination, pushing the speaker to think twice before using his or her language or to even develop a negative attitude towards it”).

13. See, e.g., Expert Mechanism on the Rights of Indigenous People, *Role of Languages and Culture in the Promotion and Protection of the Rights and Identity of Indigenous Peoples*, ¶¶ 36–44 U.N. Doc. A/HRC/21/53, ¶¶ 36–44 (2012).

14. *2019 Year of Indigenous Languages*, UNESCO (Jan. 14, 2019), <https://www.un.org/development/desa/indigenouspeoples/news/2019/01/iyl> [https://perma.cc/SH4V-S8LB] (“40 per cent of the world’s estimated 6,700 languages were in danger of disappearing—the majority belong to indigenous peoples”).

taking with them much of the knowledge, experience, and lifeways of the people themselves.¹⁵

Accordingly, in 2019, the United Nations General Assembly held the International Year of Indigenous Languages (the International Year, or IYIL2019), to address the “critical loss of indigenous languages and the urgent need to preserve, revitalize and promote” them through “urgent steps at the national and international levels.”¹⁶ Acknowledging indigenous languages as a core component of human rights and fundamental freedoms, essential to realizing sustainable development, good governance, peace, and reconciliation,¹⁷ participants in the International Year focused on international awareness, relationship building, and research.¹⁸ At the end of 2019, the General Assembly proclaimed the International Decade of Indigenous Languages to continue these efforts in 2022–2032 (the International Decade, or IDIL2022–2032), inviting UNESCO again to serve as the lead agency for international efforts and for “[s]tates to consider establishing national mechanisms with adequate funding for the successful implementation” on the domestic level.¹⁹

The International Year and Decade of Indigenous Languages are not the first efforts to address the situation of indigenous peoples and their languages. Several international covenants, along with national legal regimes, recognize the rights of minorities and indigenous peoples to use, learn, and transmit their languages. Unfortunately, as the above stories, along with many more mundane daily occurrences suggest, the application of these laws has proven inadequate to protect indigenous peoples and their languages. This Article considers how a better understanding of the human rights dimensions of the situation of indigenous peoples and their languages could help to advance remedial and ongoing measures in both law and society. Guided by the standards set in the United Nations Declaration on the Rights of Indigenous Peoples and emerging insights regarding implementation of indigenous people’s human rights, we believe there is ample opportunity to improve and transform the situation of indigenous peoples and their languages.

15. See *UNESCO Launches the Website for the International Year of Indigenous Languages (IYIL2019)*, UNESCO (Aug. 7, 2018), <https://en.unesco.org/news/unesco-launches-website-international-year-indigenous-languages-iyil2019> [https://perma.cc/YR4X-765H] (“There are some 6,000–7,000 languages in the world today. About 97% of the world’s population speaks only 4% of these languages, while only 3% of the world speak 96% of all remaining languages. A great majority of those languages, spoken mainly by indigenous peoples, will continue to disappear at an alarming rate.”).

18. See *2019 International Year of Indigenous Languages*, UNESCO <https://en.iyil2019.org> [https://perma.cc/4P4P-N6RE] (last visited Jan. 31, 2020).

If approached thoughtfully, these efforts of the United Nations will help provide the time, resources, attention, and commitment to inspire social and legal change toward realizing indigenous peoples' human rights in the realm of language. At the very least, it is time for the world community to ensure that indigenous peoples stop dying to protect their languages or because they cannot be understood in them. It may even be possible to ensure that indigenous peoples, like others, have the opportunity to think, speak, write, sing songs, be educated, receive medical treatment, raise their children, go to ceremonies, dream of better futures, and live fully and freely, all in their own languages.²⁰

In this Article, we explore what it means to take a “human rights approach” to indigenous peoples' languages, as in the IYIL2019 and related advocacy efforts. Some scholars are deeply skeptical of a “linguistic human rights” approach to minority languages and language speakers. Alan Patten and Will Kymlicka, for example, have written that the myriad of linguistic needs and issues, such as between majority and minority populations, as well as immigrant and local groups across the world makes “it doubtful that international law will ever be able to do more than specify the most minimal of standards” for language rights.²¹ Others query whether the phenomenon of language—with its expressive and cultural dynamics—is suited to the legal, statecentric interventions of human rights.²² Some observers have said that individual ability to speak an indigenous language may be less about governmental permission than personal motivation and societal relevance.²³ A leading Russian ethnologist, Valery Tishkov, defends the

20. See, e.g., Ry Moran, *Dreaming of a Day When Indigenous Languages are Protected and Honored*, VANCOUVER SUN (Aug. 18, 2016), <https://vancouversun.com/opinion/opinion-dreaming-of-a-day-when-indigenous-languages-are-protected-and-honoured> [https://perma.cc/57C3-4HZQ].

21. See Alan Patten & Will Kymlicka, *Introduction: Language Rights and Political Theory: Context, Issues, and Approaches*, in LANGUAGE RIGHTS & POL. THEORY 34 (2003).

23. Compare *Why Education Reform Alone Won't Save Bolivia's Indigenous Languages*, WORLD POL. REV. (Apr. 24, 2017), <https://www.worldpoliticsreview.com/trendlines/21941/why-education-reform-alone-won-t-save-bolivia-s-indigenous-languages> [https://perma.cc/7BEB-S4YN] (describing challenges to indigenous language instruction including resistance from parents and teachers, and lack of indigenous language support in public administration and mass media), with Daniel Openshaw, *Indigenous Languages Are Important But Are They Useful?*, MINORITYRIGHTS (May 2, 2012), <https://minorityrights.org/2012/05/02/part-2-indigenous-languages-are-important-but-are-they-useful> [https://perma.cc/Q99H-55DL] (describing that incentives, such as use of indigenous languages in universities, media, and courts, could help to combat current apathy toward learning them, and offering example of 1993 Mexican legislation that helped provide such incentives). For helpful material on the challenges, internal and external, faced by families that study “heritage languages,” see LEANNE HINTON, BRINGING OUR LANGUAGES HOME, LANGUAGE REVITALIZATION FOR FAMILIES 225–55 (2013).

right of peoples to choose a language change for pragmatic reasons or as a historical choice of the entire group. Under this theory, the language is not a major marker of identity, and indigenous societies continue to exist after language shift.²⁴ Still others challenge linguistic human rights on empirical grounds, arguing that experience shows that such rights, as articulated in legal instruments, have been largely unenforceable in the courts.²⁵

Without necessarily disagreeing with these scholarly critiques, we believe that the International Year and Decade present opportunities to reconsider human rights as a framework for the indigenous peoples' context. In this vein, we consider that previous critiques may be outdated or take too narrow of an approach to the question of implementing human rights, focusing on legal enforcement versus sociological change.

In this spirit, we offer several observations that have been lacking in previous analyses. First, and perhaps most simply, human rights law has evolved over the past decade. The Declaration on the Rights of Indigenous Peoples, adopted by the United Nations General Assembly in 2007, offers context and clarity for indigenous peoples' rights to revitalize, use, develop, and transmit indigenous languages to future generations, to understand and be understood in various public forums, and to use indigenous languages in education and media, as well as states' obligations in these realms. Moreover, studies and advice produced by UN bodies since the adoption of the Declaration have elaborated on the role of indigenous peoples' languages in guaranteeing human rights more broadly, such as the individual and collective right to culture and participation in the life of the state. Second, key norms in the indigenous peoples' human rights movement—namely the self-determination of peoples, individual and collective nature of indigenous experience, and the importance of identifying and remedying past harms—can help to inform language policy that is more responsible to indigenous people's needs and aspirations. Finally, implementing

24. V. Tishkov, *Narod ne umiraet s iazykom* [*The People Do Not Die With the Tongue*], *IZVESTIA* (Sept. 2019), <https://iz.ru/920557/valerii-tishkov/narod-ne-umiraet-s-iazzykom> [<https://perma.cc/B2AE-MH5B>].

25. See generally Moria Paz, *The Failed Promise of Language Rights: A Critique of the International Language Rights Regime*, 54 *Harv. Int'l. L.J.* 157 (2013) (outcomes in 133 cases before the European Court of Human Rights, the U.N. Human Rights Committee, and the Inter-American Court of Human Rights on language rights in education, court proceedings, and communications with the government "have consistently favored linguistic assimilation, rather than the robust protection of linguistic diversity than is formally espoused.").

human rights is not only about legal enforcement in state-systems,²⁶ but also about sociological changes that have the power to transform realities on the ground, potentially including attitudes about indigenous peoples' languages.²⁷ The same is true in the language realm where we must look capaciously—and certainly beyond the courts—to see the mutually informative potential of indigenous, state, and international actions that inspire, create, and realize human rights norms.²⁸

Perhaps most generally, we note that implementation of human rights is not purely a legal endeavor,²⁹ but rather, one that has societal

26. Compare Ryan Goodman & Derek Jinks, *How to Influence States: Socialization and International Human Rights Law*, 54 DUKE L.J. 621 (2004) (arguing that international human rights law wields influence through coercion, persuasion, and acculturation), with Oona A. Hathaway, *Between Power and Principle: An Integrated Theory of International Law*, 72 U. CHI. L. REV. 469 (2005) (focusing on the impact of international treaties on rule of law regimes within and among states).

27. See, e.g., Expert Mechanism on the Rights of Indigenous Peoples, Statement on the International Year of Indigenous Languages, 2019 (Jan. 28, 2019), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24122&LangID=E> [<https://perma.cc/U6RC-5YUB>] (“We strongly support the States that have encouraged the United Nations to Declare 2020–2030 the Decade of Indigenous Languages. This initial year is important to raise awareness among states and convene stakeholders, including universities, civil society, private sector, and other actors, in the movement for indigenous language revitalization. Yet it will take more time to reverse the dire situation of indigenous peoples’ language loss. Over the course of a decade, however, it would be possible to truly transform the situation of indigenous peoples’ languages, such that these languages could fully recover and flourish in the lives of indigenous peoples. Indigenous peoples must play a leading role and be fully consulted while these initiatives are being discussed.”).

28. Kristen A. Carpenter & Angela R. Riley, *Indigenous Peoples and the Jurisgenerative Moment in Human Rights*, 102 CAL. L. REV. 163, 163–77 (2014). Carpenter and Riley argue in this article that developments in the human rights movement, coinciding with decolonization theory, have created a juris generative or “law creating moment” in which indigenous peoples are influencing law and policy at various levels of advocacy, whether indigenous, national, or international. *Id.* Additionally, following theorists who note the importance of “sociological” approaches to human rights implementation (*see id.* at 215), the authors suggest that this dynamic moment of change and empowerment for indigenous peoples is occurring in realms both legal and nonlegal realms. *See id.* at 226–33 (offering example of Eastern Band of Cherokee Nation’s approach to addressing violence against women as including legal advocacy at all levels of government, as well as community health, education, and healing programs).

29. See *Law and Society*, Joachim J. Savelsberg and Lara L. Cleveland, OXFORD BIBLIOGRAPHIES, <https://www.oxfordbibliographies.com/view/document/obo-9780199756384/obo-9780199756384-0113.xml> [<https://perma.cc/6X57-QMNY>] (last visited Jan. 27, 2019) (“Law and society studies address the mutual relationship between law and society with its different actors, institutions, and processes. Law is created and put into practice through societal processes. Simultaneously law effects and affects social change. Beyond a causal relationship, law is further understood to constitute social institutions such as the polity, family, property, corporation, crime, even the individual. The study of law and other specializations in the social sciences are thus closely interwoven. Law and society studies represent a multi- and interdisciplinary field The field of law and society studies to which scholars from many disciplines such as anthropology, cultural studies, history, jurisprudence,

dimensions as well.³⁰ The effort to recognize and effectuate language rights must include acknowledgement of past wrongs, far-reaching vision, legal policy and reform, along with media and the arts, science and technology, religion and culture, and youth culture and music.

A human rights approach to indigenous languages could inspire, for example, awareness of the very existence of indigenous languages; renewed confidence in using one's language or asking for translation; understanding and healing from the shame of previous generations for whom the language was forbidden by governments; collective action and solidarity among indigenous peoples who seek to learn and transmit their languages to future generations; and a contemporary understanding that indigenous language is relevant not just to culture, but also to development, science, and governance. A human rights approach to indigenous language recognizes that these languages are vital rather than archaic, and that governments along with other institutions and actors must work to realize their potential for reasons of human dignity and societal wellbeing.

By calling on states to develop national action plans for language use, awareness, and revitalization consistent with the Declaration and in consultation with indigenous peoples themselves, the International Year and Decade offer the potential for a more capacious and holistic view of human rights than has been previously considered. UNESCO, for example, articulated wideranging objectives for IYIL2019, including raising global awareness of the risks to indigenous languages and their significance for contemporary activities; promotion of quality of life, intercultural dialogue, and linguistic continuity; and increasing the capacity of all stakeholders to take measures to support indigenous peoples' language rights.³¹ In these regards, IYIL2019 embraced both the universal standard setting and pluralistic implementation approaches that characterize today's human rights movement, with an emphasis on remedies for past injuries and indigenous peoples' self-determination and aspirations for the future.³²

linguistics, philosophy, sociology, and political science contribute is large.”).

30. For scholarship considering “law and society” in the realm of “human rights,” see, e.g., Heinz Klug, *Transnational Human Rights: Exploring the Persistence and Globalization of Human Rights*, 1 ANN. REV. L. & SOC. SCI. 85, 85 (2005) (arguing that “we must first look beyond the formal claims of human rights law and doctrine and consider how socio-legal approaches may help to produce a more deeply textured understanding of the relationship between human rights and law in the early twenty-first century”).

31. See 2019 *International Year of Indigenous Languages*, *supra* note 18 (stating “objectives” for IYIL2019).

32. As one example, see the work of the Muscogee (Creek) Nation to translate the Declaration into the Muscogee language and adopt it into tribal law. See Darren DeLaune,

In some places, examining language challenges through a human rights lens has already revealed best practices in language pedagogy (defer to the self-determination of peoples regarding instructional methods) and approaches to historical language oppression by states (recognize past injuries and foster reconciliation going forward). These lessons can inform debates and reforms in education, politics, and other contexts. The human rights approach can further amplify challenges including ongoing government concerns that minority languages will threaten national security or impede democratic processes, issues that can be addressed in part through diplomatic mechanisms that already have some basis for mitigating state sovereignty with the concerns of peoples.³³ In our view, these and other factors have been somewhat under-studied by critics of linguistic human rights and deserve consideration going forward.

The Article proceeds as follows. In Part I, we describe the situation of indigenous languages, as well as the protection for language rights articulated in international human rights instruments. In Part II, we offer two case studies, examining indigenous peoples' language issues in the United States and Russia. We choose these two countries in part because they are our homes and the places where we work on language issues.³⁴ The United States and Russia also offer an interesting, comparative basis for evaluating implementation of indigenous peoples' language rights across differences of geopolitics, histories, and aspirations among nations and peoples. The Article concludes with lessons learned from the case studies and reflections on the theory and practice of a human rights approach to indigenous peoples' languages. While the United Nations Declaration on the Rights of Indigenous Peoples sets universal baselines for indigenous peoples' language rights, these must be implemented with recognition of indigenous peoples'

Declaration in Process to be Translated into Muscogee, MVSCOGEE MEDIA (Feb. 27, 2018), <https://mvskokemedia.com/declaration-in-process-to-be-translated-into-mvskoke> [<https://perma.cc/LH5D-2KAA>].

33. For example, the Expert Mechanism on the Rights of Indigenous Peoples, on which we both have served, is specifically charged by the Human Rights Council with helping states and indigenous peoples realize the aims of the Declaration, through dialogue and advice. G.A. Res. A/HRC/RES/33/25 (Oct. 5, 2016).

34. See, e.g., Kristen A. Carpenter, *General Assembly: High-level Plenary Meeting for the Global Launch of the International Year of Indigenous Languages*, UN Web TV 1:57:10 (Feb. 1, 2019), <http://webtv.un.org/watch/general-assembly-high-level-plenary-meeting-for-the-global-launch-of-the-international-year-of-indigenous-languages/5997504273001>; Periodic Videos, *Implementing the UN Declaration on the Rights of Indigenous Peoples in the United States Part 4*, YOUTUBE 42:17 (Mar. 16, 2019), <https://www.youtube.com/watch?v=evlMOfcghU>.

self-determination and participation, toward specific plans and programs for realizing such rights in practice.

I. REALITIES AND RIGHTS

A. The Situation of Indigenous Languages

Indigenous peoples across the globe speak thousands of languages today. Some indigenous languages are vital and flourishing, such as Guarani in Paraguay or Quechua in Peru, each spoken by millions. But many indigenous languages are endangered, such as the Nawat language with an estimated 200 speakers in El Salvador, or Wiradjuri, with only thirty reported speakers in Australia.³⁵

Even in locales where indigenous languages are in daily use, it is difficult for individuals to obtain education, health care, or other services in their mother tongues.³⁶ In Nunavut, Canada, the lack of availability of health care in the language of the Inuit people has shown to have negative effects on health care outcomes.³⁷ A representative of Botswana recently stated before the United Nations Permanent Forum on Indigenous Issues that in his country, education is not available in indigenous languages.³⁸ At the US border with Mexico, as suggested above, indigenous peoples are sometimes unable to obtain translation services in when they are detained and even in subsequent proceedings regarding child custody, asylum, deportation, and so on.³⁹

35. See Megan Townsend, *25 Languages You Need to Listen to Before They Disappear*, INDEPENDENT (MAR. 23, 2018), <https://www.independent.co.uk/news/science/endangered-languages-dead-listen-speakers-audio-belarusian-wiradjuri-cornish-a8268196.html> [<https://perma.cc/47TK-5SPN>].

36. Meetings Coverage and Press Release, Land Rights, Critical Need to Preserve Indigenous Languages Stressed by Speakers, as Permanent Forum Continues Debate, U.N. Press Release HR/5306 (May 19, 2016).

37. See OFFICE OF THE LANGUAGES COMMISSIONER OF NUNAVUT, INVESTIGATION INTO THE QIKIQTANI GENERAL HOSPITAL'S COMPLIANCE WITH THE OFFICIAL LANGUAGES ACT FINAL REPORT 1 (2015), <http://langcom.nu.ca/sites/langcom.nu.ca/files/QGH%20-%20Final%20Report%20EN.pdf> [<https://perma.cc/2A6Q-G3MA>]. The report counsels, “[i]f you cannot communicate with your patient, your patient is not safe Being able to speak in one’s mother tongue when it concerns health is not asking a favour of health care professionals or organizations. On the contrary, it is a basic issue of accessibility, safety, quality and equality of services.” *Id.*

38. Meetings Coverage and Press Release, *supra* note 36.

39. See, e.g., Rachel Nolan, *A Translation Crisis at the Border*, NEW YORKER (Dec. 30, 2019), <https://www.newyorker.com/magazine/2020/01/06/a-translation-crisis-at-the-border> [<https://perma.cc/R2HG-6BZS>]; J. Gielselman, *An Invisible Wall: How Language Barriers Block Indigenous Latin American Asylum Seekers*, 27 TRANSNAT’L L. & CONTEMP. PROBS. 451, 469 (2018) (describing the problems of language access in detention, deportation, and asylum).

By any measure, indigenous languages are on the decline worldwide, and many have died altogether.⁴⁰ Much of this loss is traceable to the period of European conquest and colonization. In Australia, for example, there may have been 250 languages before the arrival of Europeans, of which 150 survive today, and of these only fifteen are considered healthy, namely because they are being taught to children.⁴¹ Some studies suggest that precontact there were 2000 languages spoken by 9 million people in South America and the Caribbean,⁴² a figure that by the 2000s was down to 350 languages in South America and perhaps 20 in the Caribbean.⁴³

In a number of regions, language loss went hand in hand with the early experiences of genocide, disease, slavery, and displacement associated with European conquest.⁴⁴ Later, and perhaps more pervasively, the policies of nation states were expressly designed to suppress indigenous languages in support of assimilation efforts. These policies, together with changing economics and other factors, have given rise to “language shifts” in which communities have adopted the languages of the dominant societies.⁴⁵ Even where indigenous languages survive, and current law and policy favors them, it is difficult to recover

40. MARIANNE MITHUN, *NATIVE AMERICAN LANGUAGES* (1998), <http://www.linguistics.ucsb.edu/faculty/mithun/pdfs/1998%20Nat%20Am%20Lgs%20Encarta.pdf> [<https://perma.cc/S6ZJ-F5GQ>].

41. See, e.g., Amanda Burdon, *Speaking Up*, *AUSTR. GEOGRAPHIC* (APR. 26, 2016), <https://www.australiangeographic.com.au/topics/history-culture/2016/04/speaking-up-australian-aboriginal-languages> [<https://perma.cc/KK2W-SC2A>]; Deborah Kikkawa, *Turning Back the Tide Of Indigenous Language Loss: Children to the Rescue?*, *AUSTL. DEP'T OF SOC. SERVS.*, https://www.dss.gov.au/sites/default/files/documents/02_2015/indigenous_language_loss.pdf [<https://perma.cc/S57S-TPBM>].

42. Frances Jenner, *South America's Indigenous Languages: Where Are They Now?* *LATIN AMERICA REPORTS* (Apr. 18, 2019), <https://latinamericareports.com/status-update-south-america-indigenous-languages/1759> [<https://perma.cc/4VFT-PTVE>] (“According to The World Bank’s 2015 study “Indigenous Latin America in the 21st century,” the number of languages spoken in the region is 560, although some studies estimate that before Spanish colonization the continent was home to over 2,000.”). These numbers depend on what is meant by a language, versus language dialect or language family—topics that are beyond the scope of this Article. For an older work, see *THE INDIGENOUS LANGUAGES OF SOUTH AMERICA IX* (Campbell & Grondona eds., 2012) (describing South America’s “53 language families and 55 isolates, that is, 108 known families and isolates together, including assessment of proposals of more distant relationships and listing of named but mostly unknown other ‘languages.’”).

43. See Hubert Devonish, *Protecting, Propagating, and Revising Caribbean Indigenous Languages*, *UNESCO* (Jan. 31, 2004), <https://www.mona.uwi.edu/dllp/jlu/ciel/pages/protecting.htm> [<https://perma.cc/WNU3-HE47>].

44. James Crawford, *Endangered Native American Languages: What Is to be Done, and Why?*, 19 *BILINGUAL RES. J.* 17, 22 (1995).

45. *Id.*

from decades or centuries of oppression.⁴⁶ The continuity of language transmission from generation to generation has been lost in many communities, and the psychological harm and collective trauma of past discrimination and violence makes some people reluctant or unable to try to learn, speak, or teach indigenous languages.⁴⁷ In a 2016 statement to the United Nations Permanent Forum on Indigenous Issues, a representative of the Indigenous Language Caucus stated that approximately 500 languages were projected to be lost by 2030.⁴⁸

One problem, in our view, is that states either fail to recognize language rights as human rights or subordinate these rights to others. There are several iterations of these dynamics. Indigenous language rights are notoriously difficult to assert in states that have adopted policies of monolingualism as an aspect of national unity and governing power.⁴⁹ One writer recalls that after the Arabic became the official language of Libya in 1969, “Qaddafi’s Revolutionary Council could officially approve other languages but even singing in the traditional Amazigh language of Tamazight was punishable by death.”⁵⁰ These measures ended with Qaddafi’s removal, but Libya still has not recognized the (indigenous) Tamazight language as an official language. To this day, postcommunist states in Eastern Europe seek to build a single and indivisible national identity.⁵¹ To achieve these goals, some states

46. See generally Kellie Rolstad, *Language Death in Central Mexico: The Decline of Nahuatl and the New Bilingual Maintenance Programs*, Bilingual Rev. (2001), <http://terpconnect.umd.edu/~rolstad/pdf%20of%20Language%20Death.pdf> [<https://perma.cc/2UYB-93M2>] (evaluating historical and contemporary aspects of Nahua language in Mexico).

47. See, e.g., Maureen Smith, *Forever Changed: Boarding School Narratives of American Indian Identity in the U.S. and Canada*, 2 INDIGENOUS NATIONS STUD. J. 57, 61–70 (2001) (examining personal narrative to examine indigenous students’ experiences with boarding schools in the United States., including punishment for speaking indigenous languages). The historic suppression of indigenous languages in the United States and contemporary ramifications of these policies are discussed in detail in Subpart II.A.

48. Indigenous Language Caucus, 2016 Statement to the U.N. Permanent Forum on Indigenous Issues, <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH01e2/7188dd89.dir/PF16Indigenous-Language-Caucus208.pdf> [<https://perma.cc/4HWM-M5XU>].

49. See Alan & Kymlicka, *supra* note 21, at 3 (noting that countries that formally accorded recognition to a range of minority languages during Communist regimes, such as countries of the former Soviet Union and Yugoslavia, shifted to an official policy of monolingualism when they became independent).

50. Ernesto Alvarado et al., *Regions*, 20(1) HUM. RTS. BRIEF 36, 45 (2012).

51. See COUNCIL OF EUROPE, COMMENTS OF THE GOVERNMENT OF THE RUSSIAN FEDERATION ON THE FOURTH OPINION OF THE ADVISORY COMMITTEE ON THE IMPLEMENTATION OF THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES BY THE RUSSIAN FEDERATION (2018), <https://rm.coe.int/government-comments-on-the-4th-acfc-opinion-on-switzerlandenglish-lang/1680908a1b> [<https://perma.cc/5A9A-ENPA>].

introduce voluntary assimilation discourse, emphasizing the right of minorities to access services in national languages. In this paradigm, some states argue that preventing indigenous peoples from learning their indigenous languages advances equal access to education for persons.⁵² Under the umbrella of monolingualism, whether de jure or de facto, indigenous peoples may find themselves in unable to control educational systems, language policies, or writing systems.

