The Right to Education and the UN Declaration on the Rights of Indigenous Peoples

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PART I:
The Right to Education under Article 14 of the UN Declaration on the Rights of Indigenous Peoples

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“A liberating education nurtures empathy, a commitment to community, and a sense of self-worth and dignity.”¹

I. HISTORY AND MEANING OF ARTICLE 14:

A. A Brief History of Indigenous Peoples and Education

Although the international community has long recognized education as essential to the well-being and development of individuals and communities,² state policies and actions around the world have too frequently prevented indigenous peoples from receiving a truly empowering education. This has been achieved in a variety of ways: passively by ignoring or failing to consider the economic, cultural, and linguistic realities of indigenous peoples and actively by deliberately minimizing or excluding aspects of their language and culture from educational program design and execution.³ However, the unwillingness of State-run educational programs to value and incorporate indigenous languages and cultures has an even more disturbing past than mere neglect. According to studies conducted by the Permanent Forum on Indigenous Issues, “there are countless examples from many parts of the world from the early and mid-1800s onwards and up to the mid-1900s and even longer where the intention to destroy an indigenous group [through education] has . . . been overtly expressed.”⁴

Some States took this idea of “forced assimilation” to the extreme, physically removing indigenous children from their families and their communities and placing them in residential schools, where the dominant state language, culture, and religion were forced upon them to the exclusion of anything indigenous.\(^5\) As one scholar described it:

“[Indigenous] children usually were kept at boarding school for eight years, during which time they were not permitted to see their parents, relatives or friends. Anything Indian – dress, language, religious practices, even outlook on life . . . was uncompromisingly prohibited. Ostensibly educated . . . in the English language, wearing store-bought clothes and with their hair short and their emotionalism torn down, the boarding-school graduates were sent out either to make their way in a White world that did not want them, or to return to a reservation to which they were now foreign.”\(^6\)

This experience was not unique to the United States. Comparable legacies of forcible removal of indigenous children exist throughout the world in places such as Australia, New Zealand, and Canada.\(^7\) Even where States established schools in or near indigenous communities, these schools were often geared towards forced assimilation, causing indigenous communities to identify education in schools as an ugly symbol of their overall marginalization.\(^8\) Moreover, national education reinforced negative stereotypes and discriminatory views of indigenous peoples in its general curricula.\(^9\)

Thus education, rather than being a force of empowerment, empathy, and strength, negatively impacted generations of indigenous students.\(^10\) As one UN study described it with respect to

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\(^7\) See, e.g., Martinez Cobo Chapter XIII, at para. 28 – 29. See also Martinez Cobo Chapter XIII, at para. 61.

\(^8\) See, e.g., Martinez Cobo Chapter XIII, at para. 28 – 29. See also Martinez Cobo Chapter XIII, at para. 61.

\(^9\) See also Martinez Cobo Chapter XIII at paras. 61, 71, 78-85, 127-130.

\(^10\) See also Martinez Cobo Chapter XIII at paras. 61, 71, 78-85, 127-130.
Canadian boarding schools, they “represented a ‘system of persistent neglect and debilitating abuse . . . . The schools produced thousands of [indigenous] individuals incapable of leading healthy lives or contributing positively to their communities.’”\(^{11}\) The children suffered both cultural and familial dislocation, as well as physical and psychological abuse: “Examples abound from all over the world of indigenous . . . children having experienced serious physical punishment (both in residential and in day schools), lack of food, sexual abuse and so forth…. Many such children who have suffered such education are [also] permanently alienated from both their native language and culture and their families and home communities.”\(^{12}\) Moreover, the harm caused by these educational policies has been intergenerational. For instance, children raised or educated in these schools knew very little of life in a “family” and as parents themselves had no familial or community patterns to follow in rearing their own children. Since the economic and social well-being of an indigenous group often centers around familial or kinship networks, the physical, cultural, and linguistic separation of indigenous children from these networks has contributed substantially to the dire socioeconomic conditions facing some indigenous peoples today. As one indigenous leader described it “the chances of [indigenous] survival are significantly reduced if our children, the only means for the transmission of [our] heritage, are . . . denied exposure to the ways of their People.”\(^{13}\)

Unfortunately, the human rights issues surrounding education and indigenous peoples are not merely historical. As one recent UN Special Rapporteur study on Indigenous Peoples and Education noted “indigenous peoples still face a number of difficulties to fully enjoy the right to education.”\(^{14}\) According to the study’s Conclusions and Recommendations “historical and ongoing discrimination continues to negatively affect the recognition of the rights of indigenous peoples.”\(^{15}\) As we will see, discrimination in education comes in many forms, including most prominently the denial of mother tongue-medium education for indigenous children.\(^{16}\) As one UNESCO representative recently observed “millions of [indigenous] children continue[] to be taught in languages they [do] not use or even understand. . . . [P]articipation of indigenous peoples in designing curricula [is] still limited, and education still fell short of eliminating prejudice and discrimination targeted at indigenous peoples.”\(^{17}\) There also exists a deeply rooted conception of bilingual education as a means of facilitating assimilation, rather than bilingualism and biculturalism.\(^{18}\) As a result, members of indigenous communities justifiably view even bilingual schools and programs with suspicion. Moreover, while UN studies recognize the “important progress . . . at both the national and international level towards the enjoyment of the right to education by indigenous peoples,” they also note that “lack of implementation” remains a major issue in the full recognition of this right.\(^{19}\) These implementation issues are explored

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\(^{11}\) Permanent Forum 2008, at para. 33.


\(^{14}\) Conclusions And Recommendations Of The Expert Seminar on Indigenous Peoples and Education, at para. 10.

\(^{15}\) Conclusions And Recommendations Of The Expert Seminar on Indigenous Peoples and Education, at para. 10.

\(^{16}\) Conclusions And Recommendations Of The Expert Seminar on Indigenous Peoples and Education, at para. 10.


\(^{18}\) See, e.g., Martinez Cobo Chapter XIII, at paras. 177 – 80.

\(^{19}\) See, e.g. Martinez Cobo Chapter XIII, at para. 8. Some States have attempted to implement bilingual education in schools serving indigenous populations. However, many of these programs have inadequate teacher training and
Not surprisingly, one of the main issues that Art. 14 seeks to address is the problem of historical and contemporary inequality in indigenous education. A fundamental purpose of education is to provide individuals with the necessary tools to participate fully and successfully in society. However, for indigenous peoples, the idea of participating “fully and successfully in society” has its own meaning and purpose. As one scholar of indigenous knowledge puts it:

“[Indigenous knowledge] serve[s] as the basis for a pedagogy of place that shifts the emphasis from teaching about local culture to teaching through the culture as students learn more about the immediate places they inhabit and their connection to the larger world within which the will make a life for themselves . . . As Indigenous people reassert their world views and ways of knowing in search of a proper balance between . . . ‘two worlds,’ they offer insights into ways by which we can extend the scope of our educational systems to prepare all students to not only make a living, but to make a full-filling and sustainable life for themselves [and their communities].”

Yet, as earlier noted, most existing educational systems available to indigenous peoples tend to impose upon them curricula that were originally designed to address non-indigenous cultural and linguistic contexts, rather than adapting the curricula to the particular needs and desires of a community and people. As a result, very few indigenous students receive the tools they need to find a “proper balance between two worlds,” thereby participating in “society” on equal footing with their non-indigenous counterparts. This creates an on-going inequality in education.

Relying on consultation with indigenous representatives and studies produced by UN bodies, the Working Group on Indigenous Populations (WGIP) was seeking to identify in Article 14 some of the central mechanisms that States need to put into action in order to begin to equalize the standard and quality of education for indigenous peoples. Three means for eradicating discrimination and inequality that kept recurring in the WGIP’s discussions were: (a) self-determination in the creation and management of indigenous schools, (b) instruction in the
pupils’ indigenous language, and (c) instruction within the context of the pupils’ indigenous culture. Below is a brief narrative of these important themes. The legal framework surrounding each theme is dealt with in the next section.

B. Self-Determination, Language, and Culture

1. Self-determination in Education

The first theme is one of self-determination, a principle more fully explored in Chapter 3 of this book. Under international law, self-determination is linked to notions of cultural survival, non-discrimination, economic development, political freedoms and other such basic rights, which are in turn tied to the goals and concerns of education generally. Mr. Ole Henrik Magga, chairperson of the UN Permanent Forum on Indigenous Issues summed it up this way: “The right to preserve and to develop [indigenous] reservoir of knowledge is a fundamental aspect of self-determination. . . . Education is the door to . . . [this] knowledge.” With this knowledge, indigenous peoples can work to further many of the aspects of self-determination recognized in the two major human rights convention, including “freely determin[ing] their political status” and “freely dispos[ing] of their natural wealth and resources.” Moreover, education generally is a fundamental aspect of and crucial tool to indigenous peoples’ “freely pursu[ing]ing their economic, social and cultural development.”

For reasons earlier noted, assimilationist education (education focused on and drawn from the dominant culture) violates core principles of indigenous self-determination. Firstly, it fails to provide indigenous communities with the type of empowering education envisioned by well established universal human rights norms, including the “full development of the human personality” and “the sense of its dignity.” Indeed, such an education achieves just the opposite, suppressing indigenous culture and language and alienating indigenous individuals from their family and community. Secondly, it furthers the economic, social, and political marginalization of indigenous peoples: “today, formal education and especially subtractive education, [where] the use of a dominant non-indigenous language as the teaching language (together with non-indigenous curricula and teaching methods) play an increasingly important role in reproducing the powerless economic and political status of indigenous peoples.” Article 14 speaks to an opposite approach, one in which embraces indigenous self-determination

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28 ICESCR, at art. 14.

29 ICESCR, at art. 1(1).

30 ICESCR, at art. 13.

31 See Martinez Cobo Chapter XIII, at paras. 234 – 35. See also, e.g., WGIP 16th Sess. Report, at paras. 54 – 55, 72.

in education, both in terms of redressing and repairing the intergenerational harms inflicted on indigenous peoples through education, as well as finding ways to prevent similar harms from recurring in the future.

Key aspects of accomplishing these goals include: the establishment and management of indigenous schools, as well as the partnering and consulting with indigenous communities prior to States establishing educational systems or programs on their behalf. As one UN study notes:

The participation or collaboration of indigenous communities . . . in founding and operating . . . educational establishments . . . in their communities is very important. Through such activities, . . . these establishments and institutions . . . serve the authentic aspirations of these groups and communities. [I]t is of the highest importance that the schools should be largely the creation and instrument of the indigenous communities and groups.

Other studies on education and retention equally support such an approach. For instance, in terms of retention and education, “indigenous children were more likely to attend school if their communities participated in all decisions about the content and management of their educational systems” and if the “schools . . . harmonized with their culture and traditions in a language they understood.” As discussed more fully in the domestic law section, changes such as these are beginning to take hold in some indigenous communities. They include both indigenous control of schools, as well as changes in how indigenous knowledge and educational needs are researched and incorporated not only in indigenous educational settings but in educational settings generally. However, as Chairman Magga has so aptly stated, self-determination in education for indigenous peoples does not mean limiting “ourselves to only our own knowledge. We want to combine the best from our own traditions with the best of the western and European traditions. This is quality [in education] in a true sense.” In the end, whatever the chosen curricula may be for indigenous students, Article 14 suggests that the context and content should be driven by the community it seeks to serve, consistent with notions of self-determination in

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35 See Martinez Cobo Chapter XIII, at para. 373.
education.40

2. Linguistically Pertinent Education

The interrelatedness between the right to education and the right to language is well established.41 Experts on language and teaching have long articulated the benefit of teaching children in their mother tongue:

It is axiomatic that the best medium for teaching a child is his mother tongue. Psychologically, it is the system of meaningful signs that in his mind works automatically for expression and understanding. Sociologically, it is a means of identification among the members of the community to which he belongs. Educationally, he learns more quickly through it than through an unfamiliar linguistic medium.42

Yet state dominated languages are often the language of choice where indigenous students are concerned.43 Two recent studies conducted by the Permanent Forum on Indigenous Issues demonstrate the many harmful consequences that flow from “subtractive education – teaching (some of) the dominant language at the cost of the mother tongue and thus subtracting from the children’s linguistic competence,”44 This is compared to “additive education” in which children “learn their mother tongues well, in addition to learning a dominant language (and other languages) well too.”45 The harmful consequences flowing from this form of “assimilationist” education include “negative educational consequences . . . in terms of achievement and outcomes” (e.g. higher dropout rates, lower educational scores), “negative socio-economic and other social consequences” (e.g. higher levels of unemployment, lower incomes, marginalization), “negative physical consequences” (e.g. alcoholism, suicide, violent death rates), and “negative psychological consequences” (e.g., alienation, feeling of exclusion and loss) as well as linguistic and cultural harm (e.g. loss of language and cultural knowledge).46 Not surprisingly all these elements are interconnected, as one Ojibway man from Canada describes it: “Our language is dying, that is the first sign of deterioration. Our native style of life has to be based on four elements – heritage, culture, values, language – and if you take one away it begins to break down. Then we have the symptoms of this breakdown, alcoholism, abuse” and poverty.47

Given these harmful effects, Article 14 embodies an important principle, that indigenous children

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40 See generally Martinez Cobo Chapter XIII, at para. 373.
45 Permanent Forum 2008, at para. 11, n. 5.
have a right “to be taught to read and write in their own . . . language or in the language most commonly used by the group to which they belong.”48 This principle is supported by educational and linguistic research, which shows, among other things, that using the mother tongue during the first 6-8 years as the main teaching language increasing a student’s likelihood of success in the classroom (including increasing their chances of becoming competent in the dominant language).49 Thus, while learning to read and write in the country’s official language is often important to ensure full participation within the wider society, instruction in the mother tongue as the first medium of education ultimately fosters this and other equally important educational goals by creating an environment conducive to learning.50 This classroom success in turn affects the rate of poverty, since increased “cognitive and intellectual function” is a “precondition to poverty reduction.”51

However, it is not only the indigenous individual that is affected by a policy of “subtractive education.” Such practices greatly impact the intergenerational transmission and survival of indigenous languages. According to the Permanent Forum studies:

Subtractive teaching subtracts from the child’s linguistic repertoire, instead of adding to it. In this enforced language regime, children . . . or at least their children, are effectively transferred to the dominant group linguistically and culturally. This also contributes to the disappearance of the world’s linguistic diversity . . . Optimistic estimates of what is happening suggest 50% of today’s spoken languages may be extinct . . . around the year 2100. . . . Most of the disappearing languages are indigenous languages, and . . . [e]ducation is one of the most important direct causal factors in this disappearance.52

The use of these languages in educational systems and programs is therefore vital to their preservation.53 Moreover, the value of doing so extends beyond mere linguistics. Language is “not only a means of communication, but . . . the basis of identification for an ethnicity, . . . a

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52 Permanent Forum 2005, at para. 4-5. See also OHCHR, Human Rights Legal Framework and Indigenous Languages, International Expert Group Meeting on Indigenous Languages, para. 2, UN Doc. PFII/2008/EGM1/15 (January 8-10, 2008) [hereinafter HR Legal Framework and Indigenous Languages] (“…from an approximate number of 6700 languages that are believed to exist today, over 3000 are in serious danger of disappearance. Indigenous peoples’ languages represent at least 4000 languages of the world’s linguistic diversity and most of the indigenous languages belong nowadays to the category of languages seriously endangered.”). See generally WGIP 16th Sess. Report, at para. 49.
Consequently, use of indigenous languages in schools and programs is vital to both preserving indigenous languages and transmitting indigenous knowledge to future generations. Indeed, the Permanent Forum studies suggest that certain forms of subtractive linguistic education may well amount to crimes against humanity given their destructive consequences for indigenous individuals, as well as indigenous languages and cultures. In the end, then, what Article 14 seeks to foster is a linguistic model that promotes good educational goals (as well as rights) for the indigenous individual and her people.

3. Culturally Pertinent Education

As earlier noted, education is much more than a vehicle for learning basic skills. Many indigenous peoples view education as a holistic system, designed to teach a child that all things in life are related. This system of learning is often tied to the kinship community. In his book Look to the Mountain: An Ecology of Indigenous Education, Gregory Cajete describes how family and community might define the content and process of a child’s education: “The living place, the learner’s extended family, the clan and [community] provide[] the context and source for teaching. In this way, every situation provide[s] a potential opportunity for learning . . . [where] basic education is not separated from the natural, social or spiritual aspects of everyday life.” It is this “cumulative knowledge” derived from the community and passed from generation to generation that shapes the identity of the individual and the group, and that ensures a future existence for both.

Indeed, an important goal of education is to strengthen a student’s identity. Yet education for indigenous students has often had the contrary effect. When they are taught exclusively the histories and ways of life of peoples other than their own, indigenous students end up having no historical or contemporary figures they can identify with and emulate. This further alienates them from their own cultures and communities. Yet in the process of losing that important connection to community and culture, they often fail to gain access to another. Thus rather than foster the positive

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55 See Conclusions And Recommendations Of The Expert Seminar on Indigenous Peoples and Education, at para. 10(k).
56 Permanent Forum 2008.
61 See Martinez Cobo Chapter XIII, at para. 197.
goals of education, such as self-worth, dignity and true knowledge of the world around them, indigenous students tend to “never really know [themselves] or [their] potential as … human being[s].”

Incorporating indigenous history, knowledge, values, and customs into the curricula helps to prevent this type of individual alienation. As one indigenous organization in Canada notes “children will continue to be strangers in Canadian class rooms until the curriculum recognizes [indigenous] customs and values, [indigenous] languages, and the contributions which the Indian people have made to Canadian history.”

This statement is representative of the experiences of indigenous children around the world.

From a group standpoint, an educational system that incorporates indigenous knowledge and practices into its curricula not only “stimulates [a student’s] curiosity,” but also helps to preserve and protect that heritage for future generations. Self-determination in education means exactly that, States supporting and promoting, in the words of the members of the UN Expert Seminar on Indigenous Peoples and Education, “culturally appropriate education . . . which could be achieved through the participation of indigenous communities in the [educational] planning process.”

II. INTERNATIONAL LEGAL FRAMEWORK

This section explores the existing international legal framework for the protection and advancement of indigenous education. It is not intended to provide a comprehensive look at the right to education under international law, but rather to highlight aspects that are relevant to the realization of the human rights (and in turn educational goals) articulated in Article 14 of the UN Declaration. For a more comprehensive look at the right to education generally, we encourage you to consult the various sources listed at the end of this chapter. The section begins with a brief introduction into the right of education and then covers more specifically the rights articulated in Article 14 of the UN Declaration. Subsumed within this discussion, are the comments and recommendations of various UN human rights bodies.

