Indigenous Linguistic Rights in the Arctic: A Human Rights Approach

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30 ECTS thesis submitted in partial fulfilment of the degree of Master of Arts in Polar Law (MA)

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Akureyri, April 2017
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Arctic Indigenous Linguistic Rights

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Abstract

In using an international human rights approach, this thesis assesses the fulfilment of linguistic rights for indigenous peoples and communities living in seven Arctic states (ie Norway, Sweden, Finland, Russian Federation, Canada, USA/Alaska, Denmark/Greenland). The core study of this research is to ask whether the use of an international human rights approach to language rights is best suited to protect the need of Indigenous Peoples in the Arctic. In doing so, this thesis monitors the fulfilment of linguistic rights in three fields which are commonly regarded in several international human rights documents (ICCPR, CRC, ILO 169, UNDRIP, ADRIP) as belonging to realm of basic human rights, namely education, court proceedings, and communication with the authorities. Following a country-specific approach, this thesis concludes that although Arctic indigenous linguistic rights are already enshrined in key legally-binding instruments and in documents, which reflect *lex feranda* and could lead to legislative improvements, States mostly rely on their own domestic legal systems through they implement the checks and balances that protect linguistic rights.
To my family.
Preface

The Arctic is full of different contexts and different realities. Not only in terms of the different bodies of laws and approach to domestic and international law, but also from a sociological and cultural viewpoint. In any research involving the Arctic, it has now become common-place to compare Arctic regions with one another. Understandingly so, such an approach helps feeding the Arctic academic bubble, so to say, insofar as it helps outlining the common features shared by peoples across the Arctic. Relying on this approach, this Thesis aims at drawing attention to linguistic rights for indigenous peoples in comparing the fulfilment of these rights in the North American Arctic, in the European Arctic, and in the Russian Arctic. Language playing such a key role for human beings to develop their own cultures and traditions, it seemed almost logical to shed a human rights light to the present research.

Within the present Canadian context regarding indigenous rights, the author thinks this comparison could come in a timely fashion as the debate about implementing the UNDRIP into domestic law is yet again making an appearance in Canadian political life – with the Trudeau government talking about UNDRIP’s potential implementation. Comparing both the domestic systems and international engagements of European Arctic States and of North American Arctic States, whose realities are generally far apart, allows to highlight the plurality and the core differences of Arctic legal theories, especially on a concept as unique as linguistic rights.
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However, as tempting as it is to blame someone for one’s own mistakes, as with any personal work, the buck falls with me, and any mistake – even the tiniest – is mine and mine alone.
1 Introduction

This Thesis compares the evolution of language rights for indigenous peoples and communities living in seven Arctic States. Throughout this Thesis, the aim is to discuss the evolution of language policies, laws, and rights for Arctic Indigenous Peoples under national and international law. On an even more theoretical note, in linking linguistic rights to human rights, this Thesis highlights to what extent fulfilling language rights in the public sphere improves the living standards of indigenous peoples by helping preserving their ways of living and their cultural identities.

To achieve this broad goal, this Thesis relies on several highly-researched hypotheses as starting points to begin its own research in the hope of contributing to the field of polar legal research. The link made in several international legal documents at different levels of international governance between indigenous languages and indigenous cultures shows that language is primordial for indigenous communities’ self-identification as indigenous peoples, not only in the Arctic, but also around the globe. International Human Rights instruments and documents strongly emphasize this link between culture and language in approaching linguistic rights. Therefore, one of the possible arguments to be made is that the protection of language rights is better achieved through Human Rights vocabulary. Moreover, at a more regional level, linguistic rights questions have had a huge impact on the jurisprudence and the development of linguistic planning both in the Northern Territories of Canada and in Greenland. However, while it is crucial to lay a special focus to these two countries, it is equally important to look at all the Arctic States, except Iceland, to understand to what extent looking at linguistic obligations through the prism of human rights plays a role in the development of language law and language planning for indigenous peoples in the Arctic.
As the 2012 Thematic Commentary of the Advisory Committee under the Council of Europe’s Framework Convention recalls language rights are effective only if they can be enjoyed in the public sphere. The notion of “public sphere” is best described as encompassing the three following fields: education, judicial proceedings, and communications with the relevant authorities. As former Canadian Supreme Court Justice, Michel Bastarache, points out “[i]f the right to language or some linguistic rights are basic human rights, they are universal, and they should be applied in every State where there is a linguistic minority.”

Therefore, this Thesis adopts a country-specific approach to monitoring language rights.

Notwithstanding that no legally binding definition of ‘indigenous people’ has universally been agreed upon, this Thesis relies on the definition forward by Martínez Cobo in its famous Study of the Problem of Discrimination against Indigenous Populations. According to his definition “[i]ndigenous peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.”