Elsewhere, states exercise hegemony around what they perceive to be national cultural resources. Even if indigenous culture is recognized, language rights may be neglected in favor of other national efforts around cultural heritage, which may in turn obscure indigenous peoples' political and other rights. In such a paradigm, indigenous peoples may have only secondary role, which does not include active and decisive positions, and indeed conflicts with the global norm of "self-determination" in indigenous peoples' relationships with states. A new law in Japan, for example, has yielded a mixed reception for its simultaneous recognition of the Ainu as indigenous peoples and promotion of Ainu cultural tourism, but failure to address rights to Ainu language, land, or artifacts.⁵³

Even in those states that recognize and promote interests in language diversity it remains difficult for indigenous peoples to assert language rights. Tolerance for language pluralism may merely accommodate multiple dominant languages without benefit to indigenous languages.⁵⁴ This type of multilingualism fails to acknowledge the particular historical experiences and current aspirations of indigenous peoples. From 1876 to 1996, the now infamous "residential school"

52. COUNCIL OF EUROPE, REPORT OF THE RUSSIAN FEDERATION ON IMPLEMENTATION OF THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES UNDER THE THIRD MONITORING CYCLE 101–102 (2010), <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008b7c3> [<https://perma.cc/X3LD-XEVM>].

54. See Fernand de Varennes & Elzbieta Kuzborska, *Language, Rights and Opportunities: The Role of Language in the Inclusion and Exclusion of Indigenous Peoples*, 23 INT'L J. ON MINORITY & GROUP RTS. 281, 296 (2016) ("Even in jurisdictions where indigenous peoples are a majority, such as in the territory of Nunavut in Canada, fluency in an official indigenous language is generally still not a requirement for government employment, and otherwise generous legislation still does not create a right to use a language such as Inuktitut, despite consideration of how to make this language a working language in government departments during a few years in 2000–2001. Indeed, while there is a right for members of the public to communicate with government offices in French and English, no such right exists for official indigenous languages (Chipewyan, Cree, Dogrib, Gwich'in, Inuktitut and Slavey) unless there is a significant demand for communications with and services from a specific government office or service, or 'due to the nature of the office, it is reasonable that communications with and services from that office be available in such language.'").

program in Canada was created to assimilate indigenous children by removing them from their families, forcing them to speak English and French, and punishing them for using indigenous languages.⁵⁵ Even as policies have now changed, the physical coercion and psychological trauma of those earlier efforts casts an intergenerational shadow over contemporary language use by indigenous peoples and is not ameliorated by contemporary Canadian policies that accommodate both English and French, no matter how laudable they are.⁵⁶

In some countries, the issue of indigenous language use is largely or mostly absent from the public sphere. Government policy may be formally supportive or neutral but fail to provide any sufficient support for language rights, which are treated as aspects of cultural heritage, family traditions, or ethnic rituals. In many countries, this means that nonprofit heritage organizations, centers for cultural memory, or language development institutes undertake the work of indigenous peoples' language documentation, education, and publication.⁵⁷ While these organizations may have more autonomy and primacy to the community

55. See Carole Blackburn, *Culture Loss and Crumbling Skulls, The Problematic of Injury in Residential School Litigation*, 35 *PoLAR: POL. & LEGAL ANTHROPOLOGY REV.* 289, 289, 294–97, 300 (2012); Pamela O'Connor, *Squaring the Circle: How Canada is Dealing with the Legacy of Its Indian Residential Schools Experiment*, 6(1) *AUST L.J. HUM. RTS.* 188, 191 n.17 (“The most frequent cause of punishments for children in residential schools was speaking their native languages.”); *Reports*, NAT’L CTR. FOR TRUTH & RECONCILIATION, <http://nctr.ca/reports.php> [<https://perma.cc/6G26-G67F>] (last visited Jan. 23, 2020).

56. See Varennes & Kuzborska, *supra* note 54, at 297.

57. These dynamics are varied and complicated. See ADMINISTRATION FOR NATIVE AMERICANS, NATIVE LANGUAGES ARCHIVES REPOSITORY PROJECT 9–10, <http://www.aihec.org/our-stories/docs/NativeLanguagePreservationReferenceGuide.pdf> [<https://perma.cc/Q5J7-WRJT>] (“It is difficult to tally how many community language programs exist throughout the country. They are, for the most part, unheralded and ignored, struggling to survive against a mosaic of obstacles. It is clear, though, what does bode well for fledging tribal language programs. The apparent ideal, based on established programs with any history of survival, is a private, community-based, small-scale program, unattached from any of the institutions of the day on the reservation or in the community. Those fledging programs utilizing separate private, state or tribal charters, tax exempt status and staff appear to garner more community support in the long run. The success they muster as private entities is offset by the lack of financial support enjoyed by public programming. They are at the mercy of sporadic foundation and private source funding, as well as long ingrained attitudes against teaching a Native language in a school environment.”); Brittney Melloy, *From Threatened to Thriving: Using Technology to Preserve Arctic Indigenous Languages*, *ARCTIC TODAY* (Dec. 14, 2018), <https://www.arctictoday.com/threatened-thriving-using-technology-preserve-arctic-indigenous-languages> [<https://perma.cc/2ND3-E7W4>] (describing indigenous language platform in need of private or public donor); Emily Dreyfuss, *Brazil’s Museum Fire Proves Cultural Memory Needs a Digital Backup*, *WIRED* (Sept. 7, 2018), <https://www.wired.com/story/brazil-museum-fire-digital-archives> [<https://perma.cc/3VUD-3P3F>] (describing destruction of digitization project for indigenous languages caused by fire, albeit at a nationally funded museum).

than public projects, they may also lack sufficient resources or status to fulfill the human rights obligations that international law imposes on states.

B. The Human Rights Framework

These varying national approaches occur against a backdrop of international law on language rights. Article 2 of The International Covenant on Civil and Political Rights (ICCPR), provides against language discrimination: “Each State Party . . . undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁵⁸ Additionally, Article 14 provides for language rights in criminal trials, stating that any person “[i]n the determination of any criminal charge against him . . . shall be entitled to the following minimum guarantees, in full equality (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him . . . [and] (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court.” Article 24 extends the right of nondiscrimination based on language to children.⁵⁹

While the ICCPR applies generally to all human beings, Article 27 speaks specifically to the rights of “minorities,” which have been interpreted to include indigenous peoples.⁶⁰ Article 27 provides: “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.”⁶¹ The Human Rights Committee has noted that the positive

58. G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights, art. 2 (Dec. 16, 1966) [hereinafter ICCPR].

59. *Id.* arts. 14, 24.

60. Rep. of the Human Rights Committee, Communication No. 167/1984, *Ominayak v. Canada*, ¶ 32.2, U.N. Doc. A/45/40 (1990) (“Although initially couched in terms of alleged breaches of the provisions of article 1 of the Covenant, there is no doubt that many of the claims presented raise issues under Article 27. The Committee recognises that the rights protected by Article 27, include the right of persons, in community with others, to engage in economic and social activities which are part of the culture of the community to which they belong.”).

61. ICCPR, *supra* note 58, art. 27. Article 27 can be further understood by reference to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 1992. The Declaration was by its own terms “inspired by the provisions of article 27 of the International Covenant on Civil and Political Rights,” described above. G.A. Res. 47/135, Declaration on the Rights of Persons Belonging to National or

duties of states include measures to support the revival of cultures and languages of indigenous peoples.⁶²

In the International Covenant on Economic, Social and Cultural Rights, state parties recognizes the right of everyone to take part in cultural life.⁶³ The Committee on Economic, Social and Cultural Rights has consistently called upon state parties to protect and promote indigenous peoples' rights to their cultures and languages, under Article 15 of the Covenant.⁶⁴

The Convention on the Elimination of Racial Discrimination notes in its preamble that "all Member States have pledged themselves . . . to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion."⁶⁵ In the indigenous peoples context, the Committee on the Elimination of Racial Discrimination has said that states must "recognize 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" and to "ensure that indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs and to preserve and to practice their languages."⁶⁶

Ethnic, Religious and Linguistic Minorities, para. 4 (Dec. 18, 1992). With respect to language rights, this Declaration observes that "the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live." *Id.* para. 5. Its operative articles provide that linguistic minorities shall have the right to use their languages in public and private; maintain contacts with others sharing linguistic ties; be free to express themselves and develop their languages; and be free from discrimination on this basis. *Id.* arts. 1–4. Additionally, states shall protect the existence of linguistic minorities and adopt legislation to achieve those ends; and, where possible, should also take appropriate measures for minorities to learn their "mother tongue" and through education to encourage knowledge of minority languages existing within their territories. *Id.* art. 4. While this Declaration is a helpful building block in understanding the evolution of a human rights approach to languages, it is also important to note that indigenous peoples also have a right to "self-determination" that impacts their language rights.

62. Human Rights Committee, Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, ¶ 18, U.N. Doc. CCPR/C/SLV/CO/6 (Nov. 18, 2010).

63. G.A. Res. 2200 (XXI), International Covenant on Economic, Social and Cultural Rights, art. 15 ¶ 1 (Dec. 16, 1966).

64. See Comm. on Economic, Social and Cultural Rights (CESCR), 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), ¶¶ 3, 36–37, 49–50, 53, 55, 73, U.N. Doc. E/C.12/GC/21 (Dec. 21, 2009).

65. International Convention on the Elimination of All Forms of Racial Discrimination, Preamble, Dec. 21, 1965, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969).

66. Rep. of the Comm. on the Elimination of Racial Discrimination, General Recommendation on the Rights of Indigenous Peoples, U.N. Doc. A/52/18, annex V, at 122 (1997).

The International Labor Organization (ILO) Convention 169 on Indigenous and Tribal Peoples provides the following recognition of language rights, stating in Article 28:⁶⁷

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

In this regard, ILO Convention 169 makes clear that opportunities to learn the national language must not come at the expense of the right to learn one's indigenous language, and that states have an obligation to support indigenous language development and practice. In Article 30, ILO Convention 169 sets forth:

1. Governments shall adopt measures appropriate to the traditions and cultures of the peoples concerned, to make known to them their rights and duties, especially in regard to labour, economic opportunities, education and health matters, social welfare and their rights deriving from this Convention.
2. If necessary, this shall be done by means of written translations and through the use of mass communications in the languages of these peoples.

The second point is quite powerful because it underscores state obligations to ensure human rights by providing translation and communication in indigenous languages, where necessary, and not merely by forcing or inducing indigenous peoples to learn the majority language.

The Convention on the Rights of the Child states that indigenous children shall not be denied the right to enjoy their culture, nor to profess and practice their own religion or to use their language.⁶⁸ In its General Comment No. 11 on indigenous children, the Committee on the Rights of the Child recognizes that special measures may be needed to

67. See International Labour Organisation Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries, art. 28, Jun. 27, 1989, 1650 U.N.T.S. (entered into force, Sept. 5, 1991).

68. Convention on the Rights of the Child, art. 30, Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990). See *id.* arts. 2, 29.

enable indigenous children to enjoy their cultural rights, including positive action on the part of the State.⁶⁹

Cultures and languages are an integral part of the mandate of UNESCO, as evidenced by its leadership in IYIL2019. UNESCO has a number of instruments especially relevant to cultures and languages, as well as a broader policy of encouraging indigenous peoples' self-determined cultural development and work in relation to endangered languages. The 2001 UNESCO Universal Declaration on Cultural Diversity provides:

All persons have therefore the right to express themselves and to create and disseminate their work in the language of their choice, and particularly in their mother tongue; all persons are entitled to quality education and training that fully respect their cultural identity; and all persons have the right to participate in the cultural life of their choice and conduct their own cultural practices, subject to respect for human rights and fundamental freedoms.⁷⁰

The UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (2003) recognizes that “communities, in particular indigenous communities, groups and, in some cases, individuals, play an important role in the production, safeguarding, maintenance and recreation of intangible cultural heritage.”⁷¹ The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005) encourages groups to “create, produce, disseminate, distribute and have access to their own cultural expressions, paying due attention to the special circumstances and needs of women as well as various social groups, including persons belonging to minorities and indigenous peoples.”⁷²

An additional instrument of importance is the European Charter for Regional or Minority Languages of 1992.⁷³ Declaring that regional or minority languages are part of Europe's heritage, this Charter specifies legal obligations for the languages under its purview. The Charter

69. Comm. on the Rights of the Child (CRC), General Comment No. 11 (2009): Indigenous Children and Their Rights Under the Convention, ¶ 13, U.N. Doc. CRC/C/GC/11 (Feb. 12, 2009).

70. Records of the General Conference, *UNESCO Universal Declaration on Cultural Diversity*, art. 5, UNESCO Doc. 31C/Res. 25 (Nov. 2, 2001).

71. UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, Preamble, Oct. 17, 2003, 2368 U.N.T.S. 3 (entered into force Apr. 20, 2006).

72. UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, UNESCO Doc. CLT.2005/CONVENTION DIVERSITE-CULT REV.2, art. 7 ¶ 1 (Oct. 20, 2005).

73. COUNCIL OF EUROPE, EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES (Nov. 5, 1992), <https://rm.coe.int/168007bf4b> [<https://perma.cc/JC6M-NPFT>] [hereinafter ECRML].

creates a right for individuals not to be subjected to discrimination and introduces a system of positive protection measures for minority languages and the communities using them.⁷⁴ However, states parties can flexibly determine “the nature and scope of the measures to be taken to give effect to this Charter . . . bearing in mind the needs and wishes and respecting the traditions and characteristics of the groups which use the languages concerned.”⁷⁵

As we mentioned above, the most recent international instrument to emerge with respect to indigenous peoples' rights is the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly in 2007.⁷⁶ The Declaration is a resolution of the General Assembly and as such, is not signed or ratified by states, nor enforceable in international tribunals. Some states are now in the process of developing implementation plans, whether in specific subject matters⁷⁷ or more generally.⁷⁸ Moreover, the Declaration is significant for the fact that indigenous peoples were deeply involved in its drafting and 144 states (with support later articulated by another 4) voted in favor of its adoption.⁷⁹ The Declaration sets forth a global consensus regarding indigenous peoples' rights and states' obligations to ensure those rights,⁸⁰ and can be used alone or as a vehicle for interpreting other instruments in the context of indigenous peoples.⁸¹

74. COUNCIL OF EUROPE, EXPLANATORY REPORT TO THE EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES (Nov. 5, 1992), <https://rm.coe.int/16800cb5e5> [<https://perma.cc/F8S8-AKYV>].

75. ECRML, *supra* note 73, part II art. 7 ¶ 5.

76. G.A. Res. 61/295 (Sept. 13, 2007).

77. In the United States, for example, the Advisory Council on Historic Preservation, an independent federal agency, has a plan for compliance with the Declaration with respect to the administration of lands sacred to American Indians, pursuant to the National Historic Preservation Act. *United Nations Declaration on the Rights of Indigenous Peoples*, ADVISORY COUNCIL ON HISTORIC PRESERVATION, <https://www.achp.gov/indian-tribes-and-native-hawaiians/united-nations-declaration-rights-indigenous-peoples> [<https://perma.cc/T8AW-TLGY>] (last visited Jan. 23, 2020).

78. In Canada, for example, there is legislation currently pending “to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples.” *United Nations Declaration on the Rights of Indigenous People Act*, OPENPARLIAMENT, <https://openparliament.ca/bills/42-1/C-262> [<https://perma.cc/78EW-EH-QA>] (last visited Jan. 23, 2020).

79. See Carpenter & Riley, *supra* note 28, at 176.

80. See S. James Anaya, *The Human Rights of Indigenous Peoples: United Nations Developments*, 35 U. HAW. L. REV. 983, 993 (2013).

81. See Conference Report, *Implementing the United Nations Declaration on the Rights of Indigenous Peoples in the United States*, U. COLO. L. REV. (forthcoming 2020) (summarizing arguments of James Anaya regarding the use of the Declaration as an interpretive device).

Article 13 of the Declaration is worth quoting in full, as it is the foundational language rights provision:

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.

States shall take effective measures to ensure that this right is protected and also to 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.⁸²

Thus, the Declaration's approach, building on ILO Convention 169, is to provide affirmative commitments to indigenous languages. Human rights cannot be effectuated merely by providing indigenous peoples access to majority languages, but rather states must make sure indigenous peoples can retain and communicate in their own languages.

The Declaration further provides, in Articles 14 and 15, for the right of indigenous peoples to "control their [own] education systems and institutions providing education in their own languages" and, in Article 31, "maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions."⁸³ In addition, indigenous peoples have the right to determine their own identity and membership and to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices, juridical systems or customs, all of which may implicate language use, as further described in our case studies.⁸⁴ Indeed, under the ICCPR and other instruments, cultural and language rights are indivisible and central to all the other rights.⁸⁵

Of additional importance, especially with respect to the Declaration, is its recognition of indigenous peoples' right to self-determination, which includes indigenous peoples' rights to freely determine their cultural development, to autonomy, and to participate fully, if they so choose, in the political, economic, social and cultural life of the State (arts. 3, 4 and 5).⁸⁶ Language rights may be necessary to ensure that indigenous peoples are able to participate politically, i.e., to vote, as

82. G.A. Res. 61/295, *supra* note 76, art. 13.

83. *Id.* arts. 14, 15, 31.

84. *Id.* art. 34.

85. See, e.g., The Expert Mechanism on the Rights of Indigenous Peoples, Free, Prior and Informed Consent: A Human Rights-Based Approach, U.N. Doc. A/HRC/39/62, ¶¶ 7, 22 (2018).

86. G.A. Res. 61/295, *supra* note 76, arts. 3–5.

well as to provide free, prior, and informed consent to legislation and other matters affecting them.⁸⁷

While indigenous peoples have the right to participate in all stages of language rights work, it is also true that a human rights approach to indigenous languages places the obligation for these measures on states.⁸⁸ Moreover these obligations contain both remedial and ongoing components, so states must acknowledge and correct past harms to indigenous peoples. This includes restitution for spiritual and other forms of property taken without indigenous peoples' consent, and nonrecurrence of past violations. Among human rights experts and advocates

87. See S. JAMES ANAYA, *INDIGENOUS PEOPLES IN INTERNATIONAL LAW* 97–184 (2D ED. 2004) (elaborating on the norm of self-determination in international law as it pertains to indigenous peoples).

88. International law, and international human rights law, are traditionally based on the notion of states as the exclusive holders of rights and responsibilities. See, e.g., LASSA OPPENHEIM, *INTERNATIONAL LAW: A TREATISE* 341 (1905) (“Since the Law of Nations is a law between States only and exclusively, States only and exclusively are subjects of the Law of Nations.”). For a practically-oriented, contemporary view, see *International Human Rights Law*, OFFICE OF THE HIGH COMM’R, <https://www.ohchr.org/en/professionalinterest/pages/internationallaw.aspx> [<https://perma.cc/6ZPW-MSRE>] (last visited Jan. 23, 2020) (“International human rights law lays down obligations which States are bound to respect. By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights.”). The view of international law view as exclusive to states has softened somewhat, to allow for the recognition of the roles of nonstate actors, such as corporations. See, e.g., Harold Hongju Koh, *Remarks: Twenty-First-Century International Lawmaking*, 101 *GEO. L.J.* 725, 743 (2013) (“Finally, the new twenty-first-century international lawyering process recognizes that states are not the only actors. Of course, neither international law nor foreign policy have ever been completely restricted to states, but the proliferation and influence of nonstate actors has gone viral in recent years. And so it is inevitable that the United States government now finds itself developing relationships not just with states, but with civil-society and industry groups too, among others.”) (internal citations omitted); Philip Alston, *The ‘Not-a-Cat’ Syndrome: Can the International Human Rights Regime Accommodate Non-State Actors?*, in *NON-STATE ACTORS AND HUMAN RIGHTS* 3–5 (Philip Alston ed., 2005). Yet, state liability remains particularly salient in the realm of indigenous peoples’ rights, where states have historical and current responsibilities based on their roles in the conquest and colonization of indigenous peoples. See, e.g., *Cherokee Nation v. State of Georgia*, 30 U.S. 1, 17 (1831) (stating the relationship between Indian Nations and United States “resembles that of a ward to his guardian”); *United States v. Kagama*, 118 U.S. 375, 383–84 (1886) (These Indian tribes *are* the wards of the nation From their very weakness and helplessness, so largely due to the course of dealing of the federal government with them, and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the executive, and by congress, and by this court, whenever the question has arisen.”); *Seminole Nation v. United States*, 316 U.S. 286, 296–97 (1942) (To the extent that the United States “has charged itself with moral obligations of the highest responsibility and trust” towards the Indians, it maintains fiduciary obligations to them).

alike, there is an emerging sentiment that states who previously spent public resources to destroy indigenous languages have an obligation to devote at least equivalent resources to restoring them today.⁸⁹

II. LANGUAGE RIGHTS IN PRACTICE: CASE STUDIES

In this Part, we consider the gap between aspiration and realization, also known as the challenge of implementation, with respect to the survival and revitalization of indigenous rights to languages.

The United Nations Expert Mechanism on the Rights of Indigenous Peoples has stated that IYIL2019 is an opportunity for states and indigenous peoples to undertake unprecedented and urgent preservation and revitalization measures, “which earlier have seemed impossible or untimely,”⁹⁰ in order to save the languages from extinctions.

In many states, there are laws to guide indigenous language rights in domestic contexts, including the expectations for language rights as well as means for education, translation, and other services, as in Australia and Peru.⁹¹ As we mentioned above, state laws range in terms of the nature and scope of protection for indigenous languages and their speakers.

An example of affirmative legal support is arguably found in Section 17, subsection 3 of the Finnish Constitution, which stipulates “the Sámi, as an indigenous people, as well as the Roma and other

89. See Expert Mechanism on the Rights of Indigenous Peoples, *supra* note 13, ¶ 17 (“There is a need for the recognition of the continuing value to communities and society of indigenous peoples’ traditional knowledge, including spiritual, cultural and linguistic knowledge. This will require long-term financial investments in measures for the reclaiming and relearning and sharing of this knowledge. The resources spent on this should be, at a minimum, commensurate with the monies and efforts previously spent to destroy such knowledge.”); United Nations International Year of Indigenous Languages Conference, *Focusing On The Work Of Tribal Nations In Oklahoma To Preserve, Protect And Revitalize Their Languages*, 3 (Nov. 16, 2019), [<https://perma.cc/G2MY-XVRL>] (“We . . . [e]ncourage governments to provide funding for Indigenous-led restorative language programs on an equal basis to what they spent to destroy Indigenous language fluency. For example, in the case of the United States that would include the 2.8 Billion dollars, that the US government spent on the Boarding school programs adjusted for inflation, as well as an unspecified additional amount for other governmental assimilation and child removal programs and policies.”).

90. Expert Mechanism on the Rights of Indigenous Peoples, *supra* note 27.

91. Bridget Brennan, *NSW Introduces Nation’s First Laws to Recognise and Revive Indigenous Languages*, AUSTL BROADCASTING CORP. (OCT. 11, 2017, 3:11 AM), [<https://www.abc.net.au/news/2017-10-11/nsw-passes-unprecedented-laws-to-revive-indigenous-languages/9039746>] [<https://perma.cc/UDE6-4SPV>]; Peru Officially Recognizes Indigenous Languages, CULTURAL SURVIVAL, [<https://www.culturalsurvival.org/news/peru-officially-recognizes-indigenous-languages>] [<https://perma.cc/8267-WT>]; Rosaleen Luis Howard et al., *Translating Rights: the Peruvian Indigenous Languages Act in Quechua and Aymara*, 40 AMERINDIA 219 (2018) (PERU).

groups, have the right to maintain and develop their own language and culture.” National legislation, particularly the Sami Parliament Act⁹²—which regulates status and operations of the Sami representative and self-governance body—recognizes rights of indigenous negotiation in the development of the teaching of the Sámi language in schools, as well as the social and health services or any other matters affecting the Sámi language and culture or the status of the Sámi as an indigenous people.

Yet even this official recognition of language rights does not ensure sufficient realization. The Sámi complain that Finland refuses to provide sufficient financial support for ensuring the use of language in public services, which results in the absence of medical services and education in Sámi language. There is also insufficient funding to translate among Sámi languages, which is necessary for effective use of the languages in the Sámi Parliament itself.⁹³

In the remainder of this Part, we engage in detailed study of the recognition and realization of indigenous language rights in two countries, namely the United States and Russia as a means of illuminating challenges and best practices on domestic contexts. Our primary goal is to suggest specific and thematic areas for domestic legal reform in order to recognize language rights as human rights and realize the aims of the IYIL2019. Secondarily, we offer some reflections on best practices in the implementation of indigenous peoples’ rights more broadly.

A. United States

At the time of European contact, there were approximately 300–350 indigenous languages spoken throughout what is now the United States and Canada. Subsequent developments, including a long policy history of federal suppression of Indian languages in both countries,

92. While subject to Finnish laws, the Sami Parliament is selected by the Sami and has an important role implementing constitutional provisions and represents the Sami in necessary consultations on all issues related to the indigenous people. Operations of another important institution for the Sami language in Finland, the Center for Language Ecology, Sámi Giellagáldu, were almost suspended in 2018, as the government threatened to cut off the funding significantly and suggested other Nordic countries to share the responsibility to uphold this center. See Civil Code, Act on the Sami Parliament, (974/1995; amendments up to 1026/2003 included, laki saamelaiskäräjistä), <https://www.finlex.fi/fi/laki/kaannokset/1995/en19950974.pdf> [<https://perma.cc/DLV9-3CYL>].

93. In 2019, Norway reported at the United Nations that it supports the idea of establishing Sámi Giellagáldu as a crossborder effort. Anne Karin Olli, State Secretary, Address at UN Permanent Forum on Indigenous Issues, Item 5 Discussion on the 2019 International Year of Indigenous Languages at 2 (Apr. 22, 2019), <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH3011/ee3d651c/075f43b2.dir/PF19OLLI050422.pdf> [<https://perma.cc/VF54-W4W2>].

account at least in significant part for the very low numbers of native speakers (described in census data below). In this Subpart, we describe the legal history and current situation of indigenous languages in the United States and recommend better practices and policies in the spirit of a human rights approach for national policy in IYIL2019 and beyond.