The Universal Declaration of Human Rights of 1948 proclaimed that “everyone has the right to education,” which shall be ‘free’ in the “elementary and fundamental stages.” This proclamation of rights was followed by a host of international instruments including two major

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64 Martinez Cobo Chapter XIII, at para. 200.
66 Martinez Cobo Chapter XIII, at para. 195. See also Martinez Cobo Chapter XIII at para. 194. For example, in Chile,[a] young Mapucha boy from the Cho-Chol region will certainly find it easier to understand that one cow plus another cow makes two cows, than that one orange plus another orange makes two oranges. He is familiar with cows and interested in them because they belong to his environment. As for oranges, he has never seen them growing, he is unfamiliar with the tree which produces them and he therefore finds it difficult to picture them.
67 Martinez Cobo Chapter XIII, at para. 296.
69 Conclusions And Recommendations Of The Expert Seminar on Indigenous Peoples and Education, at para. 10(l).
60 Univ. Decl., at art. 26.
international instruments that create binding obligations on States: the International Covenant on Economic, Social and Cultural Rights, which provides for “the right of everyone to an education,” and the Convention on the Rights of the Child, which provides for the “right of the child to education.” There are a host of other international instruments creating specific binding legal obligations on States with respect to the education of indigenous peoples. In particular, ILO Convention (No. 169), Concerning Indigenous and Tribal Peoples in Independent Countries, provides for the right of indigenous peoples “to acquire education at all levels on a least an equal footing with the rest of the national community.” This includes the right to a linguistically and culturally appropriate education that is developed with and controlled by indigenous peoples. Various provisions of the Convention on the Rights of the Child, when read together, similarly provide for the rights of indigenous children with respect to access to “appropriate and high quality education.”

The various human rights instruments cited above also speak to the aims and objectives of education, which include developing fully “the human personality and its sense of dignity,” enabling persons “to participate effectively in a free society,” strengthening respect for all people’s “human rights and fundamental freedoms,” and promoting “understanding, tolerance, and friendship among all nations . . . and groups.” An additional human right relevant to the full realization of these educational goals is the right of non-discrimination in education, which in the case of indigenous peoples takes on a special meaning given their unique history and the use of education as tool of forced assimilation. According to the Committee on Economic, Social and Cultural rights, States have an “immediate obligation” in relation to the right of education to ensure that the right “will be exercised without discrimination of any kind.” Article 29 of the ILO Convention (No. 169) deals directly with the linkages between educational aims and non-discrimination: “The imparting of . . . knowledge and skills that will help children belonging to the peoples concerned to participate fully and on equal footing in their own community and in the national community shall be the aim of education for [indigenous] peoples.” States have a duty under international law to provide for the right to education by means that most appropriately ensure equal opportunity for each individual member of society. However, as we will shortly see, “like and equal are not the same thing.” States will need to take appropriate steps, as articulated in Article 14 of the Declaration to ensure that indigenous students fully enjoy their right to education. This important relationship between the right to non-discrimination and the right of education is explored more fully below with respect to the legal framework surrounding Article 14(2) of the Declaration.

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70 ICESCR, at art. 13(1).
73 ILO Conv. (No. 169), at art. 27-28.
74 See CRC, at art. 28-30; Permanent Forum 2005, para. 23.
75 Univ. Decl., at art. 26(2); ICESCR, at art. 13(1).
77 ILO Conv. (No.169), art. 29.
78 ILO Conv. (No.169), art. 29.
International law requires States to facilitate or provide primary education to all individuals.\(^{80}\) Though the focus of education is usually on children and young people, the right to fundamental education also applies to adults.\(^{81}\) In particular, Article 13(2)(e) of the ICESCR requires that “[t]he development of a system of schools at all levels shall be actively pursued.”\(^{82}\) States are to work towards making secondary education “generally available” and “progressively free.”\(^{83}\) Higher education shall, in turn, be “equally accessible to all on the basis of merit [or] capacity” “by every appropriate means” and “progressively free.”\(^{84}\)

In terms of general legal obligations, the Committee on Economic, Social and Cultural Rights notes that “that the right to education, like all human rights, imposes three types or levels of obligations on States parties: the obligation to respect, protect and fulfill."\(^{85}\) The obligation of respect includes States not interfering with or hindering the enjoyment of the right to education. The obligation to protect includes States taking measures to prevent others from interfering with this right. The obligation to fulfill denotes an obligation on the part of States to take “positive measures that enable and assist individuals and communities to enjoy the right to education."\(^{86}\) With respect to State resources and education, the Committee on Economic, Social and Cultural Rights notes that: “State parties have immediate obligations to ‘take steps’ . . . toward the full realization of Article 13. . . . Such steps must be ‘deliberate, concrete, and targeted’ towards the full realization of the right to education. . . . The realization of the right to education over time, that is ‘progressively’. . . means that States parties have a specific and continuing obligation ‘to move as expeditiously and effectively as possible’ towards the full realization of Article 13.”\(^{87}\)

The Education for All Movement, of which UNESCO is the lead agency, embodies many of the educational aims advanced under international human rights law.\(^{88}\) This includes the “six internationally-agreed education goals [designed] to meet the learning needs of all children, youth and adults by 2015.”\(^{89}\) These goals include: 1. expanding early childhood care and

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\(^{80}\) ICESCR, at art. 13(2)(a), (d). See CESC Gen. Com. No. 13, at para. 47. See also Univ. Decl., at art. 26(1); CRC, at art. 28(1)(a).

\(^{81}\) “Fundamental education” is synonymous with “basic education,” but neither of these are synonymous with “primary education.” UNICEF defines basic education as follows: “Basic education provides the knowledge, values and skills that form the foundation for lifelong learning. Education can be either formal or non-formal, with elements that include literacy, numeracy and life skills. While the core of basic education is primary school, it also extends to the lower years of secondary school in a number of countries.” UNICEF, Basic Education and Gender Equality: The Big Picture, available at http://www.unicef.org/girlseducation/index_bigpicture.html (last visited May 11, 2009).

\(^{82}\) See also CESC Gen. Com. No. 13, at para. 25 (for further explanation of ICESCR, art. 13(2)(e)).


\(^{84}\) See ICESCR, at art. 13(2)(c); Univ. Decl., at art. 26.

\(^{85}\) CESC Gen. Com. No. 13, at para. 46.

\(^{86}\) CESC Gen. Com. No. 13, at para. 47.

\(^{87}\) CESC Gen. Com. No. 13, at para. 43-44.


education, 2. providing free and compulsory primary education for all, 3. promoting learning and life skills for young people and adults, 4. increasing adult literacy, 5. achieving gender parity and gender equality, and 6. improving the quality of education.\textsuperscript{90} As we will see, these goals align well with the educational needs and rights of indigenous peoples. As noted throughout the domestic section, UNESCO, in furtherance of these aims, “works closely with governments [and indigenous peoples] to . . . promote Indigenous peoples’ cultures and to develop targeted quality and inclusive education strategies enabling them to reach the Education for All (EFA) goals.”\textsuperscript{91}

One final point regarding the right to education should be mentioned here, and that is interrelationship with other human rights. The right to education is itself a fundamental right, but also an essential means by which we realize other important rights and freedoms.\textsuperscript{92} According to the former Special Rapporteur on the Right to Education, Katarina Tomasevski, the right to education “functions as a multiplier, enhancing all rights and freedoms when it is guaranteed while jeopardizing them all when it is violated.”\textsuperscript{93} This understanding of the right to education takes on particular relevance where indigenous peoples are concerned for many of the reasons already discussed: that the right to education is essential to and can really only be fully achieved by the realization of other important human rights, such as the right to indigenous self-determination and the right to cultural and linguistic integrity.\textsuperscript{94} The legal framework that supports this interpretation of Article 14 is as follows:

A. **Article 14(1): Indigenous Educational Systems**

(1) Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

The first paragraph of Article 14 is most importantly an expression of the right to self-determination in education. The right of indigenous self-determination is dealt with in Chapter 3 of this book and should be read in conjunction with this section. Briefly, both major UN human rights treaties speak to the right of all peoples to “freely determine their political status” as well as to “freely pursue their economic, social and cultural development.”\textsuperscript{95} Education is a key aspect of a peoples “freely” determining and achieving these ends. Article 14(1) involves two aspects of self-determination: the first is the right of indigenous peoples to be in charge of the creation and control of any new schools serving their communities, as well as the right to take over the management of


\textsuperscript{92} CESCR Gen. Com. No. 13, at para. 1.

\textsuperscript{93} Katarina Tomasevski, Human Rights Obligations in Education: The 4-A Scheme, p. 7 (Wolf Legal Publishers 2006) [hereinafter Human Rights Obligations in Education: The 4-A Scheme].

\textsuperscript{94} See Human Rights Obligations in Education: The 4-A Scheme at ch.3: “Acceptability” for a discussion of language, as well as discrimination in education.

\textsuperscript{95} ICESCR, at art. 1 (1-2); ICCPR, at art.1.
schools already in existence in their communities. Secondly, Paragraph (1) recognizes
the right of indigenous peoples to provide an education in their indigenous languages and
within their indigenous cultures.

The language of paragraph 14(1) includes both the right to develop and maintain non-
governmental schools, as well exercising control and authority over the creation and
control of government-funded schools serving indigenous communities. In terms of
privately-run schools, under Article 13(4) of the ICESCR, States have a responsibility to
refrain from infringing upon the rights of “individuals and bodies to establish and direct
educational institutions.”96 This is consistent with a State’s general duty to “respect” the
right to education, including not interfering or hindering the establishment of an
educational system designed by and for indigenous peoples.97 ILO Convention (No.
169), Article 27(3) similarly articulates that: “governments shall recognise the right of
[indigenous] peoples to establish their own educational institutions and facilities.”98 In
fact, education is one of three areas over which ILO Convention 169 explicitly articulates
a right of full management and control.99 This right is limited only in the sense that the
schools must meet “minimum standards established by the competent authority in
consultations with [indigenous] peoples.”100 However, as discussed below, governments
may not use the “minimum standards” requirement as reason to preclude schools from
teaching in indigenous languages and incorporating indigenous cultures into their
curricula.101

Article 14(1) of the Declaration is not limited to the establishment and control of private
schools. Indeed, a State’s general obligation to “fulfill” its human rights duties with
respect to education indicates just the opposite that States need to assist indigenous
peoples in establishing governmentally-funded educational facilities within their own
communities. This is reflected in the International Covenant on Economic, Social and
Cultural Rights, which requires States to take “deliberate, concrete, and targeted” steps to
provide “free” education at the primary school level, and to develop a “systems of
schools at all levels.”102 The Convention on the Rights of the Child similarly requires
States to provide “free” and “available” primary education, as well as secondary
education that is generally “available and accessible” to all children.103 The ILO
Convention (No. 169) also supports a finding of State supported schools which are
designed and run by and within indigenous communities. Article 27(1) of the ILO
Convention (No. 169) states that “[e]ducation programmes and services for [indigenous]
peoples … shall be developed and implemented in co-operation with them to address
their special needs, and shall incorporate their histories, their knowledge and
technologies, their value systems and their further social, economic and cultural

96 ICESCR, at art. 13(4).
97 ICESCR, at art. 13(4).
98 ILO Conv. (No. 169), at art. 27(3).
100 ILO Convention Manual, at 12. See also ICESCR, at art. 13(4).
103 CRC, at art. 28.
aspirations.” (Emphasis added.) And Article 27(2) continues: “The competent authority shall ensure the training of members of [indigenous] peoples and their involvement in the formulation and implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to [indigenous] peoples as appropriate.” (Emphasis added.) Finally, as we will see with respect to non-discrimination under Article 14(2), the right of indigenous individuals to a non-discriminatory education is also dependent on States working directly with and in indigenous communities.

Indigenous community control of schools is also consistent with the right of parents under international law to decide what their child’s schooling should look like, particularly here where indigenous educational philosophy is one of parent and community working together to ensure a culturally and linguistically appropriate education for their children. For example, Article 13(3) of the ICESCR provides that State Parties “undertake to have respect for the liberty of parents” to choose for their children schools other than those established by public authorities (so long as they conform to minimum State standards), and to respect generally a parents’ right to ensure the “religious and moral” education of their children. Article 29(1) the CRC provides more specifically that the education of a child shall be directed “to the development of respect for the child’s parent, his or her own cultural identity, language and values.”

Similar treaty provisions regarding separate educational systems or institutions in keeping with the linguistic and cultural desires of the parents can be found in the UNESCO Convention against Discrimination in Education and the International Covenant on Civil and Political Rights.

This brings us to the second part of Article 14(1), the right to establish schools and programs that are consistent with the linguistic and cultural needs of the indigenous students and their communities. Both the CRC and the ICCPR protect the right of indigenous individuals, “in community with other members of their group, to enjoy his or her own culture . . . or to use his or her own language.” In addition, ILO Convention Article 28 recognizes indigenous pupils’ right to education in their own language or the language most commonly used by the group. This right is supported by a number of positive duties on the States, including working toward achieving bilingual education. Furthermore, Article 26 of the Convention recognizes that indigenous peoples have a

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104 ILO Conv. (No. 169), at art. 27(1).
105 ILO Conv. (No. 169), at art. 27(2).
107 ICESCR, at art. 13(3).
108 CRC, at art. 29(1).
109 ICCPR, at art. 18(3); UNESCO Conv. Against Discrimination in Education, at art. 2(b), 5(1)(b); Univ. Decl., at art. 26(3).
110 CRC, at art. 30, ICCPR, at art. 27.
111 ILO Conv. (No.169), at art. 28.
112 ILO Conv. (No.169), at art. 28.
right to be given the “opportunity to acquire education at all levels on at least an equal footing with the rest of the national community.” Since children learn best in their mother tongue for all the reasons previously discussed, the right to be taught in their own language is inextricably linked to the right to achieve the same level of proficiency as non-indigenous children in basic skills and subjects.

Moreover, while educational systems or institutions are subject to “minimum [governmental] standards,” culturally and linguistically appropriate education is consistent with this requirement because it is consistent under the CRC with the idea that education to be “directed to … [t]he full development of the child's personality, talents[,] mental and physical abilities,” as well as to “[t]he development of respect for the child's parents [and for] his or her own cultural identity, language and values.” Indeed, as earlier explained, an education devoid of (or worse demeaning of) the child’s cultural or linguistic context has the opposite effect, impairing her ability “to participate effectively in a free society” or develop fully “the human personality or its sense of dignity” as articulated in the Convention on Economic, Social and Cultural Rights. The Committee on Economic, Social and Cultural Rights concurs in this interpretation, noting in its General Comment No. 13 that education must be “relevant, culturally appropriate and of good quality.” The Committee further notes that “education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.” The Committee on the Rights of the Child not only agreed with the CESCR in its General Comment No. 1, but went on to clarify that the right to education is not completely fulfilled when the curriculum “limit[s] the benefits [a group] can obtain from the educational opportunities offered, and by unsafe or unfriendly environments

113 ILO Conv. (No.169), at art. 26.
114 CRC, at art. 29(1)(a). See also ICESCR, at art. 13(1) (calling for education “directed to the full development of the human personality”).
115 CRC, at art. 29(1)(c).
117 CESCR Gen. Com. No. 13, at 3, para. 6(c).
118 CESCR Gen. Com. No. 13, at 3, para. 6(d).
119 “…Thus, the curriculum must be of direct relevance to the child’s social, cultural, environmental and economic context and to his or her present and future needs and take full account of the child’s evolving capacities; teaching methods should be tailored to the different needs of different children. Education must also be aimed at ensuring that essential life skills are learnt by every child and that no child leaves school without being equipped to face the challenges that he or she can expect to be confronted with in life. Basic skills include not only literacy and numeracy but also life skills such as the ability to make well-balanced decisions; to resolve conflicts in a non-violent manner; and to develop a healthy lifestyle, good social relationships and responsibility, critical thinking, creative talents, and other abilities which give children the tools needed to pursue their options in life.” Committee on the Rights of the Child, General Comment No. 1, article 29(1), U.N. Doc. CRC/GC/2001/1, at 4, para. 9 (2001) [hereinafter CRC Gen. Com. No. 1].
which discourage [that group’s] participation” in the learning process.120

Many other different United Nations human rights bodies have reached similar conclusions regarding the issue of a linguistically and culturally relevant education for indigenous peoples. For instance the OHCHR International Expert Group on Indigenous Languages concluded in 2008 that “international contemporary law provides the legal framework for the protection of the use one’s own language” and that the protection of this right is interrelated to the “cultural and physical survival” of indigenous peoples.121 Similarly, the United Nations Permanent Forum on Indigenous Issues has recommended in 2005 and 2008 “to governments that all education programmes for indigenous children . . . be based on the insights from solid research over many years that mainly mother tongue medium bilingual education is superior to all other forms of education in order to achieve literacy and generally effective learning.”122 Finally, the OHCHR Expert Seminar on Indigenous Peoples and Education highlighted in 2004 the obstacles to indigenous peoples’ full enjoyment of their right to education, including the lack of linguistically and culturally appropriate education that is shaped and directed by indigenous peoples.123

B. Article 14(2): Non-discrimination in Education

(2) Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

As is true for all other human rights, international law requires that States secure and protect the right to education without discrimination.124 The issue of non-discrimination is dealt with in more detail in other parts of this book. However, as earlier discussed, Article 14 of the UN Declaration is in direct response to historical and contemporary discrimination against indigenous peoples in the education systems of States. Article 14 identifies some of the central mechanisms that States need to put into place to eradicate and equalize education for indigenous peoples, including self-determination in the creation and running of schools, as well as the advancement and support of linguistically and culturally appropriate instruction.

Article 14(2) of the UN Declaration speaks specifically to the right of non-discrimination in all levels and forms of education offered by the State. In doing so, it does not merely comprise the right of indigenous pupils to attend any and all existing State schools. Rather, indigenous pupils have the right to receive education to the same extent and of the same quality as non-indigenous pupils. In other words, is the education indigenous pupils are receiving equipping them to participate in society on an equal footing with non-indigenous pupils? As discussed earlier, because different pupils have different backgrounds and needs, schools that all look the same do not necessarily produce the result of placing all individuals on an equal footing once their education is completed.

120 Committee on the Rights of the Child, General Comment No. 1, article 29(1), U.N. Doc. CRC/GC/2001/1, at 4, para. 10 (2001) (The Committee here was using the extreme example of how curricula could perpetuate gender discrimination, but it is clear that the Committee means for the example to apply to any group suffering from discrimination).
121HR Legal Framework and Indigenous Languages, at paras. 29-30.
123Conclusions And Recommendations Of The Expert Seminar on Indigenous Peoples and Education, at para. 10.
124See Univ. Decl., at art 2; UN Charter, at art 1(3).
The principles of equality and non-discrimination take on a special meaning with respect to the right to education. In much the same way that education is prerequisite for the enjoyment of other human rights (such as the ability to participate in and contribute to the economic, social, cultural, civil and political aspects of society), so too is non-discrimination an important prerequisite to the enjoyment of one’s right to education. Many of the human rights instruments relating to the education speak directly to the issue of non-discrimination. For example Article 2(2) of the IESCR and (2)(1) of the CRC require States to guarantee all the rights in the treaties, including the right to education, without discrimination of any kind. Similarly, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) guarantees the right to education without discrimination based on race, colour, or national or ethnic origin. The UNESCO Convention against Discrimination in Education is perhaps the most comprehensive with respect to the right of non-discrimination in education including prohibiting action which deprives “any person or group . . . access to education of any type at any level,” that limits “any person or group . . . to education of an inferior standard,” or “inflicting on any person or group . . . [to] conditions which are incompatible with the dignity of man.” The duties of a State with respect to eliminating and preventing discrimination are laid out in Articles 3 and 4 of the Convention, and include among other things “abrogating statutory provisions or practices which involve discrimination in education and advancing a national policy that promotes and ensures equality of opportunity and treatment.” ILO Convention (No. 169) similarly provides for the education of indigenous peoples “at all levels and on at least an equal footing with the rest of the national community.” Moreover, as earlier discussed, States have an “immediate obligation” to meet their duty of non-discrimination in education both under the ILO Convention and the IESCR. Research earlier referred to indicates that indigenous students who are educated in dominant language schools and in schools devoid of culturally pertinent curricula do far less well than their non-indigenous counterparts. Thus, supporting the conclusion that these students do not benefit from the right to education on an “equal footing” with the rest of society and are in fact being subject to an “education of an inferior standard.” Moreover, previously discussed studies show that this form of education has lasting negative effects on the individual and her community, depriving both of a right to education in a manner that is compatible with the “dignity of man.”