Under this definition, each Arctic State, except Iceland, is home to indigenous communities as traditionally understood in the context of post-colonial studies and in the realm of international indigenous rights. Following this definition, this Thesis assesses and monitors the respect, protection, and fulfilment of linguistic human rights for indigenous peoples at the national and subnational levels of seven of the Arctic States.

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1.1 Research Question

International principles of basic human rights have helped shaping and fostering a climate of good governance, with national governments implementing language policies, which are monitored through international bodies. However, as Guðmundur Alfredsson points out, “the Arctic States can often be [seen] to be lagging behind the worldwide trend when it comes to endorsing the international human rights standards that concern the indigenous peoples who live in their northernmost areas.” Based on these premises, the main research question of this Thesis is to ask whether the use of an international human rights approach to language rights is best suited to protect the needs of Indigenous Peoples in the Arctic. Nevertheless, as with many academic works this research question could not be fully answered if this Thesis did not aim at answering other, equally important, questions. Not only the above-mentioned assessment framework aims at finding out if the laws in place conform with international legislations regarding linguistic human rights, the monitoring framework also has several other aims: 1) Relying on domestic legislation, this Thesis tries to assess whether human rights vocabulary is best suited to fulfil language rights; 2) In the case of Canada, the aim is to assess whether indigenous linguistic rights and obligations derive from linguistic human rights obligations or if, at a subnational level like that of the territories, linguistic obligations towards indigenous communities are not already enshrined in Canadian law; 3) one of the main objectives of this Thesis is to demonstrate the extent to which central and local governments create a legal framework that allows their populations to use their native languages even when these are not recognised as official languages.

3 Alfredsson G, ‘Good Governance in the Arctic’ in Natalia Loukacheva (ed) Polar Law Textbook II (Nordic Council of Ministers, 2013) 195; For an exemplification of how language policies through human rights is key to good governance in the Arctic see also Grenoble LA, ‘Leveraging Language Policy to Effect Change in the Arctic’ in Mari C Jones (ed) Policy Planning for Endangered Languages (Cambridge University Press 2015).
1.2 Methodology and Structure

With the aim of providing the necessary context to understand linguistic human rights at the international level, the first chapter (2. Linguistic Human Rights) links language rights to the broader field of human rights. This is achieved in defining what language rights consist of, and in outlining the scope of such rights in a general context. The first part of the first chapter lays its focus on defining language rights (2.1 Definition) and on the evolution of international human rights jurisprudence (2.2 Human Rights Jurisprudence). From a methodological standpoint, the second part of this chapter (2.3 International Documents) can be regarded as a review of the main international and regional documents covering the rights of Indigenous Peoples and of indigenous communities to language, and it is divided into two parts. The first part focuses on the language rights provisions embedded in some key international and regional legally-binding human rights documents (e.g. the UN International Covenant on Civil and Political Rights, the International Labour Organisation Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, the UN Convention on the Rights of the Child, the COE European Convention of Human Rights, and the COE Framework Convention for the Protection of National Minorities as well as those within non-legally-binding documents such as UN Declaration on the Rights of Indigenous Peoples and the OAS American Declaration on the Rights of Indigenous Peoples (2.3.1 Language Rights as Human Rights). Furthermore, the second part of the second chapter focuses on other approaches to the protection of languages, such as regarding languages as the objects of protections, promoting linguistic diversity, or linguistic freedom (2.3.2 Other Approaches to Language Protection). Relying on several other international agreements (e.g. UNESCO 2003 Convention for the Safeguard of Intangible Cultural Heritage; 1992 Convention on Biological Diversity; 1992 European Charter for Regional or Minority Languages), this second part serves as a counter argument to demonstrate and highlight that there are other means of protecting languages in international law without focusing on the link between linguistic rights and basic human rights. However, the human rights approach to linguistic rights is the most logical, because, with any given right or protection, one should focus on the effect these rights will have on the people to whom these new rights and protections are granted.
As mentioned above, in the second chapter of this Thesis (3. Indigenous Language Rights in the Arctic, the case study takes a country-specific approach to assess the applications and scopes within the different national frameworks of the documents reviewed in the first chapter. The aim is to monitor to what the extent these rights are fulfilled for the Sámi peoples living in Norway (3.1), in Sweden (3.2), in Finland (3.3), and in the Kola Peninsula of the Russian Federation (3.4), as well as language rights in Canada (3.5) and for the indigenous peoples living in the Canadian territories (3.5.1 Northwest Territories; 3.5.2 Yukon; 3.5.3 Nunavut), in Alaska (3.6), and in Greenland (3.7). Another key element of this chapter is to assess the extent to which these international and regional documents interplay with domestic legislation. Each subsection contains its own compliance assessment based on a framework which includes monitoring linguistic human rights compliance in the field of 1) education; 2) court proceedings; 3) communication with the government and the local authorities. Each assessment is based on a careful review of domestic law and treaty obligations and the subsequent case law within each jurisdiction. This approach also considers the case law of regional and international bodies, such as that of the European Court of Human Rights (and its predecessor, the European Commission of Human Rights) and the Views of the UN Committee of Human Rights. In the case of Canada, such an approach also means comparing federal language legislations (e.g. the Official Languages Act) with the different provincial and territorial language laws. Indeed, in the subsection dealing with the subnational level of the Canadian territories, the focus is laid upon the extent to which Canadian domestic law allows indigenous languages to be used in the public sphere. Furthermore, this Thesis considers relevant academic publications and international, regional, and domestic jurisprudence on language rights and on human rights.
2 Linguistic Human Rights