1. Legal History and Current Situation

a. Federal Indian Policy and the Suppression of American Indian Languages 1800s–1960s

When Europeans arrived in what is now North America, there were hundreds of indigenous languages spoken in the region. European monarchs, settlers, traders, and religious officials initially pursued several periods of diplomacy, war, treaty negotiation, and missionary policies toward the indigenous peoples of North America.⁹⁴ With the adoption of the U.S. Constitution, the United States continued treaty-making, but ultimately this gave way to federal Indian removal in the 1820–1860s and then a policy of “assimilation” after the Civil War.⁹⁵ With respect to assimilation, federal policymakers attributed American Indians’ continued adherence to their distinctive ways of life to various socioeconomic and cultural factors. The government then tried various programs, including the allotment of tribal lands to individual Indians and the prohibition of tribal languages, with the goal of destroying the tribes and assimilating their members into mainstream U.S. society.

Prominent among these assimilation efforts was the creation of federally funded boarding schools that would teach Indian children the lessons of Christianity and “civilization” in order to “Kill the Indian in him and save the man.”⁹⁶ The model for accomplishing these goals was to assimilate Indians into the general population by taking them away from their parents and placing them in boarding schools where they would learn English.⁹⁷ As the Peace Commissioners explained, “In the difference of language to-day lies two-thirds of our trouble Schools should be established, which children should be required to attend; their barbarous dialect should be blotted out and

94. GETCHES, WILKINSON ET AL., *FEDERAL INDIAN LAW* 47–287 (2017) (describing the periods of European and US policy toward American Indians).

95. *Id.* at 167–215 (ON THE PERIODS “ASSIMILATION AND ALLOTMENT”).

96. DAVID WALLACE ADAMS, *EDUCATION FOR EXTINCTION: AMERICAN INDIANS AND THE BOARDING SCHOOL EXPERIENCE, 1875–1928* 52 (1995).

97. See, e.g., LORIE M. GRAHAM, “*The Past Never Vanishes: A Contextual Critique of the Existing Indian Family Doctrine*,” 23 *AM. INDIAN L. REV.* 1, 10–18 (1998) (describing the US federal government’s and missionaries’ attempts to Christianize Indian children by removing them from their homes and installing them in federal boarding schools where they had religious and other instruction).

the English language substituted.⁹⁸ The accepted idea that “by educating the children of these tribes in the English language[,] these differences would have disappeared, and civilization would have followed at once.”⁹⁹

The Indian Bureau issued regulations in 1880 that “all instruction must be in English” in both mission and government schools under threat of loss of government funding.¹⁰⁰ The Commissioner of Indian Affairs during this time opined that students’ native language was a “barbarous dialect.”¹⁰¹ Equating indigenous languages with barbarism was consonant with the ethic of the time in which American Indians were often seen as savage and backward. Their languages, religions, subsistence practices, and family relationships, and even in some cases their emotions and internal thought processes, were all thought of by non-indigenous society as non-civilized.¹⁰² Moreover in an early policy formulation against multilingual education, the Commissioner opined that “to teach Indian school children their native tongue is practically to exclude English, and to prevent them from acquiring it.”¹⁰³

As a result, indigenous children in boarding schools were deprived of food, had their mouths washed out with soap, or whipped for speaking their languages. One individual recounted that his father “was punished for speaking his tribal language by having sewing needles pushed through his tongue, ‘a routine punishment for language offenders.’”¹⁰⁴ Beyond the physical injuries and psychological trauma, children became unable to communicate with their parents in their

98. Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior, 26–27 (1868–69).

99. *Id.*

100. AMERICANIZING THE AMERICAN INDIANS 199 (Francis Paul Prucha, ed., 1973).

101. Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior, 504 (1887).

102. For more information on notions of Indian inferiority and languages, see Charla Bear, *American Indian Boarding Schools Haunt Many*, NAT'L PUB. RADIO (May 12, 2008), <https://www.npr.org/templates/story/story.php?storyId=16516865> [https://perma.cc/9AZ8-EBSR]. For an analysis of historical notions of Indian barbarism and savagery as they affect contemporary Indian rights, see generally ROBERT A. WILLIAMS JR., *LIKE A LOADED WEAPON: THE REHNQUIST COURT, INDIAN RIGHTS, AND THE LEGAL HISTORY OF RACISM IN AMERICA* (2005).

103. UNITED STATES CONGRESS, ABRIDGMENT . . . CONTAINING THE ANNUAL MESSAGE OF THE PRESIDENT OF THE UNITED STATES TO THE TWO HOUSES OF CONGRESS . . . WITH REPORTS OF DEPARTMENTS AND SELECTIONS FROM ACCOMPANYING PAPERS, VOLUME 1 679 (2015). See, e.g., J.D.C. ATKINS, *THE ENGLISH LANGUAGE IN INDIAN SCHOOLS*, in AMERICANIZING THE AMERICAN INDIANS: WRITINGS BY THE “FRIENDS OF THE INDIAN,” 1880–1900, 199 (Francis Paul Prucha, ed., 1973).

104. See Smith, *supra* note 47, at 61–62 (quoting CELIA HAIG-BROWN, *RESISTANCE AND RENEWAL* 11 (1988)).

native tongue, pray in a traditional manner, or participate in subsistence activities that required verbal communication.¹⁰⁵ Those who had their language beaten out of them suffered individual shame and loss of identity, and as adults they were unlikely or unable to transmit the language to the next generation.¹⁰⁶

b. Self-Determination in Federal Indian Language Policy

Finally, in the 1960s, American Indian activism around the Red Power and Civil Rights movement coalesced into the tribal self-determination movement. An American Indian political platform advocated for indigenous rights in the realms of education, economic development, health care, government, culture, and language. In 1990, Congress passed the Native American Languages Act (NALA), acknowledging that “the traditional languages of Native Americans are an integral part of their cultures and identities and form the basic medium for the transmission, and thus survival, of Native American cultures, literatures, histories, religions, political institutions, and values” and that the “United States has the responsibility to act together with Native Americans to ensure the survival of these unique cultures and languages.” The Act stopped short of apologizing for the government’s past suppression of indigenous languages but did recognize, that “acts of suppression and extermination directed against Native American languages and cultures are in conflict with the United States policy of self-determination for Native Americans.”

105. See Bear, *supra* note 102 (offering narratives from boarding school survivors that illustrate these points). For other sources, see also Eric Hemenway, *Indian Children Forced to Assimilate at White Boarding Schools*, NAT’L PARK SERV., <https://www.nps.gov/articles/boarding-schools.htm> [<https://perma.cc/U6AZ-PNL6>] (last visited Feb. 17, 2020) (“Anishnaabamowin was spoken by the vast majority of Odawa at Little Traverse. All of these characteristics changed rapidly after the War of 1812. One mechanism that greatly accelerated these changes was boarding schools.”); Bear, *supra* note 102 (“In 1945, Bill Wright, a Pattwin Indian, was sent to the Stewart Indian School in Nevada. He was just 6 years old. Wright remembers matrons bathing him in kerosene and shaving his head. Students at federal boarding schools were forbidden to express their culture—everything from wearing long hair to speaking even a single Indian word. Wright said he lost not only his language, but also his American Indian name.”).

106. For example, Tracy Hebert of First Peoples Cultural Council in British Columbia, has said that “intergenerational trauma” caused by Canadian residential schools is a major factor in the decline of indigenous languages. See Terri Coles, *Indigenous Languages are in Danger of Becoming Extinct: Here’s How You Can Help Save Them*, HUFFINGTON POST (June 21, 2018), https://www.huffingtonpost.ca/entry/indigenous-languages_ca_5cd556cde4b07bc7297724ce [<https://perma.cc/Z2WT-SH7X>] (“Young Indigenous children were punished, often severely, for using their mother tongues, and that led to a loss of the languages—and the culture and nationhood integral to them—for the next generations, she said. ‘They protected their children by not sharing the language for fear that they would have a similar experience.’”).

NALA declared it the policy of the United States to “preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages,”¹⁰⁷ with specific reference to the use of indigenous languages in federal, state, and tribal education systems, tribal government, and public expression.¹⁰⁸ As amended in 1992, NALA had funding provisions, making one to three year grants available to tribal governments and organizations for “the survival and continuing vitality of Native American languages” and enumerated the types of programs that were eligible, including teacher training, intergenerational knowledge transmission, the dissemination of documents and so on.¹⁰⁹ Still, NALA’s funding was criticized as both inadequate and unreliable.¹¹⁰

NALA’s substantive provisions were interpreted narrowly in the case of *Office of Hawaiian Affairs v. Department of Education*, in which a federal district court held that NALA provided no basis for Native Hawaiians to claim a right to language immersion in education, a right that the plaintiffs had asserted through the section of NALA prohibiting restrictions on the right of Native Americans “to express themselves through the use of Native American languages . . . in any public proceeding, including publicly supported education programs.”¹¹¹ Among other things, this case highlighted the disparity between the law on the books and the language revitalization in the community. Hawaiian was already recognized as an official state language and successful language nest programs were thriving pedagogically. However, the court stopped short of finding a statutory right to the kind of education—immersion—that actually worked in teaching language fluency.

In 2006, Congress passed the third iteration of indigenous language rights legislation in the form of the Esther Martinez Language Preservation Act.¹¹² As Allison Dussias has carefully recounted,¹¹³ witnesses testified to Congress about the links between language, individual wellbeing, tribal survival and human rights.¹¹⁴ They also

107. *Id.*

108. *Id.*

109. *Id.*

110. Allison M. Dussias, *Indigenous Languages Under Siege: The Native American Experience*, 3 INTERCULTURAL HUM. RTS. L. REV. 5, 24 (2008).

111. *Office of Hawaiian Affairs v. Dep’t of Educ.*, 951 F. Supp. 1484 (D. Haw. 1996).

112. Esther Martinez Native American Languages Preservation Act of 2006, 42 U.S.C. § 2991 (2018).

113. See Dussias, *supra* note 110, at 27–51. For an international law perspective on minority language rights, see generally Julie Chi-hye Suk, *Economic Opportunities and the Protection of Minority Languages*, 1 L. & ETHICS OF HUMAN RTS. 1 (2007).

114. See Dussias, *supra* note 110, at 32. (Representative Heather Wilson of New

explained best practices in tribal language revitalization methodologies, including immersion opportunities, teacher training, relevant materials, and whole family involvement.¹¹⁵ Their comments referenced not only interests in preserving, but also keeping cultures alive. The resulting Act expanded the types of eligible Native American language programs to language nests, survival schools, and restoration programs, aimed to stop further loss of indigenous languages and to improve Indian children's educational performance overall.

The Esther Martinez Act expired in 2012, but the program continues to be funded through annual appropriations. In 2019, Congress passed the "Esther Martinez Native American Languages Programs Reauthorization Act," funding the program nationally at \$13 million dollars annually from 2020 to 2024, for education, training employment, and social services.¹¹⁶ In Canada, the government of British Columbia recently invested \$50 million in indigenous language revitalization for one province alone.¹¹⁷ Going forward, it would be helpful to have broad-based economic analysis of the costs and benefits of a national plan for indigenous language revitalization to meet policy objectives set in consultation with tribal governments.¹¹⁸ For example, in Hawaii, revitalizing the native language has both raised graduation rates and lowered suicide rates.¹¹⁹ Such research could be a component of a national activity plan during what we hope will be a forthcoming decade on indigenous languages.

Mexico "situated the struggle for native language protection and support within the broader national and international struggle for human rights: 'The United States of America and other countries around the world are supporting human rights, including the rights of indigenous minorities The time has come now for equal recognition of the basic human rights of America's native peoples and the control of our education'"

115. *Id.* at 43.

116. Esther Martinez American Languages Program Reauthorization Act (2019), Pub. L. No. 116-101, 133 Stat. 3261 ("To amend the Native American Programs Act of 1974 to provide flexibility and reauthorization to ensure the survival and continuing vitality of Native American languages.").

117. *British Columbia Invests \$50 Million in Indigenous Languages*, LANGUAGE MAG. (Mar. 16, 2018), <https://www.languagemagazine.com/2018/03/16/british-columbia-invests-50-million-for-indigenous-languages> [<https://perma.cc/3CS4-EEGF>].

118. One possible approach would be to study the resources required for language revitalization in Hawaii over the last 20–30 years and adjust for experiences and circumstances of other indigenous communities in the U.S. Frances Kai-Hwa Wang, *Hawaiian Language Revival Used as Model for Other Indigenous Languages*, NBC (Mar. 17, 2017, 9:56 PM), <https://www.nbcnews.com/news/asian-america/hawaiian-language-revival-used-model-other-indigenous-languages-n734891> [<https://perma.cc/G7LG-EU6P>].

119. Keala Carter, *What I've Learned from Hawaii's Language Revitalization Movement*, INTERCONTINENTAL CRY (Feb. 14, 2018), <https://intercontinentalcry.org/live-learned-hawaiis-language-revitalization-movement> [<https://perma.cc/RZP4-J6E9>].

National education and voting laws also impact language rights and practices. Following the earlier No Child Left Behind Act, Congress passed the Every Student Succeeds Act in 2015.¹²⁰ This Act established a grant program supporting Native American language immersion programs and schools whose primary language of instruction is a Native American language.

Additionally, the Voting Rights Act, as amended in 1975, requires state elections departments to provide language assistance to groups whose language is Spanish, Native American, Alaska Native, or one of the Asian languages if more than five percent of the voting age population speaks limited English.¹²¹ In Alaska, there were years of litigation by Alaska Natives showing that Department of Elections activities were “not designed to transmit substantially equivalent information in the applicable minority . . . languages.”¹²² A 2016 settlement order contains extensive provisions for meeting the requirements of the Voting Rights Act by making voting information and processes truly available to Alaska Natives.¹²³

Two states, namely Hawaii and South Dakota, recognize indigenous languages as official state languages.¹²⁴ But, as described below,

120. See Every Student Succeeds Act, Pub. L. No. 114-95, § 1111(c)(2)–(c)(3), 129 Stat. 1802, 1825–35 (2015); Every Student Succeeds Act § 1111(h)(1)(C)(i)(I).

121. See Voting Rights Act Amendments of 1975, Pub. L. No. 94-73, 89 Stat. 400 (codified as amended in 42 U.S.C. §§ 1973–1973bb-1).

122. See James T. Tucker et al., “Why Should I Go Vote Without Understanding What I Am Going to Vote For?” *The Impact of First Generation Voting Barriers on Alaska Natives*, 22 MICH. J. RACE & L. 327, 372 (2017) (discussing *Nick v. Bethel* and *Toyukak v. Treadwell*).

123. *Id.* at 377–78 (“Pre-election dissemination of information in the Official Election Pamphlet to Alaska Native voters in their language and dialect; Translation of election information into Gwich’in and several Yup’ik dialects in addition to the translations already made in the Central Yup’ik dialect; Increased collaboration with tribal councils to meet the needs of Alaska Native voters who need to receive election information in their native languages and dialects; A full-time employee responsible for administrating and coordinating all of the Division’s language assistance activities; Providing sample ballots in Gwich’in and Yup’ik that voters can bring into the voting booth with them; Making Gwich’in and Yup’ik dialects available on touch-screen voting machines when it is technologically feasible; Increased pre-election outreach by bilingual election workers; Preparation of glossaries of election terms and phrases in Gwich’in and several Yup’ik dialects to guide bilingual poll workers providing language assistance; Mandatory bilingual poll worker training on how to provide language assistance to voters; Providing Gwich’in and Yup’ik-speaking voters with a toll-free number through which they can make inquiries in their native languages and dialects; Relying on Yup’ik and Gwich’in language experts to translate election materials, including information on ballot measures, candidates, absentee and special-needs voting and voter registration; Pre-election publicity in Gwich’in and Yup’ik through radio ads, public service announcements and announcements over VHF ra F radios in villages that do not receive local radio stations.”).

124. S.D. Codified Laws § 1-27-20 (2019).

some states have also passed laws purporting to restrict indigenous language use.

Recently and for the first time, the US Census assessed indigenous language use, including how many speakers of North American Native languages reside in the United States, where they live across the country, and what languages they speak.¹²⁵ Results of the study appear in a report entitled “Native North American Languages Spoken at Home in the United States and Puerto Rico: 2006 to 2010.” The mere fact of collecting this data is a helpful step toward identifying and addressing indigenous languages issues in the United States.

The Census Bureau counted about 372,000 people who speak Native North American languages at home.¹²⁶ The most common of these languages is Navajo, or Diné, with nearly 170,000 speakers, followed by Yupik and Dakota, each with about 19,000 speakers. After that were Apache, Keres, Cherokee, Choctaw, Zuni, Ojibwe, Pima, Inupik, Hopi, Tewa, Muscogee, Crow, Shoshoni, Eskimo, Tiwa, and additional North American indigenous languages not specified.¹²⁷

Most Native North American language speakers are concentrated in Alaska, Arizona, and New Mexico, with just nine counties from these three states containing half of the nation’s speakers.¹²⁸ Apache County in Arizona has the most concentrated population of speakers with 37,000, while McKinley County in New Mexico has 33,000. Other states with significant numbers include South Dakota, California, Oklahoma, and Washington. The report does not include information on Native Hawaiians.

The Census Bureau looked for disparities among Native North Americans who reside in American Indian or Alaska Native Areas (AIANAs) and those who do not.¹²⁹ The majority of Native North American language speakers live in AIANAs (237,000 of the 372,000 counted as speakers). Out of Navajo speakers, 112,000 resided in AIANAs. As for Yupik and Dakota speakers, 84.5 percent and 51.5 percent lived in AIANAs, respectively. Nonetheless, the vast majority

125. See *Census Shows Native Languages Count*, LANGUAGE MAG., <https://www.language magazine.com/census-shows-native-languages-count> [https://perma.cc/EF2A-M9M5] (last visited Jan. 28, 2019).

126. U.S. DEP’T OF COMMERCE, U.S. CENSUS BUREAU, *NATIVE NORTH AMERICAN LANGUAGES SPOKEN AT HOME IN THE UNITED STATES AND PUERTO RICO: 2006–2010* at 2 (2011), <https://www2.census.gov/library/publications/2011/acs/acsbr10-10.pdf> [https://perma.cc/RC4K-7ENW].

127. *Id.*

128. *Id.* at 5.

129. *Id.*

of AIANAs residents do not speak a Native North American language at home (only 5.4 percent do). Five percent of AIANAs residents speak Spanish, making it the most common non-Native North American language spoken at home—apart from English—and rivaling the number of residents who do speak an indigenous language at home.

A dispiriting trend identified by the Census was an overall decrease in indigenous language use. Among those who identified themselves as American Indian or Alaska Native, one in five people aged 65 and over spoke a Native North American language in their home compared with only one in ten of people aged between 5 and 17. The numbers suggest that younger generations are not learning indigenous languages, which may lead to the extinction of some languages. Of the 169 indigenous languages coded by the survey, less than 20 have over 2000 speakers using the language at home.

While federal law, especially the Esther Martinez Native American Languages Preservation Act, now seeks to protect instead of eradicate language rights, American Indians still face political and legal challenges to their efforts to secure language rights.¹³⁰ Some of the political opposition seems to emerge from debates on language rights in the immigration context. Not too long ago, for example, the Oklahoma Legislature convened to discuss an “English Only” measure motivated by a desire to assimilate immigrants into mainstream society.¹³¹ When principal chiefs of several Indian nations appeared to testify against the bill, they were denied the opportunity to address the legislature—even in English. The bill passed the state house, though eventually died in the state senate.¹³² Clearly, legal advocacy and social conditions alike must ameliorate in order to ensure indigenous peoples’ language rights in the United States.

2. The Right to Revitalize, Use, Develop and Transmit

Following the passage of NALA and the Esther Martinez Act, the most innovative efforts continue to emerge from American Indian tribes and organizations, using their often scarce resources to create

130. See generally Allison M. Dussias, *Waging War With Words: Native Americans Continuing Struggle Against the Suppression of Their Languages*, 60 OHIO ST. L.J. 901 (1999); Dussias, *supra* note 110. For an international perspective, see generally Suk, *supra* note 113.

131. *Official English Legislation Passes House Committee Following Tense Hearing*, ASSOCIATED PRESS (Apr. 2, 2008), <https://oklahoman.com/article/3224542/official-english-legislation-passes-house-committee-following-tense-hearing> [https://perma.cc/V3DG-R2ZP].

132. *Id.*

language immersion programs, train fluent speakers as instructors, and publish teaching materials.¹³³ Many promising initiatives are occurring in Indian Country, led and funded either by tribal government or private organizations. As we observed above, it is national governments—not indigenous peoples—that hold human rights obligations. Yet it is also true that in many instances, indigenous peoples cannot wait for national governments to act, especially when there are pressing problems in communities. As a practical matter in the United States, tribal governments work in partnership with the federal government.

In this Part, we discuss several examples, from the Navajo, Cherokee, Yuchi, and Wampanoag peoples, each illustrating certain methodologies and objectives around language revitalization. These examples should not be read as representative of the situation of indigenous languages in the United States., which differ greatly across regions, smaller tribes, urban populations, and so on. Other sources provide very helpful information on language revitalization in Alaska, Hawaii, and throughout the Lower-48 states of the United States.¹³⁴ Nevertheless, we wish to give a relatively detailed snapshot of several tribes to contextualize some of the international and national law points more specifically through these examples.

The Navajo Nation is located in the Four Corners Region of the United States on a reservation of approximately 17,544,500 acres. Its population consists of around 350,000 people, residing both on the reservation and in other locations throughout the United States. Use of the Navajo language defies the stereotype of indigenous languages as cultural relics. During World War II, the Navajo language was used as an unbreakable code for US forces.¹³⁵ Today, the Navajo language continues to be used for communication at home and in religious

133. See, e.g., Janine Ja no's Bowen, *The Ojibwe Language Program: Teaching Mille Lacs Band Youth the Ojibwe Language to Foster a Stronger Sense of Cultural Identity and Sovereignty*, HARV. PROJECT AM. INDIAN ECON. DEV. 1 (Dec. 2004), https://hpaied.org/sites/default/files/publications/Ojibwe_Language_Program_Web_Version.pdf [<https://perma.cc/JMD2-EDK6>].

134. See, e.g., BARBARA A. MEEK, *WE ARE OUR LANGUAGE: AN ETHNOGRAPHY OF LANGUAGE REVITALIZATION, IN A NORTHERN ATHABASKAN COMMUNITY* (2011) (extended study of language renewal efforts by the Kaska community); HINTON, *supra* note 23 (edited collection of essays on indigenous language revitalization examples among the Miami, Wampanoag, Karuk, Yuchi, Mohawk, Hawaiian, Anishinabe, and Kawaiisu people of the United States, with comparative examples from Maori and others around the world).

135. *Navajo Code Talkers and the Unbreakable Code*, CENT. INTELLIGENCE AGENCY, (Nov. 6, 2008), <https://www.cia.gov/news-information/featured-story-archive/2008-featured-story-archive/navajo-code-talkers> [<https://perma.cc/K98H-CYLF>].

ceremonies,¹³⁶ is taught in tribal and public schools,¹³⁷ and is used in tribal courts and legal processes.¹³⁸ Yet law and society, coupled with history and current events, present significant challenges to keeping the language vital.

Historically, the Navajo people suffered from the federal government's policies of removal and imprisonment in the 1860s. The Treaty of 1868 allowed them to return to the Navajo homeland, albeit on a smaller land base, and also provided for an "English education."¹³⁹ In this regard, assimilation followed very quickly on the heels of military conquest. As Professor Sarah Krakoff has explained,¹⁴⁰ "when the Navajo returned from Bosque Redondo, the US military built the first schools, and troops were then sent out to round up Navajo children, often forcibly separating them from their families."¹⁴¹ The federal government, in implementing the treaty, imposed an "English education" meaning "not only that children would learn the English language, but that they would not be able to wear their hair long, speak their language, or learn about their traditions and cultures."¹⁴² As in other boarding schools, the teachers punished students for speaking Navajo and gave them English names, to further the effort.

Krakoff writes that "[i]n 1930, seventy-one percent of Navajos spoke no English, as compared to seventeen percent of the rest of the Indian population. Since that time, the number of Navajo-only speakers has dropped while the number of English-only speakers has risen."¹⁴³ In two rural areas more than 95 percent of students entering schools spoke Navajo whereas by 1995, it was only 50 percent.¹⁴⁴ A 2018 study shows that Navajo students face a myriad of pressures—from poverty

136. See, e.g., Felicia Fonseca, *Navajos Top List of Native Language Speakers in U.S.*, BOSTON.COM (Dec. 14, 2011), http://archive.boston.com/news/nation/articles/2011/12/14/navajos_top_list_of_native_language_speakers_in_us [<https://perma.cc/4GSO-TU9K>].

137. *Learning Navajo Language Helps Students Connect to Their Culture*, ARIZONA STATE UNIVERSITY (Apr. 17, 2014), <https://asunow.asu.edu/content/learning-navajo-language-helps-students-connect-their-culture> [<https://perma.cc/X4XU-ZDEF>].

138. Noel L. Smith, *Program Enhances Navajo Language in Tribal Courts*, ALBUQUERQUE J. (Nov. 23, 2017), <https://www.abqjournal.com/1096795/program-enhances-navajo-language-in-tribal-courts.html> [<https://perma.cc/WX3S-VBK9>].

139. Treaty with the Navajo, U.S.–Navajo, art. 6, June 1, 1868, 15 Stat. 667.

140. Sarah Krakoff, *A Narrative of Sovereignty: Illuminating the Paradox of the Domestic Dependent Nation*, 83 OR. L. REV. 1109 (2004).