More specifically, when considering issues of non-discrimination in education, States need to be cognizant of how UN bodies have defined a meaningful education. According to the Former UN Special Rapporteur on the Right to Education as well as the Committee on Economic, Cultural, and Social Rights, education “in all its forms and at all levels” should be available, accessible, acceptable and adaptable. This question of the “4-As of Education” is addressed more

126 UNESCO Convention Against Discrimination in Education, at art. 1.
127 UNESCO Convention Against Discrimination in Education, at art. 3-4.
128 ILO Conv. (No. 169), at art. 26.
129 ILO Conv. (No. 169), at art. 26; ICESCR, at art. 13.
130 ILO Conv. (No. 169), at art. 29, UNESCO Convention Against Discrimination in Education, at art. 1(b).
131 CESCR Gen. Com. No. 13, para. 6. In her 1999 Preliminary Report, the Rapporteur on the Right to Education “structured [governmental obligations corresponding to this right generally] into a 4-A scheme, denoting the four essential features that primary schools should exhibit, namely availability, accessibility, acceptability and adaptable.”
thoroughly later in this chapter. However, the following information (and the information contained in the section on Article 14(3)) is a representative sample of the steps a State can take to meet their obligation of non-discrimination in education.

The right to education requires, among other things, that schools at all levels be physically “available” to all potential students. States must therefore increase the available infrastructure of schools to meet whatever need exists. Second, schools must be “accessible” without discrimination, including on the basis of economic status, race, culture, language, sex or religion. Besides simply opening school enrollment to all who need it, States can take further steps to “enhance equality of educational access for individuals from [economically] disadvantaged groups[,]” by taking other meaningful steps such as creating fellowship systems and economic subsidies for these groups, as well as providing them with transportation to schools, accommodation near or at schools, and adequate clothing. Moreover, as elucidated above, under Article 14(2) of the Declaration, State responsibility toward indigenous peoples does not end with merely facilitating the unrestricted admission of indigenous pupils to all existing State schools. Rather, education must “adapt” to the particular needs and best interests of each child. In order to truly eradicate discrimination and provide indigenous students with “the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community,” States need to ensure that State-funded education is tailored to “enable and assist” indigenous pupils to enjoy the benefits of education to the same extent as other pupils. Therefore, the focus under Paragraph (2) is on “eliminat[ing] … inequalities in educational outcomes for [indigenous] children and young people.” (Emphasis added.) Thus, according to Article 29 of the ILO, the question States must ask is whether the education they are offering indigenous pupils imparts “general knowledge and skills that will help children belonging to the peoples concerned to participate fully and on equal footing in their own adaptability.” Preliminary Report of the Special Rapporteur on the Right to Education, U.N. Commission on Human Rights, 55th Sess., Prov. Agenda Item 10, U.N. Doc E/CN.4/1999/49 (January 13, 1999). The 4-A Scheme is also explained in great detail in Katarina Tomasevski, Human Rights Obligations in Education: The 4-A Scheme, (Wolf Legal Publishers 2006).

132 Human Rights Obligations in Education: The 4-A Scheme.


137 See Cobo Martinez Volume V, at para. 97.

138 Cobo Martinez Volume V, at paras 70-74.


community and in the national community.” (Emphasis added.)

“Equal opportunity” here is not necessarily limited to a student having an equal chance at competing for a slot in a school or within the educational system as a whole, but rather that the schooling provided to this student equips her to succeed in society to the fullest extent of her potential. Thus, in order to meet the goals of preparing indigenous pupils for a blended way of life that allows them to function in and (if necessary) outside of their indigenous communities, State curricula will need to incorporate indigenous ways of knowing and learning in addition to general knowledge and skills needed for survival outside of the indigenous community. On the issue of acceptability, the ICESCR Committee has made it clear that “the form and substance of education, including curricula and teaching methods, have to be acceptable, e.g. relevant, culturally appropriate and of good quality to students, and in appropriate cases, parents.” Thus, non-discrimination in the education of indigenous pupils includes at minimum curricula and teaching methods relevant to and consistent with the cultural and linguistic needs and concerns of students and their families.

Finally, it is important to note that under international law a State may establish, maintain, or permit separate educational systems for religious, cultural or linguistic reasons without running afoul of principles of non-discrimination. However, schooling that looks on its face to be equal but limits indigenous pupils to an “education of an inferior standard” (particularly as it relates to educational outcomes) would be discriminatory under international law. This issue is addressed more fully in the next section on “effective [State] measures.”

C. Article 14(3): Effective Measures, Right of Access, and Consultation

(3) States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

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142 ILO Conv. No. 169, at art. 29.
143 CRC, at art. 29. See CRC Gen. Com. No. 1, at para. 3 (posing “competition” and “equal opportunity” as opposite terms). In regard to the relationship between Articles 28 and 29 of the CRC, the Committee states here that the “right to education is not only a matter of access … but also of content. An education with its contents firmly rooted in the values of article 29 (1) is for every child an indispensable tool for her or his efforts to achieve in the course of her or his life a balanced, human rights-friendly response to the challenges that accompany a period of fundamental change driven by globalization, new technologies and related phenomena. Such challenges include the tensions between, inter alia, the global and the local; the individual and the collective; tradition and modernity; long- and short-term considerations; competition and equality of opportunity; the expansion of knowledge and the capacity to assimilate it; and the spiritual and the material.” See also ILO Conv. No. 169, at art. 29.
144 ILO Conv. No. 169, at arts. 28(2), 29; ICESCR, at art. 13(1).
146 See, e.g., UNESCO Conv. Against Discrimination in Education, at art. 2(b); see also CESR Gen. Com. No. 13, at para. 33.
147 UNESCO Conv. Against Discrimination in Education, at art. 1(b). See also World Conference Against Racism, at para. 123(b)-(e) (“[u]rg[ing] States to … eliminate obstacles limiting … access … to education[,] … ensure … access … to education of good quality[,] … establish and implement standardized methods to measure and track the educational performance of disadvantaged children and young people[, and] … eliminate … inequalities in educational outcomes.”).
In ascertaining the meaning of 14(3) under international law, we are faced with the initial question of whether paragraph (3) stands alone or is in some way connected to the other paragraphs of Article 14. A review of the drafting history of Article 14(3) suggests that paragraph (3) compliments paragraphs (1) and (2). In particular, it requires States to take affirmative steps to ensure that indigenous individuals have access to culturally and linguistically appropriate education as previously defined by paragraphs (1) and (2). Additionally it independently addresses the unique situation of indigenous individuals living outside their community, often as the result of State removal policies.

Research on the evolution of Article 14(3) through the Working Group on Indigenous Populations suggests that the later clauses of Article 14(3) were not intended to modify earlier clauses. Thus, for instance, the clause “when possible” relates solely to the issue of children living outside their communities. It was added to later versions of Article 14 to address State concerns with being able to, in all circumstances, provide “access” to children “living outside their communities.” As one intergovernmental organization noted before the Working Group, “indigenous children living outside their communities have the right to education in their own culture and language at the State’s expense, which could be difficult to implement in many countries due to resource constraints.” This seems to be a common theme in regard to the drafting of article 14 (at the time Article 15). In order to ensure country support various proposals were advanced, such as this proposed remedy by the representative of Canada that “indigenous children living outside their communities should have adequate opportunities to education in their own culture and language, where demand and resources allowed.” Ultimately the Working Group settled on the language “when possible.”

The reason that the clause “including those living outside their communities” was added to paragraph 3 of Article 14 was to specifically acknowledge and address the history of forcible removal of indigenous children to places such as boarding schools. As one UN study notes, in some countries such removals have had a negative effect on the “preservation of indigenous languages and cultures.” This direct link between the damage that has been done by displacement and an opportunity for reparations from the States involved may also speak to the “when possible” language, not just because of lack of available resources, but because not all countries have removal or displacement issues.

This obligation to ensure that indigenous individuals living outside their communities have access, when possible, to culturally and linguistically appropriate education is consistent with the duty of States under international law to eradicate discrimination in all sectors of society and address the needs of all individuals (no matter where they are situated). This right of access

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148 It is important to note that the final version of 14(3) contains seven commas and nine clauses.
150 See IGO Report.
ensures that indigenous students have an opportunity to succeed on an equal level with their non-indigenous peers by, among other things, strengthening their sense of identity. In order to meet this duty, States may need to take “effective measures” to address the economic and physical disparities between indigenous and non-indigenous students. As we will see in the section on domestic law and practice, these initiatives can take many forms, from scholarships, to teacher training, to community-based programming.

Research similarly indicates that the three independent paragraphs of Article 14 are related in one key respect: the “States shall, in conjunction with indigenous peoples, take effective measures” language of paragraph (3) represents a positive obligation on States to facilitate the rights encompassed in (1) and (2). Thus, paragraph (3) of Article 14 represents to some degree the practical application of the first two paragraphs, requiring States to take “effective measures” to facilitate the right to self-determination in education under 14(1) and the right to non-discrimination under 14(2). This includes affirmative action to ensure that indigenous pupils have access to linguistically and culturally appropriate education. Moreover, any action that States take relating to the education of indigenous individuals must be in partnership with the affected communities.

Some of the obligations of the State under paragraph 3 can be met merely by States “respecting” indigenous peoples right to education, including not interfering or placing undue restrictions on their right to establish culturally and linguistically appropriate educational programs and systems. Some examples of this lack of respect given by the UN Special Rapporteur include national policies and practices that require “birth certificates for the enrollment of children and the denial of indigenous names, long hair, and traditional dress at school.” Additionally, States can “protect” indigenous individuals' rights to education by ensuring that others do not interfere with their basic rights. Finally, given the significant disparities that exist between indigenous and non-indigenous peoples in the area of education, largely due to a long history of discriminatory practices, compliance with Article 14(3) will require States to take “effective measures” to equalize and ensure a right to indigenous education. As earlier noted, this could include such things as committing additional resources to provide for schools and appropriately trained teachers within indigenous communities, as well as making changes to state-wide curricula to ensure bilingual and intercultural programming.

Some States may have concerns, when meeting its duty to take “effective measures,” with using governmental resources to support special measures for indigenous individuals. However, such expenditures are consistent with international principles on non-discrimination. According to the Committee on Economic, Social and Cultural Rights, “special measures intended to bring about

\textsuperscript{154} Prelim. Report of Special Rap. on Right to Education, at para. 57.
\textsuperscript{156} The OHCHR says that article 14(3) “recognizes…the states' positive obligation to “take effective measures.” International Expert Group Meeting on Indigenous Languages, 8-10 January 2008, New York, Human Rights Legal Framework and Indigenous Languages, Indigenous People and Minority Unit, PFII/2008/EGM1/15, at 22.
\textsuperscript{157} As stated above, this would include such things as consulting with indigenous communities on the development and planning of new educational programs in the wider educational system, as well as the development of educational programs and systems within the communities themselves.
\textsuperscript{158} Conclusions And Recommendations Of The Expert Seminar on Indigenous Peoples and Education, at 10(d).
\textsuperscript{159} Conclusions And Recommendations Of The Expert Seminar on Indigenous Peoples and Education, at 10.
de facto equality . . . for disadvantaged groups is not a violation of the right to non-discrimination in education, so long as such measures do not lead to the maintenance of unequal . . . standards for different groups.160 In terms of potential “disparities in spending” such disparities constitute discrimination only insofar as they “result in differing qualities of education.” (Emphasis added.) 161 Indeed, not providing adequate resources to ensure the same quality of education between indigenous and non-indigenous students would be inconsistent with Article 14(3)’s mandate to “take effective measures” to ensure an appropriate education for indigenous individuals and Article 14(2)’s mandate of non-discrimination.

It is also important to note that government responsibility for funding indigenous educational systems under Article 14(3) is not incompatible with the right of indigenous peoples under Article 14(1) to control the development, establishment and maintenance of these governmentally funded systems. In fact, ILO Convention No. 169 assumes that given the problems of poverty created by past governmental discrimination and neglect, it will not be economically feasible for many indigenous groups to develop and maintain schools that adequately serve the needs of their pupils without the financial help of State governments and other entities.162

The final requirement of Paragraph (3) is that all measures by the State be taken “in conjunction with indigenous peoples,” which is consistent with the self-determination in education goals of Article 14(1). This duty of consultation and participation is an important theme of the UNDRIP and runs throughout many of its articles.163 States have a history of making unilateral decisions affecting indigenous peoples, often to their detriment. This is particularly true in the context of indigenous education, where educational policy was often set by the State with an aim of advancing the State’s own goals (such as forced assimilation). Today, international human rights law requires States to work in conjunction with indigenous peoples on matters such as the education of their children.164

Finally, some States have expressed concern that their resources may well be insufficient to comply fully with the requirements of Article 14(3),165 or alternatively, that other more immediate societal concerns take precedence over compliance with these requirements.166 In working through these questions, States can be guided by General Comment 3 of the Committee on Economic, Social and Cultural Rights, in which the Committee addresses similar concerns relating to the ICESCR:

In order for a State party to be able to attribute its failure to meet at least [these] minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition

162 See ILO Conv. (No. 169), at art. 27; ILO Convention Manual, at 18, 68-72.
164 See, e.g., ICESCR, at art. 13(1); CRC, at art. 29(c); CERD, at art. 5(e)(v).
165 See, e.g., Report of Second Meeting of Working Group on Draft Decl., at para. 156.
[(both domestically and internationally)] in an effort to satisfy, as a matter of priority, those minimum obligations. ... However, ... even where the available resources are demonstrably inadequate, the obligation remains for a State party to strive to ensure the widest possible enjoyment of the rights under the prevailing circumstances.  

Thus, States have a “specific and continuing obligation to move as expeditiously as possible” toward the full realization of the right to indigenous education. As the next section demonstrates, this obligation extends in some cases beyond the international realm to regional and domestic spheres.

III. REGIONAL AND DOMESTIC PRACTICES

While there is no question that the norms that make up the right to indigenous education are well established under international law, lack of implementation is a major issue in some areas of the world. As recently as 2005, the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, concluded that “effective implementation of programmes and actions” continues to hamper indigenous peoples right to education, due in part to “deeply rooted discrimination in some societies,” as well as unaddressed economic and physical obstacles. With that said, many of the international norms discussed above are finding their way into state law and practice. This section begins with a discussion of regional norms on indigenous education and then explores domestic developments in this area. Through the exploration of domestic case studies, we are able to identify some common factors that aid in the promotion of the right to education for indigenous peoples. Similarly, it helps us to identify some of the common issues faced by states and indigenous peoples in the implementation of the various aspects of Article 14.

A. Regional Human Rights Obligations

Regional instruments are generally in accord with international norms in recognizing not only a universal right to education, but one that is culturally and linguistically appropriate as well.
These instruments similarly speak to the need for community-driven learning and educational development.

For instance, the Charter for the Organization of American States (OAS) recognizes that the “rapid eradication of illiteracy and expansion of educational opportunities for all” is integral to the important goals of creating “equality of opportunity” in other spheres of life, and encouraging “full participation of [its] peoples in decisions relating to their own development.” \(^{171}\) To this end, the American Convention on Human Rights obligates States, similar to the IESCR, to “adopt measures … with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational. . . and culture standards” of the Charter. \(^{172}\) The American Declaration on the Rights and Duties of Man also provides for “a right to education” that prepares individuals “to attain a decent life, to raise his standard of living, and to be a useful member of society.” \(^{173}\) Both the Convention and the Declaration also address the right of non-discrimination and equality in education. \(^{174}\) As earlier discussed, to participate fully and equally as a “member of society,” States will need to develop educational programs and systems that speak directly to the political, economic, cultural and linguistic needs of indigenous peoples.

With regard to incorporating indigenous knowledge and culture into education, various OAS instruments already recognize the “right to take part in the cultural life of the community”, \(^{175}\) as well as “the duty of man to preserve, practice and foster culture by every means within his power.” \(^{176}\) The OAS Charter further provides that in working toward “meet[ing] educational needs,” States are “bound to preserve and enrich the cultural heritage of the American peoples.” \(^{177}\) In the context of adult education, OAS States are also bound to “ensure that the benefits of culture” in the eradication of illiteracy through appropriately designed “adult and
vocational education.” 178 Finally, the OAS Charter identifies education and culture as pathways “toward the overall improvement of the individual, and as a foundation for democracy, social justice, and progress.” 179

Moreover, the OAS is currently working on two additional instruments that address the educational and identity rights of indigenous peoples. 180 The one most directly on point, Article XIV of the Draft American Declaration on the Rights of Indigenous Peoples, includes the three major elements found in Article 14 of the UN Declaration: the right of indigenous peoples to control their own educational systems, the right to have access to all levels of education without discrimination, and the right to a culturally and linguistically relevant education. 181 Although the OAS Declaration as a whole is still in draft form, as recently as 2007, OAS Member States expressed agreement over the language and principles found in Article XIV. 182

In other regions of the world, the African (Banjul) Charter on Human and Peoples’ Rights (ACHPR) similarly connects the right to education with the right of the “individual [to] … take part in the cultural life of his community[,]” and additionally requires States to “promot[e] and prot[ect the] morals and traditional values recognized by the community.” 183 Even more explicitly, the African Charter on the Rights and Welfare of the Child states that “education … shall be directed to … the preservation and strengthening of positive African morals, traditional values and cultures[.]” 184 Article 11(2)(a) states that the education of the child shall be “directed to … the promotion and development of the child’s personality, talents, and mental and physical abilities to their fullest potential”, which would include a culturally and linguistically appropriate education. 185 The Charter also states that countries shall “take appropriate measures with a view to achieving the full realization of this right and shall in particular…respect the rights and duties of parents...to choose their children’s schools.” 186

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178 OAS Charter, at art. 50.
179 OAS Charter, at art. 47.
In October of 2000, the African Commission on Human and Peoples Rights established The Working Group on Indigenous Populations/Communities with a mandate to, among other things, “study the implications of the African Charter on Human Rights and well-being of indigenous communities . . ., consider appropriate recommendations for the monitoring and protection of the rights of indigenous communities . . . [and] . . . submit a report to the African Commission.”187 The Working Group’s report included a section on the right to education, noting that “Literacy rates are poor for most indigenous peoples and often school attendance is less than 50% below the national level.”188 The Working Group noted some reasons for these numbers: “Since most of them live on the periphery of their respective countries, it is often very difficult if not impossible for children to walk to school. Their nomadic lifestyle is often blamed for this, rather than the inability of governments in Africa to adjust to the varying needs of different communities within their borders.”189 The Working Group went on to identify some of the pressing questions facing African countries with respect to indigenous education, including the issue of the role of culture and language in ensuring access to education. In particular, the Working Group acknowledged that “[i]t is known that an education system that assumes aspects of dominant cultural perceptions towards indigenous peoples tends to be alien and non-accepting of them. This tends to lead to a high drop-out rate due to discrimination by teachers and other students; . . . absenteeism when the children join their parents for gathering, herding or other activities; intensification of poverty and reliance on government hand-outs due to unemployment . . .” 190 The Working Group has singled out Namibia’s treatment of the San people in particular as a “useful example of how appropriate education models can be developed” to benefit indigenous peoples.191 This example is discussed more fully below.