2.1 Definition

From both a sociolinguistic and an anthropolinguistic approach, “language is a part of a complex web of culture and identity and as such must be viewed only through those delicately interwoven and intricate relationships and the local meanings it holds for community members.” In fact, as pointed out in the Arctic Biodiversity Assessment, “[l]anguages provide windows into how cultures experience, interact and think about their environment.” The disappearance of languages across the world has had negative effects on the transmission of knowledge through cultural practices.

What are linguistic human rights? What do they entail? What is their scope? What is their purpose? To these questions, legal scholars have not managed to come with a definite answer on which everybody can agree. Nevertheless, some scholars have attempted to take up this perilous task of defining language rights. For instance, in terms of combining language rights and human right, the United Nations Special Rapporteur on minority issues defined linguistic human rights as:

“obligations on state authorities to either use certain languages in [some] contexts, not interfere with the linguistic choices and expressions of private parties, and may extend to an obligation to recognise or support the use of languages of minorities or indigenous peoples. Human rights involving language are a combination of legal

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6 See K David Harrison, When Languages Die: The Extinction of the World’s Languages and the Erosion of Human Knowledge (OUP 2007); Nicolhas Evans, Dying Words: Endangered Languages and What They Have to Tell Us (Blackwell 2010).
requirements based on human rights treaties and guidelines to state authorities on how to address languages or minority issues, and potential impacts associated with linguistic diversity within a state. Language rights are to be found in various human rights and freedoms provisions, such as the prohibition of discrimination, freedom of expression, the right to private life, the right to education, and the right of linguistic minorities to use their own language with others in their group.”

Tove Skutnabb-Kangas defines linguistic human rights as “only those language rights are linguistic HUMAN rights which are so basic for dignified life that everybody has them because of being human; therefore, in principle no state (or individual) is allowed to violate them.” Other definitions are provided by the likes of Susanna Mancini and Bruno De Witte, who have a much more cultural-right approach to language rights or by scholars like Moria Paz whose approach and definition are more pragmatic. The definitions, on

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9 Mancini and de Witte define language rights as “fundamental rights protecting language-related acts and values. The term ‘fundamental’ denotes the fact that these rights are entrenched in the constitution of a country, or in an international treaty binding on that country. In this sense, language rights constitute limits to the ordinary operations of the politics of language within a state (or within a region or a supranational entity such as the European Union) [...]” They also argue that the recent developments in European law in order to protect linguistic rights (EU and COE) have set limits to the language policies individual states can put in place; see Mancini S and de Witte B, ‘Language Rights as Cultural Rights: A European Perspective’ in Francesco Francioni and Martin Scheinin (eds) Cultural Human Rights (Martinus Nijhoff 2008) 247.
10 Paz relies on a different, dare one say more pragmatic, approach, as she regards language rights as to be understood “to be specific entitlements that protect language-related acts and values. Language here is the primary good, and the aim of the legal protection is to ensure both that individuals enjoy a safe linguistic environment in which to speak their mother tongues and that vulnerable linguistic groups qua groups retain a fair chance to flourish.” Paz exemplifies her approach in linking it with section 23 of the Canadian Charter whose aim is to protect language for its own sake. In a footnote, in which she explains her approach to language rights, she quotes the Canadian Supreme Court in Mahe v Alberta: “The general purpose of s. 23 of the Charter is to preserve and promote the two official languages of Canada, and their
which this Thesis relies the most, be some more legally accurate than others, all have a similar conclusion: language is quintessential to human beings. “The core linguistic right is the right to speak one’s own language,” but without basic human right vocabulary and approach upholding these rights this cannot be achieved. One of the hypotheses of this Thesis is to regard the protection of language rights as better achieved through international obligations pursuant to international human rights documents.