141. *Id.* at 1142.

142. *Id.*

143. *Id.* at 1143.

144. *Id.*

to peer pressure—that impact how and whether they speak Navajo in school and at home.¹⁴⁵

Today, the Navajo Nation “faces a significant challenge to turn education from a threatening, negative influence into one that can provide positive opportunities.”¹⁴⁶ While the Navajo Nation has used the power of tribal law and governance to meet this challenge, it has also faced the pressure of “English only” policies in local governance,¹⁴⁷ employment,¹⁴⁸ and education.¹⁴⁹ In 1984, for example, the Navajo Tribal Council passed a law requiring all schools on the Navajo Reservation to teach Navajo language and culture in all grades.¹⁵⁰ In practice, schools on the Navajo reservation took various approaches to language education ranging from schools that had minimalist inclusion of Navajo language, if at all, to those that use Navajo as the medium of instruction.¹⁵¹ In between are those schools that use Navajo only as a means to teach English and those that approach Navajo as a supplemental “foreign” language.¹⁵²

145. Tiffany S. Lee, “If They Want Navajo to Be Learned, Then They Should Require It in All Schools”: Navajo Teenagers’ Experiences, Choices, and Demands Regarding Navajo Language, *WICAZO SA REV.* 22 (Spring 2007), <https://nau.edu/wp-content/uploads/sites/49/2018/04/Lee-If-They-Want-Navajo-to-be-Learned-then-they-should-require-it-in-all-schools.pdf> [<https://perma.cc/X2V9-WD57>] (an empirical study of predictors for Navajo language fluency, and finding use in the home, use at school, and traditional religious practices to be positively correlated with language acquisition, and peer pressure to be negatively correlated.) (“[T]he students reported in the interviews having strongly negative recollections of being teased when trying to speak Navajo. The most elaborate stories shared in the interviews came from these types of experiences In addition, students’ peers within the school affect their language choices. Students conform to one another in the English-speaking school environment.”). *Id.*

146. Krakoff, *supra* note 140, at 1142.

147. Don Terry, *Arizona Court Strikes Down Law Requiring English Use*, *N.Y. TIMES* (Apr. 29, 1998), <https://www.nytimes.com/1998/04/29/us/arizona-court-strikes-down-law-requiring-english-use.html> [<https://perma.cc/4PJV-2XU8>] (noting that twenty-three states passed laws in the 1980s and ‘90s making English the official language, and that in Arizona the statute—eventually struck down by the Arizona Supreme Court—prohibited government officials from conducting state business in any language but English).

148. Michael Janofsky, *Ban on Speaking Navajo Leads Cafe Staff to Sue*, *N.Y. TIMES* (Dec. 20, 2002), <https://www.nytimes.com/2002/12/20/us/ban-on-speaking-navajo-leads-cafe-staff-to-sue.html> [<https://perma.cc/9JQ2-ACF5>] (*employees of a burger drive-in restaurant were required by company policy to speak only in English—even with other employees—unless a customer could not understand English*).

149. Marley Shebala, *Council Slams Door on “English Only”*, *NAVAJO TIMES* (Jul. 22, 1999), [CChttp://www.languagepolicy.net/archives/NT1.htm](http://www.languagepolicy.net/archives/NT1.htm) [<https://perma.cc/52TR-9F75>].

150. *Id.* (citing Nation Code tit. 10, § 111 (Equity 1984) (requiring instruction in Navajo language); *id.* § 112 (requiring instruction in Navajo culture)).

151. *Lee, supra* note 145, at 13.

152. *Id.*

In several instances, the Arizona legislature has imposed language policy that would limit the use of languages other than English by government officials or in public places.¹⁵³ While these measures may have been intended to impact Spanish-speaking immigrants, they pose challenges for Navajo speakers as well.¹⁵⁴

In 1987, proponents pushed through a ballot initiative to amend the state constitution. The resulting Article XXVIII, declared English as the official language of the state of Arizona, and that the state and its political subdivisions—including all government officials and employees performing government business—must “act” only in English. Violating the state constitution is punishable through employment sanctions.

The measure was challenged by Spanish and Navajo speaking state government employees, on grounds of free speech and due process, arguing that prohibiting that it violated the 1st and 14th Amendments of the Constitution, as well as federal civil rights laws.¹⁵⁵ The Ninth Circuit, noting that “the protection of the Constitution extends to all, to those who speak other languages as well as those born with English on the tongue” held that Article XXVIII constituted “a prohibited means of promoting the English language and affirm[ed] the district court’s ruling that it violates the First Amendment.”¹⁵⁶

While the Ninth Circuit opinion was ultimately vacated by the US Supreme Court for mootness and nonjusticiability, it contained important reasoning about the role of indigenous languages in expression, and relatedly in political representation and participation. Considering the case of a legislator elected in part for his ability to speak to a constituency in Spanish or Navajo, the court stated:

No one could order such an official to speak Spanish or Navajo. Neither, however, can the state preclude him or his staff from transmitting information regarding official state business to persons resident in his

153. See, e.g., *Yniguez v. Arizonans for Official English*, 69 F.3d 920, 923 (9th Cir. 1995) (en banc), *vacated sub nom. by Arizonans for Official English v. Arizona*, 520 U.S. 43, 48–49 (1997).

154. Mary Carol Combs & Sheilah E. Nicholas, *The Effect of Arizona Language Policies on Arizona Indigenous Students*, SPRINGER SCI. & BUS. MEDIA 101, 102 (Feb. 1, 2012), https://www.coe.arizona.edu/sites/default/files/combs-nicholas-published_article.pdf [<https://perma.cc/DC8A-6R5J>] (“Arizona’s coercive—and byzantine—language and education policies for English language learners provide an instructive example of the phenomenon of unintended consequences. Although these policies were overtly designed to restrict the access of Spanish-speaking students to bilingual education programs, their reach has extended to Native American children in Arizona’s rural and urban public schools.”).

155. *Yniguez*, 69 F.3d at 920.

156. *Id.* at 923–24.

district in whatever language he deems to be in the best interest of those he was elected to serve.¹⁵⁷

Turning to education, in 2000, Arizona approved legislation imposing “structured English immersion” education programs with impacts on indigenous students as well.¹⁵⁸ The legislation’s approach to English acquisition—a certain number of hours of English-only instruction—was criticized by both education and language experts. It also threatened to interfere with tribal education policy and pedagogy regarding Navajo instruction, including bilingual and bicultural programs that showed high achievement in English and Mathematics.¹⁵⁹ Eventually the Attorney General opined that NALA denied the state authority to prohibit teaching of Native American languages whether the public schools were on or off the reservation.¹⁶⁰

Despite all of these challenges, the Navajo Nation’s own initiatives have been remarkable. As Krakoff has written, “without tribal initiatives to preserve language and culture, there would be virtually no chance that language and culture could survive and adapt in the unique Navajo way.”¹⁶¹

In our own research at the intersection of indigenous rights and language, we have found one use of the Navajo language in contemporary society particularly remarkable, and that is its role in the tribal legal process.¹⁶² Navajo courts have a preference for Navajo customary law,

157. *Id.* at 937. See also *id.* at 941 (“The practical effects of Article XXVIII’s *de facto* bar on communications by or with government employees are numerous and varied. . . . [A]s we suggested earlier, the restrictions that Article XXVIII imposes severely limit the ability of state legislators to communicate with their constituents concerning official matters. For example, the provision would preclude a legislative committee from convening on a reservation and questioning a tribal leader in his native language concerning the problems of his community. A state senator of Navajo extraction would be precluded from inquiring directly of his Navajo-speaking constituents regarding problems they sought to bring to his attention. So would his staff. The legislative fact-finding function would, in short, be directly affected.”).

158. Joseph Flaherty, *Legislation Seeks to Relax Arizona’s Restrictive English-Only Teaching Mandate*, PHOENIX NEW TIMES (Jan. 16, 2019), <https://www.phoenixnewtimes.com/news/lawmakers-arizona-immersion-ell-english-language-learners-11111977> [<https://perma.cc/KNX7-8MBE>].

159. *Combs & Nicholas, supra note 154*, at 107. (“In the decade and a half leading up to passage of Proposition 203, achievement data from Navajo bilingual-bicultural and immersion programs were encouraging. Students in bilingual-bicultural programs at Rock Point and Rough Rock consistently outperformed their peers in mainstream English programs at these schools, acquiring literacy in both English and Navajo. They also came to appreciate and value their Navajo identities.”) (internal citation omitted).

160. Application of Proposition 203 to Schools Serving the Navajo Nation, 101–006 (R00–062) Op. Ariz. Att’y Gen. 4–6 (2001).

161. Krakoff, *supra note 140*, at 1144.

162. See Kristen A. Carpenter, *Interpretive Sovereignty: A Research Agenda*, 33 AM.

which often relies on concepts—for example the trust that the people have a for a leader or the role of in-laws in the community—expressed most accurately in the tribal language¹⁶³ Navajo Supreme Court Justice Ray Austin has written that this process “involves retrieving ancient tribal values, customs, and norms and using them to solve contemporary legal issues and tribal problems.”¹⁶⁴

Yet, in law and governance, promoting Navajo language use can be contested even internally. In one recent case, an otherwise popular candidate for the Navajo Nation presidency was disqualified from election on grounds that he could not show fluency in the language.¹⁶⁵ This example illuminates the difficulties of overcoming the intergenerational legacies of federal policies designed to suppress languages in the past. Despite such challenges of language use and revitalization, tribal judges, leaders and community members are committed to practices of “traditional jurisprudence” that “incorporate[es] [tribal] beliefs into our tribal institutions.”¹⁶⁶

Similarly, there are internal tensions over the use of language in Navajo schools. As Professor Tiffany Lee has written, in Navajo culture traditionally, education may have been about preparation for life in a holistic sense, a life in which speaking Navajo was an inherent attribute. Conversely, education today is formal and may be viewed by some Navajos as an opportunity to master bodies of knowledge that will enable one to participate in the wage-earning economy in which English may be more useful than Navajo.¹⁶⁷ In more traditional families, students continue to use Navajo at home, and also in the religious and ceremonial contexts in which Navajo language is inherently consistent with the worldview and activities. Yet some teenage tribal members report social stigma and embarrassment when they try to speak Navajo,

INDIAN L. REV. 111, 131–38 (2008).

163. *See id.*

164. RAYMOND D. AUSTIN, *NAVAJO COURTS AND NAVAJO COMMON LAW: A TRADITION OF TRIBAL SELF-GOVERNANCE*, xvii (2009).

165. Tristan Ahtone, *Navajo Nation Changes Language Law*, NAT'L PUB. RADIO (Oct. 27, 2014), <https://www.npr.org/sections/codeswitch/2014/10/27/358586876/navajo-nation-changes-language-law> [<https://perma.cc/TUY9-MWC7>] (reporting on the divisive situation of a Navajo Nation citizen who was disqualified from tribal elected office because he lacked fluency in Navajo).

166. *See* Gregory H. Bigler, *Traditional Justice and Protection of Our Society: A Juris-generative Tail*, 43 AM. INDIAN L. REV. 1, 2 (2018) (alteration to original) (A recent article describing the role of traditional norms and values, as well as international human rights law, in the contemporary institutions of the Muscogee (Creek) Nation and Euchee tribes. Throughout this Article, Judge Bigler describes aspects of the relationship between indigenous languages and the survival of tribal law, society, and culture today.).

167. *Lee, supra note 145*, at 12–13.

in the form of teasing by peers for trying to speak an old-fashioned language and by elders for their lack of fluency.¹⁶⁸ Others suggest that Navajo has low social status compared to English, especially at school, and that they must seek out “secret, safe places” to speak Navajo.¹⁶⁹ This may include sports practices with likeminded kids or Navajo language class.¹⁷⁰

Recent efforts undertaken by Diné College to produce educational materials in Navajo and prioritize Diné studies may help not only to provide material for use in education but also increase feelings of pride associated with the language.¹⁷¹ We also see tremendous progress in the work of the Navajo Supreme Court and the Navajo Nation Human Rights Commission, both of which use the language intensively in its own right and as a source of information on Navajo law.¹⁷² These developments show that the Navajo language is meaningful in contemporary society and institutions. Perhaps they will come to help to underscore the importance of indigenous languages, as against the many impediments.¹⁷³

To turn to another example, we consider the Cherokee people, including the three federally recognized Cherokee tribes (the Eastern Band of Cherokees, Cherokee Nation of Oklahoma, and United Keetoowah Band). The Eastern Band of Cherokee Indians, located in North Carolina, has approximately 14,000 citizens residing on what remains of the Cherokees’ traditional southeastern homeland.¹⁷⁴ The descendants of Cherokees relocated on the Trail of Tears in the 1830’s reside in Oklahoma where the Cherokee Nation has approximately 370,000 enrolled tribal citizens and the United Keetowah Band has approximately 14,000 citizens.¹⁷⁵

168. *Id.* at 20–21.

169. *Id.* at 24.

170. *Id.*

171. *Navajo Children’s Multimedia Literature Books*, CTR. FOR DINE TEACHER EDUC., <http://hooghan.dinecollege.edu/cdte/mmbooks/tsf/multimediabooks.htm> [https://perma.cc/399V-RFD3] (last visited Jan. 20, 2020) (providing publicly-accessible stories in Dine at a wide variety of proficiency levels).

172. See Carpenter & Riley, *supra* note 28, at 222 (on interpretive work of the NNHRC).

173. See Laura Gomez, *Bill To Repeal Arizona’s English-Only Law Moves Forward*, ARIZ. MIRROR (Mar. 13, 2019), <https://www.azmirror.com/2019/03/13/bill-to-repeal-arizonas-english-only-law-moves-forward> [https://perma.cc/7WPJ-2HSQ] (noting efforts associated with H.Res. 2026, a bill to repeal Structured English Immersion).

174. *Eastern Band of Cherokee Indians in North Carolina*, NCAI, <http://www.ncai.org/tribal-wawa/sdvcej-today/eastern-band-of-chokeee-indians-in-north-carolina> [https://perma.cc/AY2M-R7HU] (last visited Mar. 3, 2020).

175. *Frequently Asked Questions*, CHEROKEE NATION, <https://www.cherokee.org/>

In the Eastern Band of Cherokees, the Cherokee language is also extremely endangered.¹⁷⁶ For children, the Kituwah immersion school is deeply committed to keeping the language alive.¹⁷⁷ The immersion program has two components: an early childhood education beginning with newborns to five-year-olds and an elementary education, with teaching positions modeled after Cherokee Central Schools and a curriculum that meets the North Carolina Standard Course of Study.¹⁷⁸ The students, teachers, and parents involved in Kituwah Academy take an approach to education in which the school is a home and its members are a family.

With respect to adult education, some Eastern Cherokees have taken a different pedagogical approach. Adults who do not grow up speaking Cherokee are learning Cherokee as a second language and their sense of shame around Indian identity and language issues may surface more readily than for children. Eastern Band tribal member John Standingdeer, along with folklorist Barbara Duncan, came to understand that second language learners may need special techniques for learning a language that was originally transmitted orally from generation to generation.¹⁷⁹ Standingdeer explained how alienation from the language as a young person distanced him from his identity—even

about-the-nation/frequently-asked-questions/common-questions/?page=2&pageSize=7 [https://perma.cc/9GDL-BJWY] (last visited Mar. 3, 2020); *About Us*, UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN OKLAHOMA, <https://www.ukb-nsn.gov/about-us> (last visited Mar. 3, 2020).

176. Dale Neal, *Why I am Learning Cherokee, the First Language of Our Landscape*, CITIZEN TIMES (Aug. 1, 2016), <https://www.citizen-times.com/story/life/2016/08/01/why-m-learning-choerokee-first-language-our-landscape/87885016> [https://perma.cc/BRD8-424Y] (reporting that “there are only about 100 to 200 fluent speakers among the tribe’s 15,000 members, mostly elderly . . . and about only of about 50 youngsters who are serious about learning the language.”).

177. *New Cherokee School Opens*, CULTURAL SURVIVAL, <https://www.culturalsurvival.org/news/new-choerokee-school-opens> [https://perma.cc/L8ZN-NCAT] (last visited Jan. 20, 2019) (“With only 420 fluent elderly speakers remaining among the Eastern Band communities in North Carolina, tribal officials and language advocates in 2004 opened a pre-school immersion program for six babies. Those children now form the kindergarten class at Kituwah Academy, and will remain full-time students at the immersion school through their fifth-grade year, by which time their second-language Cherokee speaking and writing skills will be firmly internalized. The community estimates that by 2011 as few as 200 fluent speakers will still be living among elder generations, so the training of 32 language-fluent children comes at a critical time in their struggle to save the language.”).

178. *Id.*

179. Marti Maguire, *John Standingdeer’s Goal is Saving the Cherokee Language*, CHARLOTTE OBSERVER (Nov. 30, 2015), <https://www.charlotteobserver.com/news/local/article47153445.html> [https://perma.cc/LQQ4-PUSX] (“The tribe’s “speakers” were skeptical of the new system, and many still are. But Standingdeer insists his method is particularly useful for people who are learning the language later in life—and is not meant to replace the oral language, from which it differs in some ways.”).

his name—as a Cherokee, leading to years of frustrating attempts to learn the language.

Standingdeer and Duncan describe the importance of discovering the “inherent indigenous patterns of the language,” which may differ from other linguistics, grammar, and other methodologies for language preservation, recording and teaching.¹⁸⁰ Locating these patterns has, from a practical perspective, made it possible to program conjugation on a computer, to become fluent without memorizing each long polysynthetic word, and to transcend a Eurocentric, colonized approach to the language.¹⁸¹ Standingdeer and Duncan developed a new methodology and technology and received a U.S. Patent for their invention in 2015.¹⁸²

The Cherokee Nation of Oklahoma runs a language program consisting of an Office of Translation, Community Language, and Language Technology.¹⁸³ Its mission is “the perpetuation of our language in all walks of life ranging from day to day conversation, ceremonially, as well as in online arenas such as social media.”¹⁸⁴ The Cherokee language is taught in public and tribal schools (both immersion and otherwise), offered to government employees, and through community classes, both local and online. The language is still heard regularly at ceremonial stomp dances and at academic conferences in the community. The tribe continues to print the newspaper, *CHEROKEE PHOENIX*, partly in Cherokee syllabary, and also hosts a weekly radio show, “Cherokee Voices”, almost entirely in the Cherokee language.¹⁸⁵

Despite all of these signs of vitality, Cherokee is an endangered language, used by only 10,000 people in daily life. To address this serious situation, in 2019, the Cherokee Nation announced a new Cherokee Language Advisory Board to unite the vision and efforts represented in the Cherokee Translation Department, Cherokee Language Master Apprentice Program, Cherokee Language Technology Program, and the Cherokee Immersion School.¹⁸⁶ Later that year, the newly elected

180. *Id.*

181. *Id.*

182. *John Standingdeer Receives Patent, YOUR GRANDMOTHER'S CHEROKEE* (Nov. 23, 2015), <https://www.yourgrandmotherscherokee.com/blog/john-standingdeer-receives-patent> [<https://perma.cc/4D8Y-R5WC>].

183. See *CHEROKEE NATION, Language*, <https://language.cherokee.org> [<https://perma.cc/PJ5U-TQZC>] (last visited Feb. 19, 2020).

184. *Id.*

185. *Radio Show Archives, CHEROKEE NATION*, <https://www.cherokee.org/radio-show-archives> (last visited Mar. 3, 2020).

186. See Bill John Baker, *Cherokee Nation Keeps Language Alive for Future Generations*, *INDIANZ* (Feb. 4, 2019), <https://www.indianz.com/News/2019/02/04/bill-john-baker-cherokee-nation-keeps-la.asp> [<https://perma.cc/38DC-27B3>].

Principal Chief Chuck Hoskin, Jr., announced a \$16 million investment by the tribe to create a new tribal language center and programming.¹⁸⁷

Through these several methodologies—involving children, adults, and elders—learning the language enables Cherokees to participate more fully in their culture, to see the landscape in the way that their ancestors did long ago, and even to begin to understand the relationship between humans and language differently.¹⁸⁸ Beginning with the election of Wilma Mankiller as Principal Chief in 1987, Cherokee culture and language have played a more prominent role in contemporary politics.¹⁸⁹ Cherokee language appears both symbolically and informationally on place names, street signs, and at the Cherokee museums and cultural centers. Both tribes have funded Cherokee language education, ranging from elementary immersion to high school instruction, local community and employee instruction to online, at-large, and even publicly available lessons. Subsequent chiefs of the Cherokee Nation and Eastern Band have prioritized language in their election and governing platforms.¹⁹⁰

Successful students of these programs have gone on to use the language in scholarly and community work, including a publication of the Cherokee National Resources Department on traditional plant knowledge.¹⁹¹ Cherokee scholars and elders are also using the language to revitalize indigenous ethnobotany in the Cherokee Nation.¹⁹² Such work is an example of the relationship between language preservation and use, as well as land management and biodiversity, in the contemporary United States. These efforts also beneficially disrupt¹⁹³

187. *Chief Hoskin Announces \$16M Cherokee Language Initiative*, CHEROKEE PHOENIX (Oct. 1, 2019), <https://www.cherokeephoenix.org/Article/index/103591> [<https://perma.cc/5MXV-9339>].

188. See John Standingdeer, *Remarks at the Session on the International Year of Indigenous Languages, Conference on Implementing the Declaration on the Rights of Indigenous Peoples*, YOUTUBE (Mar. 16, 2019), <https://www.youtube.com/watch?v=evlMOfcghuU>.

189. See DURBIN FEELING ET AL., CHEROKEE NARRATIVES: A LINGUISTIC STUDY 5 (2018).

190. See, e.g., CHAD “CORNTASSEL” SMITH, LEADERSHIP LESSONS FROM THE CHEROKEE NATION: LEARN FROM ALL I OBSERVE 6, 25, 83 (2013).

191. See generally CHEROKEE NATION NATURAL RESOURCES DEPARTMENT, WILD PLANTS OF THE CHEROKEE NATION (2009).

192. See generally CLINT CARROLL, ROOTS OF OUR RENEWAL: ETHNOBOTANY AND CHEROKEE ENVIRONMENTAL GOVERNANCE (2015). Cherokee citizen Clint Carroll worked with a group of Cherokee medicine keepers and students to promote traditional knowledge and land conservation and won funding from the National Science Foundation. Courtney Packard, *Prof Preserves Native Traditions with Help of the National Science Foundation*, COLO. ARTS AND SCI. MAG. (Feb. 27, 2017), <https://www.colorado.edu/asmagazine/2017/02/27/prof-preserves-native-traditions-help-national-science-foundation> [<https://perma.cc/899E-L3M6>].

193. For an example of a good collaborative effort between a linguist (Dr. Andrew

the more conventional narrative in which a nonindigenous linguist studies an indigenous language for his own purposes, without necessarily benefiting the community.¹⁹⁴ By contrast, in this case, a Cherokee citizen holds the patent for the language methodology, which has in turn educated Cherokee scholars to use the language for the benefit of the community and with the promise of benefiting other indigenous communities as well.¹⁹⁵

Lessons from the Cherokee experience show that the people are still recovering, politically, culturally, and linguistically, from the federal government's actions in the 1830s to relocate them from their homeland and remove them to Indian Territory, present day Oklahoma.¹⁹⁶ Before this so-called "Removal" policy, everyone spoke Cherokee; now, this is no longer the case. Yet one of the Nation's points of pride is the fact that Sequoyah invented the Cherokee syllabary in the 1820's and the language has been printed for many years. Now it is available for electronic communication. As a result of negotiations between the tribal leadership and technology companies in the early 2000s,¹⁹⁷ Cherokee can be used on various mobile devices, operating systems, and applications.¹⁹⁸ Contemporary projects, especially in the realm of technology,

Cowell at the University of Colorado) and indigenous community (the Northern Arapaho), see *The Arapaho Language Project*, UNIV. COLO. BOULDER, <https://www.colorado.edu/p13d6ec61edd> [<https://perma.cc/QZ2K-NHFR>] (last visited Jan. 31, 2020) ("This website was created to support the revitalization of the Arapaho language and be a helpful resource for Arapaho language learners. In addition to the *Arapaho Lessons* and *Dictionary*, this website also features a *Pronunciation Guide*, examples of the *language being used for everyday life*, scanned *bilingual curriculum materials* and other *resources helpful in learning this language*.").

194. See, e.g., Taté Walker, *Three Questions to Ask Yourself Before Learning an Indigenous Language as a Non-Native*, EVERYDAYFEMINISM (July 30, 2016), <https://everydayfeminism.com/2016/07/learn-indigenous-language> [<https://perma.cc/H4UG-YKQE>] (describing that while indigenous people learn their languages "for cultural survival," others may have mixed motives including enhancing personal profit or specious identity claims, which may risk cultural appropriation).

195. See Barbara Duncan, *Remarks at the Session on the International Year of Indigenous Languages as read by Clint Carroll, Conference on Implementing the Declaration on the Rights of Indigenous Peoples*, YOUTUBE (Mar. 16, 2019), <https://www.youtube.com/watch?v=evlMOfcghuU> (noting that a focus on the inherent patterns of the Cherokee language may be helpful to studying other indigenous languages as well).

196. See Kristen A. Carpenter, *supra* note 162, at 117–18.

197. See Eugene Huo, *Cherokee Nation Convinces Apple to Add Language Support to iPhone, iPad*, MACGASM (Dec. 24, 2010), <https://www.macgasm.net/2010/12/24/cherokee-nation-convinces-apple-add-language-support-iphone-ipad> [<https://perma.cc/H4VP-CFPZ>].

198. Slash Lane, *Apple Partners with Cherokee Tribe to put Language on iPhones*, APPLEINSIDER (Dec. 23, 2010, 12:00 PM), https://appleinsider.com/articles/10/12/23/apple_partners_with_cherokee_tribe_to_put_language_on_iphones [<https://perma.cc/D95P-JDYH>].

plant knowledge, and journalism, make the relevance and the potential of the language apparent. At the same time, Cherokees often hear and use the languages in cultural settings ranging from school to the stomp grounds and Cherokee Heritage Center.