The European Social Charter likewise identifies education as a key component to “protect[ing individuals] against poverty and social exclusion.”192 The same document also echoes international law in requiring member States to “provid[e] for the establishment or maintenance of institutions and services sufficient and adequate” to ensure children and young people with an education that is aimed at their “right to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities.”193 In line with these principles is the recognition of the right of parents to educate their children “in conformity

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191 European Social Charter, at art. 30.
192 European Social Charter, at art. 17.
with their religious, philosophical and pedagogical convictions.”

So too has Europe considered the important issues of language in a child’s educational development. Most of the legal development has been around minority rights generally, which are a separate concern from those of indigenous peoples. However, these laws help us to better understand where European countries stand on the more general issue of language and schooling, which in turn may be relevant to various indigenous peoples throughout Europe, most notably the Sami peoples. For instance, Article 19(12) of the European Social Charter calls for member States “to promote and facilitate, as far as practicable, the teaching of the migrant worker’s mother tongue to the children of the migrant worker.” Other regional language instruments include the Framework Convention for the Protection of National Minorities, which underlines the necessity for national minorities to participate in the decision making process, especially in cases where the issues being considered affect them directly. The Convention acknowledges the right of national minorities to “set up and to manage their own private educational and training establishments”, and requires States to “foster knowledge of the culture, history, language and religion of their national minorities.” Additionally, the European Charter for Regional and Minority Languages obligates States to make minority languages available in pre-school, primary, and secondary level schools, as well as in higher education, vocational, and technical schools.

Other influential non-treaty standards include the Hague Recommendations Regarding the Education Rights of National Minorities, which were meant to serve as a general framework for States. The recommendations recognize, among other things, the right to equality and non-discrimination, the right of national minorities to establish and manage their own schools, and the right of individuals to learn in their native tongue at pre-school, kindergarten, and primary levels. The High Commissioner on National Minorities, who was responsible for drafting the Recommendations, has said “it is clear that education is an extremely important element for the preservation and the deepening of the identity of persons belonging to a national minority.”

While these are not directly applicable to indigenous peoples, they demonstrate a regional trend in the development of linguistic and culturally appropriate educational models for various sectors of society as a primary tool for advancing the right to education. Each of these instruments is consistent with international principles on the right to a linguistically and culturally relevant education, which is in turn inextricably linked to “the full development” of one’s “personality

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195 European Social Charter, at art. 19(12).
and . . . physical and mental capacities.”\textsuperscript{201} This reading of regional law is strengthened by the European Court of Human Rights’ recent decision in Cyprus v. Turkey, in which the Court ruled that the lack of any Greek-medium education at the secondary level in Turkish-controlled Cyprus amounted to a denial of the right to education.\textsuperscript{202}

The regional instruments discussed above articulate and reinforce educational structures that can be particularly beneficial to indigenous peoples. The instruments touch on many facets of the educational system, including indigenous involvement in the creation and operation of educational systems, use of non-dominant languages in curriculum reform and development, and incorporation of different ways of knowing and learning with regards to education and schooling. As we will see below, these regional norms, along with international law, are shaping law and practice at the domestic level.

\section*{B. Domestic Practices: Some Case Studies}

As earlier demonstrated, an indigenous person’s full educational potential is tied to his or her ability to learn in a linguistically and culturally-relevant environment that is shaped and controlled by indigenous peoples and that is free of discrimination. Subsumed within various existing regional instruments is the recognition of these basic rights. While implementation of international and regional norms is still an ongoing concern, States and Indigenous peoples have taken some major steps domestically to advance and support the rights articulated in Article 14 of the Declaration.

This next section highlights some examples of legal reform and implementation. Read together, these domestic case studies suggest some common factors necessary in the promotion of the right to indigenous education by States: the development of a coherent educational implementation plan that identifies country specific issues and steps for overcoming those issues, direct involvement and consultation with indigenous peoples in the educational reform process, legal and educational reform that recognizes and solidifies indigenous peoples’ cultural and linguistic rights, promotion and assistance for indigenous-controlled educational systems and initiatives, recognition of indigenous practices and perspectives as the point of departure for knowledge generation and learning, and a willingness to seek out regional and international expertise and resources with and on behalf of indigenous peoples.

Equally important are what these case studies tell us about the common issues that States and Indigenous Peoples face in the implementation of Article 14. The most common issues being inadequate funding in terms of educational reform and poverty related initiatives, lack of available technical and other such expertise in the areas of indigenous educational reform, logistical obstacles in reaching certain segments of the population, and an inability to ensure that the mandates and goals of the State are being met at various levels of authority, particularly in

\begin{footnotes}
\item[201] Case of \textit{Cyprus v. Turkey}, ECHR no. 25781/94, 10 May 2001. The Court held that Article 2 of Protocol 1 of the European Charter for the Protection of Human Rights and Fundamental Freedoms had been violated which states that “no person may be denied the right to education…in conformity with their own religious and political convictions.” The Hague Recommendations Regarding the Education Rights of National Minorities at 275; \textit{see also} European Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol No.1, art. 2.
\item[202] Case of \textit{Cyprus v. Turkey}, ECHR no. 25781/94, 10 May 2001; \textit{see also} Permanent Forum 2008.
\end{footnotes}
local areas where entrenched views regarding indigenous peoples often hamper even the most well-intentioned and well-thought out initiatives. The studies also suggest a need for a cohesive mechanism to ensure that indigenous peoples are not only consulted in the reform process, but are actively leading the charge with respect to these reforms.

The following examples are grouped by regions and are a mere sampling of the many educational initiatives underway. In some areas of the world, educational reform is in the early stages of development. Others, such as the United States, have been focusing on the issue of indigenous education for quite some time.

**United States**

Indigenous education in the United States has a long and complicated history, marked by periods of tolerance and intolerance or by what one group of scholars recently described as a “safe/dangerous paradigm”:

“One is the reality of a revolution in Indigenous education, of opportunity seized by native people in the name of self-determination. . . . [T]he passage of the Native American Languages Act was, in fact, a crucial assertion of Indigenous language rights. Indigenous-controlled bilingual/bicultural schooling, heritage-language immersion, native charter schools, and Native standards for culturally responsive schooling are further examples of these self-determinant initiatives. A second reality is of an entrenched federal bureaucracy that, despite its public rhetoric, has protected its own powers and stifled native self-determination. . . . When Indigenous initiatives have crossed the line between allowable, safe difference and [what is perceived as] radical . . . difference, federal control has been reasserted in explicit, diffuse, and unmistakably constricted ways . . . [such as] state and federal policies that strip bilingual children of their most powerful learning resource—their mother tongue. . . .” 203

These “dual realities” that exist within the United States (and elsewhere) often make it difficult to achieve genuine indigenous self-determination in education. Indigenous peoples often face a point of pushback (even on rights as non-controversial as education) in States that are grappling with their own identities as “multilingual, multiethnic, multicultural polit[ies].” 204

Many early treaties between the United States and Native American Nations included educational provisions, but often with the framework of “civilizing” and “Christianizing”

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indigenous children. For instance, an 1803 treaty with the Kaskaskias Nation provided that: “the United States will give annually for seven years one hundred dollars towards the support of a priest . . ., who will engage to . . . instruct as many of [the tribe’s] children as possible in the rudiments of literature.” Except for one brief period in the 1930’s, this assimilationist view of education prevailed both as a matter law and practice until the 1970’s when the United States shifted toward recognition of the self-determining rights of Native American Nations.

In the last thirty five years the United States has taken far reaching steps on the legislative front with respect to key aspects of Article 14. Following several national studies on American Indian education, new legislation was drafted to support indigenous cultures and languages, as well as indigenous controlled educational systems. One of the most influential laws passed in support of these new policies was the Indian Education Act of 1972 (IEA), which provided funding for programs that served indigenous children in public and reservation schools. The IEA was designed to achieve equal educational opportunity to Native Americans and included grants for curriculum development and teacher training, as well as support for fellowships to Native American students in graduate and professional programs. The IEA specified that “all projects funded under the legislation must be developed and conducted with the cooperation of the tribes, parents, and students so that the Indian future in education can be determined in full conjunction with Indian desires and decisions.” A related law, the Indian Self-Determination and Education Assistance Act, was also a crucial step toward Native American participation and control in education, providing, among other things, bloc grants to American Indian Nations for various educational programs. In terms of federal indigenous language initiatives, The Esther Martinez Native American Languages Preservation Act of 2006 authorizes grants for Native American educational and restoration programs. The Native American Languages Act of 1990 also deals with the preservation of Indian languages by recognizing “the right of Indian tribes and other Native American governing bodies to use the Native American languages as a

205 See, e.g. Reyhner and Eder, A History of Indian Education, p. 26-28 (1989) (During the time of treaty-making with Indian nations, the Senate approved over 400 treaties, of which at least 120 had educational provisions.).
208 See 1966 Presidential Task Force on Indian Affairs, “A Free Choice Program for American Indians”, 23 December 1966, Final Report; Indian Education: A National Tragedy - A National Challenge (Kennedy Report)1969 Report of the Committee on Labor and Public Welfare, United States Senate made by its Special Subcommittee on Indian Education pursuant to S. Res. 80. Prior to the early 1970s, the general policy of the federal government toward indigenous education was one of forced assimilation into the dominant society. See Jon Reyhner & Jeanne Eder, A History of Indian Education (Eastern Montana College, Billings (1989); In many cases, indigenous languages, cultures, and histories were forbidden at federally sponsored schools.
210 The Indian Education Act of 1972, PL 93-380.
medium of instruction in all schools funded by the Secretary of the Interior."

Two federal agencies have been created and charged with the task of implementing these and other related laws pertaining to the education of indigenous peoples in the United States. The Bureau of Indian Education (BIE), within the U.S. Department of Interior, operates 184 indigenous elementary and secondary schools, as well as 2 post-secondary schools for indigenous students. In addition, it funds 24 tribal colleges that are operated directly by indigenous nations and organizations. The other agency, the Office of Indian Education (OIE), is located with the U.S. Department of Education. While not directly operating any schools, the OIE provides financial and other support to local educational agencies and indigenous nations and organizations who are addressing the unique educational and culturally related academic needs of indigenous students. One of the Office of Indian Education’s primary aims is to equalize opportunity for indigenous students to ensure that they are achieving at the same level as all students within the United States. Some of these objectives are achieved through federally funded programs, such as the Cherokee language program, the San Juan Pueblo Tribe Bilingual/Bicultural Program, the Bay Hills Indian Community Comprehensive Education Program, and the Cool Inlet Native Association Early Childhood Program.

In addition to federal initiatives, individual states within the United States are developing and advancing their own educational initiatives. A large percentage of indigenous students attend public schools run by state and local governments and thus these institutions play a crucial role in ensuring some of the rights articulated in Article 14 of the Declaration. Individual states and indigenous peoples of the U.S. have a complicated history. While states have at times been reluctant to embrace cultural difference and educational sovereignty where indigenous peoples are concerned, others have come to appreciate and value indigenous worldviews as a source of strength and pride. Contemporary evidence of this can be found in the State of Montana’s Indian Education for All Law, intended to ensure that all educational personnel have an understanding and awareness of Indian nations. To assist in this endeavor, the University of Montana implemented a new online course for teachers and administrators to educate them on federal Indian policy and tribal sovereignty. Similarly, the state of New Mexico recently implemented a comprehensive Indian Education Act covering a host of important issues, such as

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214 PL 101-477, Title I-Native American Languages Act, October 30, 1990.
215 These post-secondary Institutions are Bureau of Indian Affairs operated Haskell Indian Nations University and Southwest Indian Polytechnic Institute.
increased involvement in educational decisions affecting local indigenous communities.221 Elsewhere, the state of Arizona has established an Office of Indian Education, which, among other things, collaborates with Native American Nations on the educational needs of Native American students. 222 Similarly the South Dakota Department of Education collaborates with the Indian Education Advisory Council to improve the educational experience for indigenous peoples in that state.223

Yet much of what has happen in terms of true pedagogical shifts in Indian education has come from indigenous peoples themselves – bringing indigenous ways of knowing and learning into the process of “schooling.” One of the earliest examples at the post-secondary level is Diné College, formally the Navajo Community College, which was established by the Navajo Nation in 1968. 224 The Diné College curriculum applies traditional Navajo educational principles to advance learning through the study of Dine language, history, and culture. 225 Building on this earlier model, there are today over 36 indigenous run Colleges and Universities in the United States.226 These tribal colleges “combine personal attention with cultural relevance to encourage American Indians—especially those living on reservations—to overcome the barriers they face to higher education.”227

Examples of indigenous elementary and secondary reform include the Rough Rock Community School in Arizona, which serves students in grades K-12. Rough Rock states as its purpose to “educate, enlighten, and retain the proper cultural rearing of…Navajo children.” 228 Additionally, the Rock Point Community School, also located in Arizona, strives for high student attendance and high academic achievement in both Navajo and English at all grade levels. 229 The Oneida Nation School in Wisconsin offers education to students in primary and secondary grades. 230 Its program goals include utilizing Oneida Nation culture and life ways as a learning tool that encompasses “an integrated, holistic, collaborative approach to life long learning for the individual student, family, community, and nation.”231 Indigenous groups in the U.S. are also collaborating to create urban centers that support adult literacy -- an important segment of the

222 Indian Education Annual Report: Methodology and Results, 5/31/2007, Arizona Department of Education, Tom Horne, Superintendent of Public Instruction, prepared by Research and Evaluation Section, OIE, ADE; See ARS 15-244.
224 Diné College website, http://www.dinecollege.edu (last visited May 15, 2009); The main campus of Diné College is located at Tsaile (Tsééhílí), Arizona, with additional sites at Window Rock, Chinle, Ganado, Kayenta, and Tuba City to serve Arizona residents, while a branch campus at Shiprock and a Site at Crownpoint serve New Mexico residents.
indigenous population that is often underserved. One example is the American Indian Center in Chicago, the longest running urban Indian organization in the United States. It is one of 18 members of the National Urban Indian Family Coalition which provide a host of educational services to indigenous peoples living in urban areas, coupled with health and other social service programs. These are just some of the many from-the-ground-up examples taking hold in the United States.

Even with these successes the United States has encountered a plethora of issues over the years. Some of the same problems identified as early as the 1960s are still prevalent today, such as negative self-esteem among indigenous students, leading to higher absenteeism and drop out rates. In its April 2007 report, the Committee on the Elimination of Discrimination noted that the percentage of Native Americans, Native Alaskans, and Native Hawaiians that dropped out of high school were significantly larger than the general population (16.1 percent as compared to 9.8 percent). The numbers of indigenous students attending college were likewise lower than the average. And as is true in most countries, the current level of funding is inadequate to support the United States’ rather robust legal framework. However, the Indian Nations Risk Task Force suggests that public and Bureau of Indian Affairs supported schools are not adequately meeting the needs of indigenous students for a host of reasons beyond just funding. The most prevalent and perhaps most difficult issue to confront is “an unfriendly school climate that fails to promote appropriate academic, social, cultural, and spiritual

232 See United Indian Nations, Inc. (UIN), based in San Francisco, California, available at http://eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/14/d0/0f/pdf (last visited May 18, 2009). The American Indian Center of Chicago also conducts visits to Chicago public schools to give talks to students about Native American life and history. AIC-Chicago also offers teacher training to help public school teachers to more accurately portray American Indian history in their curricula. See AIC-Chicago website, available at http://www.aic-chicago.org/education.html (last visited May 18, 2009).
235 Senate Special Subcomm. On Indian Educ., Comm. on Labor & Public Welfare, Indian Education: A National Tragedy-A National Challenge, S. Rep. No. 91-501, at 21. See also Let No Native American Child Be Left Behind, at 819, 844. FN 220; The Report also identified several other negative results: the classroom becoming a battleground in which children tried to protect their identity; schools failing to understand, and often denigrating, cultural differences; schools blaming their own failures on Indian students; schools to recognize the importance of the Indian community; and the perpetuation of a cycle of poverty that undermined success of other government programs.
239 These funding issues are evident in educational facilities examined by the Department of Interior Inspector General, many of which were found to be unsafe and dangerous. See, e.g., Health and Safety Deficiencies at Bureau of Indian Education Elementary and Secondary Schools (No. C-IN-BIA-0008-2007); Indian Affairs committee finds Native American Schools, Jails, and Health Facilities Crumbling (Native American Times, March 7, 2008), available at http://nativene.ws.wordpress.com/2008/03/07/indian-affairs-committee-finds-native-american-schools-jails-and-health-facilities-crumbling-native-american-times (last visited May 11, 2009).
development among many Native students.” The Task Force identified a series of systemic problems contributing to these statistics, such as “curriculum [issues], inadequately trained teachers, lack of . . . parental participation, serious socioeconomic problems, and insufficient and unpredictable funding.” The Task Force has declared four national priorities: 1) developing parent-based childhood education, 2) training more indigenous teachers, 3) making schools responsible for the promotion of students’ tribal language and culture, and 4) strengthening tribal colleges. The National Indian Education Association (NIEA), the largest and oldest Indian education organization in the United States, has advanced similar self-determination strategies for improving the overall educational success of indigenous students, including increased tribal control of education through such initiatives as the establishment and support of tribal departments of education within tribal governments.

Another important issue in the United States is the recent trends with respect to bilingual education or additive versus subtractive education. The proposed English-only or English-first initiatives that have taken hold in some parts of the United States are largely attributed to the influx of immigrants from Spanish speaking countries, but they affect Native Americans nonetheless. Hand in hand with the “English only” initiative is the movement against bilingual education. At least three states have passed propositions on all-English instruction. These English only and anti-bilingual sentiments create a hostile environment for the indigenous learner and may well undermine other initiatives to preserve and protect indigenous languages and cultural traditions. This issue has been a major concern of indigenous educators for some time:

“Historically, Indian education [in the U.S.] has been mostly subtractive in nature. In the short . . . history of self-determination, Indian people, on the whole, have favored schools that teach their children non-Indian ways without forcing them to forget their Indian ways. The Indian influence in . . . education is increasing, and the battle now is to make sure Indian education never returns to being a one-way, subtractive process of cultural

243 The National Indian Educational Association is a membership based organization “committed to increasing educational opportunities and resources for American Indian, Alaska Native, and Native Hawaiian students while protecting our cultural and linguistic traditions”, http://www.niea.org/profile/(last visited May 19, 2009).
assimilation.”

Although there has been a concerted effort by indigenous peoples to maintain and develop mother tongue and bilingual skills, such as we have seen in Rock Point, Rough Rock, and other tribal educational institutions, bilingual education in the United States has often been shaped by questions of immigration, rather than questions that involve and are relevant to indigenous peoples. A related concern comes from the “No Child Left Behind Act of 2001,” which some indigenous educators see as a “one-size-fits all” approach to education, focusing more on English language standardized testing rather than other flexible assessment tools that might be better suited to indigenous bilingual learners. These and other related issues are being explored and analyzed by educational scholars in the United States. One important outcome of these studies is their ability to uncover “the falseness of fears attached to notions of . . . cultural difference and the promise of [indigenous educational] diversity as a source of national strength.”