### 2.2 Human Rights Jurisprudence

As mentioned earlier in this chapter, languages play an important role in developing and maintaining one’s identity and culture, this is the reason why in international human rights jurisprudence, languages are not directly an object of protection per se. Linguistic rights derive from the importance of languages for communities and individuals and the rights these communities and individuals enjoy under international human rights law. Following this reasoning, asking what linguistic rights actually consist of seem to be a good starting point from which to build this research. To truly answer the question of what linguistics human rights are and where they fit within human rights jurisprudence, one must take a few steps back and look at two human rights concepts that have kept many legal scholars awake at night, namely “the indivisibility of human rights” and the different generations of rights.

The indivisibility of human rights is “the idea that no human right [civil, political, cultural, economic, social, and group rights] can be fully realized respective cultures, by ensuring that each language flourishes, as far as possible, in provinces where it is not spoken by the majority of the population. The section aims at achieving this goal by granting minority language educational rights to minority language parents throughout Canada.” However, as appealing as Paz’s definition is, it fails to encompass the facts that protecting languages as such does not help minorities or indigenous communities per se. In fact, viewing languages as the object of protection only emphasizes pragmatic legal outcomes and fails to embed its emphasis within international human rights frameworks; see Paz M, ‘The Failed Promise of Language Rights: A Critique of the International Language Rights Regime’ (2013) 54:1 Harvard International Law Journal 157; see also Mahe v. Alberta, [1990] 1 SCR 342, 1990.

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11 Mancini de Witte (n 8) 248.
without fully realizing all other human rights.”

This doctrine has been promoted by the United Nations as early as 1968 with the Tehran Declaration whose paragraph 13 states that “since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible.” Furthermore, as Rhona Smith points out “the indivisibility of rights was [also] emphasized in the Convention on the Rights of the Child of the United Nations, the African Charter on Human and Peoples’ Rights, and the EU Charter on Fundamental Rights.” Therefore, it can be argued, as JW Nickel does that “within a system of successfully implemented human rights, many rights support and reinforce other rights”

This notion of “indivisibility of rights” might not seem obvious to non-jurists as the progressive realisation of rights seems to be the standard in most countries that pride themselves on promoting and fulfilling human rights. However, human rights have long been considered in terms of waves, or more accurately in terms of “generations of rights.” Civil and political human rights are what primarily constitute the first generation of human rights. They are generally thought as being the simplest to enact at the national level as they directly relate to interference of the State with individual rights and liberties. Civil and Political rights are negative rights as “they require only that governments should abstain from activities that would violate them.” These rights originally come from the both the French and the American revolutions and the declarations that were put forward afterwards. Such rights, which are generally accepted and recognized across the world, are, as Smith notes “the fundamental basic human rights required to be exercisable by everyone in any

15 Nickel (n 12).
fair democratic society.\textsuperscript{18} At the international level, these rights have mostly been embedded in the 1966 International Covenant on Civil and Political Rights.\textsuperscript{19} The second generation of human rights are the rights, which evolved from the social reforms in Europe at the end of the nineteenth century, and comprise rights such as “[t]he right to education, the right to appropriate housing, the right to social security, and the right to a safe and healthy working environment.”\textsuperscript{20} Contrarily to Civil and Political rights, Economic, Social, and Cultural rights are a set of positive rights, which means that they “require active intervention on the part of governments and cannot be realized without such intervention.”\textsuperscript{21}

With the above-mentioned notions in mind and the definition laid out in the previous section (2.1), is thus possible understand language rights as being basic human rights in their very nature. As De Varennes and Kuzborska point out “they are basically for the most part the application of basic human rights standards such as freedom of expression, the right to private life or non-discrimination and other human rights that may at times impact in areas of language choice and usage for particularly vulnerable groups such as indigenous peoples or minorities.”\textsuperscript{22} However, the question of how to construe language rights in terms of indigenous and minority rights – thus in term of the mechanisms that are to be put in place for their progressive realization in countries that are home to indigenous communities – still stands. It is possible to answer this question in arguing that the many international human rights instruments protect indigenous and minority language speakers to the extent that they “provide a basic regime of linguistic tolerance, that is, protection against discrimination and various forms of assimilation […] This protection is not granted through specific language rights, but through general human rights such as a right to anti-discrimination measures, freedom of expression,

\textsuperscript{18} Smith (n 16).
\textsuperscript{19} International Covenant on Civil and Political Rights, December 19, 1966, 999 UNTS 171 (ICCPR).
\textsuperscript{20} Smith (n 16).
\textsuperscript{21} Alston and Quinn (n 17).
of assembly and association and rights to respect for private and family life.”