Video testimony explains powerfully how some concepts and experiences like rightful living or explaining one's home really do not translate from Cherokee to English.¹⁹⁹ Some families have been able to place their children in tribal immersion schools, which have been successful if challenging in both North Carolina and Oklahoma. Several publishers seek to make not only elementary education but also literary, historical, and legal materials available in Cherokee. Yet contemporary realities of poverty, education, employment, and otherwise may make it very difficult for the majority of tribal citizens to access these programs or prioritize language in their lives. Unlike for some Navajo speakers, the challenge for many Cherokees is revitalization versus maintenance of language skills, because a Cherokee family may not have spoken Cherokee for a generation or two. As Cherokee language speakers have rightfully said, recovering and using the language is critical to being Cherokee.²⁰⁰

Navajo and Cherokee are two of the largest tribes in the United States. But it also bears noting that smaller tribes are doing very significant work on language revitalization. For example, the Yuchi or Euchee people comprise approximately 2000 people, many of whom are recognized as citizens of the Muscogee (Creek Nation) in Oklahoma. For the Yuchi or Euchee, elders such as Josephine Wildcat Bigler have been instrumental in keeping the language alive over recent generations, even as numbers of speakers diminished.²⁰¹ The Yuchi Language Project in Sapulpa, Oklahoma, directed by Richard Grounds, teaches children from the time of their birth and is producing fluent speakers in the youth generation, with young people learning not only from elders, but also teaching each other.²⁰² An initiative called the Euchee

199. For a powerful video account of the struggle to save Cherokee, see *FIRST LANGUAGE: THE RACE TO SAVE CHEROKEE* (The North Carolina Language and Life Project 2014).

200. See generally *id.*

201. *One of the Last Remaining Native Yuchi Speakers Passes*, CULTURAL SURVIVAL (JUNE 13, 2016), <https://www.culturalsurvival.org/news/one-last-remaining-native-yuchi-speakers-passes> [<https://perma.cc/2AJ4-DRPZ>] (documenting her efforts to preserve the Yuchi language by creating youth programs, translating hymns, recording folk tales, history, recipes, and traditional practices for the next generation, and working at a language nonprofit where she contributed her deep knowledge of the Yuchi language, culture, and history).

202. John Michael Baglione, *Preserving a Culture, One Speaker at a Time*, HARV. GAZETTE (Nov. 21, 2017), <https://news.harvard.edu/gazette/story/2017/11/yuchi-language-project-seeks-to-revitalize-indigenous-identity-through-common-tongue> [<https://perma.cc/>

Language Program led by Cultural Leader Yoney Spencer connects the language to the ceremonial stomp grounds, and use of the language in traditional Euchee law and traditions.²⁰³

Across the country in Gay Head, Massachusetts, the Wôpanâak language had been dormant since the 1850's. In 1993, jessie little doe baird started the Wôpanâak Language Reclamation Project.²⁰⁴ She has used historic bibles translated into Wôpanâak, as well as a variety of course styles, to bring fluency back to the people.²⁰⁵ The Miami language has also reawakened from dormancy, supported by a growing relationship of healing between the Miami Tribe and Miami University of Ohio.²⁰⁶ Each of these stories is important in its own right and also as a demonstration of the diversity of circumstances among American Indian tribes and their languages. Indeed, each of the 573 federally recognized tribes could write its own story about its language history, challenges, and vision.

3. Implementing Human Rights

First and foremost, we must note that the United States did not announce a national plan for the International Year, nor did it have a national organizing committee. The United Nations General Assembly stated in its resolution on the International Decade that it:

Invites Member States to consider establishing national mechanisms with adequate funding for the successful implementation of the International Decade of Indigenous Languages in partnership with indigenous peoples, and invites indigenous peoples, as custodians of

WT9J-6MCR].

203. Yoney Spencer, *Remarks at Muscogee (Creek) Nation District Court CLE 2019: Traditional Law and Courts*, YouTube (June 18, 2019), https://www.youtube.com/watch?v=H14_gXAP0SE (discussing Euchee law).

204. Ellen L. Lutz, *A Language Out of Time*, CULTURAL SURVIVAL Q. MAG. (June 2007), <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/language-out-time> [<https://perma.cc/6CR5-5VUN>].

205. *Jessica Little Doe Baird*, MACARTHUR FOUND. (SEPT. 28, 2010), <https://www.mac-found.org/fellows/24> [<https://perma.cc/RE3K-PE2K>] (noting her work to revitalize the Wôpanâak language, including producing a 10,000-word Wôpanâak-English dictionary, instructional materials for the study of the language, afterschool language classes, and an immersion summer camp).

206. Mary Annette Pember, *How a University and a Tribe are Teaming up to Revive a Lost Language*, YES MAG. (MAY 9, 2018), <https://www.yesmagazine.org/peace-justice/how-a-university-and-a-tribe-began-mending-ties-and-revived-a-lost-language-20180509> [<https://perma.cc/3XEQ-49LJ>] (detailing the work of the Myaamia Center, a joint project of the Miami University and the Miami tribe of Oklahoma, to facilitate instruction in Myaamia language and culture).

their own languages, to initiate and develop appropriate measures for the implementation of the International Decade²⁰⁷

Therefore, the very first suggestion we would make is for the United States to take seriously the opportunity to join the world community in implementing indigenous peoples' language rights. A national organizing committee—comprised of indigenous and state leaders and supported by partners from academia, the media, entertainment, and other realms—should develop a mechanism or plan for the Decade.

Taking the opportunity to engage in the human rights community as inspiration for domestic legal reform is particularly important given that, as Scholar James Fife has said, “The US scheme for indigenous language protection . . . must change if the indigenous languages in this country are to survive.”²⁰⁸ The United States is well-situated to reform domestic policy, in particular the Esther Martinez Acts, in ways that would more closely meet the aims of the Declaration.

As the United States reflects on its language policy, we note that there are some things that U.S. policy currently excels at—namely recognizing, at least formally, the self-determination of tribal governments in forming language policy and allowing for approaches that suit the tribes' differing language needs. NALA and the Esther Martinez Act have recognized “the status of the cultures and languages of Native Americans is unique and the United States has the responsibility to act together with Native Americans to ensure [their] survival.” This legislation helpfully recognizes the obligation of the government to indigenous peoples to ensure their language rights. These grant programs authorized by these statutes were recently highlighted by the representative for the United States at the Global Launch of IYIL2019 at the United Nations General Assembly.

From a human rights perspective, however, the United States should more fully acknowledge the impacts of the government's role in suppressing indigenous languages from both a financial and moral perspective.²⁰⁹ Government relocation of Indians, including the Navajo Long Walk and the Cherokee Trail of Tears, was devastating to their survival with ramifications for all aspects of life. The federal Indian boarding school program subsequently specifically targeted languages

207. G.A. Res. A/74/396, ¶ 25 (Dec. 2, 2019).

208. See James Fife, *The Legal Framework for Indigenous Language Rights in the United States*, 41 WILLAMETTE L. REV. 325, 368 (2005).

209. Cf. Task Force on Aboriginal Languages and Cultures, *Towards a New Beginning: A Foundational Report for a Strategy to Revitalize New Nation, Inuit, and Métis Languages and Cultures*, DEP'T CAN. HERITAGE 89 (June 28, 2005) (considering these issues) <http://www.afn.ca/uploads/files/education2/towardanewbeginning.pdf> [<https://perma.cc/2RHS-NT26>].

to destroy Indian culture. The federal U.S. government issued an “apology” statement to Native Americans in 2010, but unlike the Canadian Truth & Reconciliation Commission, this apology did not come about through a broad-based process, nor provide any remedial calls for action. The US apology failed to acknowledge the role of the federal government in attempting to destroy indigenous culture and language.²¹⁰ The intergenerational impacts of these policies are well-known to indigenous peoples and they should inform national policy.

At a minimum, the United States must recognize and apologize for its destruction of indigenous languages and, as a measure of reconciliation, work to meet indigenous peoples’ aspirations with respect to language use, revitalization and transmission. In Canada, national chief Perry Bellegard recently gave a speech articulating a vision of fluency for indigenous communities in Canada.²¹¹ This would be our personal recommendation as well, and we believe that as a matter of human rights, all indigenous peoples in the United States should have at least the opportunity for fluency in their languages. But different tribal governments may have differing priorities and federal programming should allow for that, with perhaps a baseline set of services, plus opt-in programs. These measures would have to be taken in consultation and with the free, prior, and informed consent of indigenous peoples. A model, though one with insufficient funding, is the Native American Graves Protection and Repatriation Act which sets out substantive standards and allows tribes to pursue repatriation as their priorities and values allow. The next iteration of a federal native languages act could consider amendments accordingly.

Beyond legislative efforts, the federal executive branch, through relevant departments (such as Interior, Education, State, Homeland Security, Immigration and Customs Enforcement, Health and Human

210. See Ann Piccard, *Death by Boarding School: “The Last Acceptable Racism” and the United States’ Genocide of Native Americans*, 49 GONZ. L. REV. 137, 165 (2013–2014). A bill introduced by Senator Brownback would acknowledge the role of federal boarding schools in eradicating language and culture. S.J. Res. 14, 111th Cong. (1st Sess. 2009) (“Whereas the Federal Government condemned the traditions, beliefs, and customs of Native Peoples and endeavored to assimilate them by such policies as the redistribution of land under the Act of February 8, 1887 (25 U.S.C. 331; 24 Stat. 388, chapter 119) (commonly known as the “General Allotment Act”), and the forcible removal of Native children from their families to faraway boarding schools where their Native practices and languages were degraded and forbidden.”).

211. For publicity associated with this event, see *Indigenous Languages Celebrated at Conference June 24–26 in Victoria, B.C.*, NATION TALK (June 24, 2019), <http://nationtalk.ca/story/indigenous-languages-celebrated-at-conference-june-24-26-in-victoria-b-c> [<https://perma.cc/7NFT-UF6L>].

Services, and others) should work with tribal governments and language organizations to develop a comprehensive approach to meeting the aims of the Declaration and other human rights instruments with respect to language use. There are several models for such cooperative approaches to American Indian issues, such as the White House Tribal Nations Conference,²¹² the White House Initiative on American Indian and Alaska Native Education,²¹³ as well as the Working Group on Violence Against Women.²¹⁴

With respect to legislation and regulation in the area of languages, some of the issues to consider are as follows:

Acknowledging the government's role in suppressing indigenous language could play a role in diffusing the shame associated with language use and loss alike. The federal government could then work with tribal governments and others to form a plan of reconciliation that would facilitate healing and recovery in this realm. A critical part of this plan would be to recognize that indigenous languages are key not only to remembering a cultural past, but moreover, architecting a multifaceted future, including everything from indigenous science to literature, government to economic development, as in the examples from the Cherokee Nation, Navajo Nation, and others.

Policymakers must become alert to the way that language rights are linked to other rights, with attention paid to specific contexts. Some indigenous persons cannot enjoy the right to vote or receive due process

212. See generally EXEC. OFFICE OF THE PRESIDENT, 2016 WHITE HOUSE TRIBAL NATIONS CONFERENCE PROGRESS REPORT: A RENEWED ERA OF FEDERAL-TRIBAL RELATIONS (JAN. 2017), https://obamawhitehouse.archives.gov/sites/default/files/docs/whncaa_report.pdf [<https://perma.cc/5FPN-PERS>].

213. See *White House Initiative on American Indian and Alaska Native Education*, U.S. DEP'T OF EDUC., <https://sites.ed.gov/whiaiane/advisory-council-agencies/agencies> [<https://perma.cc/7PJU-5GYX>] (“There is established the Interagency Working Group (IWG) on AI/AN education and TCUs. The IWG shall consist of senior officials from the Department of Education and the Department of the Interior and officials from the Departments of Justice, Agriculture, Labor, Health and Human Services, and Energy, the Environmental Protection Agency, and the White House Domestic Policy Council, as well as such additional agencies and offices as the Secretaries of Education and the Interior may designate. Each agency designated by the co-chairs as a member of the Interagency Working Group shall develop and implement a two part, 4 year plan of the agency's efforts to fulfill the purposes of this order, with part one of the plan focusing on all AI/AN students except for those attending TCUs, and part two focusing on AI/AN students attending TCUs.”).

214. See 2016 WHITE HOUSE TRIBAL NATIONS CONFERENCE PROGRESS REPORT: A RENEWED ERA OF FEDERAL-TRIBAL RELATIONS, *supra* note 212, at 4, 26 (announcing President Obama signed Executive Order 13647 on June 26, 2013, establishing the White House Council on Native American Affairs (WHCNA) as . . . “a path to a more effective federal government for Indian Country, bringing together federal Departments and Agencies from across the Executive Branch to “break down siloes” and coordinate for more effective programs”).

without translation services. In other communities, it may be rights to religious or cultural freedoms, treaty rights or child welfare that necessitate the restoration of language rights.

Some U.S. states continue to fail to appreciate the right of indigenous peoples to express themselves in public in their languages. This issue has been acute in litigation over religious freedoms and sacred sites in Hawaii, where some practitioners speak to the court and tribunals in Hawaiian—even if they understand some English—insisting that they have a right to do so and that some concepts of spiritual significance must be expressed in Hawaiian.²¹⁵ The state initially refused to provide translation, despite the fact that Hawaiian is an official language of the state, and only recently changing the policy.²¹⁶ From a human rights perspective, this issue goes both to the right to understand legal proceedings and to identity, which, in Hawaii, is linked to place and ancestral relationships.²¹⁷

Lack of funding is also a problem in access to health care, voting, employment, and other fundamental needs. At the federal level, the United States should be encouraged to commit to today's language programs at least the sums spent to eradicate indigenous languages in the 1800's and 1900's.²¹⁸

In the language context, journalist and Cherokee Nation citizen Rebecca Nagle has reported that “[b]etween 1877 and 1918, the

215. Ray Downs, *Hawaii Judge Orders Arrest of Man Who Spoke Hawaiian Language in Court*, UNITED PRESS INT'L (Jan. 25, 2018), <https://www.upi.com/Hawaii-judge-orders-arrest-of-man-who-spoke-Hawaiian-language-in-court/8471516857580> [<https://perma.cc/5FCH-5ADJ>] (reporting on the arrest of Professor Kaleikoa Ka'eo for failure to appear after he was present in court to answer three misdemeanor charges related to his protest of construction in Haleakalā National Park, but answered the judge in Hawaiian “to defend our right as a people to speak our language in our own homeland,” and because “there are things you can say in Hawaiian that you know really express through our cultural view of why it's important for us to defend our sacred sites”).

216. Frances Kai-Hwa Wang, *Hawaiian Language Finds New Prominence in Hawaii's Courts Decades After Near Disappearance*, NBC NEWS (Feb. 28, 2018), <https://www.nbcnews.com/news/asian-america/hawaiian-language-finds-new-prominence-hawaii-s-courts-decades-after-n851536> [<https://perma.cc/AE79-8JGV>].

217. See generally Shawn Malia Kana'iaupuni & Nolan Malone, *This Land is my Land: The Role of Place in Native Hawaiian Identity*, in 3 HÜLLI: MULTIDISCIPLINARY RES. ON HAWAIIAN WELL-BEING 281 (2006) (on the significance of Hawaiian place names to identity); Edward Haleaoha Ayau, *Rooted in Native Soil*, 7 COMMON GROUND (1995), https://home.nps.gov/Archeology//Cg/fd_fa_win_1995/soil.htm [<https://perma.cc/W3FD-ATRF>] (on the relationship of identity to ancestors whose names and relationships are expressed in Hawaiian).

218. For an example, albeit in a different posture than language policy, of federal litigation and settlement for an accounting of federal mismanagement of tribal resources, see, e.g., *Consultations on Cobell Trust Land Consolidation*, U.S. DEP'T OF THE INTERIOR, <https://www.doi.gov/cobell> [<https://perma.cc/7F5Y-A7SC>].

United States allocated \$2.81 billion (adjusted for inflation) to support the nation's boarding school infrastructure—an educational system designed to assimilate Indigenous people into white culture and destroy Native languages.”²¹⁹ Nagle compares this to her assessment that “[s]ince 2005, however, the federal government has only appropriated approximately \$180 million for Indigenous language revitalization. In other words, for every dollar the U.S. government spent on eradicating Native languages in previous centuries, it spent less than 7 cents on revitalizing them in this one.”²²⁰

These figures and additional accounting to elucidate the public funds previously spent to eradicate American Indian languages could help provide a moral and ethical benchmark to assess the adequacy of public funding under the Esther Martinez Act—currently proposed at \$13 million annually. From a practical perspective, these funds appear inadequate considering that “[i]n 2018, only 47 language projects received funding—just 29% of all requests, leaving more than two-thirds of applicants without funding, according to ANA.”²²¹ Even if we add other sources of federal funding which would raise the 2019 figure to approximately \$17 million, Nagle believes that “[c]ompared to how much the United States spent on exterminating Native languages, that sum is a pittance.”²²²

Beyond funding, issues in the education realm are the following: the certification process for teachers, requirements of mandatory testing in public schools, and the overall achievement gap between American Indian and non-Indian children. National requirements for certification and testing were quite stringent under the No Child Left Behind Act, replaced now by the Every Child Succeeds Act, which provides more state autonomy. The administration of this Act is an opportunity for states and tribal governments to implement indigenous children's language and education rights, perhaps by following the model of the Navajo Nation's education department in partnering with tribal and public schools—and repealing English-only measures.

With respect to retention and achievement, American Indian students are dropping out of school at a rate roughly twice the national average, a statistic that may correlate with indigenous language

219. Rebecca Nagle, *The U.S. has Spent More Money Erasing Native Languages than Saving Them*, HIGH COUNTRY NEWS (DEC. 9, 2019), <https://www.hcn.org/articles/indigenous-affairs-the-u-s-has-spent-more-money-erasing-native-languages-than-saving-them> [<https://perma.cc/K9WK-HUT4>].

220. *Id.*

221. *Id.*

222. *Id.*

instruction. A national study reported that in 2009, barely a quarter of Bureau of Indian Education students reported speaking to each other in Native American languages every day, and the numbers for public school students are negligible.²²³ By contrast, the opposite appears to be true in immersion schools. Indigenous students are thriving in these settings, showing higher test scores and graduation rates, as well as stronger connections to their culture.²²⁴

Some of the reform in the language rights space should of course occur in partnership with universities, industry, museums, and archives. The federal government could support such initiatives and partnerships through programs that emphasize innovative research and development.²²⁵ Tribal colleges, given their unique position in Indian Country, should be prioritized.²²⁶

From American Indian language experiences, we must come to appreciate the diversity of tribal histories, resources, and aspirations. Accordingly, federal law in the United States should be encouraged to set baselines complying with the Declaration, for example through amendments to the Esther Martinez Act providing more funding, but also allow flexibility such that each tribal nation can help to determine precisely what kind of assistance it needs in light of past history and current aspirations. Tribes in the United States are quite familiar with negotiating their needs through consultation and agreements with the federal government,²²⁷ although this process can always be improved

223. Kelsey Klug, *Native American Languages Act: Twenty Years Later, Has It Made a Difference?*, CULTURAL SURVIVAL (Jul. 18, 2012), <https://www.culturalsurvival.org/news/native-american-languages-act-twenty-years-later-has-it-made-difference> [https://perma.cc/3LVN-3SY2].

224. *Id.* (“Virtually all students in Native Hawaiian schools now graduate from high school, and their language programs have expanded so much that students can go through university completely in Native Hawaiian. Diné (Navajo) immersion students are scoring with or above their non-immersion peers on standardized tests, even in English. At Waa-dookodaading, an Ojibwe language school in Wisconsin, one hour of English instruction per day is enough for students to reach ‘proficient and above proficiency’ performance levels on NCLB assessments. The school says it ‘turned [the] model on its head’ to successfully teach English as its students’ foreign language. Since these programs incorporate Native culture, they also help students to become more proud of their traditional culture.”).

225. Several tribes have their own protocols for free, prior, and informed consent in projects with researchers. *See, e.g.*, RII Native Peoples Technical Assistance Office, *Tribal Community and Research Protocols*, UNIV. ARIZONA, <http://nptao.arizona.edu/tribal-community-and-research-protocols> [https://perma.cc/4YRK-RM9Y].

226. *See Language Revitalization*, 24 TRIBAL C. J. OF AM. INDIAN HIGHER EDUC. 1, 5 (2013) (“From the Arctic Circle to the Great Plains, tribal colleges and universities are launching a vast array of new programs to revitalize and preserve Native languages.”).

227. *See generally* Robert J. Miller, *Consultation or Consent: The United States Duty to Confer with American Indian Governments*, 91 N.D. L. REV. 37 (2015) (considering standards of consultation).

and should be improved consistent with the Declaration's provisions on free, prior, and informed consent.²²⁸

Some language revitalization measures should involve not only tribal and federal governments, but also private industries and social institutions. This would help individual indigenous children and families, as well as tribal communities, neighbors, and American society at large to become aware of and support indigenous languages. As awareness grows through education, media, entertainment and so on, pride and motivation to study languages is also likely to increase. In one interesting example, the Disney Corporation recently signed a contract with Sámi people of the Nordic countries to produce *Frozen 2*, featuring a Sámi language and storyline.²²⁹ The Cherokee Nation has partnered with technology companies to enable texting and the use of various apps in the Cherokee syllabary.²³⁰ In some places, the federal government and tribes have cooperated on bilingual highway signs²³¹ and visionaries are imagining public transportation in indigenous languages.²³² Scientists are testing the relationship among indigenous language use and cultural participation²³³ and good health.²³⁴ The possibilities are endless for enriching activities using and promoting indigenous languages in the United States.

Jacob Manatowa-Bailey, director of the Sac and Fox Nation of Oklahoma's Sauk Language Department, explained that "[w]hen tribal children are given the opportunity to learn their language, they are happier, healthier human beings. It doesn't mean their lives are easier. It does mean that their identities are stronger and that they are better prepared to face the challenges of being an Indigenous person in the modern world."²³⁵

Manatowa-Bailey captures the essence of a human rights approach to indigenous languages. It is this sentiment and vision that the United States should strive to achieve in partnership with indigenous peoples.

Finally, we recommend the United States address the situation of indigenous migrants, who are currently without translation services when they cross the US border. In US deportation hearings, aliens' due process rights include a right to government provided interpreters or language services.²³⁶ Yet lesser standards apply in detention. Homeland

228. G.A. Res. 61/295, U.N. Declaration on the Rights of Indigenous People (Sept. 13, 2007), arts. 10, 11, 19, 28, 29, 32.

235. See Klug, *supra* note 223.

236. *Nazarova v. I.N.S.*, 171 F.3d 478, 484 (7th Cir. 1999) ("A non-English-speaking alien has a due process right to an interpreter at her deportation hearing because, absent an interpreter, a non-English speaker's ability to participate in the hearing and her due process right to a meaningful opportunity to be heard are essentially meaningless."); see Tal Kopan,

Security insists that if Customs & Border Protection agents “ever have a language or communication issue, they are required to find another Agent who speaks the language or to utilize contract interpreters.”²³⁷ Yet in many instances, indigenous peoples do not receive translation services. Noting shortfalls in government offered language assistance, a 2000 Executive Order directed each federal agency to “examine the services it provides and develop and implement a system by which [limited English proficient] individuals can meaningfully access those services consistent with, and without unduly burdening the fundamental mission of the Agency.”²³⁸ This resulted in the creation of U.S. Department of Homeland Security’s Language Access Plan,²³⁹ including the U.S. Immigration and Custom Enforcement’s Handbook.²⁴⁰ The Handbook states that in detention centers, “[o]ral interpretation or assistance shall be provided to any detainee who speaks another language in which written material has not been translated or who is illiterate,” at least regarding initial orientation.²⁴¹ Recently, the Department of Justice has been criticized for terminating the provision of interpreters at immigration hearings, replacing them with mass videos in which individuals may not have any chance to understand the legal process they face.²⁴²

The international human rights standards discussed in this Article arguably imposes greater obligations to provide translation or otherwise make sure indigenous peoples can understand legal proceedings surrounding the criminalization of unauthorized entry (even understanding

Trump Administration Ending In-person Interpreters at Immigrants’ First Hearings, S.F. CHRON., July 3, 2019, <https://www.sfchronicle.com/politics/article/Trump-administration-ending-in-person-14070403.php> [<https://perma.cc/JLH8-8BSG>] (discussing the potential due process implications of a 2019 Trump Administration policy that is replacing in-person interpreters with pre-recorded videos during initial immigration court hearings).

237. *Id.*

238. Exec. Order No. 13,166, 65 Fed. Reg. 50, 121 (Aug 16, 2000).

239. *See generally* U.S. DEP’T OF HOMELAND SEC., LANGUAGE ACCESS PLAN (Feb. 28, 2012), <https://www.dhs.gov/sites/default/files/publications/crcl-dhs-language-access-plan.pdf> [<https://perma.cc/5ETH-984K>].

240. *See generally* U.S. IMMIGRATION & CUSTOMS ENF’T, 2011 OPERATIONS MANUAL ICE PERFORMANCE-BASED NATIONAL DETENTION STANDARDS, DETAINEE HANDBOOK (2016), <https://www.ice.gov/detention-standards/2011>.

241. *Id.* at 410.