Latin America
For many countries in the Organization of American States system, emphasis has been placed in the first instance on constitutional and statutory reform. For instance, Ecuador, Guatemala, Mexico and Panama have all included language in their constitutions that promote either

253 See K. Tsianina Lomawaima & T.L. McCarty, “To Remain an Indian”: Lessons in Democracy from a Century of Native American Education.
254 See Republic of Ecuador, Political Constitution of 1998, available at http://pdba.georgetown.edu/Constitutions/Ecuador/ecuador98.html (last visited May 11, 2009), art. 84(11): The State shall recognize and guarantee to indigenous people, in conformity with this Constitution and the law, with respect to public order and human rights, the following collective rights: 11. Granting of a quality education. Relying on the system of intercultural bilingual education.” Ecuador has also defined the right of self-determination to include the “right to establish priorities in plans and projects aimed at improving economic and social conditions,” which would necessarily include educational projects and programs.
255 See Republic of Guatemala, 1985 Constitution with 1993 Reforms, available at http://pdba.georgetown.edu/Constitutions/Guate/guate93.html (last visited May 11, 2009), art. 76: Educational system and bilingual instruction. The administration of the educational system should be regional and decentralized. In the schools established in areas with predominately indigenous populations, instruction should preferably be imparted in a bilingual format.
256 See Mexican Constitution, available at http://historicaltextarchive.com/sections.php?option=viewarticle&artid=93#T1C3, in English (last visited May 11, 2009). Article 2.B.II states: To eliminate the scarcities and leftovers that affect indigenous people and communities, these authorities have the obligation to: II. Guarantee and increment the levels of education, favoring bilingual and bicultural education, literacy, completion of basic education, vocational training, and mid-superior and superior education. Establish a system of grants for indigenous students at all levels. Define and develop educational programs of regional level that recognize the cultural heritage of their peoples, in agreement with the laws about the matter and in consultation with indigenous communities. Stimulate the respect and knowledge of the diverse cultures that exist in the nation.
257 See Derechos de los Pueblos Indigenas, Comparacion de Constituciones (see specifically Panama’s constitutional provisions), available at http://pdba.georgetown.edu/Comp/Derechos/indigenas.html#pan (last visited May 11,
bilingual education or education in the mother tongue for indigenous peoples. Argentina, Brazil, Colombia, and Venezuela have similarly established within their constitutional framework the right of indigenous peoples to an inter-cultural and bilingual education.

Guatemala

Guatemala is an example of a country that has worked to put in place a legal framework for improving indigenous education. As one UN study notes the indigenous peoples of Guatemala have for centuries experienced “severe societal discrimination, marginalization and exclusion,” which in turn led to decades of internal conflict. The Peace Accords of 1996, along with Guatemala’s ratification of ILO Convention (No. 169), were intended, among other things, to reverse some of these trends by promoting and protecting the cultural and linguistic diversity of the indigenous peoples of Guatemala. More specifically, the “Agreement on the Identity and Rights of Indigenous Peoples” addressed the right to education of indigenous peoples, stating that the government should “expand and promote bilingual education and place emphasis on the study and knowledge of indigenous languages at all educational levels and recruit and train indigenous bilingual teachers and technical and administrative officials.” Similarly the

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260 See Constitucion Política de Colombia, available at http://confinder.richmond.edu/admin/docs/colombia_const2.pdf (last visited May 11, 2009), art. 10. “The education provided in communities with their own linguistic traditions will be bilingual.”; art. 68, “The members of ethnic groups will have the right to training that respects and develops their cultural identity.”

261 See Derechos de los Pueblos Indigenas, Comparacion de Constituciones (see specifically Venezuela’s constitutional provisions), available at http://pdba.georgetown.edu/Comp/Derechos/indigenas.html#ven (last visited May 11, 2009), art. 121. “The State shall promote the appreciation and dissemination of the cultural manifestations of the native peoples, who have the right to their own education, and an education system of an intercultural and bilingual nature.” Available in English at http://www.misionvenezuela.org/espanol/ConstitutionoftheBolivarianingles.pdf (last visited May 11, 2009).


Constitution of Guatemala guarantees the right to education for all without discrimination, while acknowledging the importance of bilingual education particularly at schools that have a predominant indigenous population.265 The country also has a number of domestic laws that mandate quality education for indigenous peoples. For instance, in 1995, the General Directorate of Bilingual Intercultural Education was created and charged with the duties of preserving and promoting bilingualism and cultural diversity within the country and in particular among the Mayan-speaking population.266 More recently, laws were adopted to promote and develop the Mayan language and culture throughout public and private educational systems, in part by increasing funding for bilingual and bicultural teachers and student programming.267

Consistent with these legal reforms, UNESCO has worked with local education groups to develop the Mayan Bilingual and Intercultural Education for Elementary School project, which incorporates Mayan language and culture.268 This program of study is complimented by an extensive Mayan bilingual intercultural teacher training program. According to UNESCO, “[t]he project has been successful because it adopted an educational approach taking ancestral culture and values, as well as present indigenous practices in different regions of Guatemala, as the point of departure for knowledge generation and learning.”269 UNESCO has worked with local communities on a number of other successful bi-lingual educational programs.270

265 Republic of Guatemala, 1985 Constitution with 1993 Reforms, available at http://pdba.georgetown.edu/Constitutions/Guate/guate93.html (last visited May 11, 2009), art. 76: Educational system and bilingual instruction. The administration of the educational system should be regional and decentralized. In the schools established in areas with predominately indigenous populations, instruction should preferably be imparted in a bilingual format. Article 78: “teaching at schools that have a predominant indigenous population shall be administrated bilingually.” See Right to Education of Afro-descendant and Indigenous Communities in the Americas, P. 88. “Article 71 obligates the State to provide education without discrimination. Article 74 of the Constitution declares that primary education is a right and an obligation for all children and shall be provided at no cost.”


267 Right to Education of Afro-Descendant and Indigenous Communities in the Americas, p. 90.


conducted by UNESCO and others suggest that bilingual programs in Guatemala has improved
the schooling outcomes of indigenous children and led “to a reduction in repetition rates, with a
cost saving estimated at US $5 million a year…”

Yet the indigenous peoples of Guatemala still face a host of challenges to realizing their rights to
education under Article 14, as evidenced by low primary school completion and literacy rates in
many indigenous communities. This is coupled with ongoing systemic discrimination against
the Mayan population. A recent comprehensive NGO study to the Inter-American Commission
on Human Rights regarding the status of indigenous education in Guatemala has identified
specific implementation issues that impede the educational progress of indigenous peoples
despite an existing national legal framework. They include such things as low education
spending, poor facilities, inadequate teacher training, school locations that aren’t well placed to
serve rural families, continued language barriers between teachers and students, and lack of
programming designed to meet the needs of rural indigenous populations. The study also
identifies an array of steps Guatemala could take to improve upon its educational “outcome
indicators” for indigenous peoples, such as devoting more resources to universal primary
education, improving instructional quality, increasing community involvement, and addressing
school infrastructure problems to name a few. Other specific issues include the production of
learning materials in local languages and special training for teachers. While the primary
roadblocks in Guatemala seem to be predominately structural, there continues to be entrenched
stereotypic views of indigenous peoples within the larger society. These views inhibit the full
realization of the right to education for indigenous people by, among other things, affecting
implementation at the local level. As we will see, Article 15 of the UNDRIP addresses more
directly these specific concerns and what States can do to overcome them.

Brazil

The above example demonstrates just how difficult it can be to move from legal reform to
implementation. Brazil’s experiences suggest both a top down as well as bottom up approach to
implementing the constitutional mandate that “Indian communities shall . . . be ensured the use
of their native tongues and their own learning methods.” UNESCO has worked closely with

objectives of the program involve “promoting the development of bilingual and multicultural education, particularly
Mayan education, as a catalyst for the integral development of the peoples that make up the Guatemalan
population.” See Main document of Mobilization Project to Support Mayan Education, Netherlands, 519/GUA/12,
(Systemization of Project’s Outcomes) 1994-2004, p. 24, available at

Education for All by 2015: Will we make it? EFA Global Monitoring Report, 2008, p. 120, available at
http://unesdoc.unesco.org/images/0015/001547/154743e.pdf (last visited May 19, 2009) [hereinafter EFA Global
Monitoring Report 2008]. See also Emilio Porta and Jose Laguna, Education for All by 2015: Will we make it?
UNESCO Guatemala Country Study].

Right to Education of Afro-Descendant and Indigenous Communities in the Americas, at p. 85, n., 32; EFA

Right to Education of Afro-Descendant and Indigenous Communities in the Americas, at pp. 94-96.

Right to Education of Afro-Descendant and Indigenous Communities in the Americas, at pp. 86, 94-96.

Right to Education of Afro-Descendant and Indigenous Communities in the Americas, at pp 94-95.

EFA Global Monitoring Report 2008, p.120.

Brazilian Constitution, art. 210(2).
FUNAI (National Foundation for the Native Indian Population) and the Ministry of Education to help ensure the right to education for indigenous peoples, through capacity building, teacher training, and the development of culturally and linguistically appropriate materials for both indigenous and non-indigenous schools. One recent study conducted by Brazil’s Ministry of Education suggests that some progress is being made with the development of some 2,000 schools in or near indigenous territories and the employment of some 7,000 teachers, 85% of whom are indigenous persons. However, problems remain, including the high drop out rate of students beyond the 4th grade, where the rate of indigenous pupils drops from 65% in the 1st through 4th grades, to a mere 14% in the 5th through 8th, and a mere 1.5% percent in the secondary years. Studies suggest that this may be in part due to the location of schools. While some of the schools being developed are community based, many still require young people to leave their villages in the second phase of primary school and move to towns where most of the schools are located. This disruption of education during an important phase of identity and community building often leads not only to high drop out rates, but also social and cultural dislocation. Thus, indigenous communities in Brazil are pushing for more village-based primary educational facilities to “ensure a process of teaching and learning that will conform to the requirements of identity-building and sustainability.”

Mexico
Mexico faces a similar disconnect between its educational laws and implementation of those laws. On the one hand, Mexico has begun the process of recognizing indigenous rights, particularly in the area of language and education. For instance, the 2001 amendment to the Mexican Constitution recognizes “indigenous peoples’ collective right to preserve and enrich the languages, knowledge and all the elements that constitute their culture and identity.” This was followed by the 2003 “Federal Law to Prevent and Eliminate Discrimination,” which established the government’s obligation to take positive steps to promote equality for indigenous peoples through such things as bilingual education programs, scholarships, education availability

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281 Ministry of Education Report, at p. 43.
282 See Constitution of Mexico, art. 2; See also Morse Caoagas Flores, The Role of ILO in the Promotion and Protection of Indigenous Languages, p.8., PFII/2008/EGM1/14.
283 Constitution of Mexico, article 2 Section A.IV, 2001. A. This Constitution recognizes and guarantees the right of indigenous peoples and communities to self-determination, and, in consequence, autonomy to: IV. Preserve and enrich their languages, awareness of their heritage, and all the elements that constitute their culture and identity; Morse Caoagas Flores, The Role of ILO in the Promotion and Protection of Indigenous Languages, p.6., PFII/2008/EGM1/14.
at all levels of schooling, and vocational training. Additionally, the “General Law on Linguistic Rights of Indigenous Peoples” stipulates that indigenous languages are national languages and “recognizes individual and collective rights to indigenous peoples and communities such as access to compulsory education that is bilingual and intercultural.” Moreover, Mexico has established a number of institutions to assist them in the implementation of this legal framework.

Some indigenous peoples of Mexico are beginning to benefit from these reforms. UNESCO notes in its EFA Global Monitoring Report that Mexico has stepped up efforts to address performance issues at schools within indigenous communities through, among other things, compensatory programs. The programs include such components as “childcare support . . ., support to school management, extension and improvement of primary school infrastructure and equipment, . . . learning materials . . ., professional development and training for education staff, monetary incentives for teachers . . ., and . . support [for] educational projects developed by parents and community leaders.”

More specifically, by way of example, bilingual and bicultural programs have been developed for the Tarahumara people of Chihuahua, which include incorporating their language in preschool through third grade curricula. To assist the teachers in this endeavor, a standardized written form has been created from the five different dialects of the Tarahumara language, which in turn has been used to develop standardized materials and a basic vocabulary. And to reverse the traditional stigma attached to bilingual teaching in Mexico, bilingual teachers receive a higher salary than the regular monolingual Spanish teachers. In terms of community based initiatives, the State of Chihuahua has created a policy that allows funding for day schools with a minimum of eight students. These schools allow rural children to be educated without having to be uprooted from their families to attend a boarding school.

Even with these initiatives, which have had some measurable success in improving school outcomes, Mexico continues to face some of the same implementation challenges that other countries face. These include inadequate teacher training, inadequate funding sources for intercultural and bilingual education, ongoing societal discrimination against indigenous peoples,

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286 For instance, the Ministry of Education promotes linguistic diversity through efforts by the General Coordination for Intercultural Bilingual Education (CGEIB) and the Director General of Indigenous Education (DGEI). The National Institute for Indigenous Languages (INALI) was created in 2004 to promote and support indigenous languages. INALI website available at http://www.inali.gob.mx/ (last visited May 18, 2009).
289 The Tarahumara of Mexico, Carla Paciotto, p.159.
290 The Tarahumara of Mexico, Carla Paciotto, p.159.
291 The Tarahumara of Mexico, Carla Paciotto, p. 160.
292 The Tarahumara of Mexico, Carla Paciotto, p.160.
and state or local indifference to the full implementation of existing laws and rights. Many of these challenges are explore more fully in the 2006 Oaxaca Declaration on Indigenous Education in the Americas, drafted by indigenous educators from Mexico, Guatemala, Canada, and Bolivia.

Bolivia

Bolivia is a particularly useful example in terms of indigenous educational rights, as it was the first country to incorporate the provisions of the Declaration into national law. The Bolivian Constitution was revised in December 2007 to counteract the historical subjugation of its indigenous peoples. The new Constitution, which was voted in by referendum on January 25, 2009, recognizes the country as a “multiethnic and multicultural society.” In terms of specific legal reform, “The Law of Educational Reform of 1994” (ERL) made it possible for the indigenous peoples of Bolivia to receive education in their mother tongue. The ERL requires that students be taught to read and write in their mother tongue before transitioning into Spanish. This includes the Guarani, Aymara, and Quecha, who were to be taught in their mother tongues using textbooks and teaching materials provided by the Ministry of Education. By 1998, over half of the country’s primary schools had at least one grade under reform. The ERL also created The Educational Councils of Indigenous Peoples (CEPOs). CEPOs was set up for each of the main indigenous groups (Aymara, Quecha, and Guarani), as well as peoples of the Amazon to allow them input in the formulation of educational policy at the national level.

294 Intercultural education and indigenous education in Mexico, an experience in Oaxaca, Natalia de Bengoechea, p. 3 and 7, Universidad Pedagógica Nacional.
295 See Oaxaca Declaration on Indigenous Education in the Americas, Hemispheric Indigenous Educators Network, p. 1. Indigenous educators from Mexico, Canada, Guatemala, and Bolivia gathered in Oaxaca on March 30, 2006 to discuss the indigenous educational situation and to how to address it.
296 Morse Caogas Flores, The Role of ILO in the Promotion and Protection of Indigenous Languages, PFII/2008/EGM1/14.
Evidence of indigenous input can be found in Bolivia’s support for the Bilingual Intercultural Education Project amongst the Guarani people. The Guarani themselves actively participated in designing and managing the project, which promoted literacy in both Spanish and Guarani, according to the felt needs of the community, as well as incorporating Guarani history and culture. Additionally, in 1990, UNICEF initiated the Proyecto de Educación Intercultural Bilingüe (PEIB), which built on pilot experiences from donor-funded projects in the 70s and 80s in Bolivia and Latin America. PEIB studies had shown that indigenous students taught in their mother tongue were more proficient than students from control schools in language, mathematics (after second grade), life sciences, and had higher self-esteem. However, similar to Guatemala and Brazil, Bolivia is facing some implementation issues. These challenges relating to poverty, political turmoil, and discrimination have been explored in several recent studies, most notably “The Bolivian Education Reform 1992-2002: Case Studies in Large-Scale Education Reform.”

Colombia

In Colombia, years of internal struggle have taken a toll on the educational rights of indigenous peoples. Many groups have been displaced as a result of the turmoil, and this displacement inevitably results in disruption of education. However, Colombian officials also see the linkage between peace and educational rights: that an important component of any peace process is the availability of quality education for the many minors who are most susceptible to being drawn into the internal conflict. In terms of existing legal framework, the Colombian Constitution does contain some provisions that recognize and protect indigenous rights, and in particular respect for indigenous language and the right to bilingual education. The Constitution does not provide for free primary education, however, and requires those that can afford to do so to pay for education. As for legal reform, Colombia has in place Law 21 (The General Education Law of 1994), under which the rights of the Colombian indigenous peoples are regulated and which most importantly incorporates ILO Convention (No.169) into national law. Government policy in favor of indigenous rights in education is implemented under Act 115 of 1996, by which the Ministry of Education develops a "National Ethnic Education

304 [RECHECK] Supreme Decree No. 23036 of 28 January 1992; see also Hyltenstam and Quick, 1996. The Bolivian Education Reform; see also Albo, Xavier (2002) Educando en la Diferencia, hacia unas politicas interculturales y linguisticas para el sistema educativo. La Paz: CIPCA
305 Right to Education of Afro-Descendant and Indigenous Communities in the Americas, at p. 54.
307 Article 67 of the Colombian Constitution allows the government to charge parents for primary education; see also Concluding Observations of the Committee on Economic, Social, and Cultural Rights: Colombia. 30/11/2001 (observing that Colombia violates Articles 13 and 14 of the ICESCR by imposing fees in order to access public education on individuals who can afford to pay).
Program" that establishes the framework for teaching languages and cultures of the various ethnic groups.\(^{310}\) Under Article 72 of law 115, a Ten-Year Educational Development Plan has been created to implement the constitutional and legal mandates for indigenous peoples and other underserved groups.\(^{311}\) The Department of Indigenous Affairs of the Ministry of Interior is charged with carrying out the most recent ten year plan that runs from 2006 to 2015.\(^{312}\) This new plan addresses in particular discrimination and inequality in education.\(^{313}\) One major hurdle for meeting these goals, however, has been insufficient allocation of financial and other resources.\(^{314}\) Other major implementation issues include systemic poverty, lack of available schools, lack of broad-based support for autonomous indigenous education,\(^{315}\) and perhaps most pressing the continued violence that impedes indigenous persons’ access to existing educational programs and schools. A recent NGO report to the Inter-American Commission on “Right to Education of Afro-descendant and Indigenous Communities in the Americas” explores more fully each of these issues.\(^{316}\)

**Canada**

The Canadian experience with First Nations\(^{317}\) education highlights the importance of recognition of indigenous self-determination in education, coupled with a deeper understanding of the intergenerational consequences of removal and forced assimilation through education.

Section 35 of The Canadian Constitution Act of 1982 provides that: “The existing aboriginal and treaty rights of the aboriginal peoples are hereby recognized and affirmed.”\(^{318}\) While this language does not specifically address indigenous educational rights, those rights are integral part of the recognition and affirmation of inherent or “aboriginal rights” under section 35.\(^{319}\) As

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\(^{310}\) Law 115 (1996).