Therefore, it is important to note that most minority and language rights derive from international human rights instruments. This also means that these rights are not limited to minorities or indigenous peoples. In practical terms, minorities and indigenous peoples are the ones who most need linguistic human rights to be upheld and for whom language rights are the most relevant as they are often denied these rights. However, as De Varennes notes these rights could potentially apply to majorities who are being denied their language rights by public authorities. As De Varennes further remarks, “language rights are not collective rights, nor do they constitute ‘third generation’ or vague, unenforceable rights: by and large, the language rights of minorities are an integral part of well established, basic human rights widely recognized in international law, just as are the rights of women and children.”

It is now possible to assess that, because minority and indigenous language speakers’ protection is being realised through general human rights, these basic human rights “provide a flexible framework capable of responding to many of the more important demands of individuals, minorities or linguistic minorities.” However, there is a vital distinction to make in term of language rights. On the hand, it is possible to view that the private use of a language by individuals (negative freedoms) and the more positive rights of the use and promotion of a minority language by public authorities (e.g. education, court proceedings, and communication with local authorities).

### 2.3 International Documents

Within the scope of this Thesis, the next step, after having defined linguistic human rights and having put them into context, is to look at the codification of these human rights in some key international legal instruments. Several key

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human rights instruments have been in turn adopted under the auspices of the United Nations (UN), the Organization of American States (OAS), the International Labour Organisation (ILO) and the Council of Europe (COE). Such an approach, with an emphasis on the phrasing of these rights within these instruments, allows to understand the way minority and indigenous language rights are construed internationally.

2.3.1 Language Rights as Human Rights

This section aims at giving a brief overview of the relevant instruments and documents in the field of indigenous rights and human rights, namely the ICCPR\textsuperscript{27}, the 1989 International Labour Organization Convention 169 (ILO 169),\textsuperscript{28} the 1989 Convention on the Rights of the Child (CRC),\textsuperscript{29} the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP),\textsuperscript{30} and the recent OAS’ American Declaration on the Rights of Indigenous Peoples (ADRIP).\textsuperscript{31} These instruments can be used to make the case for implementing more holistic legal frameworks at the national and regional levels. In terms of legal force, whereas the ICCPR, the ILO 169 and the CRC are legally binding, the UNDRIP and the ADRIP, because of their nature as declarations, do not enjoy a legally binding status. Furthermore, at a more regional level, it could also be judicious to zoom in on different international conventions and bodies, especially the European Convention of Human Rights (ECHR) and the case law of the European Court of Human Rights (ECtHR).

The International Covenant on Civil and Political Rights (ICCPR), which is binding under international law and to which every Arctic State is party, clearly states that in States where linguistics minorities exist, one cannot be denied the right to enjoy their own culture, practise their own religions or to use their own language (art. 27). In discussing language rights, it is common to start with the

\begin{footnotesize}
\textsuperscript{27} ICCPR (n 19).
\textsuperscript{28} International Labour Organization, Indigenous and Tribal Peoples Convention 1989, C169 (ILO 169).
\textsuperscript{29} Convention on the Rights of the Child 1989, 1577 UNTS 3 (CRC).
\textsuperscript{31} Organization of American States American Declaration on the Rights of Indigenous Peoples (Adopted at the third plenary session, held on June 15, 2016) AG/RES. 2888 (XLVI-O/16) (ADRIP).
\end{footnotesize}
The link between language and culture as codified in Article 27 of the ICCPR. Although Art. 27 only protects the right of linguistic minorities to use their own languages among themselves (“in community with the other members of their group”), this article can also be construed as positing the claim for a State obligation to implement positive measures. The UN Human Rights Committee (UNHRC), a quasi-judicial body whose Views and Comments are not legally binding but still enjoy a certain amount of jurisprudential leverage, furthered this claim in its General Comment (GC) No. 23 on Article 27. In GC No. 23, the UNHRC pointed out that ‘positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practise their religion, in community with the other members of the group.’ The approach of linking culture and language can also be found in some communications submitted to the Committee. However, most of the time when communications involving a question about minority language rights per se have been put before the Committee, the UNHRC’s Views failed to provide a robust answer that could help furthering the protection of linguistic diversity, and the UNHRC’s Views are generally leaning toward more pragmatic accommodations. Although article 27 does not create language obligation per se, it still recognises the existence of positive obligations to protect the rights of indigenous peoples. While in international law, the concepts of minorities and indigenous peoples are different, indigenous peoples are entitled to the protection of article 27 in States where they constitute both a minority and an indigenous people.