242. U.S. COMM’N ON CIVIL RIGHTS, THE U.S. COMMISSION ON CIVIL RIGHTS DENOUNCES REPLACEMENT OF INTERPRETERS WITH A VIDEO AT IMMIGRANTS’ FIRST IMMIGRATION HEARING 1 (July 19, 2019), <https://www.usccr.gov/press/2019/Immigration-Interpreter-Statement.pdf> [<https://perma.cc/GU63-LQCZ>]. *See* International Covenant on Civil and Political Rights, G.A. Res. 2200, 21 U.N. GAOR, Supp. (No. 16) at 52, U.N. Doc. A/6316 (1967) (“Each State Party . . . undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”).

that immigration courts are civil courts). The Covenant on Civil and Political Rights provides that individuals have a right to understand legal proceedings in criminal matters and prohibits discrimination against minorities on the basis of language.²⁴³ The Declaration recognizes that indigenous peoples have the right to use, revitalize, and transmit their languages.²⁴⁴ It further provides that “[s]tates shall take effective measures to ensure that this right is protected and also to 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.”²⁴⁵

To ensure basic human rights to life, due process, family, privacy, and health—and also to avoid mistakes and disasters like denying available medical care to indigenous children or accidentally separating them from parents—we recommend that the United States meets international standards on language rights and strives to ensure that indigenous migrants have translation services as all stages of interactions with US officials in immigration, customs, and enforcement matters. Live interpreters are preferable to videos and if the United States starts to gain information and track data about indigenous migrants, it will be better equipped to provide translation in the necessary languages. Additionally, there are programs, including a tool used by Department of Homeland Security—the “I Speak” documents—that can help to identify language at least for literate individuals.²⁴⁶ Technology may be able to provide both prerecorded information and real time translation of use to migrants. All of these measures can help to address the “translation crisis” at the US border with Mexico, especially as it impacts indigenous peoples.²⁴⁷

243. Additionally, Article 14 provides for language rights in criminal trials, stating that any person, “[i]n the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality . . . (c) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him and (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court.” Article 24 extends the right of non-discrimination based on language to children. Article 27 provides: “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.”)

244. Declaration on the Rights of Indigenous Peoples, *supra* note 228, art. 13.

245. G.A. Res. 61/295, ¶ 12, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).

246. See generally U.S. DEP’T OF HOMELAND SEC., “I SPEAK” BOOKLETS AND POSTERS FOR DHS RECIPIENTS (May 10, 2019), <https://www.dhs.gov/sites/default/files/publications/Overview%20of%20I%20Speak%20Resources%20for%20Recipients.pdf> [<https://perma.cc/JJ4U-EYTW>].

247. Nolan, *supra* note 39.

B. Russia

In Russia today, there are approximately one hundred indigenous groups, including the Selkup and Shor of Siberia, Udege and Uylta of the Far East, Nenets and Chukchi of the Arctic, Udmurt and Mari in Europe, and Avar and Lezgin in the Caucasus. Like their counterparts around the world, Russian indigenous peoples have struggled to retain their languages during periods of national assimilation. Yet specific to Russia, Russian indigenous peoples have been impacted by particular aspects of Russian language policies, which must inform measures to support the recovery of indigenous languages today. Russian legislation distinguishes 47 indigenous groups who do not exceed 50,000 in population and therefore require measures for special protection. Both small and ‘bigger’ groups comply with internationally recognized criterion of self-identification, relations to historical lands, traditional occupations and distinct language and culture. This Article therefore takes an inclusive approach and considers language policies as they relate to all indigenous peoples in the country.

1. Legal History and Current Situation

a. Language Policy in Tsarist Russia and the Soviet Union: Russification and Other Concerns

In different historical periods, Russia has taken different approaches to indigenous languages.²⁴⁸ In the sixteenth century, the Tsar authorized Russian traders and military troops to expand his influence by entering the territories of indigenous peoples in Siberia and the Far East. While pursuing a regime of conquest, the Tsar also ordered that “native peoples should be treated respectfully and accommodatingly, while military actions should only be applied against armed revolts.”²⁴⁹ Native peoples were forced to pay a tax, primarily in furs (yasak), in exchange for the promise of protection by the Tsarist Empire. In areas of massive Russian settlement, the indigenous population was subject to “Russification”—meaning pressure to adopt the Russian language, economic activities, and social organization.²⁵⁰ However, in 1822, the

248. A note on sources in this Subpart: many legal sources are available only in the Russian language. Coauthor Alexey Tsykarev, who is a native Russian speaker, fluent in English and trained as a translator, has provided English language translations where no other was available. We also provide citations to the original sources for readers who wish to review them in Russian.

249. Winfried K. Dallmann, *Indigenous Peoples of the Russian North*, NORWEGIAN POLAR INST., https://ansipra.npolar.no/english/items/Russ_north.html [<https://perma.cc/3DJJ-9FE5>] (last visited Jan. 31, 2020).

250. *Id.* (citing “the Statute ‘On the Governing of Outlanders’” (“inorodsy”—outlanders,

first Russian legal act to define the status of indigenous peoples recognized that they had both the freedom of religion and the right to use and learn native languages.²⁵¹ This law, known as the “Statute on the Governing of Outsiders,” provided for the establishment of special schools where indigenous languages served as the languages of instruction. Additionally, indigenous populations were never forced to change their traditional lifestyle, move to other territories, or learn Russian.²⁵² In this manner, the Russian Empire strove to ally itself with indigenous peoples, rather than eradicate its indigenous populations.²⁵³

At the early stages of the Soviet era, in the 1920s and 1930s, the concept that all peoples are equal and have the right to self-determination was supported in politics according to ethnic lines. Ethnic republics and autonomous districts (‘okrug’) had been established and named after so called ‘titular peoples.’²⁵⁴ This method of administrative division introduced by Lenin’s government was subsequently inherited by modern Russia. Presently, both ethnic republics and autonomous districts reflect the idea of national²⁵⁵ self-determination of peoples and self-governance of peoples within the Russian Federation. In this structure, republics introduce a concept of statehood for non-Russian peoples, while autonomous districts represent a form of self-governance of indigenous peoples within larger administrative units.²⁵⁶ There is also an autonomous Jewish oblast (‘region’) and three federal cities. All other types of regions—‘krai’ (‘territory’) and ‘oblast’—are legally

literally “people of another origin” of 1822)).

251. Cf. Galina Diatchkova, *Indigenous Peoples of Russia and Political History*, 21 CAN. J. NATIVE STUD. 217, 219 (2001).

252. Anna Varfolomeeva, *Evolution of the Concept “Indigenous People” in the Soviet Union and the Russian Federation: The Case Study of Vepses*, CENT. EUR. UNIV., 25 (2012).

253. Ruslan Garipov, *Pravo na ispol'zovanie i okhranu rodnogo iazyka u korennykh malochislennykh narodov Rossii [The Right to Use and to Protect Mother-Tongue Among Indigenous Small-Numbered Peoples of Russia]*, 4 Rossiiskii iuridicheskii zhurnal [RUSS. JURIDICAL J.] 157 (2012).

254. Jeremy Smith, *Was There a Soviet Nationality Policy?*, 71 EUROPE-ASIA STUD. 972 (2019).

255. In the Russian context, national republic or national district is a more commonly used term as in the Russian ethnology ‘nation’ and ‘ethnos’ are equal, while nation is also used to refer the entire population of the country—political nation.

256. Chukotka autonomous district does not belong to any other larger territory and therefore constitutes an exception. For sources on Chukotka’s status and history as it relates to indigenous peoples, see, e.g., Igor Krupnik & Mikhail Chlenov, “The end of “Eskimo Land”: Yupik Relocation in Chukotka, 1958–1959” 31 *Études/Inuit/Studies*, 59, 59–81 (2007) (history of Inuit in Chukotka autonomous district); Jennifer Kingsley, *A Fading Culture Adapts to the Changing Times in this Arctic Town*, NAT'L GEOGRAPHIC (Jan. 25, 2019), <https://www.nationalgeographic.com/culture/2019/01/women-of-chukotka-arctic-russian-culture> (current situation of indigenous women in Chukotka autonomous district).

identical and mostly populated by Russians with no or little indigenous representation.²⁵⁷ In some regions with minor indigenous populations, ethnic districts were established and ethnic schools were opened.

Both ethnic districts and republics of the Soviet-era were meant to recognize the right of peoples to self-governance through direct participation in decisionmaking, quotas for representation in power, and enforcement of indigenous languages use.²⁵⁸ This included freedom to use indigenous languages in administration and public affairs and to make them visible in cities and villages. During this period, many indigenous languages, which had previously existed only in oral traditions, acquired written script.²⁵⁹ Additionally, new vocabulary enabled the languages to serve new roles in media, administration and education. For example, in the Republic of Karelia, named after the Karelian people, a university was established, and newspapers and textbooks were published in Karelian.²⁶⁰ Similarly, in Tverskaya oblast—a mostly Russian region near Moscow with a significant Karelian population—a Karelian ethnic district was established for a short period of time, which allowed for running schools in the Karelian language.²⁶¹ In these respects, early Soviet-era policies and practices allowed indigenous languages to survive and even flourish.

After World War II, changes to the political landscape in Russia had deleterious impacts on indigenous languages. To recover from the war and confront threats of separatist sentiment, leaders promoted “unification” in both culture and industry. This meant a prevailing state-building role for the majority “Russian” ethnicity at the expense of other ethnic, minority, or indigenous traditions. As a

257. Marina Obrazkova, *How Russia's Administrative System Works*, RUSS. BEYOND (JAN. 12, 2014), https://www.rbth.com/politics/2014/01/12/how_russias_administrative_system_works_32209 [https://perma.cc/4ENH-2P69].

258. Compare ALEXEI G. ARBATOV ET AL., MANAGING CONFLICT IN THE FORMER SOVIET UNION: RUSSIAN AND AMERICAN PERSPECTIVES 90 (ALEXEI ARBATOV ET AL. EDs., 1997) (on governance in Soviet Union) with ETHNIC AND RELIGIOUS MINORITIES IN STALIN'S SOVIET UNION: NEW DIMENSIONS OF RESEARCH (Andrej Kotljarchuk & Olle Sundström eds., 2017).

259. JULIE TETEL ANDRESEN & PHILLIP M. CARTER, LANGUAGES IN THE WORLD: HOW HISTORY, CULTURE, AND POLITICS SHAPE LANGUAGE 108–10 (2016).

260. Compare Paul M. Austin, *Soviet Karelian: The Language that Failed*, 51 SLAVIC REV. 16 (1992) (DESCRIBING POLITICAL CHALLENGES TO THE SURVIVAL OF KARELIAN LANGUAGE) with Richard Lloyd Christophe Morin, *Livvi Karelian at Petrozavodsk State University An Ethnography of Language Attitudes*, UNIV. E. FIN. 1, 1–3 (2017), https://epublications.uef.fi/pub/urn_nbn_fi_uef-20171148/urn_nbn_fi_uef-20171148.pdf [https://perma.cc/7W-MY-7Q9G] (describing Karelian language studies at Petrozavodsk State University).

261. For information generally on Karelians in Tverskaya see, e.g., Ott Kurs, *Indigenous Finnic Population of NW Russia*, 34 GEOJOURNAL, 447, 447–56 (1994); SEppo LALLUKKA, *The Breakdown of Tver' Karelian Demographic Continuity*, 19 ETHNIC AND RACIAL STUD. 316 (1996).

direct consequence, the Russian language was promoted among Soviet citizens as a language of highly developed culture of world class. It therefore offered more opportunities to their speakers, while languages of other ethnic groups seemed out of date and nonfunctional in the context of major spheres of public life. The concept of bilingual education did not yet exist, nor was it contemplated by the Russian government as a viable approach to language policy.

As Ruslan Garipov has explained, the Soviet Union after WWII adopted a highly paternalistic and purposeful assimilation policy toward all non-Russian populations.²⁶² Self-determined administrative entities lost their ethnic independence or were destroyed altogether. Indigenous cultures were perceived as a burden to the efficiency of expanding industrialization and exploitation of natural resources, as well as the shared sense of a Russian identity that would support these activities during the Cold War. The country strove to rebuild its destroyed economy and win its strategic competition with the West. This required societal transformations, large movements of the workforce across the country, the unification of villages, and the closure of economically unsustainable villages—all of which had a significant impact on the ability to use and transmit languages in Russia. In addition, children were told not to speak their native languages in schools and other public places, and parents were discouraged from speaking indigenous languages at home. To further eradicate indigenous culture and language, the government encouraged settlers to move into indigenous villages, thereby disrupting their languages and ways of life even more broadly.

After the collapse of the Soviet Union in 1991, the Russian Federation encountered an economic crisis that threatened to further disrupt and disintegrate the country. This new period in Russian history, however, brought with it freedoms and liberties, where ethnic movements gained renewed strength and indigenous peoples experienced a so-called ‘ethnic renaissance,’ featuring an activation of national self-identification and pride, and growth of political support for indigenous peoples and their languages.²⁶³ In many republics, languages of titular peoples were declared state languages, and additional laws and policies were put in place in support of indigenous populations. However, after a so called ‘parade of sovereignties’, when regions acquired as much authority as the weak central government allowed for in the

262. Garipov, *supra* note 253, at 4.

263. Alxey Konuykhov, *Natsional'naiā identichnost' finno-ugorskikh narodov* [*National Identity of Finno-Ugric Peoples*], FINNO-UGORSKIĬ MIR [FINNO-UGRIC WORLD] 79 (2008).

1990s, the economic and political growth in the 2000s led to a resurgence of anti-indigenous sentiment reminiscent of similar policies from late in the Soviet era. Ethnic and linguistic policies have since been constrained, leading to a reduction in the right to develop and encourage use of indigenous languages.

b. Controversies of Linguistic Policy in the Post-Soviet Era

This complex background stands in stark contrast to the current narrative, advanced by the Russian government, that there was no colonization in Russia,²⁶⁴ that indigenous peoples voluntarily joined the Russian state, and that Russia's indigenous languages have been carefully preserved.²⁶⁵ According to some Russian policy makers, the endangered state of some indigenous languages stems from globalization and urbanization,²⁶⁶ rather than historical injustices or contemporary policies of states. To be sure, some UNESCO officials support the theory of the danger of minority language extinction in Russia caused by globalization. According to Victor Montiloff, "this danger is growing exponentially with the introduction of new technologies," which widens "the economic gap between those who have access to information in their own language and those who don't."²⁶⁷

Allying themselves with this assertion, individual government-backed experts report that only one indigenous language has ever died in Russia,²⁶⁸ despite the fact that data provided by researchers from

264. Welcoming Address by the Head of the Delegation of the Russian Federation A.D. Viktorov at the Opening Ceremony of the 14th Session of the UN Permanent Forum on Indigenous Issues (Apr. 20, 2015), http://russiaun.ru/ru/news/un_pfis [<https://perma.cc/URS3-ABP5>].

265. *Statement by the Head of the Russian Delegation Igor Barinov as Part of the Consideration by the Committee on the Elimination of Racial Discrimination of the Combined 23rd and 24th Periodic Reports of the Russian Federation on the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination*, MINISTRY FOREIGN AFF. RUSS. FED'N. (Aug. 4, 2017), http://www.mid.ru/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/2832374 [<https://perma.cc/8H9S-M269>].

266. Alekseï Shipilov rasskazal, kak proïdet forum iazykov korennykh narodov v Ugre [Alexey Shipilov Spoke at the Conference on Indigenous Languages in Ugra], UGRA NEWS (Feb. 6, 2019), https://ugra-news.ru/article/aleksey_shipilov_rasskazal_kak_proydet_forum_yazykov_korennykh_narodov_v_yugre [<https://perma.cc/84VR-YQNG>].

267. Viktor Montiloff, *Internet and Language Diversity: Is It Possible?*, in LINGUISTIC AND CULTURAL DIVERSITY IN CYBERSPACE 60, 68 (Evgeny Kuzmin et al. eds., 2008).

268. Senior Researcher and Chief Scientist of the Institute of Ethnology and Anthropology of the Russian Academy of Sciences Vladimir Zorin and Valery Tishkov (both former federal Ministers for Ethnic Politics) have stated in interviews that "no people has disappeared, no language has died over 1150 years of co-existence of more than 190 peoples in Russia." See Interview, *Professor Vladimir Zorin: Luchshe desiāt' let peregovorov, chem odin den' voïny*, [Better ten Years of Negotiations than one day of war], INSTITUT ÈTNOLOGII I ANTROPOLOGII RAN [INST. ETHNOLOGY AND ANTHROPOLOGY] (May 22, 2014), <http://iea-ras.ru/index.php?go=News&in=view&id=243> [<https://perma.cc/R7AC-DPCD>]. See also

the Russian Academy of Sciences for official use by policymakers and government officials suggests that fourteen languages disappeared in Russia over the last 150 years.²⁶⁹ Linguist Olga Kazakevich provides specific examples: the Chuvan and Omok languages died during Tsarist Russia, Yug and Kamasin were lost in 1970s, and most recently in 2003—the Babin Sami language lost its last remaining speaker.²⁷⁰ According to the opening address at the 2019 International Year of Indigenous Languages in Russia, 18 indigenous languages are on the verge of extinction.²⁷¹ Indeed, the UNESCO Atlas of Endangered Languages considers *all* Russian indigenous languages endangered to a certain degree.²⁷² In between the censuses of 2002 and 2010, almost all indigenous peoples in Russia showed demographic decline and critical loss of language speakers.²⁷³ In total, the number of indigenous language speakers decreased by 15–16 percent over the eight year period.²⁷⁴ Researchers anticipate that the next census in 2020 will show an even more acute negative shift.²⁷⁵

Natalya Rybakova, «*Identichnost' cheloveka toporom narubit' na kusochki neprosto*»: Valerii Tishkov o rossiianakh kak edinom narode i o tom, kak zapishut tatar v perepisi-2020 [“*It’s not Easy to Chop a Person’s Identity with an ax*”: Valery Tishkov About Russians as a Single People and how the Tatars will be Recorded in the 2020 Census], SOBYTIĀ [EVENTS] (Feb. 12, 2019), <https://sntat.ru/obshchestvo/identichnost-cheloveka-toporom-narubit-nakusochki-neprosto-valeriy-ti> [<https://perma.cc/ND3G-XGXX>].

269. V FADN Rossii rasskazali, chto v Rossii za poslednie 150 let ischezli 14 redkikh iazykov [The Federal Agency for Ethnic Affairs of Russia Said that 14 Rare Languages Have Disappeared in Russia Over the Past 150 years], FED. AGENCY FOR ETHNIC AFF. (Feb. 5, 2019), <http://fadn.gov.ru/special/news/2019/02/05/3725-v-fadn-rossii-rasskazali-chto-v-rossii-zaposlednie-150-let-ischezli-14-redkih-yazykov> [<https://perma.cc/TF67-Z94X>].

270. Alisa Veselkova, *Smert' i vozrozhdenie iazykov. Skol'ko iazykov my poteriali i poteriam v blizhaishev budushchem, a kakie smogli vozrodit'sia* [The Death and Rebirth of Languages. How Many Languages Have We Lost and Will Lose in the Near Future, and Which Ones Could Be Reborn], RUSS. AGENCY (Dec. 14, 2018), https://chrdrk.ru/other/smert_i_vozrozhdenie_yazykov [<https://perma.cc/2GPW-V46N>].

271. *18 iazykov korennykh narodov strany nakhodiatsia pod ugrozoi ischeznoeniia* [Indigenous Languages Endangered], PROUFU (Mar. 26, 2019), https://proufu.ru/news/society/78194-18_yazykov_korennykh_narodov_strany_nakhodyatsya_pod_ugrozoy_ischeznoeniya [<https://perma.cc/38GK-WNY3>].

272. *Atlas of Endangered Languages*, UNESCO, <http://www.unesco.org/languages-atlas/index.php?hl=en&page=atlasmap> [<https://perma.cc/Z5KC-9NMT>] (last visited Jan. 31, 2020).

273. RUSSIAN FED’N, ALL-RUSSIAN CENSUS 2010 (2010), https://www.gks.ru/free_doc/new_site/perepis2010/croc/perepis_itogi1612.htm [<https://perma.cc/8U2F-DRGZ>].

274. Nail Gyilman, *How Many Indigenous Peoples in Russia, How Many Languages Do They Have and How to Preserve Them?* HORIZONTAL RUSSIA 7x7 (JULY 13, 2018 1:11 AM), <https://7x7-journal.ru/post/109272> [<https://perma.cc/3Y6W-RASW>].

275. See generally VALERY TISHKOV, *ĖTNIČESKOE I RELIGIOZNOE MNOGOOBRĄZIE ROSSII* [ETHNIC AND RELIGIOUS DIVERSITY IN RUSSIA] (2018).

Today's Russian Federation is a plurinational state where 151 languages (around 270 with dialects) are spoken, according to official data provided by the Institute of Linguistics of the Russian Academy of Sciences. Of these, 25 languages are used in the education system as a language of instruction, 81 languages are taught in schools as part of curriculum, and 9 more languages are taught on an optional basis as an extracurricular activity.²⁷⁶ The United Nations Special Rapporteur on the Rights of Indigenous Peoples, James S. Anaya, explained in his country report on Russia that in many indigenous communities only 15–20 percent of members of a given community study native languages.²⁷⁷ Linguistic diversity in the country and the internal and external sensitivity associated with this issue compels the federal government to portray the country as responsible when it comes to language rights. Therefore, Russia was among the first of United Nations member states to establish a national organizing committee for the IYIL2019, and it subsequently adopted a national Action Plan of major events and efforts to uplift the level of support for indigenous languages. Russia has also supported the proposals for an International Decade of Indigenous Languages, and the opportunity to promote the country's experience. On one hand, Russia's involvement signals a commitment to indigenous languages, but on the other, it is not entirely clear that Russia is actually committed to fully embracing indigenous peoples' own aspirations in formulating its language policies.²⁷⁸

As a formal matter, Russian law contains a number of important provisions on language rights. Article 26(2) Constitution of the Russian Federation stipulates that everyone shall have the right to use his or her native language, and to freely choose a language of communication, specifically for the purposes of raising children, education and

276. Statement by the Head of the Federal Agency of Ethnic Affairs of the Russian Federation Igor Barinov at the 18th Session of the UN Permanent Forum on Indigenous Issues (2019), <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH3444/85da7ac9.dir/PF19BARINOVA050422.pdf> [<https://perma.cc/V6X9-HXDJ>].

277. James Anaya, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, U.N. Doc. A/HRC/15/37 (July 19, 2010).

278. One of the examples of such practices are so called immersion groups in kindergartens, where Russian is the language of instruction and teachers only use some words and sentences in indigenous languages. Therefore, this methodology does not produce language speakers unlike "language nests," but just introduces the languages to children before attending school. While this information comes from author Alexey Tsykarev's personal experience, additional information on indigenous languages in Russian schools can be found at Marina Starodubtceva, *Indigenous Education Systems of Canada and the Russian Federation: Comparative Analysis*, 15 *GLOBAL J. HUMAN-SOC. SCI.: G LINGUSITICS & EDUC.* 1, 12–13 (2015) (discussing strengths and weaknesses of indigenous language education in Russia as compared with aboriginal language education in Canada).

creative work. Article 68(3) provides that the Russian Federation shall guarantee to all of its peoples the right to preserve their native language and to create opportunities for its study and development. Article 69 of the Constitution specifically guarantees the rights of indigenous peoples according to the universally recognized principles and norms of international law, international treaties, and agreements of the Russian Federation.

Two federal laws, entitled the ‘Languages of the Peoples of the Russian Federation’ and ‘Education in the Russian Federation’ ensure the linguistic rights of citizens. In addition, there are several policy documents, such as the State Ethnic Policy Strategy until 2025 issued in 2012 and amended in 2018, which prioritize the preservation of the ethnocultural and linguistic diversity of the country, albeit while still underlining the statebuilding and interethnic communication role of the Russian language.²⁷⁹ Another policy document, the Concept of the State Educational Policy of 2006, recognizes the need for the reconciliation of the state’s interest in providing access to quality educational and cultural services and the interests of Russia’s populace to have educational opportunities in native languages and broadly speaking, preserve their languages and cultures.²⁸⁰ The legislation is therefore adequately developed and linguistic rights are elaborated on in great detail. Here, we address why accessing these rights in practice is challenging due to revisions, amendments, inefficient implementation and the lack of funding.

Professor Vladimir Kryazhkov summarizes indigenous peoples’ collective and individual linguistic rights in Russia vis a vis the existing legislation: (1) the right to preserve, use and revitalize languages free from administrative restrictions; (2) the right to create scripts; (3) the right to learn native languages, establish their own educational systems and obtain state support for teaching and research; and (4) the right to develop the languages, for example, by providing financial support and stimulating community-based activities such as publishing literature and media. Kryazhkov emphasizes that the language rights of indigenous peoples are the shared responsibility of indigenous peoples and the state. He clarifies that the legislation considers indigenous languages as secondary, having communicative and integrative value only within

279. *Strategiya Gosudarstvennoy Natsionalnoy Politiki Rossiyskoy Federatsii Na Period Do 2025 Goda* [State Ethnic Policy Strategy of the Russian Federation Until 2025] 2012, <http://pravo.gov.ru/proxy/ips/?docbody=&nd=102161949> [https://perma.cc/FV6L-R69B].

280. RUSSIAN FED’N, *KONTSEPTSIĀ RAZVITIĀ OBRAZOVANIĀ RF DO 2020 G* [THE CONCEPT OF DEVELOPMENT OF EDUCATION OF THE RUSSIAN FEDERATION UNTIL 2020], (2014) AT NO. 2765-R.

a limited territory and inside a certain community, therefore implying that is not obligatory in public spheres for exercising political and civil rights. By contrast, Russian language is a precondition for Russian citizenship and is required to access the benefits and social services conferred by citizenship.²⁸¹

Each of Russia's 22 republics* may designate a second state language in addition to Russian. The vitality of indigenous languages in Russia varies depending on levels of support available in each republic.²⁸² The Republic of Sakha (also known as Yakutia), located in Far Eastern Siberia, recognizes both Russian and Sakha as state languages. In addition, Sakha recognises five official indigenous languages—Dolgan, Yukagir, Evenk, Even and Chukchi—that can be used public life, including government and media. Thus, in Sakha, there is a relatively strong level of support for multiple indigenous languages.