\(^{314}\) General Education Law of 1994; see also Right to Education of Afro-Descendant and Indigenous Communities in the Americas, at p. 61.

\(^{315}\) One project designed to help Colombia break out of the “standardized” system of education for indigenous students is a publicly funded “Indigenous University,” conceived by the Regional Indigenous Committee of Cauca. The University is merely in the planning stages and faces many hurdles political and economic hurdles. See Right to Education of Afro-Descendant and Indigenous Communities in the Americas, at p. 76.

\(^{316}\) See Right to Education of Afro-Descendant and Indigenous Communities in the Americas, at notes 75 and 81.

\(^{317}\) While the terms First Nation and Aboriginal are used throughout the Canadian section, it is important to acknowledge that distinctions exist between and among the First Nation, Inuit and Metis peoples of Canada.

\(^{318}\) Constitution of Canada, Part II, § 35 (1). §§ 2 & 3 also speak to aboriginal rights: “In this Act, “aboriginal peoples of Canada” includes the Indian, Inuit, and Metis peoples of Canada. For greater certainty, in subsection (1) “treaty rights that now exist by way of land claim agreements or may so be acquired.”

one scholar puts it, “Protection of a [First Nations’] existence will be meaningless unless it is accompanied by protection of [their] activities and institutional structures and capacity for maintaining these by practices and education.”320 While there is much debate (in scholarship and case law) as to the scope and meaning of this constitutional provision,321 education in one’s own language, culture, and community has been a central or inherent aspect of aboriginal society:

“Mothers and Elders were the repositories of knowledge and wisdom. They were the institutions which educated the young. . . . This form of education affected the child positively because it addressed itself to the total community. The child had the opportunity to develop a good self-image as an individual and as a member of the First Nation.”322

A recent First Nations Education Action Plan from the Assembly of First Nations demonstrates that these aims remain true today:

First Nations education is a life long learning process that begins in the cradle and continues through to old age. First Nations women and elders play a central role as the transmitters of their culture to the younger generations. Enhanced education outcomes for all First Nations’ learners require the recognition of First Nations jurisdiction over education at all levels . . . . First Nations education must be grounded in First Nations languages and cultural values, and must be adequately funded so that education outcomes meet or exceed those of the general Canadian population.”323

This First Nations Education Action Plan, which has not been fully implemented in Canada, tracks many of the key elements of Article 14 of the UNDRIP, such as equality in education through indigenous self-determination, and promotion and protection of linguistic and cultural integrity.

In addition to this broader reading of the constitution, there are specific educational provisions in the Canadian Indian Act. These provisions speak in general terms to the powers of the Minister of Indian Affairs and Northern Development relating to the elementary and secondary education of First-Nations students.324 However, there are varying views within Canada as to the scope of educational rights recognized and advanced under the Act.325


321 For an overview of this discussion, see First-Nations Education and the Law: Issues and Challenges, at 366-375.


325 The Act is viewed by some as an anachronistic instrument of educational paternalism. See First-Nations Education and the Law: Issues and Challenges, at 353 (“This legal framework is conducive to federal bureaucratic regulation of education to First-Nations students by non-First Nations entities shaped by policies and curricula largely uninfluenced by First-Nations communities and peoples themselves.”). See also A Manifesto for First
Canada is the federal agency with primary responsibility for education on First Nations reserves. Its powers stem from a host of “statutes, treaties, agreements and government policy.” Among other things, INAC provides funds for the education of children who attend schools either on reserves (about 60% of First Nations students) or in provincially-run schools off reserve (about 40% of First Nations students). The INAC also funds project-based initiatives designed to improve educational outcomes. They include “professional development for teaching staff, teacher recruitment and retention, and greater parent and community engagement in education.” Much analysis has been done on the efficacy of the current federal system of education, some of which is noted below.

In recognition of the government’s need to address shortcomings in existing policy and practices, the federal government implemented in 2008 the Reforming First Nation Education Initiative, which among other things, is directed at improving educational outcomes for First Nations students in three primary areas: literacy, numeracy and student retention. It is a “proposal driven program,” in which First Nations educators seek funds from the federal government to plan and make improvements in these three priority areas. The second part of the First Nations Education Initiative is the “Education Partnerships Program”, which is “designed to promote collaboration between First Nations, provinces, and Indian and Northern Affairs Canada . . . [with respect] to improving the success of First nation elementary and secondary students in First Nation and provincial schools.” It is too early in the program to assess the efficacy of these new initiatives. As we will see, the larger question is how these programs fair with respect to promoting and supporting indigenous self-determination in education -- that is the development of indigenous programs in language, culture, ways of learning and knowing and so on – all of which Article 14 recognizes as the most effective means of improving the educational quality and outcome for First Nations students and First Nations peoples.

Other sources of rights to indigenous education under Canadian law include the various educational and schooling clauses in some of the treaties concluded between First Nations and Canada in the late 1880s and early 1900s. These were treaties in which First Nations negotiated, among other things, “for schools, teacher and knowledge that would enable them to develop bicoognitive skills for their future.” There is much written about the scope and breadth of the

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Nations Education in Ontario, at 4 (“the Act exists solely to administer paternalistic policies and practices that interfere with the exercise of meaningful jurisdiction over education and true [indigenous] self-government”).


educational rights and duties articulated in these treaties. Broadly read, these provisions are consistent with Article 14 of the UNDRIP in that they recognize the rights of First Nations to have schools “built in their communities and for their purposes.” These treaty rights, along with aboriginal or inherent rights, were reaffirmed in the 1982 Constitution Act. Yet, unlike aboriginal rights, these early treaty rights were not applicable to all First Nations in Canada. However, additional treaties and other related agreements are currently being negotiated among federal, provincial, and First Nation governments that can address further the issue of indigenous rights to education and the necessary reforms at the various levels of government to ensure these rights.

One important example is the ongoing British Columbia Treaty Commission process, which is yielding a number of treaty and related agreements between and among First Nations, British Columbia and the federal government on a host of indigenous self-determination issues. One such recent treaty is the Tsawwassen First Nation Treaty, which, among other things, speaks to the right of Tsawwassen First Nation to exercise “self-government authority” in such areas as “preservation of culture, management of land, exercise of its treaty rights and the operation of its government.” This is just one of many agreements stemming from a treaty commission process established with the province of British Columbia and participating First Nations. In terms of education, there have been a series of agreements, followed by enabling legislation, negotiated between British Columbia, First Nations, and the federal government. In total, they are designed to “recognize[] participating First Nations’ jurisdiction over education on First Nations land in British Columbia,” which is consistent with the aims articulated in Articles 14(1) and (3) of the UNDRIP. These agreements and their accompanying legislation similarly ensure that participating First Nations students have the opportunity to “reach their full potential” within and outside of their nation, which is consistent with the aims of Article 14(2) of

See e.g., First-Nations Education and the Law: Issues and Challenges, at 357-359; Animating Sites of Postcolonial Education: Indigenous Knowledge and the Humanities.


Some of the highlights of the First Nations Education Act and related agreements include recognition of on-reserve First Nations K-12 schools; greater control by the First Nations Education Authority with respect to teacher certification, school certification and curriculum and exam standards; and increased consultation between the provincial Ministry of Education and First Nations Education Authority on educational policy, legislation and standards affecting First Nations education. Other related initiatives include Enhancement Agreements between school districts, individual First Nations and the Ministry of Education, which are designed to “enhance the educational achievement of Aboriginal students” … through “shared decision-making and specific goal setting” with respect to the educational needs of First Nation students.” These agreements, which are still in the early stages of implementation, may well serve as models for advancing and facilitating the rights of indigenous First Nation students throughout the rest of Canada.

Another example would be the work being done by the Government of Nunavut, a territory of Canada. In 1993 the Government of Canada entered into a government-to-government agreement with the Inuit, who currently make of 85% of the population of Nunavut. This agreement recognized, among other things, the rights to self-government and control over land and resources. While Nunavut has “the same status and powers” as other territories in Canada, according to the Government of Nunavut, “it operates in a way unique from any other jurisdiction in Canada.”

Nunavut incorporates Inuit values and beliefs into a contemporary system of government through Inuit Quajimajatuqangit and the working language is Inuktitut. Inuit culture is promoted through the Department of Culture, Language, Elders and Youth, which plays a key role in helping all departments develop and implement policy reflective of Inuit values.

The Nunavut Department of Education’s mission echoes these aims, focusing on education as the path to the “life-long learning journey of Nunavummiut.” This mission was recently codified in a government bill entitled the Nunavut Education Act, which, among other things, recognizes “the relationship between learning, and language and culture; and the importance of curriculum and school programs” that reflect this reality.

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While the situation in Nunavut allows for a more comprehensive, indigenous based approach to education, indigenous individuals throughout Canada would equally benefit from a cohesive approach that recognizes the linkages between and among culture, language, and community directed learning. One of the primary criticisms among scholars, educators and indigenous leaders is the lack of solid governmental support for self-determination in aboriginal education. As the Royal Commission on Aboriginal Peoples noted in 1996:

[F]ederal, provincial and territorial governments [should] act promptly to acknowledge that education is a core area for the exercise of Aboriginal self-government…. Federal, provincial and territorial governments [should] collaborate with Aboriginal governments, organizations or education authorities . . . to support the development of Aboriginally controlled education systems. . . .

However, as one scholarly study highlights “Aboriginally controlled education system[s]” have not in emerged to any significant degree in Canada: “The dream of ‘Indian control of Indian education’ has proven chimerical and empty for various reasons: lack of initial capacity and an ongoing lack of capacity development, and a lack of vision, commitment, and ethical and professional standards, to name but a few. More than anything else, however, it has failed because it founded on a hopelessly Balkanized and fragmented approach to educational governance.”

Indigenous leaders and educators echo these concerns. The Assembly of First Nations, in a 2005 First Nations Education Action Plan noted that “[t]here is a need to recognize First Nations jurisdiction as a central tenet of education reform . . . in order for those reforms to be effective.” This position is supported by a host of evidence supporting the need for indigenous peoples’ control over their own institutions for those institutions to be effective in promoting the well-being of the indigenous people they serve. To ensure these aims in the context of education, the First Nations Plan calls for an educational policy based on two key components: 1. “a recognition of First Nations inherent jurisdiction and the establishment of First Nations as empowered and definitive authorities that operate on a government to government basis vis-à-vis both the federal and provincial governments in relation to education.” 2. “[A]dequate, stable, and predictable long term funding arrangements . . . that is sufficient to meet the needs arising from recognition of First Nations jurisdiction over education at all levels.” Other studies have reached similar conclusions regarding current programs and curricula: “mainstream education programs and curricula are largely irrelevant to the values, philosophies and needs of their people, families and communities. To obtain the best possible education for First Nations children, a comprehensive restructuring of education is needed,” along with a “First Nations curriculum” and the development of First Nations education goals.”

352 First Nations Education Action Plan, at 3-4.
These critiques of the existing state of indigenous education in Canada are valid and need to be addressed. Yet earlier examples in the British Columbia and Nunuvet context demonstrate movement in the direction of Article 14 of the UNDRIP in terms of collaboration and recognition, where the central tenet of the educational reform process is recognition of First Nations’ jurisdiction over education. Another important area of potential collaboration is with respect to protecting and revitalizing First Nation, Inuit and Metis languages and cultures. In 2002, the Minister of Canadian Heritage identified a “10 year budgetary plan to preserve, revitalize and promote Aboriginal languages and cultures.” A task force was appointed to develop a strategy for meeting these aims. In 2005, it issued a report entitled “Toward a New Beginning: A Foundational Report for a Strategy to Revitalize First Nation, Inuit and Metis Languages and Cultures.” The report chronicles both the diversity of indigenous language spoken and the current state of those languages, which the report concludes are all “losing ground and endangered.” The report also noted that while “there are worldwide trends compounding this loss of language, Canada’s past assimilative actions, particularly the residential school system, cannot be ignored.” The report notes Canada’s duty to “provide resources necessary to restore” these languages as a result of these policies, but concludes that “First Nation, Inuit, and Metis peoples must . . . take their rightful place as the first and foremost teachers of their own languages and cultures.” The Task Force offered up 25 key recommendations to advance these aims, which were informed by discussions with elders, community groups, First Nation, Inuit and Metis organizations, as well as scholarly research and writings. These recommendations track several of the factors earlier identified as relevant to the promotion and protection of indigenous education at the domestic level, including legislation that formally recognizes the constitutional status of indigenous languages and equitable resource support for those languages on par with other officially established languages. The recommendations also touch upon necessary educational reform, such as language immersion programs and teacher training initiatives, to name a few. According to the Task Force, these are just the first of many steps that will be necessary to revitalize indigenous

354 Another example includes ongoing negotiations between the Anishinabek Nation and the Canadian government, as part of Canada’s Aboriginal Self-Government policy, to recognize Anishinabek Nations’ law-making authority with respect to primary, elementary and secondary education for members living on participating First Nations land within the Anishinabek Nation. See also http://www.ainc-inac.gc.ca/index-eng.asp (last visited May 18, 2009).
357 Toward a New Beginning: A Foundational report for a Strategy to Revitalize First Nation, Inuit and Metis Languages and Cultures, at 3.
358 Toward a New Beginning: A Foundational report for a Strategy to Revitalize First Nation, Inuit and Metis Languages and Cultures, at 2.
359 Toward a New Beginning: A Foundational report for a Strategy to Revitalize First Nation, Inuit and Metis Languages and Cultures, at 2.
360 Toward a New Beginning: A Foundational report for a Strategy to Revitalize First Nation, Inuit and Metis Languages and Cultures, Recommendation 3.
361 Toward a New Beginning: A Foundational report for a Strategy to Revitalize First Nation, Inuit and Metis Languages and Cultures, Recommendation 4.
362 Toward a New Beginning: A Foundational report for a Strategy to Revitalize First Nation, Inuit and Metis Languages and Cultures, Recommendations 10 & 15.
languages and cultures, which they note are an integral part of Canada’s “rich linguistic heritage.”

At the community level, there are a number of examples of initiatives designed to further the cultural, linguistic, and educational rights of aboriginal peoples. The Alternative Education Program of the Akwesasne, whose land crosses the border between the United States and Canada, is recognized as one of the most successful First Nations programs of its kind. The Akwesasne Mohawk School, located on Cornwall Island in the middle of the St. Lawrence River in Ontario, is a public school that offers courses in the Mohawk (Kanienketha) language from primary through secondary levels, a course in native culture, “cover[ing] everything from the creation story to contemporary times. . . .” Another example would be the Waycobah First Nation Elementary School in Nova Scotia, which has been operating since 1980 and educates students from head start to the sixth grade. Its mission is to “encourage our children, in a safe and supportive environment, to become life-long learners who respect themselves and others, have pride in their culture, and possess a strong desire to succeed.” They have a full immersion program in Head Start, employing Mi’kmaq in most of the lower elementary grades, leading to bilingual education in the upper grades. In terms of adult learning there is the First Nations Adult and Higher Education Consortium (FNAHEC), a Canadian First Nations’ non-profit organization focused on establishing quality adult and higher education programs for First Nations people. In addition, there are several First Nations higher education institutions, such as the First Nations University of Canada, which began as the Saskatchewan Indian Federated College and has been in operation since 1976. It has, among other things, a Department of Indigenous Education devoted to the development of quality teachers.

While these examples and studies suggest that work on improving indigenous education in Canada is underway, the country continues to confront what one indigenous leader refers to as an “education system in crisis.” Concerns range from the lack of schools within a number of
indigenous communities, the discrepancies in funding between reserve and province schools, lower overall educational achievement for Native students, and high rates of adult illiteracy, to name a few.  

One particularly moving account on the need for more schools came from the young people of Attawapiskat, a remote Cree community in Northern Ontario, who recently began a campaign for a new school in their community. They have been without a proper facility since 1979, when a fuel leak rendered their school uninhabitable. A recent Indian and Northern Affairs Canada report indicated that there were at least 57 other indigenous communities that were similarly in need of schools.57  The issues extend beyond facilities to issues of performance, with the Auditor General of Canada noting that First Nation students are achieving significantly below non-aboriginal students.

Yet the issues and solutions run deeper than mere numbers for the indigenous peoples of Canada. In 1998 the Canadian Government acknowledged its role in the “weakening of the identity of Aboriginal peoples” and more specifically in the development of and administration of assimilative residential schools:

Sadly, our history with respect to the treatment of Aboriginal people is not something in which we can take pride. Attitudes of racial and cultural superiority led to a suppression of Aboriginal culture and values . . . suppressing their languages and cultures, and outlawing their spiritual practices.  We must recognize the impact of these actions on the once self-sustaining nations . . . . We must acknowledge that the result of these actions was the erosion of political, economic, and social systems . . . . Against the backdrop of these . . . legacies, it is a remarkable tribute to the strength and endurance of Aboriginal people that they have maintained their historic diversity and identity.  The Government of Canada today formally expresses to all Aboriginal people in Canada our profound regret for past actions of the federal government . . . . One aspect of our relationship . . . requires particular attention, the Residential School system.  This system separated many children from their families and communities and prevented them from speaking their own languages and from learning about their heritage and culture.  In the worst cases, it left legacies of personal pain and distress that continue to reverberate in Aboriginal communities today. Tragically, some children were victims of physical and sexual abuse.

The Government of Canada acknowledges the role it played in the development and administration of these schools.  

During this time, Canada announced the Gathering Strength: Canada’s Aboriginal Action Plan, which “calls for a renewed partnership with Aboriginal people based on recognizing past mistakes and injustices, the advancement of reconciliation, healing and renewal, and the building of a joint plan for the future.” According to one report, “some 250 education reform projects . . . involving provincial, territorial governments, the federal government and Aboriginal groups” have been funded to date under the Gathering Strengths Action Plan. In addition, in 2007, a residential school settlement was reached to compensate those who were affected by the aboriginal boarding school policy. The Settlement provides, among other things, financial compensation to the victims of residential schools. It also establishes an Aboriginal Healing Foundation to promote inter-cultural healing as well a Truth and Reconciliation Commission to document and publicize the history of forced separation and assimilation.

However, this process may not on its own be able to address the important systemic challenges arising from this history, such as continued reliance on a centralized educational policy. As one study on “First Nations Education and the Law” concludes, “in the end only First Nations people can ‘transform and uplift’ the education of their children. Settler governments can assist but they cannot direct.” Dr. Marie Battiste takes this one step further in her studies on Indigenous Knowledge and Pedagogy, [summarize those studies here].

Canada’s implementation of the right to indigenous education is complicated by a number of historical and contemporary factors. On the one hand, you have recent constitutional reform that recognizes and affirms “the existing aboriginal and treaty rights of the aboriginal peoples” of Canada. However, Canada’s experience demonstrates that such reform, in order to be

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effective on the ground, needs to be coupled with comprehensive legislative and educational planning. Some of this is currently underway. Additionally, the country has begun to acknowledge and address the ongoing intergenerational harms flowing from many years of forced removal and assimilation. These policies, along with Canada’s indigenous self-determination efforts in Nunavut, British Columbia, and elsewhere, suggest ways forward for Canada. Acknowledgement and support by the federal government and its provinces for indigenous self-determination in education initiatives would open the door to ensuring and strengthening the Article 14 rights of First Nations peoples.