The evolution of the international jurisprudence also allows us to make the connection between human rights and language rights. As stated above, language rights are for the application of basic human rights standards. In this respect, it is vital to distinguish the right to use a particular language in private activities, or even in religious activities as enshrined in ICCPR. The UN Human Committee provides a good interpretation of the scope of private in Ballantyne, Davidson, McIntyre v. Canada, the View of the HRC is that “[a]rticle 19, paragraph 2 [in which the freedom of expression clause is embedded,] must be interpreted as encompassing every form of subjective

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33 Paz (n 10).
ideas and opinions capable of transmission to others.” The HRC further its View is stating that: “[T]his protection may be achieved in other ways that do not preclude the freedom of expression, in a language of their choice, of those engaged in such fields as trade. For example, the law could have required that advertising be in both French and English. A State may choose one or more official languages, but it may not exclude, outside the spheres of public life, the freedom to express oneself in a language of one's choice.”34

Regarding Article 27 of the ICCPR, it is important to take into account the impact of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which was Adopted by General Assembly resolution 47/135 of December 18th 1992. As stated in its preamble, this Declaration was inspired by the provision of Article 27 concerning the rights of persons belonging to ethnic, religious and linguistic minorities. Indeed, Art.2 states inter alia that persons belonging to linguistic minorities have “the right […] to use their own language, in private and in public, freely and without interference or any form of discrimination.”

This leads to another human right approach, which has been used more often than not, namely non-discrimination provisions as protecting linguistic rights. As De Varennes and Kuzborska suggests, “[f]or larger concentrations of indigenous language speakers, it is possible that they also have a right to government services, such as public education, public health and social services, even government departments using indigenous languages where this is reasonable and justified, under the prohibition of discrimination.”35 Examples of such an approach can be found in the case law of the UNHRC in the Diergaardt v Namibia case in which the Committee stated that “Under article 2, paragraph 3(a), of the [ICCPR], the State party is under the obligation to provide […] an effective remedy by allowing its officials to respond in other languages than the official one in a nondiscriminatory manner. The State party is under an obligation to ensure that similar violations do not occur in the

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future.” More recently, in the 2017 case of Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), the International Court of Justice regarded the need of ensuring the availability of Ukrainian-language education in schools in Crimea for the Crimean Tatar community as falling under the scope both Articles 2 and 5 of CERD. In using such an approach, the Court reminded the Russian Federation that it had an obligation under CERD to ensure the availability of education in the Ukrainian language in refraining to impose and maintain limitations on the Ukrainian Tatar community (negative freedom).

The text of the ILO 169 protects indigenous peoples on several levels. Art. 3 states that indigenous peoples have “the right to enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination.” The ILO 169 further grants Indigenous Peoples the rights to citizenship “without discrimination” (art. 4) and in the same article, it is stated that special measures have to be adopted to safeguard “persons, institutions, property, labour, cultures and environment of the peoples concerned.” Moreover, governments have an obligation to consult indigenous peoples on the implementations of the special measures mentioned in art. 4 (art.6). Furthermore, governments should refrain from implementing politics of assimilation and, wherever practicable, children have to be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong (art. 28.1) and measures shall be taken to promote and preserve the development and practice of indigenous languages (art. 28.3). Article 28 can thus be construed as the basis of right to education a child’s mother tongue. However, in the Arctic, the ILO 169 has only been ratified by two Arctic States (i.e. Denmark and Norway). This greatly limits the ability of article 28 to be the root of a potential right to minority mother tongue education in other Arctic jurisdictions.

In addition, with the CRC, States agreed that child education should prioritise the development of respect for the child’s parents as well as for the child’s cultural identity and language (art. 29.1c). Moreover, article 30, whose phrasing echoes article 27 of the ICCPR, grants children of minorities and of indigenous origins the right to enjoy their own cultures, to use their own languages as well as to profess their own religions. However, the scope of article 30 is limited to only using the language among their own communities. It seems also worth mentioning that under the CRC, children, who are in breach of the law, have the right to receive the free assistance of an interpreter in case they were not able to speak or understand the language used (art. 40.2b.vi).

Another key international instrument that can be used when it comes to protecting indigenous language speakers at the international level is the 2007 UNDRIP. Being a UN declaration, the UNDRIP is not legally binding per se, nevertheless, some legal scholars are starting to view the UNDRIP as belonging to the realm of customary law.38

The UNDRIP’s art.13.1 and art. 13.2 both grant Indigenous Peoples various language rights such as the rights to revitalize, use, develop and transmit their languages (13.1) the rights to be able to understand political and legal life (13.2). The wording of art. 13.2 is as follows, “[s]tates shall take effective