By contrast, the Republic of Karelia, located in Western Russia along the Finnish border, recognizes Russian as the sole state language. Ironically, perhaps, Karelia fails to recognize even the Karelian language as a state language. In 2004, the republic's legislators introduced the law «On State Support of the Karelian, Vepsian and Finnish Languages in the Republic of Karelia». This law provides full legal protection to the language communities of indigenous peoples, including the possibility for language use in governance, education, public life and the media, but stops short of state language status.

Recently, however, the autonomy of republics regarding language policy has been undermined and subordinated by 2017 amendments to the federal law on education. Previously, in republics where an indigenous language was recognized alongside Russian as a state language, all children would learn both Russian and the indigenous language in school. But now, the Republic cannot make native language instruction mandatory, even with state languages of the Republic. Children in all Russian republics are instructed only in Russian, unless parents elect for extra instruction in a “native” or “ethnic language.”²⁸³

281. Vladimir Kryazhkov, *Native Language Right [By the Example of Small-Numbered Peoples of the North]*, 11 ST. AND L. 32 (2016). Republic of Crimea is de-facto one of the 22 republics within the Russian Federation, but according to the Resolution of the UN General Assembly 68/262 Autonomous Republic of Crimea are an integral part of Ukraine. See G.A. Res. 68/262 (Mar. 27, 2014).

282. See generally VALERY TISHKOV, ROSSIĬSKAĪĀ ARKTIKA: KORENNYE NARODY I PROMYSHLENNOE RAZVITIE [THE RUSSIAN ARCTIC: INDIGENOUS PEOPLES AND INDUSTRIAL DEVELOPMENT] (2016) (discussing regional differences).

283. See Konstantin Zamyatin, *Finno-Ugric Languages in Russian Education: The Changing Legal-Institutional Framework and Falling Access to Native Language Learning*, 44 ÉTUDES FINNO-OUGRIENNES ¶¶ 44–46 (2012). Understanding the law may require

What do the new amendments mean in practice? Under the old policy, for example, children who were ethnically Russian in the Republic of Komi studied Komi as a state language, while indigenous children attended Komi-as-native classes. Today, there is no more mandatory study of Komi for any student, and only ethnic Komis are likely to elect it for their children. The amendments thus diminish bilingualism and crosscultural exchange, as well as the status, visibility, and utility of indigenous languages.

Some more specific policy documents, concepts and strategies have been adopted in numerous regions. Examples of such concepts and strategies include the Concept of the Development of Ethnocultural Education in the Republic of Komi and the Strategy for the Development of the Karelian Language until 2020 in the Republic of Karelia. Whereas the former describes efforts at digitalization and modernization of indigenous languages and providing educational services in those languages, the latter looks at the language ecology and modernization and then suggests the creation of a unified Karelian language out of the three major dialects. As part of these policies or laws, executive authorities may adopt state target programs that identify both the specific government actors in charge of different elements of state language policies and the amounts of subsidies to which each actor is entitled.

Internationally, Russia is very active in the realm of linguistic diversity, going so far as to promote its own best practices of language preservation. As one of eight founding members of the Arctic Council Cooperation, Russia has proposed a project called Children of the Arctic, which endeavors to disseminate many of the best practices that have been successfully deployed in the Russian High North. One such practice is that of nomadic schools, where specially trained teachers are placed with reindeer herder families in the tundra and they provide

additional context. The term “native language” (“родной язык”) in Russian means an individual’s first learned language. The Indigenous peoples’ movement in Russia also uses this term to identify the language associated with a person’s ethnicity, even if in fact the first language he or she learned was Russian or another language. Previously many ethnic republics required students to learn the language of the republic, which was often an indigenous language. However, 2017 amendments to national law make these languages optional and limit classes to two hours a week. Commentators have said “[t]hese measures will only hasten the demise of these languages—and will ensure that the Russian language remains preeminent across the country.” See Guzel Yusapova, *Russia is Cracking Down on Minority Languages but a Resistance Movement is Growing*, THE CONVERSATION (Sept. 11, 2018, 8:47 AM), <http://theconversation.com/russia-is-cracking-down-on-minority-languages-but-a-resistance-movement-is-growing-101493> [<https://perma.cc/DS5P-2NHW>]; see also Neil Hauer, *Putin’s Plan to Russify the Caucasus: How Russia’s New Language Law Could Backfire*, FOREIGN AFFAIRS, Aug 1, 2018, <https://www.foreignaffairs.com/articles/russia-fsu/2018-08-01/putins-plan-russify-caucasus> [<https://perma.cc/TT5J-9NJC>].

educational services to the children in close proximity to their families, thereby preventing them from having to attend residential schools. This educational model allows children to stay with their parents, learn and speak their native language, and perform their traditional vocations. As one such illustration, during the 2016/17 academic year, in the territory of the Yamal-Nenets Autonomous District, educational services were provided in Nents nomadic encampments by nine kindergartens, one nursery school and three primary schools. Teaching was administered by 24 “nomadic” teachers. In all, 106 children received preschool education and 77 were enrolled in general primary classes.²⁸⁴

With respect to international legal norms, Russia has not expedited its incorporation of international standards and treaties into its domestic normative framework. As one of 47 Member-States of the Council of Europe, an international organization established in 1949 to promote harmony, cooperation, good governance, human rights, democracy and the rule of law on the European continent, Russia is party to 60 conventions. One of them is the Framework Convention for the Protection of National Minorities, a comprehensive treaty which commits states to “promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.”²⁸⁵ Russia initially signed but refused to ratify the European Charter of Regional or Minority Languages, a treaty that introduces specific protective measures for nondominant languages, including indigenous languages. This treaty introduces a comprehensive list of measures to protect languages, and state parties can choose and implement only those which reflect regional specificities and most adequately would support particular languages. An explanation for Russia’s unwillingness to ratify this charter can be found in a study titled, “European Language Charter and Russia, Applied and Urgent Anthropology.”²⁸⁶ The authors refer first and foremost to the unprecedented scale of linguistic diversity in Russia, along with the vast territories of the country, which make it difficult to collect data and monitor sociolinguistic situation. The financial resources

284. Human Rights Council Res. 16/21, U.N. Doc. A/HRC/WG.6/30/RUS/1 (May 7–18, 2018).

285. COUNCIL OF EUROPE, FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES AND EXPLANATORY REPORT (Feb. 1, 1995), <https://rm.coe.int/16800cb5eb> [<https://perma.cc/X3H8-EJWK>].

286. S.V Sokolovsky & V.A. Tishkov, *Evropeiskaia Iazykovaia Xartiia I Rossiia* [*European Language Charter and Russia*], 218 STUD. IN APPLIED AND EMERGENCY ETHNOLOGY (2010).

required to implement the Charter is also a clear cause for concern. In addition, there are concerns that implementation of this Charter can destroy fragile peace and revive old or cause new interethnic conflicts in linguistically diverse regions with some history of tensions between different ethnic groups, for example the Republic of Dagestan. Finally, the study emphasizes that many existing federal and regional legislation and support measures already satisfy most of the obligations the Charter imposes on state parties.

Despite the abundance of legal frameworks and prominent governmental support for linguistic diversity, however, the implementation of sustainable practices that secure language rights remains incomplete. In particular, five notable components of federal and regional language policies demonstrate how much work still must be done in order to meet the aims of the Declaration and the aspirations of indigenous peoples with respect to language rights.

First of all, and again in contrast with the work of the Canadian Truth and Reconciliation Commission, which led to the historic acknowledgement of linguistic oppression and a formal apology from the Canadian government, Russia has failed to acknowledge the damage caused by government policies to indigenous languages. The official position that Russia has saved languages spoken even by the smallest communities, such as the Votians (68 language speakers) and the Izhorians (123 language speakers), is called into question by the minute size of each language community itself. The absence of substantial speakers in each community demonstrates Russia's inability to promote, grow, and safeguard indigenous languages.

Second, decisionmakers lack a deeply informed sense of how international and constitutional obligations to support languages should be administered as a practical matter. One illustration comes from the Ministry of Education's recent statement on the "Concept of Teaching Indigenous Languages." The need for such a statement was unclear given that, according to Russia's report under the Framework Convention for the Protection of National Minorities, the regulations necessary to provide quality language education are already in place.²⁸⁷ Moreover, the statement failed to address the main impediment to effective teaching identified by educators themselves, namely that state assessment of educational materials is prohibitively time-consuming and expensive. Framed as a "deliverable" for IYIL2019, this statement wasted resources by repeating aspects of national policy that already comply

287. COUNCIL OF EUROPE, *supra* note 52.

with international standards, while missing an opportunity to address bureaucratic impediments to improved language instruction.

Third, the legislative framework does not guarantee the right to learn native languages, nor does it allow students to elect native languages as their primary language of instruction, except in certain exceptional cases. The federal education law provides that “citizens have the right to receive preschool, primary, basic, and general basic education in their mother tongue from among the languages of Russia’s peoples and to learn such language if the education system can provide this opportunity.” Yet schools have the right to refuse to provide education in a given language if there is an absence of any of the following conditions: availability of textbooks in that language, methodological material in the language, qualified teachers, and many others. In addition, in some regions, such as the Republic of Karelia, the Central Election Commission refuses to print out ballots and other election-related material in indigenous languages, on the grounds that the specific territories in which indigenous peoples reside are not legally defined, and that indigenous peoples can speak Russian.²⁸⁸ This directly contrasts with federal legislation, however, which states that indigenous peoples are granted the opportunity to exercise their electoral rights in their native languages.

Beyond these longstanding problems, experienced observers have noted recent signs of regression in language policy. Indeed, recent amendments to federal education laws have eroded the entire system of obligatory instruction in non-Russian state languages in the republics. Protests by ethnic elites,²⁸⁹ meaning the intellectual and civil leadership of indigenous peoples, ultimately produced a compromise: state languages and other languages must be taught if (1) children or their parents ask for instruction, and (2) if the particular educational institution has the capacity to render educational services in the language.²⁹⁰ While the President has announced new funding for language

288. *Karel'skie aktivisty osporili otkaz TSIK pechatat' izbiratel'nye biulleteni na karel'skom i vepsskom iazykakh* [Karelian Activists Challenged CEC Refusal to Print Ballots in Karelian and Veps Languages], LEV GUMILEV CENTRE (Feb. 13, 2018), <https://www.gumilev-center.ru/karel'skie-aktivisty-osporili-otkaz-cik-pechatat-izbiratelnye-byulleteni-na-karel'skom-i-vepsskom-zyazykakh> [https://perma.cc/GJY9-XRDF].

289. Dmitry Lyubimov et. al, *A Common Language: Russia's 'Ethnic' Republics See Language Bill As Existential Threat*, RADIO FREE EUR./RADIO LIBERTY (June 20, 2018, 3:54 PM), <https://www.rferl.org/a/russia-language-bill-ethnic-republics-existential-threat/29306974.html> [https://perma.cc/58Z2-P2TK].

290. Konstantin Zamyatin, *Minority Language Education in Russia: Enforcing the Voluntary Teaching of Non-Russian Languages*, INT'L CENTRE FOR ETHNIC AND LINGUISTIC DIVERSITY STUD. (July 3, 2018), <http://www.icelds.org/2018/07/03/>

education, a fundamental problem remains: the new legislative regime weakens previous requirements for instruction in languages other than Russian, specifically indigenous languages like Komi, Mari, Udmurt, Sakha, Moksha and others.

Fourth, the central role of schools as the traditional keeper of social and cultural life in rural settlements has diminished. Small rural schools have been closed and pupils are either offered enrollment at boarding schools or daily transportation via substandard roads to schools in bigger settlements far from their homes. These developments are reminiscent of a 1950s-era policy that eliminated so-called “unpromising” villages, displacing thousands of indigenous peoples from their homes and disrupting intergenerational transmission of indigenous languages.²⁹¹ The apparent revival of this practice exacerbates migration of indigenous people to cities and increases the number of intermarriages, factors which may again facilitate the disappearance of indigenous languages.

Fifth, central authorities tend to consider languages from the perspective of national security, in which linguistic diversity appears incongruous with national unity and nationbuilding projects. The widely advanced concept of the so-called “Russian world” highlights the Russian language as critical to the unity of all peoples of the Russian Federation. In furtherance of this policy, the State Duma passed legislation in 2002 requiring that all state languages in the Russian Federation be based on Cyrillic script, with limited exceptions.²⁹² The law was aimed at preventing centrifugal tendencies in Tatarstan, one of the most independent Central-Russian republics, which possesses both a strong ethnic elite and a cultural affiliation with the transnational Turcic people’s movement. In the early 2000s, Tatar elites proposed that the official script of the Tatar language be changed from Cyrillic to Latin, in line with current practice in other Turcic countries. Such a move by a republic, especially one with a preferential tax regime granted by the federal government, was viewed as crossing a red line in the eyes of decisionmakers in Moscow. The central government responded by making it clear that it retains control over scripts used by indigenous

minority-language-education-in-russia-enforcing-the-voluntary-teaching-of-non-russian-languages [https://perma.cc/AN82-JT4D].

291. Alexandra Tomaselli and Anna Koch, *Implementation of Indigenous Rights in Russia: Shortcomings and Recent Developments*, 5 INT’L INDIGENOUS POL’Y J. 9 (2014).

292. See BRIAN P. BENNET, RELIGION AND LANGUAGE IN POST-SOVIET RUSSIA 34 (2011). SEE ALSO *O Gusudartvennom Iazyke Rossiiskoi Federatsii* [About the State Language of the Russian Federation], ROSSIYSKAYA GAZETA [ROS. GAZ.] (JUNE 7, 2005).

populations, and it resisted this attempt to change the status quo.²⁹³ The Constitutional Court later affirmed the position of the central government, and Tatarstan was not permitted to switch the Tatar language's alphabet from Cyrillic to Latin.²⁹⁴ This incident demonstrates the Russian government's intolerance of language rights when such rights conflict with national security concerns.

The outcome of this incident also became an obstacle for the continued usage of the Latin-based Karelian language as a state language in the Republic of Karelia, despite the fact that Karelian had been utilized as a state language since 1989. From that year, all efforts to develop modern language in Karelia have been based on the Latin script: dictionaries, textbooks, media publications, road signs, and more. Karelian civil society devoted substantial resources to literacy enhancing projects in villages in order to teach the Latin script to older generations so that they would be able to read books and newspapers in the Karelian language. While lawyers are confident that the federal law is discriminatory to Karelians,²⁹⁵ and that indigenous peoples should have the right to control their scripts,²⁹⁶ the Russian government insists that script has nothing to do with language phonetics or the cultural context, and that this anti-Latin policy can therefore be imposed as a political decision.²⁹⁷ The Constitutional Court supported this position when it decided that the legislation ensures "the state unity, harmonization and balanced functioning of the common federal language and republican state languages, providing for their optimal interaction within the common languages space."²⁹⁸ Yet linguists argue that the choice of a script by a language community is a byproduct of the historical, cultural, and linguistic contexts.²⁹⁹ States should therefore not impose their own regulations and

293. *Putin Makes Cyrillic Official Alphabet*, MIDLAND DAILY NEWS (DEC. 11, 2002, 8:00 PM), <https://www.ourmidland.com/news/article/Putin-Makes-Cyrillic-Official-Alphabet-7152929.php> [<https://perma.cc/3EHY-QCNE>] (reporting on a new Russian law requiring the use of the Cyrillic alphabet for official languages.).

294. Zamyatin, *supra* note 283.

295. EUR. COUNSULT. ASS., *Comments of the Government of the Russian Federation on the Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities in the Russian Federation*, GVT/COM/INF/OP/I(2003)005 (Feb. 21, 2003).

296. G.A. RES. 61/295, Declaration on the Rights of Indigenous Peoples (Sept. 13, 2007).

297. COUNCIL OF EUROPE, *supra* note 51.

298. Postanovlenie Konstitutsionnogo Suda Rossiiskoi Federatsii ot 16 noiabriã 2004 g. № 16-p [Resolution of the Constitutional Court of the Russian Federation of November 16, 2004 No. 16-P], Meeting of the Legislation of the Russian Federation, at 47 (2004).

299. See Peter Unseth, *The Sociolinguistics of Script Choice*, 192 INT'L J. SOC. LANGUAGE 1, 1-4 (2008); Opinion of the Institute of Linguistics of the Russian Academy of

restrictions, especially if those regulations and restrictions are guided by fear, incomplete analysis and misunderstanding. In the case of the Karelian language, the principal sources for the development of new vocabulary are the Finnish, Estonian, and Sami languages, which are all based on the Latin script. Abandonment of the right of indigenous peoples to control their scripts contributes to the violation of their right to self-determination and identity, and prevents them from developing their language in a historically and culturally appropriate way.

2. The Right to Revitalize, Use, Develop and Transmit

Leading Russian researchers believe that the educational system plays a leading role in language preservation and revitalization. Vep-sian scholar Zinaida Strogaltshikova³⁰⁰ has written that “education is the primary guarantor of preservation of indigenous languages:”

It is education that forms and raises both humans and civilians. There is therefore a vital need for a special program or sub-program that is aimed at the preservation of languages spoken by minorities with small populations. I must underline that, for many children, their native language is no longer native, and we must therefore adjust our approach to teaching these languages as if they are foreign languages.³⁰¹

Linguist Olga Kazakevich agrees that school can be a significant factor in the destiny of languages. While it is common practice in Russian schools to teach indigenous languages once a week in the first four grades, scholars believe that deploying a full-fledged language program starting with three lessons per week would have positive results.³⁰²

Ruslan Garipov goes even further by suggesting a change to the purpose of education—shifting the focus away from the integration of indigenous populations into mainstream society and toward the preservation and promotion of cultural diversity. For this shift to happen, he proposes including cultural and linguistic diversity concepts into course

Sciences Regarding Use of Cyrillic or Latin Script, No. 14405-01-218 (Sept. 26, 2017) (on file with the authors). The choice of script could also be seen as constituting a medium of expression pursuant to the “freedom of expression” contained in various human rights instruments. *See, e.g.*, G.A. Res. 217 (III) A, Universal Declaration of Human Rights at art. 19 (Dec. 10, 1948).

300. Zinaida Strogaltshikova is a Senior Researcher of the Institute of Language, Literature and History of the Karelian Research Center of the Russian Academy of Sciences and Chair of the Association of the Teachers of Native Languages and Literatures of Indigenous Small-Numbered Peoples of the North, Siberia and the Far East.

301. Irina Akhmedova, *Zinaida Strogalschikova: “The Main Guarantor of the Preservation of the Languages of Small Peoples is the Field of Education,”* UGRA-NEWS (MAR. 21, 2019), https://ugra-news.ru/article/zinaida_strogalschikova_glavnym_garantom_sokhraneniya_yazykov_malochislennykh_narodov_yavlyaetsya_s [<https://perma.cc/49G8-TF59>].

302. Gylman, *supra* note 274.

curricula, and even encourages the adoption of some of Tsarist Russia's educational concepts with respect to indigenous peoples.³⁰³

Indigenous peoples' own views on the role of education is very similar. For example, the Congress of the Karelian people and Congresses of Finno-Ugric Peoples of Russia have repeatedly asked for the establishment of an ethnic school department within the federal and subnational ministries of education.³⁰⁴ Indigenous peoples believe that this institutional improvement would help build the formal educational infrastructure required to maintain the uninterrupted teaching of indigenous languages in kindergartens, schools and universities. This model would also allow for the departure from teaching indigenous languages as just a subject, toward the establishment of real ethnic schools with indigenous languages as the languages of instruction. Such an aspirational model can be found in New Zealand,³⁰⁵ where Maori is a language of instruction in kindergartens, schools and universities, showing that an educational system can function to support revitalization and further maintenance of indigenous languages. As Annika Pasanen has explained:

A language nest is a day-care facility for pre-school age children in an area where a certain minority language is spoken. The idea behind the language nest is the same as in early, complete language immersion: the children who come into the language nest are mostly speakers of the majority language, and from their first minutes in the language nest, the carers will only speak the minority language to them.³⁰⁶

The 'Kohanga Reo' Language nest was established in early 1980's in New Zealand as Maori early childhood immersion and culturally supportive sites in order to teach 'Te Reo' the Maori language and peoples' customs. This methodology later expanded to other indigenous territories. In the 1980's, language nests were launched in Hawaii under the name 'Aha Punana Leo,' and in the 1990's, language nests appeared in Finland to revitalize Inari Sami language. The first indigenous language nest in Canadian British Columbia was started in 1987, and then

303. Garipov, *supra* note 253, at 4.

304. REZOLIŪTŠIĀ VI s"ezda Obshcherossiiskogo obshchestvennogo dvizeniā Assotšiatšiiā finno-ugorskikh narodov Rossiiskoi Federatšii [Resolution VI Congress of the All-Russian Social Movement "Association of Finno-Ugric Peoples of the Russian Federation"], (Sept. 27–29, 2017).

305. *New Zealand the Educational System—Overview* (2019), STATEUNIVERSITY EDUC. ENCYCLOPEDIA, <https://education.stateuniversity.com/pages/1080/New-Zealand-EDUCATIONAL-SYSTEM-OVERVIEW.html> [<https://perma.cc/XE8R-8UPC>] (last visited Jan. 31, 2020).

306. Annika Pasanen, *The Language Nest*, VISAT (APR. 21–23, 2015), <http://www.visat.cat/articles/eng/116/the-language-nest.html> [<https://perma.cc/UMU8-5UKJ>].

expanded throughout Canada,³⁰⁷ Australia, United States and other countries. The method has shown proved results in relatively quick increase in language speakers in communities where language natural acquisition in families from generation to another has interrupted. For example, in New Zealand, the number of speakers has increased up to a few percentage points since 1982.³⁰⁸ As the author Ulla Aikio-Puoskari has written, “The start of the Inari Sámi–medium education in 2000 can be considered one of the most remarkable outcomes of language nest activities”.³⁰⁹ Success of the immersion program has also changed the attitude of parents who initially believed that fluency in the native language provided for both increased career opportunities and enabling them ‘to learn the traditional cultures, values, beliefs and way of thinking’.³¹⁰

Nevertheless, while linguists believe in the power of education, such linguists remain skeptical of the longterm viability of critically endangered languages with only tens or hundreds of speakers. They believe that languages spoken by so few people cannot be rescued even with strong support programs and significant financial support.

A different approach is perhaps best articulated by Andrey Kibrik, the Director of the Institute of Linguistics of the Russian Academy of Sciences. Kibrik states that, because language is a living thing, it is impossible to transmit in the formal setting of the classroom. For this reason, the school is not the right environment for language revitalization.³¹¹

As a language activist and coordinator of an online group “Strana Yazikov” (Country of Languages), Vasily Kharitonov argues that linguistic communities should not rely only on formal education and thereby limit their revitalization measures to the mere creation of textbooks. Kharitonov argues that grassroots-level language initiatives

307. CHIEF ATAHM SCHOOL CURRICULUM TEAM, *FIRST NATIONS LANGUAGE NESTS: YOUR GUIDE TO OPERATING A SUCCESSFUL LANGUAGE PROGRAM FOR THE VERY YOUNG 8* (2009) (detailing the language nest concept and providing practical guidance for creating a youth language immersion program).

308. *New Zealand: The Maori*, AL JAZEERA (Jul. 14, 2014, 7:10 PM), <https://www.aljazeera.com/programmes/livingthelanguage/2012/04/2012416141630195978.html> [<https://perma.cc/XG7S-92AG>] (reporting on the success of the language nest model in New Zealand).

309. Ulla Aikio-Puoskari, *Revitalization of Sámi Languages in Three Nordic Countries*, in ROUTLEDGE HANDBOOK OF LANGUAGE REVITALIZATION 355, 357 (2018).

310. *Language Shift and Revitalization of Te Reo Māori*, LANGUAGE CONTACT, <https://sites.google.com/site/hongkonglinguistics/Downhome/language-shift/te-reo-maori> [<https://perma.cc/8T32-2SNH>].

311. *Liudi ne mogut byt' eksponatami etnograficheskogo muzeia [People Cannot be Exhibits in an Ethnographic Museum]*, KOMMERSANT (Mar. 21, 2019, 1:02 PM), <https://www.kommersant.ru/doc/3917580> [<https://perma.cc/7XSW-249E>].

can have a much more significant impact on indigenous language preservation.³¹² Although the primary responsibility for the vitality of a language belongs to the linguistic community that speaks that language, it is crucial for other stakeholders to support the right to revitalize native languages. Many indigenous local communities and individual language activists across Russia exercise this right through activities and projects devoted to enlarging spheres of language use. Thanks to this community-based civic activism, indigenous peoples can create contemporary and unique content which need not always relate to the history and culture of the respective language community.³¹³ One example is creation of a video course of breathing exercises for women in the Karelian language, which contributes both to enhancing health and learning new vocabulary in the language.³¹⁴

Furthermore, six civil society organizations in the Baltic Sea region from Russia, Estonia, Latvia, and Finland are building a Civil Society Network for Revitalizing Indigenous Languages.³¹⁵ In practical terms, this network provides mini grants for innovative local initiatives, which are implemented at the intersection of crafts, arts, cuisine, and languages. Indigenous activists offer language quests for children, popularize indigenous wisdom via car stickers, revive traditional place names through 3D maps, and promote scripts by making design product lines for offices. The concluding document of the First Forum of Finno-Ugric Language Activism suggests that the educational system and civic activism are interlinked and have equal significance in the preservation of languages. For example, a civil society might work with parents, in order to convince them of the importance of learning indigenous languages and popularizing languages via implementing informal language initiatives.³¹⁶

312. Vasily Kharitonov, Remarks at the International Symposium on Indigenous Languages in Sakhalin, Russia (Feb. 22–23, 2019).