Nordic Countries
Sami country, which stretches over the Northern part of the Arctic area of the Scandinavian countries and the Kola Peninsula in Russia, is home to about 70,000 Sami peoples. Sweden, Norway, and Finland are advancing several regional initiatives with respect to implementing and ensuring the rights of the Sami. Core aspects of these initiatives (both domestically and regionally) are explored more fully in the section on media rights. These include the Nordic Sami Convention, as well as a series of constitutional and legislative reforms. With respect to education, the regional convention enumerates specific rights of access to education in the Sami language and within Sami territory. In particular, Article 26 states that “The Sami population residing in the Sami areas shall have access to education both in and through the medium of the Sami language.” To bolster the regional legal commitment to Sami education, Finland, Norway and Sweden have all passed domestic legislation recognizing the right of the Sami to education in their mother tongue. Equally important is the role that the Sami Parliaments, themselves an exercise in indigenous self-determination, play in this process.

Various ongoing initiatives of both the Sami parliaments and the states have open the door to a collaborative approach among the Sami both in terms of promoting self-determination in education, as well as meeting the unique educational needs of students. For instance, in Sweden, they have established six state run schools, which go from the pre-school level to upper

386 http://www.sweden.se/eng/Home/ (last visited May 18, 2009).
387 Nordic Sami Convention (submitted Nov. 2005), available at http://www.saamicouncil.net/?newsid=2223&deptid=2192&languageid=4&news=1(last visited May 18, 2009). The Convention also allows for the future participation of Russia, which also is home to a Sami population, through a protocol.
388 Nordic Sami Convention. Article 26 reads in total: “The Saami population residing in the Saami areas shall have access to education both in and through the medium of the Saami language. The education and study financing system shall be adapted to their background. Such education shall enable attendance of further education at all levels while at the same time meet the needs of Saami individuals to continuously be active within the traditional Saami livelihoods. The study financing system shall be arranged in such a way as to enable higher education through the medium of the Saami language. Saami children and adolescents outside the Saami areas shall have access to education in the Saami language, and also through the medium of the Saami language to the extent that may be deemed reasonable in the area concerned. The education shall as far as possible be adapted to their background. The national curricula shall be prepared in cooperation with the Saami parliaments and be adapted to the cultural backgrounds and needs of Saami children and adolescents.”
389 See Language Act (Finland 423/2003), § 4; Swedish Code of Statutes: Act concerning the right to use the Sami language in dealings with public authorities and courts (1999), § 8; Act on the Sami Parliament (Finland 974/1995), § 9; Act of June 1987 No. 56 concerning the Sameting (the Sami parliament) and other Sami legal matters (the Sami Act) (Norway), § 3-8.
390 The Sami Parliaments were created in Finland in 1973, Norway in 1987, and in Sweden in 1993.
secondary and offer curriculum that incorporates Sami language and culture. Moreover, a Sami school board oversees the Sami schools and the Sami educational programs. Most notably, the school board has been active in providing guidance on how to include the Sami perspective in subjects such as art, natural sciences (biology, physics, chemistry), and home economics. In Finland, primary schools in the municipalities of Utsjoki and Inari have classes where pupils are taught in the Sami language. Norway has similarly acknowledged both in law and practice that Norway has the responsibility to “create conditions enabling the Sami people to preserve and develop its language, culture, and way of life.” The country has embraced this commitment through enactment of the Norwegian Primary School Act in 1990, which included the right to be taught in Sami. Since 1997, Norway has provided textbooks in the three Sami languages for its Sami students. There is also a Sami university, Sámi Allaskuvla, in Kautokeino (Guovdageaidnu), in Norway. Established in 1989, its students come from all corners of the Sami territory: Norway, Finland, Sweden and Russia. This is another example of how the educational rights of the Sami can be respected and advanced at the regional and domestic levels.

Yet, parallel to the troubles of other states, there are varied levels of implementation of Sami education laws, as well as a lack of sufficient programs and technical support in some important areas such as teacher training. For instance, while the language of the regional Sami convention

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391 National Sami Information Centre (which is attached to the Sami Parliament) & Ministry of Agriculture, Food and Consumer Affairs, The Sami—an Indigenous People in Sweden (Edita Västra Aros, 2005), 18, 40, 42, 43, 47, 52. The Swedish Sami have also established a Sami library that “has a large collection of literature in Sami, as well as literature about the Sami and Sami affairs … The Sami Library not only has non-fiction, but also works of fiction by Sami writers.” The Sami-an Indigenous People in Sweden, at 55.
395 Constitution of the Kingdom of Norway of 1988, Article 110(a).
396 The Norwegian Primary School Act of 1990 reads:
1. Children in Sami Districts have the right to be taught in Sami and to be instructed through the medium of Sami. From the seventh year the pupils themselves decide on this matter. Children taught in or through the medium of Sami are exempted from instruction in one of the two Norwegian language varieties in the eight and ninth year.
2. On advice from the local school board the municipality board may decide the Sami-speaking children shall be instructed in Sami all nine years and that Norwegian-speaking children shall learn Sami as a subject.
3. Instruction in or through the medium of Sami may also be given to children with a Sami background outside the Sami districts. If there are at least three Sami-speaking pupils at a school, they may demand instruction in Sami.
has been finalized, ratification has stalled due in part to resource and other such concerns. Sweden recently voiced concern to the Committee on the Elimination of Racial Discrimination regarding the educational mandates of the convention, particularly with respect to the recruiting and training of teachers fluent in the Sami languages. The Finnish Sami Parliament similarly reported to CERD that “the problems of education in the Sami language are related to isolation, school administration, and resources.” And in Sweden the Sami board has had a difficult time keeping up with demands for textbooks, especially with a greater number of schools teaching Sami curricula. Finally, concerns still exist with respect to the lack of focus, even within the Sami educational system, on Sami ways of knowing and learning. A recent study pointed out “the importance of making use of local knowledge, nature and flexible timetabling” for furthering the educational experiences of Sami students. These concerns echo the ongoing resource and training hurdles faced by other countries, which in turn support the need for additional international technical assistance and support. Finally, a larger but similarly related concern is that the Sami peoples of all three countries continue to face challenges throughout various sectors of society with respect to linguistic and cultural rights, due in part to varying degrees of recognition and protection.

Australia

In 2008, the Australian Prime Minister issued an apology to the indigenous peoples of Australia for the forcible removal of indigenous children by past governments (known as the Stolen Generation): “As Prime Minister of Australia, I am sorry. On behalf of the Government of Australia, I am sorry. On behalf of the parliament of Australia, I am sorry.”

This history of forced removal and education has shaped educational outcomes for generations of indigenous students:

399 Committee for the Elimination of all forms of Racism, 73rd Session, Sweden, 17th-18th Report, 11-12 August 2008, p.5, Finland has echoed Sweden’s concerns about the legal consequences of the Convention.
400 Committee for the Elimination of all forms of Racism, 73rd Session, Sweden, 17th-18th Report, 11-12 August 2008. See also NGO Report by The United Nations Association of Sweden (p. 25); NGO Report by the Saami Council Sweden (p. 1-10); NGO Report by CMR (p. 9-10). All available at http://www2.ohchr.org/english/bodies/cerd/berds73.htm, (last visited May 18, 2009).
Historically, the policies and practices of Australian governments were predicated on the supposed ‘inferiority’ of Indigenous Australians. This has contributed to a tendency for systems and schools to devalue the educational potential of Indigenous students and to overlook the cultural, linguistic, and social capital they bring to the classroom. While this ‘deficit’ view is now contested, the perception that Indigenous students are to blame for their poor educational outcomes lingers on. Disparity in educational outcomes of Indigenous and non-Indigenous students has come to be viewed as ‘normal’ and incremental change seen as acceptable.407

A day following the historical apology, the federal government took steps through its Educational Minister designed to improve education and educational opportunities for indigenous peoples. They included legislative proposals that would, among other things, increase the number of teachers in remote areas of Australia.408

This is in addition to steps that had been taken throughout the 1990s to articulate a “National Aboriginal and Torres Strait Islander Education Policy.”409 This policy has been endorsed by states and territorial governments.410 The policy articulates four major goals which include: involvement of Aboriginal and Torres Strait Islander people in educational decision-making, equality of access to education services, equity of educational participation, and equitable and appropriate educational outcomes.411 These goals are broken down further into 21 long-term, national goals, which echo some of the major principles articulated in Article 14 of the Declaration. For instance, the long term goals include establishing mechanisms for community consultation and decision-making with respect to the education of indigenous children, increasing the number of indigenous educational teachers and other such workers, ensuring that indigenous children have access (including local access) to educational services on a basis comparable to other Australian children, increasing educational participation of indigenous children in pre-school and compulsory education, developing programs to support indigenous language and culture, as well as promoting traditional and contemporary cross-cultural understandings.412

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Australia has also adopted a number of laws aimed at supporting these policies. For instance, consistent with the norm of indigenous self-determination in education, one of the primary objectives of the Aboriginal Education (Supplementary Assistance) Act 1989 appears to be the facilitation of involvement of Australian indigenous peoples in the educational decision making process. The Act also acknowledges the role of language and culture in the education of indigenous pupils. Finally, the Act requires the Australian government to provide the funds and resources necessary to ensure “equitable and appropriate educational outcomes” for indigenous students, consistent with Article 14’s non-discrimination in education norm. The Indigenous Education (Targeted Assistance) Act of 2000, which was amended in 2004, reiterates Australia’s commitment to providing “financial assistance for the education of Indigenous persons, and for related purposes.” Additional laws include the Higher Education Act of 2003 and the School Assistance Act of 2004. In terms of planning and accountability, the Australian Government undertakes an annual survey to determine the level of effort that is going into improving outcomes for Indigenous students. From 2005-2008, the Australian Government estimates some two billion dollars of funding for indigenous educational programs.

Yet commitment at the legislative level does not necessarily translate into practice, especially without an across the board understanding among the various levels of educational players. Education in Australia is spread across national, state and territorial boundaries, with issues of control that lead to a lack of consistent aims. For instance, recent steps were taken in the Northern Territory with respect to a directive that all schools teach in English for the first four hours of each day, suggest a potential backlash against the many bilingual schools that have taken hold in that territory. This is in direct contradiction to recent pronouncements from the


Related to this issue of control is the lack of recognition by Australians that the “debate about education for Aboriginal and Torres Strait Islander people is also a debate about broader issues. In part it is a practical, on-the-ground manifestation of the debate . . . about self-determination, self-management, autonomy and control [by indigenous peoples] over their own affairs and about the nature of the relationship between Indigenous people and [the Australian] government.”\footnote{Peter Christensen and Ian Lilley, The Road Forward? Alternative Assessment for Aboriginal and Torres Strait Islander Students at the Tertiary Level, available at http://www.dest.gov.au/archive/highered/eippubs/eip9708/chapter3.htm#head2 (last visited May 18, 2009).} This may well change given that Australia has recently embraced the UN Declaration as a means of “re-setting” the relationship between Indigenous and non-Indigenous Australians:


Consistent with these principles of self-determination in education, the indigenous peoples of Australia are working independently and in conjunction with the government to ensure that linguistically and culturally appropriate education is available to its peoples. One particular area of concern is with respect to the transmission of language and culture through oral traditions.\footnote{Permanent Forum on Indigenous Issues: Agenda Item 7: Report of the International Expert Group Meeting on Indigenous Languages, available at http://www.hreoc.gov.au/social_justice/PFII/languages.html (last visited June 28, 2009). See Martinez Cobo XIII, at pp. 91, 99.} This has lead to the development of Aboriginal language centers throughout Australia as a means of incorporating Oral Tradition Heritage Methodologies into education curriculum.\footnote{Australian Human Rights Commission website: http://www.humanrights.gov.au/Social_Justice/PFII/languages.html (last visited May 18, 2009).} For instance, the Wangka Maya Pilbara Aboriginal Language Centre focuses on preserving, analyzing, and recording local languages in that region.\footnote{Wangka Maya Pilbara Aboriginal Language Centre, http://acl.arts.usyd.edu.au/projects/wangkamaya/index.php?option=com_content&task=view&id=69&Itemid=95 (last visited June 28, 2009).} Current projects include recording oral language tradition on DVD, which is in turn used to compile aboriginal dialect dictionaries. Working in conjunction with the University of Sydney, which provides research and funding, the Centre is using these materials in their cultural awareness training to bring indigenous language and culture to the broader communities.\footnote{Wangka Amaya Pilbara Cultural Language Centre, http://acl.arts.usyd.edu.au/projects/wangkamaya/index.php?option=com_content&task=view&id=69&Itemid=95 (last visited June 28, 2009).} This is just one of many examples of steps that indigenous peoples are taking to ensure their rights to a culturally and linguistically appropriate education.  \footnote{Add additional examples of indigenous educational initiatives such as the
As a result of governmental and indigenous efforts, the educational outcomes of Indigenous Australians have improved. As one study noted, “this is evident across a range of indicators on the enrollment, participation, and achievement” [429]. However, there are still gains to be made. For instance, “disproportionate numbers of Indigenous students do not meet national benchmarks in literacy and numeracy at years 3, 5, and 7...” [Moreover] three out of ten Indigenous students leave school between year 10 and year 11 compared to one out of ten non-Indigenous students.” [430] Another recent study by the Australian Education Union identified a number of complex factors impacting education access and outcomes for indigenous students: failure to engage the needs and expectations of students and their communities, lack of consistent support for indigenous languages and cultures, lack of adequate funding and other resource related problems such as inadequate staffing, and lack of availability of preschool education in many communities. [431]

New Zealand

There are other examples of domestic indigenous educational programs that attempt to put into practice the norms and standards articulated in Article 14 of the UN Declaration. Beginning in 1998, the Ministry of Education in New Zealand began “extensive consultation” with the Maori peoples to develop a “Maori Education Strategy.” [432] The new strategy emphasized three primary goals: “raise the quality of English-medium education for Maori, support the growth of high quality kaupapa Maori education, [and] support greater Maori involvement and authority in education.” [433] The government has since partnered with Maori teachers and leaders to “promote independent Maori education based on Maori culture and traditions, and controlled by Maori people,” while also integrating Maori educational ways of knowing and learning into the general

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431 Education is the key: An education future for Indigenous communities in the Northern Territory, Australia Education Union, 9 September 2007, p.6.
Additional aspects of this strategy were reaffirmed and updated in 2005 to ensure continuity of commitment to Maori education. Some key aspects that tie specifically to the rights articulated in Article 14 include addressing various attitudes, thinking, and practices with respect to Maori education. The strategy calls for a shift away from a deficit based model of thinking and practice to one that is “Maori potential” focused. It is best illustrated in the following chart:

Table 1: Maori Potential Approach in education

<table>
<thead>
<tr>
<th>Less focus on:</th>
<th>More focus on:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remedying deficit</td>
<td>Realising potential</td>
</tr>
<tr>
<td>Problems of dysfunction</td>
<td>Identifying opportunity</td>
</tr>
<tr>
<td>Government intervention</td>
<td>Investing in people and local solutions</td>
</tr>
<tr>
<td>Targeting deficit</td>
<td>Tailoring education to the learner</td>
</tr>
<tr>
<td>Maori as a minority</td>
<td>Indigeneity and distinctiveness</td>
</tr>
<tr>
<td>Instructing and informing</td>
<td>Collaborating and co-constructing</td>
</tr>
</tbody>
</table>

Another key aspect of the strategy is the recognition that “culture and education are inextricably interwoven,” that “Maori children and students are more likely to achieve when they see themselves, their whanau [family], hapu [sub-tribe] and iwi [tribe] reflected in the teaching content and environment.” This role of culture in education is strengthened by the dual focus on Maori language education. As one study aptly notes “language is the essence of culture.”

The Maori language is protected under the Waitangi Treaty as a te reo Maori, a valued Maori treasure. Additionally, the Maori Language Act in 1987 made te reo Maori one of the three official languages of New Zealand. The New Zealand Ministry of Education recently noted that

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434 See ILO Convention (No. 169) Manual, at 66. See also WGIP 16th Sess. Report, at para. 63 (explaining in further detail a portion of New Zealand’s Maori language program, which is directed at both children and adults).
437 Ka Hikitia: Managing for Success-Maori Education Strategy, 2008-2012, Te Tahuhu o Te Matauranga (Ministry of Education), p. 20. This includes developing cross-cultural teaching and learning relationships, which is represented by the concept of ako, a principle “grounded in . . . reciprocity.”
“as an official language and taonga of Aotearoa New Zealand, te reo Maori offers unique academic, cultural, educational, economic, social and linguistic benefits for all New Zealanders. This vibrant language supports the development and celebration of our national identity, enhances the mana whenua [self identity, sense of belonging] of our indigenous people and contributes to a creative and successful economy.”

Since the 1980s there has been a concerted effort on the part of the Maori to revitalize and strengthen te reo Maori. These efforts led to the establishment of kura kaupapa Maori, language school settings for the teaching of Maori language and culture. The impact has been substantial both in terms of the number of te reo Maori speakers, as well as improving opportunities for Maori learners in and outside of New Zealand. For instance, in 2004, the National Educational Monitoring Project (NEMP) conducted a comparative achievement study of Maori-medium students and English-medium Maori peers that suggest cognitive, social, and educational advantages to bilingual/immersion education. One study in particular noted that students in Maori immersion and bilingual schools “have a lower rate of stand downs, unjustified absences and truancy than Maori in English-medium schools.”

However, the NEMP also outlines a number of ongoing concerns, such as: the under-resourcing of Maori-medium education, lack of teacher training in bilingual/immersion education, concerns over teacher fluency in te reo Maori, lack of sufficient Maori language assessment resource, ongoing public misperception about bilingualism and bilingual education, and finally a lack of coordinated national policy on bilingual/immersion education. Some of these concerns are in fact the focus of the Ministry of Education’s 2008-2012 Maori Education Strategy.

Other aspects of the strategy include a focus on early childhood education, such as the development of an early childhood curriculum that incorporates, under the idea of ako or reciprocal relationships, “the people and context of children’s wider lives.” It also includes reaching out and supporting the entire family, as is done through Atawhaingia te Pa Harakeke (Nurture the Family), a program aimed at building upon the interconnectedness and interrelatedness of families and communities. A related set of programs are being developed for grades 9 and 10, where studies indicate an increase in truancy, suspension, and expulsion.

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levels.  However, success in these age categories in terms of keeping students engaged in the learning process has come primarily from changes in “teaching attitudes and practices.”

[Other Maori-specific examples here.]

Thus, the experience of New Zealand suggest progress on a number of key fronts, such as official governmental recognition of a Maori centered, Maori driven educational strategy; steps to ensure and promote the linkages between education and culture and language; commitment to additional resources and programs; and a realization that systemic shifts in attitudes, thinking and practices is a key step in improving Maori education outcomes. However, these same studies suggest that there is additional work to be done, particularly as it relates to wider societal perceptions and commitments to Maori language, culture and rights of self-determination in education.

Namibia

Another important domestic example involves the San of Namibia, a group that continues to face major issues with respect to the availability and accessibility of relevant educational services and schools. One study suggests that “fewer than one in five San of school-going age currently attend school.” However, steps have been taken in the last ten years with respect to San education, during which time the number of San students enrolled in schools has doubled. These improvements are attributed in part to the collaboration among non-governmental organizations and governmental bodies, such as the Ministry of Basic Education, Sport, and Culture (MBESC). In 1993, MBESC (then known as MBEC) created a document outlining the State’s policies towards indigenous education, entitled “Toward Education for All: A Development Brief for Education Culture and Training.” Among other things, the MBEC policy acknowledged a key aspect of Article 14 of the declaration, the importance of mother-tongue instruction: “All natural foreign languages are equal regardless of the number of speakers.