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38 Only four states voted against the declaration (Australia, Canada, New Zealand, and the US). Moreover, since then, all these naysayers have publicly endorsed the UNDRIP. Therefore, it can be argued (as former Special Rapporteur on the rights of indigenous peoples, S. James Anaya, does) that this latter point is of crucial importance for the recognition of the UNDRIP as belonging to the realm of customary law, because this demonstrates opinio juris on the part of these states. However, as RL Johnstone points out, ‘[t]he UNDRIP cannot simply be taken in its entirety as a statement of customary law. General Assembly Resolutions are indicative of State opinio juris and point to lex ferenda but State practice is still necessary to establish the existence of customary norms and too short a time has passed to establish adequate usus, notwithstanding the considerable steps taken by several States to incorporate the declaration into domestic law.’ See Anaya SJ and Wiessner S, ‘The UN Declaration on the Rights of Indigenous Peoples: Towards Re-empowerment’ (JURIST Forum, 3 October 2007) <http://www.jurist.org/forum/2007/10/un-declaration-on-rights-of-indigenous.php> accessed 31 January 2017; But see Rachael L Johnstone, Offshore Oil and Gas Development in the Arctic under International Law: Risk and Responsability (Brill 2015) 64.
measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.” Apart from the clear use of the word “interpretation,” the scope of these “effective measures” are not defined. However, language such as “other appropriate means” could imply that political, legal, and administrative proceedings should be conducted in indigenous languages. As Lenzerini suggests “[it] is a clear example of a case in which it is objectively impossible for indigenous peoples to protect themselves; in fact, since ‘political, legal and administrative proceedings’ are regulated by State laws, it is indispensable that the measures necessary for members of indigenous communities to understand and be understood in those proceedings (e.g. through being allowed to speak their own mother language) are provided for by such laws).”

Furthermore, concerning the distinction made in section 2.2 between the private use of a language and the use and promotion of a minority language by public authorities, a right to education in an indigenous person’s own language can be found in article 14.3, in which it is stated that “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.”

Regarding the implementation of these instruments, all the Arctic states have ratified the ICCPR and the CRC has been ratified by all Arctic countries except the United States. The situation becomes a bit more complex when it comes to the ILO 169, which only two Arctic countries, Norway and Denmark, have ratified. As mentioned above, although the US and Canada voted against the UNDRIP and Russia abstained in the 2007 vote, since then all the Arctic

countries have now officially stated that they were ready to work with the declaration and to take it into account.

Discussing the legal systems of European states, such as Denmark/Greenland, Finland, Norway, and Sweden, one should bear in mind that they are members of the COE, and have ratified the European Convention on Human Rights (ECHR), which has “established forums for dealing with human rights disputes.” For instance, within the framework of the COE, a robust system of monitoring for minority and language rights has also been built around the Framework Convention for National Minorities. Furthermore, as a point of caution, it is worth remembering that since the European Convention and the Framework Convention are instruments that were developed by the COE, they are not part of the current EU law (acquis communautaires). “Nonetheless, they have been influential in the development of EU policies towards linguistic minorities.”

Today, “the [ECHR] is so often applied, especially after being incorporated and thus directly applicable that it now has quasi-federal quasi-constitutional properties.” Therefore, the jurisprudence and the case law of the European Court of Human Rights, the ECHR judicial body, could also help in order to assess the extent to which minority and indigenous linguistic rights are fulfilled in a European context.

Among all regional human rights systems, Europe has by far the most robust legal architecture that has had a big impact on its member States. As said above, this system consists of the European Convention on Human Rights (ECHR) and its Protocols and the complaints mechanism of the European Court of Human Rights (ECtHR). As Timo Koivurova remarks, “[t]he ECtHR enjoys a strong normative influence on its 47 states parties, given that the Court’s judgments are legally binding on those states. The Court can hear complaints concerning various northern indigenous peoples: the Inuit from

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44 Skutnabb-Kangas (n 8).
45 á Rógvi (n 43).
Danish Greenland, the Saami in Norway, Finland, Sweden and Russia, as well as numerous other indigenous peoples in the Russian Federation." The language of the European Convention on Human Rights’ provisions and articles, which can be interpreted as dealing with linguistic rights, mainly focuses on rights to language when dealing with the judiciary and is fairly similar to the language found in other international instruments. However, in their wording, these ECHR articles put an emphasis on the word “understand,” which narrows the ambit of these provisions as States are not in breach as long as individuals understand the language. In practice, “the Convention per se does not guarantee the right to use a specific language in communications with public authorities or the right to receive information in a language of one’s choice.” In addition, the other provisions including language secure the prohibition of discrimination “on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” Such language is reminiscent of anti-discrimination provisions of other international treaties. Furthermore, the right to freedom of expression, which is guaranteed under ECHR Article 10, protects the use of minority and indigenous languages in the private sphere. On this regard, the European Commission of Human Rights’ case law in Inhabitants of Leeuw-St. Pierre v. Belgium that, although article 10 guarantees right to freedom of expression, the Convention does not guarantee "linguistic freedom" in cases where individuals are seeking the right to any language in any specific context regarding administrative matters with the local authorities.