313. See, e.g., *Karelian Movement*, NUORI KARJALA, <http://nuorikarjala.ru/en/motion/news/korennye-narody-berut-otvetstvennost-za-sokhranenie-yazykov> [<https://perma.cc/73VZ-RLC3>].

314. See Association of Ethnocultural Centres and Heritage Organisations (ECHO), *Breathing Exercises Video Course in Karelian*, SANA 2019, <http://sana2019.ee/en/breathing> [<https://perma.cc/LKA6-9KY6>] (last visited Jan. 31, 2020).

315. *Ten Initiatives by Language Activists to be Implemented During the International Year of Indigenous Languages 2019*, NUORI KARJALA, <http://nuorikarjala.ru/en/motion/news/desyat-proektov-yazykovykh-aktivistov-budut-realizovany-v-mezhdunarodnyy-god-yazykov-korenykh-narod> [<https://perma.cc/6BDL-HTUS>].

316. *Outcome Document, First Forum of Finno-Ugric Language Activism*, NUORI KARJALA, http://nuorikarjala.ru/download/Outcome%20document_Language%20activism%20forum_ENG.pdf [<https://perma.cc/9VZA-WR47>].

One of the Forum participants, Natalia Antonova, a language activist from the Republic of Karelia, posits that language activists play an important role in society, but should not be overburdened by functions that belong to the governmental educational system.³¹⁷ The forum of Finno-Ugric Language Activism further suggests that the civil society must work in partnership with the state and should not serve the government's function with respect to ensuring language rights. Removing indigenous languages from the educational system is certain to negatively impact the status, standing, and prestige of these languages.³¹⁸

One novel approach to language preservation worth highlighting is that of Karelian Language House. Karelian Language House is not only an indigenous NGO, but a physical coworking space in the village of Vielyarvi, where the local linguistic community can come together in the spirit of revitalizing the use of a native language through one of many group activities: producing handicrafts, cooking, singing in a village chorus, or performing in a local amateur theatre. This small local community has also been commended for taking the lead on an additional program called "the language nest," which has been recognized by the United Nations as an advanced practice in indigenous language preservation.³¹⁹

Following its inception by the Maori in New Zealand, the language nest approach came to Russia via Finland, where it has been successfully used for the revitalization of the Inari Sami and Skolt Sami languages.³²⁰ However, Russian federal authorities refused to adopt the language nest program, suggesting that the method causes the ethnic segregation of children, and creates inequality and unequal access to opportunities among students.³²¹ Despite the lack of support from the Russian government, Russian linguist Andrey Kibrik denies that fluency in an indigenous language constitutes an obstacle to learning the state language of the country, obtaining a general or higher education, and being competitive in the labor market.³²² In fact, he suggests that the opposite is true: language nests facilitate bilingual

317. See *Indigenous Peoples Hold Primary Responsibility for the Preservation of Their Languages*, NUORI KARJALA, <http://nuorikarjala.ru/en/motion/news/korennye-narody-berut-otvetstvennost-za-sokhranenie-yazykov> [https://perma.cc/6G5K-8QFM] (last visited Mar. 3, 2020).

318. *Outcome Document*, *supra* note 316.

319. U.N. Econ. & Soc. Council, Permanent Forum on Indigenous Issues, 15th Sess., expert group mtg., U.N. Doc.E/C.19/2016/10 (Feb. 29, 2016).

320. Association of Ethnocultural Centres and Heritage Organisations (ECHO), *supra* note 314.

321. COUNCIL OF EUROPE, *supra* note 51.

322. KOMMERSANT, *supra* note 311.

education, providing a competitive advantage both in education and the job market.³²³

As noted above, ILO Convention 169, Article 28 also speaks in favor of methods such as language nests. Experts read Article 28 of ILO Convention 169 as endorsing a model of “controlled segregation” versus integration into the dominating population.³²⁴ This model is not directed against the majority in society, but should instead be seen as a positive measure, as it serves as a final effort at creating a safeguard that enables intergenerational communication in indigenous languages. Indeed, linguistic communities themselves do not tend to consider language nests as an effort to segregate, but rather, view them as an effort to welcome representatives of other peoples and to learn their languages.

The European Charter for Regional or Minority Languages introduces and legally stipulates the concept of positive measures for indigenous language preservation:

It is clear today that, by reason of the weakness of numerous regional or minority languages, the mere prohibition of discrimination is not sufficient to ensure their survival. They need positive support [I]t is left up to the States to determine the manner in which they intend to act to promote regional or minority languages in order to preserve them, but the charter emphasizes that such action must be resolute.³²⁵

On the other hand, the Charter underlines that these measures do not promote the supremacy of a supported language or destroy linguistic equality:³²⁶

The adoption of special measures in favor of regional or minority languages aimed at promoting equality between the users of these languages and the rest of the population or which take due account of their specific conditions is not considered to be an act of discrimination against the users of more widely-used languages.

While language nests are useful for settled communities, nomadic indigenous communities would need other culturally appropriate models. Understanding the negative experience of boarding schools, the Russian government has introduced a nomadic school method, which ensures access to education without taking children from their families,

323. Psychologists debate the relationship between bilingualism and mental control. See Ed Yong, *The Bitter Fight Over the Benefits of Bilingualism*, THE ATLANTIC (Feb. 10, 2016), <https://www.theatlantic.com/science/archive/2016/02/the-battle-over-bilingualism/462114> [<https://perma.cc/82JT-DUJT>].

324. MART RANNUT, POSOBIE PO JAZYKOVOJ POLITIKE [THE LANGUAGE POLICY GUIDE] 94-95 (2004).

325. ECRML, *supra* note 73, ¶ 61.

326. Kryazhkov, *supra* note 281.

and without harm to their physical and mental health. This method also allows for the preservation of native languages and cultures via traditional occupations. When children grow up in their natural environment, they learn traditional vocation-related vocabulary in the proper context by learning this vocabulary through the practice of a traditional vocation. This educational practice might be appropriate for indigenous peoples living in the conditions of the Arctic and practicing reindeer husbandry in the tundra. Nenets elders claim that their children can manage reindeer alone by the age of twelve if they stay with the family and learn the language and vocabulary associated with the profession, whereas children at the age of sixteen are incapable of managing reindeer alone if they are taken to a boarding school.³²⁷ For children to be raised with competence in their cultural traditions, they must have mobile schools that can accompany them and the reindeer.

Some parents, however, are inclined to be skeptical of mobile schools and native language preservation in general because they believe that indigenous languages are not viable and not practically useful for children. In some communities, this skepticism is tied to the assumption that indigenous languages are underdeveloped, lack sufficient modern vocabulary and sophisticated legal terminology, and therefore cannot be used in higher education, courts, or science. Indigenous peoples' rights to determine their future should naturally include the right to develop of their languages. In Russia, language commissions (Terms and Spelling Commissions) normally work under executive authorities, in some cases even under the heads of republics.³²⁸ The duties of these commissions include language planning, rationing, and the development of vocabulary and official translations. The United Nations Declaration on the Rights of Indigenous Peoples has been translated into various Finno-Ugric languages in Russia with the support of language commissions. Sometimes language development is the subject of cooperation between indigenous communities and the private sector. In the Russian Far East, for example, Sakhalin Energy Company, in conjunction with indigenous peoples and government authorities, has adopted a cooperation plan with a strong language component, including yearly conferences in indigenous languages and

327. Sergey Kharychi, Remarks at the International Symposium on Indigenous Languages in Sakhalin, Russia (Feb. 22, 2019).

328. Alexey Tsykarev & Vasily Nemechkin, *Expert Mechanism on the Rights of Indigenous Peoples, Indigenous Peoples and Access to Information (Examples of the Republic of Karelia and the Republic of Mordovia)*, at 17, U.N. Doc. A/HRC/EMRIP/2018/CRP.3 (Jul. 9, 2018) (detailing the structure of language commissions in Karelia and Mordovia).

translation of laws and artistic masterpieces into local Nivkh indigenous language.³²⁹

In modern societies, the vitality of languages depends on more than just their use in education, media and administration.³³⁰ Indigenous peoples would like to have access to the Internet and modern information and communication technologies. Countries such as Estonia push for access to the Internet as a human right, which also includes the right to information, income and communication.³³¹ This emerging human right should also apply to indigenous peoples.³³² The International Conference on Preservation of World Languages in Cyberspace addressed the issue of substandard cyberinfrastructure in remote indigenous settlements. Poor cyberinfrastructure denies teachers of the ability to use the Internet for language teaching purposes, and to communicate with common indigenous language speakers from settlements thousands of kilometers away. To remedy this problem, indigenous languages should be well-represented in cyberspace and increased use of technology. Indigenous language activists have begun the process of increasing access to Internet and information by developing indigenous language versions of Wikipedia, translating interfaces of social media resources into indigenous languages, and creating online dictionaries, and therefore providing access to Internet in the language indigenous peoples can understand. The interregional Laboratory of Information Support for Finno-Ugric Languages in the Republic of Komi has contributed to the digitalization and documentation of many indigenous languages of Russia.³³³ In the republics of Sakha (Yakutia)³³⁴ and Karelia,³³⁵ indigenous

329. *Sakhalin Indigenous Minorities Development Plan*, SAKHALIN ENERGY, <http://www.sakhalinenergy.ru/en/social/programmes/simdp> [https://perma.cc/7JCF-GS9D] (last visited Jan. 31, 2020).

330. KONSTANTIN ZAMIATIN ET. AL, *KAK I ZACHEM SOKHRANIAT' IAZYKI NARODOV ROSSII?* [HOW AND WHY TO SAVE THE LANGUAGES OF THE PEOPLES OF RUSSIA?] 24 (2012).

331. *Estonia is a Digital Society*, VISIT ESTONIA (last updated Jan. 3, 2020), <https://www.visitestonia.com/en/why-estonia/estonia-is-a-digital-society> [https://perma.cc/T28G-XQRU].

332. Oliver Loode, *Remarks at the 11th Session of the U.N. Permanent Forum on Indigenous Peoples*, YOUTUBE (May 16, 2012), <https://www.youtube.com/watch?v=t71V9O3txcM>.

333. *Mezhregional'naiia laboratoriia informatsionnoi podderzhki funktsionirovaniia finno-ugorskikh iazykov* [Interregional Laboratory of Information Support for the Functioning of Finno-Ugric Languages], FU-LAB, <http://fu-lab.ru/laboratoriya> [https://perma.cc/U24T-ZFUU] (last visited Jan. 16, 2020).

334. *Mul'timediinnyi portal dlia obshcheniia na iazykakh narodov Severa razrabotali v Iakutii* [A Multimedia Portal for Communication in the Languages of the Peoples of the North Was Developed in Yakutia], RAMBLER (Feb. 7, 2019), <https://news.rambler.ru/other/41684526-multimediynny-portal-dlya-obscheniya-na-yazykah-narodov-severa-razrabotali-v-yakutii> [https://perma.cc/DP53-49D4].

335. Human Rights Council, *supra* note 284, at 5.

peoples work on multilingual internet portals in order to create unique content in indigenous languages. Indigenous community-led language revitalization initiatives in Kamchatka have reached young audiences and made use of new technological opportunities without significant financial resources: online music channels with subtitled recordings of indigenous language songs (Itelmen karaoke) and a smartphone application to facilitate language discussion groups in Itelmen have been particularly useful.³³⁶

3. Implementing Human Rights

The Russian Constitutional Court has interpreted Article 68.3 of the Constitution to ensure the rights of all peoples of the Russian Federation to preserve their native language and to guarantee the conditions necessary for their study and development.³³⁷ This interpretation has the potential to meet the standards of international human rights law, including the recognition of both Russian and indigenous languages as state languages in each Republic.³³⁸ A bilingual or multilingual model would better serve the rights of indigenous peoples to obtain education in their own language and to learn the national state language of the country, as envisioned by the Declaration. In our view, this approach would not only improve the general quality of education and assist in sustainable nationbuilding efforts, but would also promote peace and prevent additional societal conflict.

Yet, while the Constitutional Court seems to support this approach as a matter of law, there are a number of political impediments to its realization, including a failure to respect the self-determination of indigenous peoples in setting language policy and the perception that multilingualism undermines national security.

The Russian Federation has failed to acknowledge indigenous peoples as equal partners in determining language policy.³³⁹ As a result, while Russia has a highly detailed legislative framework on languages, it is not consistent with the real needs of linguistic communities who require flexibility to adopt novel and particularized measures for language revitalization and maintenance. Moreover, by failing to recognize historical harms or intergenerational trauma caused by denial of

336. U.N. Econ. & Soc. Council, *supra* note 319.

337. Resolution of the Constitutional Court No. 16, *supra* note 298.

338. *Id.*

339. For treatment of the issue of indigenous peoples' participation in issues of language and culture in Russia, *see, e.g.*, Alexandra Xanthaki, *Indigenous Rights in the Russian Federation: The Case of Numerically Small Peoples of the Russian North, Siberia, and Far East*, 26 HUM. RTS. Q. 74, 84–88 (2004).

indigenous language rights in the past, Russian language policy is bereft of remedial insights and approaches to current language issues. Going forward, linguistic communities must have the opportunity to provide free and informed consent in all efforts that relate to their languages. Cooperation based on proper consultation, participation and consent would avoid the mistakes made by governments and researchers when they imposed scripts, methodologies or strategies on how to save indigenous and minority languages from extinction. In Karelia, for example, after significant resources were devoted to developing a “unified language” by a small group of elite researchers in academic institutions, the initiative was rejected by the Karelian people who had their own pedagogies and insights for language revitalization.

Relatedly, cooperation with indigenous peoples can help to develop the data that will be instrumental to enhancing language policy-making. Indigenous peoples can assist federal and regional authorities to better train census employees and improve questionnaires tracking indigenous population demographic data. One small step recently undertaken toward this goal was allowing for census respondents to mention two native languages instead of one. In terms of comparative lessons of this Article, it may be helpful for Russian advocates to consider research in the United States that has begun to explore the role of indigenous peoples in contributing to assessments of language vitality.³⁴⁰

The next step to be taken after full inclusion of indigenous peoples in policymaking processes, is public promotion of linguistic diversity as a substantive matter. Indigenous languages benefit when their prestige is restored and they are considered assets to economic and social wellbeing. Research can help to dispel assumptions that indigenous languages burden states, by showing for example how multilingualism

340. See, e.g., Tyler Peterson & Ofelia Zepeda, *Workshop: Assessing and Documenting the Vitality of Native American Languages* (2016) (abstract available at https://www.nsf.gov/awardsearch/showAward?AWD_ID=1601738) (“Currently, there is no systematic assessment of the Native American languages of the United States and their vitality . . . [T]his project will review existing assessment tools and survey methodologies with the goal of enabling participants to create new and innovative assessment tools that address this need. Participants will [include] Native Americans who are currently engaged in language work, as citizen scientists, educators, and staff and students at tribal colleges and universities. This project has the potential to inform policy decisions and implementations in national and international contexts. In addition, it will create a cohort of indigenous citizen scientists well-versed in scientific activities that include research protocols, assessment design and use, data analysis and more.”).

fosters diversity in the labor market.³⁴¹ Studies by the World Bank³⁴² and United Nations,³⁴³ moreover, reveal that indigenous languages may help to foster tourism and culture-based businesses in rural areas. Use of indigenous minority languages has also been linked to social cohesion, social status, and the economic wellbeing of speakers—fostering the political and social stability of states and peace in indigenous communities.³⁴⁴

Despite these positive accounts in Russia, many policy makers continue to see indigenous languages as undermining national security. Consider, for example, the Karelian peoples' movement to secure state status for the indigenous Karelian language in the Republic of Karelia. Because the Karelian language is related to Finnish, some members of the republican parliament consider this effort as potentially threatening to Russian hegemony, and therefore, unsettling to peace and security in the region. Proponents of the national security approach also argue that a recognizing Karelian as a state language would disadvantage citizens who do not speak Karelian. Such arguments successfully led to the amendment of the Constitution of the Republic of Karelia now requiring a referendum to establish any state language beyond Russian in the Republic. Because Karelians represents only seven percent of the population of the Republic, the Constitutional amendment make it highly unlikely that the indigenous language of the Republic will ever be recognized as a state language.

Finally, states should understand the multidimensional character of indigenous languages and the indivisibility of human rights. It is not possible to reform healthcare services in indigenous language-speaking areas without using these languages in hospitals. Sociocultural assessment of infrastructure projects on indigenous lands must include use of the languages and an assess impact of economic activities on languages, cultures and health.³⁴⁵ For many linguistic communities divided

341. See generally Ruslan Garipov, *Labor Market Integration of Indigenous Youth in the Republic of Karelia, Russia*, INT'L J. MINORITY & GROUP RTS. 1 (2019).

342. Svetlana Kolchurina et al., *Socio-Economic Development Through Finno-Ugric Culture in Kalevsky District, the Republic of Karelia: Final Report*, WORLD BANK 75 (2016).

343. Expert Mechanism on the Rights of Indigenous Peoples, Good Practices and Challenges, Including Discrimination, in Business and in Access to Financial Services by Indigenous Peoples, in Particular Indigenous Women and Indigenous Persons with Disabilities, U.N. Doc. A/HRC/36/53, at 14 (Aug. 8, 2017).

344. Tove Skutnabb-Kangas & Robert Phillipson, *Linguistic Rights, Past and Present*, in LINGUISTIC HUMAN RIGHTS: OVERCOMING LINGUISTIC DISCRIMINATION 96 (Skutnabb-Kangas & Robert Phillipson eds., 1995).

345. See, e.g., D.H. Whalen et al., *Healing Through Language: Positive Physical Health Effects of Indigenous Language Use*, 5 F1000 RES. 852, 856 (2016).

by international and administrative borders, it is also crucial to ensure equal rights and guarantees for all community members on different sides of the borders. The right to use indigenous languages is often critical to voting, political participation, and expression of conscience in indigenous peoples. In short, if the Russian Federation and other countries wish to ensure democratic processes, they must protect the right to indigenous languages.

CONCLUSION

Indigenous peoples' languages are critical to indigenous worldviews, as well as democracy and human right more broadly.³⁴⁶ IYIL2019 ushered in awareness of the possibilities and challenges associated with indigenous peoples and their language rights. International human rights instruments and frameworks have developed in recent years, particularly with the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, and now offer guidance regarding the rights of indigenous peoples and the obligations of states in the realm of indigenous peoples' languages. There is additional interpretive guidance and advice available from the United Nations.³⁴⁷ At the same time, indigenous peoples, are increasingly asserting rights to speak their languages and pressing for measures to realize these rights. Their empowerment is an aspect of the local, national, and international dynamics of the indigenous languages movement.

Accordingly, the Strategic Outcome Document of IYIL2019 calls for a multistakeholder approach to a multilingual future.³⁴⁸ Recognizing that universal human rights "can be more fully realized when indigenous peoples are free to speak, think, and live in their own languages" and that "the impacts of hundreds of years of language suppression or neglect cannot be reversed in one single year," the General Assembly proclaimed a full decade to work on these issues going forward. Our understanding is that the decade will build on the awareness raised

346. *Evo Morales: 'Indigenous Languages Are Part of Our Identities'*, TELESUR (Feb. 1, 2019), <https://www.telesurenglish.net/news/Evo-Morales-Indigenous-Languages-Are-Part-of-Our-Identities-20190201-0016.html> [<https://perma.cc/Z49H-AF4W>] ("The loss of a language means the loss of a worldview; a decline and belittling of human intelligence . . . Today we keep resisting the post-colonial anger that tries to crush our rebellions against injustice . . . They speak to Indigenous people about democracy and human rights. Can there be democracy or rights when our indigenous peoples live crushed by the tyranny of capital.").

347. See, e.g., Expert Mechanism on the Rights of Indigenous Peoples, *supra* note 13.

348. Records of the General Conference, *UNESCO Strategic Outcome Document of the 2019 International Year of Indigenous Languages*, UNESCO Doc. 40 C/68 (Nov. 15, 2019).

during 2019 and create platforms for cooperative implementation of indigenous peoples' language rights going forward. These efforts will be guided by a human rights framework and involve other domains from biodiversity to reconciliation.³⁴⁹ Goals include understanding and facilitating the role of indigenous languages in peacebuilding and sustainable development.³⁵⁰

Additionally, our analysis of the situation in the United States and Russia suggests several points that we would like to offer for further consideration during the IDIL2022–2032.

Even amongst the widely divergent histories and political identities of the United States and Russia, it is clear that indigenous peoples' languages have been perceived as threatening to national hegemony. Both countries suppressed indigenous languages in ways that contributed to the endangered status of indigenous languages and discrimination faced by speakers. Observers may note that these policies are largely in the past and indigenous peoples are “free” to learn and use their languages today. But this is not entirely accurate for two reasons. First, these past acts have not yet been remedied. The historical suppression of indigenous languages disrupted intergenerational learning, brought about individual and collective trauma, and diminished confidence and pride in the language. It has also created gaps in usage such that many communities lack not only fluent speakers but also contemporary media, schools, literatures, and professional terminologies in their indigenous languages. These problems remain, albeit complicated and contextualized through the experiences of each country.

Second, even while policies have changed somewhat in favor of indigenous peoples' self-determination in the realms of language and culture, contemporary iterations of nationalism continue to suppress indigenous languages. In the United States, indigenous peoples find themselves enveloped in both formal and informal discrimination against racial minorities and non-Englishspeaking migrants, in the areas of legal services, health, education, employment, and voting. In Russia, the move for independence by former Soviet republics undergirds concerns that indigenous peoples might follow suit, leading to laws that diminish the status of indigenous languages and ostensibly the political

349. See *id.* annex, 4 (“Highlight[ing] an urgent need to promote, strengthen and mainstream indigenous languages across social, cultural, economic, environmental, political, scientific and technological domains, and to acknowledge their importance for peace-building, sustainable development, biodiversity, the mitigation, and adaptation of climate change, and reconciliation processes in society”).

350. See *id.* annex, 4.

and cultural unity that accompany them. Thus discrimination against indigenous peoples and their languages is not fully in the past.

It is important for indigenous peoples in these countries, and in all countries, to consider the deeper sources of opposition to their language aspirations. When critics claim that indigenous peoples are indifferent about their languages or ascribe the lack of resources for language programs to benign forces, a deeper inquiry may reveal more insidious or structural problems. Surely indigenous peoples have individual and collective responsibilities to learn and transmit the languages, but they are often up against iterations of nationalism that have not fully embraced the multilingual or plurilingual realities of today's global society.³⁵¹ While concerns about national unity and security are often paramount, contemporary democracies must recognize that these concerns must go hand in hand with human rights, including indigenous peoples' language rights.

Against all of these historical challenges and their contemporary legacies, indigenous peoples in both countries are determined to protect and revitalize their languages. As examples throughout this Article suggest, this movement is not about outsiders saving indigenous languages but rather about indigenous peoples' own activism and aspirations.³⁵² Myriad examples from the United States and Russia reveal how indigenous peoples desire to reclaim, use, revitalize, and transmit their languages. Whether Cherokee or Karelian, Wampanoag or Nenets, indigenous peoples in settings rural, urban, traditional, and developed, are working on their languages. They often have deeply felt aspirations, difficult to put into practice after generations of discrimination and oppression.

As we have argued, the UN Declaration on the Rights of Indigenous Peoples can support indigenous peoples' language rights advocacy. The Declaration sets a baseline that indigenous peoples have the rights to revitalize, use, develop, and transmit their languages to future generations. States must, at a minimum, incorporate the Declaration's standards on language rights in their national laws and policies, whether

351. See Claudia Josi, *The Recognition Of Diversity In The New Bolivian Constitution: Reliance On Traditional Perspectives And Respect Of International Law*, 47 REV. JURIDICA U. INTER. P.R. 701, 701 (2012–13) (“The Bolivian constitutional reform of 2005 was the beginning of a political process that lead to the redefinition of national identity in the new constitution. Ancestral values and traditions, as well as internationally recognized standards concerning the rights of indigenous people, have been incorporated in this reform and have modified and strengthened the respect for diversity in this new constitution?”).

352. See generally Gregory Bigler & Mary S. Linn, *Acting Responsibly: Linguists in American Indian Communities*, 21 PRACTICING ANTHROPOLOGY 34 (1999).

by constitution, statute, or other mechanism. States must also remedy past harms in the realm of language and related rights. Society must create the conditions where these rights can flourish in realms including family, media, communications, education, health, science, governance, economy, and entertainment.³⁵³

Even states with existing legislation supporting indigenous peoples' language rights, like the United States, must do better in terms of consulting with indigenous peoples regarding legal reform going forward. During the International Year, Russia announced a national action plan and national organizing committee on indigenous languages. This helped to facilitate indigenous peoples' participation in the United Nations' events and cooperation between indigenous peoples and the state. The United States and all countries should have national organizing committees, comprised of both state and indigenous leaders, for the Decade. The norms of self-determination, participation, and free, prior, and informed consent must guide these interactions between states and indigenous peoples during the Decade and beyond.

Recognizing language rights as human rights, both generally and in the indigenous peoples' context, would advance individual and collective dignity, culture, biodiversity and societal wellbeing going forward. In these ways, a human rights approach to indigenous languages transcends all of the legal and policy points that we have discussed. It involves solidarity among indigenous peoples and change in society more broadly, and an understanding that freedom of expression in indigenous languages is critical to humanity on an individual and collective basis. Inspired by the International Year, states and indigenous peoples have the opportunity to work together to ensure the use, preservation, revitalization, and transmission of indigenous languages into the International Decade. The time is now, before one more language or one more voice goes silent.

353. For sources focusing on revitalization efforts in urban indigenous communities, *see, e.g.*, SARAH SHULIST, *TRANSFORMING INDIGENEITY: URBANIZATION AND LANGUAGE REVITALIZATION IN THE BRAZILIAN AMAZON* (2018); JENANNE FERGUSON, *WORDS LIKE BIRDS: SAKHA LANGUAGE DISCOURSES & PRACTICES IN THE CITY* (2019).