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449 See, e.g., Stephen May, Richard Hill and Sarah Tiakiwai, Bilingual/Immersion Education: Indicators of Good Practice, Final Report to the Ministry of Education, Wilf Malcom Institute of Educational Research, School of Education, University of Waikato, p. 91 (“despite the significant advances made on its behalf in recent years, bilingualism in Maori and English is still viewed as subtractive by many – perhaps still, the majority – of the wider Aotearoa/New Zealand community.”).
450 An Assessment of the Status of the San in Namibia, p. 123, James Suzman, Legal Assistance Centre(LAC), Windhoek, April 2001).
451 An Assessment of the Status of the San in Namibia, p. 125, James Suzman, Legal Assistance Centre(LAC), Windhoek, April 2001).
of that particular language. . . . For pedagogical reasons it is ideal for children to study through their own language during the early years of schooling when basic skills of reading, writing, and concept formation are developed.”454 The Baraka School in Nyae Nyae has embraced this concept by teaching San learners in their Ju/'hoan language in grades one through three.455

Yet Namibia also acknowledges ongoing issues and challenges.456 For instance, in a recent Article 9 report to the Committee on the Elimination of Racial Discrimination, Namibia identified what it saw as the three major hurdles to education for the both the San and the Ovahimba community, another indigenous group in Namibia.457 “poverty within the families, negative attitudes of those not marginalized, and high illiteracy rates of parents…”458 In order to promote more access, the Government has established “Inter-sectoral Task Force” designed to “formulate policy guidelines on educationally marginalized children (EMC). . . . [and] to help co-ordinate the activities of NGOs, Ministries, and other stakeholders regarding EMC.”459 Another separate study on the “Assessment of the Status of the San in Namibia” outlines similar factors affecting the literacy rates among the San in Namibia: poverty (making it difficult to afford such things as uniforms and fees), lack of adequate transportation to schools, lack of community-based schools (versus boarding schools which can perpetuate cultural dislocation and disrupt familial structures), on-going negative attitudes of non-indigenous students and teachers toward the San, lack of consistent education in the mother-tongue (which includes lack of materials and teacher training in the San language), low literacy rates among parents, and teenage pregnancy.460 Moreover, since the San inhabit not only Namibia, but also parts of Botswana, Angola, Zambia, and Zimbabwe, there is a regional dimension to the San culture that creates its own unique set of issues and concerns (similar to the Sami situation).461

Current research suggests that, in the short term, policies for the San should “focus primarily on enrolling San in school and creating conditions at the applicable school that encourage learners to stay there.”462 Looking back to the Article 14 factors identified earlier in the domestic section, certain steps can be taken to advance these short term goals: such as direct involvement by the San in the creation and implementation of educational policy and programming, official recognition and promotion of San language and culture, support for San-controlled educational systems, and incorporation of San worldviews on the processes of knowledge generation and

454 An Assessment of the Status of the San in Namibia, p. 128, James Suzman, Legal Assistance Centre(LAC), Windhoek, April 2001).
455 An Assessment of the Status of the San in Namibia, p.128, James Suzman, Legal Assistance Centre(LAC), Windhoek, April 2001).
457 CERD Namibia, p.20.
462 An Assessment of the Status of the San in Namibia, p. 132, James Suzman, Legal Assistance Centre(LAC), Windhoek, April 2001.
learning.

Moreover, as one researcher notes, long term success in San education is dependent on addressing the linkages between poverty and education, an issue prevalent throughout many indigenous societies. The equality and non-discrimination aspects of Article 14 speak directly to this issue of an economically accessible education and might include, in programmatic terms, such things as school allowances and subsidies, transportation, housing, and clothing to name just a few. However, on a larger scale, poverty reduction efforts and educational opportunities need to be linked and promoted. These are all areas where international expertise on the part of UNESCO and other governmental as well as non-governmental entities can be most helpful.

Malaysia, Japan and Nepal

Each of the following States have taken some steps in the area of language, culture and education. For instance, the Government of Malaysia has adopted the “Pupil’s Own Language” policy, aimed at teaching the Kadazan language to pupils belonging to that indigenous group in the State of Sabah on the island of Borneo. The 1997 policy stems from the 1996 Education Act, and acknowledges that instruction in indigenous language is important in the education of indigenous children. The Sabah Education Department, with funds raised by the Kadazandusun Language Foundation, also purchased 100 copies of the Kadazan Dusun-Malay-English Dictionary in 1999 to incorporate better bilingual education into their system.

Recently, the Japanese Legislature passed a resolution calling for the recognition of the Ainu people as an indigenous peoples, an important first step toward eventual implementation of the UNDRIP. The resolution in support of this recognition passed unanimously on June 8, 2008 and states that "The government shall recognize the Ainu as an indigenous people with a unique language and distinctive religious/cultural practices." On the same day, the Chief Cabinet Secretary similarly recognized the Ainu as peoples “indigenous to the northern part of the Japan

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463 An Assessment of the Status of the San in Namibia, p. 132, James Suzman, Legal Assistance Centre(LAC), Windhoek, April 2001.
archipelago . . . and who . . . possess a unique language, religion and culture.” These statements represent an important step in the full realization of educational rights for the Ainu peoples who, until recently, have been subject to educational policies aimed at the erasure of their language and culture.470 The Ainu are the indigenous people of the islands of Honshu and Hokkaido. Since 1997, the Law for the Promotion of the Ainu Culture and Dissemination and Advocacy for the Traditions of the Ainu and the Ainu Culture (Culture Promotion Law) has been in place.471 This law, commonly referred to as the Ainu Shinpo, sought a reversal of past policies of assimilation by, among other things, promoting bilingual education and awareness of the Ainu culture and history.472 However, these laws and policies do not unequivocally acknowledge the indigenous status of the Ainu in relation to the UNDRIP or international law generally. This is an issue that remains a point of contention among governmental entities and others working to promote the rights of the Ainu.473 Moreover, even with these laws in place, there still remain many issues of discrimination in fact, as recently noted by the UN Human Rights Committee.474 In its 1998 concluding observations to Japan, the HRC noted its concern with “the discrimination against members of the Ainu indigenous minority in regard to language and higher education, as well as about non-recognition of their land rights.”475 In 2008, the HRC further commented on Japan’s obligation to “provide adequate opportunities for Ainu…children to receive instruction in or of their language and about their culture, and include education on Ainu… culture and history in the regular curriculum.”476 Statistics in the area of education bears these concerns out. One governmental study notes in particular the discrepancy in the number of Ainu children going to school and universities as compared to the national average in Japan, which some see as a carry-over from past discriminatory laws.477

471 Human Rights Issues on the Ainu People in Japan: Their Social and Cultural Development through Overcoming the Social Prejudice and Discrimination, Yuzuru Yokoyama, PhD. Professor, School of Social Welfare, Hokusei Gakuen University, Sapporo, Japan, at 2.
473 Ainu People Today - 7 Years after the Culture Promotion Law, Yoichi Tanaka, available at http://www.hurights.or.jp/asia-pacific/no_36/03.htm (last visited June 28, 2009).
474 Additional information in relation to the fifth Japanese report submitted under Article 40 paragraph 1(b) of the International Covenant on Civil and Political Rights by the Ainu Resource Centre, available at www2.ohchr.org/English/bodies/hrc/docs/ngos/ARCJapan94.doc (last visited June 28, 2009).
475 The Committee is concerned about the discrimination against members of the Ainu indigenous minority in regard to language and higher education, as well as about non-recognition of their land rights”, Concluding observations of the Human Rights Committee : Japan. 19/11/98, CCPR/C/79/Add.102., at 14, available at http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/5a2b9a28d433b6ea802566d40041ebbe?OpenDocument (last visited June 28, 2009).
Finally, in terms of Nepal, over 40 percent of the Nepalese population belongs to indigenous groups. The 1990 constitution of Nepal recognized the right “to preserve and promote language, script and culture” and also “the right to operate schools up to the primary level in mother-tongues for imparting education.” Moreover, Nepal ratified the ILO Convention No. 169 in September 2007, which it used in its recent constitution-making process. The 2007 Interim Constitution of Nepal states that “Each community shall have the right to get basic education in their mother tongues provided for in the law”, and that “each community residing in Nepal shall have the right to preserve and promote its language [and] script.” Nepal faces a number of important implementation issues in terms of this new constitutional mandate. In particular, the Committee on the Elimination of Racial Discrimination acknowledged the extreme economic hardship and resulting poverty of the State, but encouraged the State to take all necessary steps “to include intercultural education in school curricula.” Recent efforts on the part of Nepal and others within and outside the country suggest that even during times of political transformation, important reforms are possible. For instance, the government has created the community school support project (CSSP), designed to aide disadvantaged children in rural areas. Additional efforts are underway on the part of indigenous groups and non-governmental organizations. This includes the development of the Nepal Federation of Indigenous Nationalities (NFIN), which consists of 54 different indigenous organizations.

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479 Constitution of the Kingdom of Nepal 2047 (1990), Part III(18): 18. Cultural and Educational Right:
(1) Each community residing within the Kingdom of Nepal shall have the right to preserve and promote its language, script and culture.
NIFN was formed with the goal of “documenting, preserving and promoting cultures, languages, religion, customs, traditions of the Indigenous Nationalities of Nepal and to assist them in developing and obtaining equal rights.” NIFN works to promote indigenous language and education by lobbying government offices for better and equal treatment. Outside of Nepal, NGOs such as the Global Federation of Indigenous Peoples of Nepal (GFIPN) work to promote Nepalese language and customs by spreading knowledge and information about the struggles of the indigenous populations of Nepal on the world stage.

Summary
These are some of the many country examples supporting Article 14’s central goal of equalizing the standard and quality of education for indigenous peoples. Countries have begun to recognize -- through various laws and state-sponsored programs -- the linkages between a culturally and linguistically relevant education and one that ensures equality in education. Still others have come to realize that these aims are best realized through state initiatives that recognize and support indigenous communities in their efforts to create and manage their own schools, which includes supporting and incorporating indigenous ways of knowing and learning.

Earlier we identified some of the key factors for success drawn primarily from the case studies: meaningful dialogue between states and indigenous peoples, constitutional and/or legislative reform, a comprehensive plan of implementation, indigenously based initiatives, the embracing of different ways of knowing and learning, and the development of meaningful partnerships with regional and international bodies. We also identified some common roadblocks to success: economic and logistical obstacles, lack of expertise in terms of teacher and curriculum needs, and entrenched and sometimes discriminatory views regarding indigenous peoples, particularly as it relates to issues of bilingualism and biculturalism. Many of these roadblocks are addressed more fully in the next section “Measuring Success and other Implementation Questions” using Katarina Tomasevski’s 4-A scheme.

Yet closer examination of the individual case studies can offer States insight on ways forward with respect to Article 14. For instance, while many States are hampered by inadequate funding, the cases studies suggest that there are a number of important steps that can be taken that require little to no funding, such as providing official recognition to language and cultural rights or consulting with and utilizing the expertise found within and among indigenous communities, as the Maori example so aptly demonstrates. In terms of infrastructure and development needs, the case studies suggest that international and regional involvement, as well as creating networks among and between states and indigenous peoples, such as in the case of Sami, can be useful tools. These are just a few of the many lessons that can be learned by exploring more thoroughly

487 Information available at http://demrepubnepal.blogspot.com/2006/08/alliance-gfipn-audio-video.html (last visited June 30, 2009). GFIPN was founded at the First Gathering Indigenous Peoples of Nepalese Origin in New York in 2005. Much of the work to promote the rights of indigenous peoples inside of some countries must be done by those working outside of the country itself, bringing attention to their plight through global dissemination of information.
the practices of States, regional bodies, and indigenous peoples. This may be more easily accomplished after 2009 when the study requested by the U.N. Human Rights Council on “lessons learned and challenges to achieve the implementation of the right of indigenous peoples to education” is published by the Expert Mechanism on the Rights of Indigenous Peoples.

IV. MEASURING SUCCESS AND OTHER IMPLEMENTATION QUESTIONS

Article 14 represents settled legal obligation under international law. Conventional and customary law guarantees not only the right to education for indigenous peoples, but the rights to self-determination, non-discrimination, and cultural integrity in education as well. The settled nature of these rights is evidenced in part by the fact that regions and countries have begun to incorporate portions of Article 14’s approach to eliminating discrimination and promoting self-determination in education, most notably through cultural and linguistic measures. However, within this existing framework, questions remain on how a State might assess whether it is adequately addressing the educational rights of indigenous peoples. Further guidance from regional and international bodies on this issue of implementation is needed. This section is intended to provide some preliminary guidance on this and other related questions using a well established analytical framework for measuring a State’s obligation with respect to the right to education generally.

According to the IESCR Committee and the former UN Special Rapporteur for Education, Katarina Tomasevksi, “education in all its forms and at all levels shall exhibit the following interrelated and essential features”: availability, accessibility, acceptability, and adaptability. Often referred to as the “4-A Scheme,” availability refers to the “functioning educational institutions and programmes” in “sufficient quantity;” accessibility refers to “institutions and programmes” that are “physically” and “economically” accessible to everyone “without discrimination” of any kind; acceptability includes “the form and substance of education” that is “relevant, culturally appropriate, . . . of good quality” and otherwise acceptable to students and in appropriate cases parents as well (subject to minimum governmental standards); adaptability refers to education that is “flexible” and adaptable to the “changing needs” of societies.

489 See http://www2.ohchr.org/english/issues/indigenous/contribution.htm (last visited April 21, 2009).
493 Human Rights Obligations in Education: The 4-A Scheme.
communities and students, particularly with respect to their “diverse social and cultural settings.”

When considering the application of these “interrelated and essential” aspects of the right to education, “the best interest of the student” is of primary concern.

In formulating Article 14, the Working Group on Indigenous Peoples articulated some concrete actions States made need to take in order to begin to combat the effects of discrimination and inequality in indigenous education. These actions can be viewed within the context of the 4-A Scheme. As noted earlier, acceptability refers to the form and substance of education, such as curricular materials and teaching methods that are relevant and culturally appropriate. Adaptability overlaps with this concept in that it relates to educational methods that are flexible enough to meet the diverse social and cultural needs of the particular societies and communities and students being served. However, according to the studies that informed Article 14, in many indigenous areas there are no, or far too few, teachers with sufficient knowledge of the relevant indigenous language and culture to be able to incorporate these into the curriculum. The studies further showed that teachers serving indigenous populations were often not properly trained to teach in those communities, nor did they necessarily have the appropriate teaching or course materials to meet the unique educational needs of the students. Consequently, Article 14 speaks to the need of States to make a more concerted effort to aid indigenous communities in recruiting and training indigenous teachers, as well as developing appropriate textbook and other resources for teachers and students alike. Yet adaptability in education extends beyond curricula and teacher concerns to the larger issue of developing educational systems that are integral to the social and cultural settings of the students. In the case of indigenous peoples this would include State support for educational institutions and facilities that are located in and controlled by indigenous groups.

This brings us to the issues of availability and accessibility. These same studies demonstrated that many countries have no, far too few, or far too inadequate schools in or near indigenous communities. States will need to address these problems by building new schools within indigenous communities or strengthening existing ones. Other creative solutions such as establishing distance learning programs for adolescents and adults or mobile schools for nomadic communities may also be helpful. As noted by the CESCR, whether a State is meeting its obligation to make available “functioning educational institutions and programmes” will vary based on a number of factors, including the development context within in which the

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494 CESCR Gen. Com. No. 13, para. 6(d).
498 See Martinez Cobo Volume V, at para. 97.
While all institutions must have such things as “protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving competitive salaries, teacher materials and so on,” additional facilities or programmes, such as instruction in the mother tongue, will depend on the unique situation of the community and students being served.

In terms of accessibility, States need to provide for an education that is not only physically accessible, but also one that is economically accessible and non-discriminatory. Governments will need to take measures to eliminate the significant economic disparities that exist between indigenous and non-indigenous peoples. State funded financial aid programs in the form of fellowships, allowances, subsidies, and the provision of resources such as living accommodations, transportation and adequate clothing can be important measures to this end. Poverty itself is often an important barrier to a family being able to afford to allow their children to go to school and can significantly undermine State efforts to provide an education that is “accessible to all.” Thus, in some places, poverty reduction efforts will have to be formulated and implemented in conjunction with educational programmes and objectives. The drafters of Article 14 also wanted to be careful not to define the right to education too narrowly as to leave out an important sector of society, recognizing in particular the need for adult learning programs. As one scholar has noted, “[l]iteracy and permanent programs of adult learning are fundamental to the[] goal[] . . . [of ensuring] that people can participate consciously and critically in national decision making.” Thus, governments need to be cognizant of the need for indigenous education and training at all levels, including adult literacy.

Finally, on the question of non-discrimination, some States have articulated concerns regarding the potential effects of Article 14 on non-indigenous populations. For instance, some States may fear that adapting education to the particular needs of indigenous peoples will negatively affect their nation’s unity. Others may be concerned about the effect that changing curricula to meet indigenous students’ needs may have on non-indigenous students who are attending the same schools. Some of these concerns are dealt with in our discussion of Article 15 of the Declaration, which speaks to, among other things, the issue of cultural pluralism in education. The Committee who oversees the IESCR notes, however, that non-discrimination in education means that “education must be accessible to all, especially the most vulnerable groups, in law and fact.” Thus, the concept of equality in education takes into consideration the need for specially designed programs or institutions that ensure that quality education is accessible to

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503 CESCR Gen Com. No. 13 at para 6(a).
506 See Martinez Cobo Volume V, at para. 97.
510 UNDRIP, at art. 15.
indigenous students as a matter of fact. In other words, while the instruction or programs or institutions may not look the same in all cases, they ensure the same educational aims and objectives, most notably the “full development of the human personality.”

On the larger question of national unity, Jose R. Martinez Cobo, author of the UN study on discrimination against indigenous populations, perhaps stated it best when he explained that “national unity does not necessarily imply cultural uniformity and the disappearance of different cultures, which can in fact enrich this unity by giving it many different shades and facets and strengthened and deepened contributions since each individual and each group would participate on the basis of his or its own identity and cultural patterns. It is therefore desirable, and even necessary, to respect and strengthen . . . indigenous culture[s] simultaneously with the efforts to provide a better knowledge of the dominant culture.” For all the reasons discussed in this chapter, this recognition and support for cultural pluralism and cultural identity within the larger society is consistent with international human rights precepts.

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512 Univ. Decl., at art 26(2); ICESCR, at art 13(1); CESCR Gen. Com. No. 13, at para. 4.
513 Martinez Cobo Chapter XIII, at para. 234.
514 See Martinez Cobo Chapter XIII, at para. 234.
Suggested Readings and Additional Sources:


K. Tsianina Lomawaima & T.L. McCarty, “To Remain an Indian”: Lessons in Democracy from a Century of Native American Education.


Stabilizing Indigenous Languages (Gina Cantori, ed. 2007)

Morse Caoagas Flores, The Role of ILO in the Promotion and Protection of Indigenous Languages, PFII/2008/EGM1/14.


Additional Indigenous Education Resources:


US Bureau of Indian Affairs: http://www.bia.edu/bie/about_bie/our_schcels/index.cfm

US Office of Indian Education http://www.ed.gov/about/offices/list/oese/oie/index.html