The 1995 Framework Convention for the Protection of National Minorities, which entered into force in 1998, offer a much more relevant answer to the subject at stake. There are several provisions of the Framework Convention

47 Ibid.
(FC) that contain language rights obligations. The most important provision is embedded within section 5 (1) in which it is recognised that “[t]he Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.” However, other important provisions are also embedded elsewhere within the text of the Framework Convention. Article 14 provides for a good basis to a right to minority language education as it states that “[t]he Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language.” However, the phrasing of the following provision (14.2) provides some opt-outs (e.g. “as far as possible”; “sufficient demands”; …) and, even though as Skutnabb-Kangas argues “there are real problems in writing binding formulation that are sensitive to local conditions,” these alternatives weaken the scope of the education provisions. In fact, although the Framework Convention puts several

51 See Article 9: freedom of expression in minority languages and access to media; Article 10: right to use minority languages in private and in public, orally or in writing, linguistic planning to facilitate relations between those persons and the administrative authorities in areas inhabited by minority-language speakers, and right to be informed promptly in a language understood by person against whom charges are being brought, if necessary via the free assistance of an interpreter; article 11: right to minority-language patronyms and first names recognition by the authorities, and right to display “minority language signs, inscriptions and other information of a private nature visible to the public”, obligation for topographical indications intended for the public also in the minority language when there is a sufficient demand for such indications in areas traditionally inhabited by a substantial numbers of persons belonging to a national minority; Article 12: obligations for Parties to take appropriate measures in the field of education to promote these languages and to promote equal opportunities at all level of education; Article 14: right to learn a minority language for persons belonging to national minorities and right to education in minority language in areas traditionally inhabited by a substantial numbers of minority speakers. Furthermore, these measures shall be implemented without impeding the ability of minority-language speakers to learn the majority language.

52 Article 14.2 states that “[i]n areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.”

obligations upon its Parties, some of the language used in the document leave room for states to interpret these obligations within their own legal contexts. For instance, terms such ‘appropriate measures’ and ‘substantial numbers’ do not come with any definition or threshold, and States can interpret these terms as they so choose without being in breach of the Framework Convention. Vague terms such “as far as possible” are also used and they allow States for more positive interpretations.\(^{54}\) On this matter, Hogan-Brun and Wolff remark that “[there] was [an] inability (and unwillingness) of the contracting parties to reach a consensus on the definition of ‘national minority’ that subsequently gave signatory states a wide margin for interpretation, that is to deliberately exclude certain groups from the relevant provisions.”\(^{55}\) Other scholars see more pragmatic shortcomings to some of the Framework Convention’s provisions. In term of education, Guðmundur Alfredsson suggests that when compared to international human rights documents, some provisions (e.g., article 13) fall short of imposing financial obligations to its parties. Indeed, as Alfredsson argues “one can argue that public funding for minority schools, at least on a proportional basis as to payment per student, should be a legal requirement under general equal rights and non-discrimination clauses when public schools in the minority language and with minority-oriented curricula are not available. Anything else would be discriminatory.”\(^{56}\)

Another criticism that is often made regarding the FC is that the Convention does seem to create new human rights. The approach of the Framework Convention is to provide for a series of principles and objectives that create an obligation for States parties to adapt their legislation and to adopt new policies.\(^{57}\) Furthermore, as De Varennes points out that the Framework


\(^{57}\) See de Beco G and Lantschner E, ‘The Advisory Committee on the Framework Convention for the Protection of National Minorities (The ACFC)’ in Gauthier de
Convention is an integral part of human rights to the extent that all the provisions of the FC “are examples of the direct application of general human rights provisions, mainly freedom of expression, non-discrimination, right to private life and the rights of members of a linguistic to use their own language with other members of their group.”

As with the Convention, an Advisory Committee, made up of experts from the Council of Europe's member States, was built around the Framework Convention. This Advisory Committee, to which states submit report on the situation as a mean to monitor the implementation of the Convention. Reports should be submitted “within one year following the entry into force of the Convention and additional reports every five subsequent years.” Following their submissions, the reports are examined by the Advisory Committee as they use written sources from both state and non-state actors. Thereupon, “the Advisory Committee adopts an Opinion which is transmitted to the state concerned as well as all states sitting in the Committee of Ministers.” The outcomes of these Opinions, which could be compared to the Views of the Committees at the UN level, are not legally binding but have helped fostering back-and-forth discussions between the Advisory Committee and the States. Although the Advisory Committee has been regarded by many States as having too progressive views, the Advisory Committee has also been able to challenge States’ conceptions of what constitutes a minority and to influence them to revise their conceptions.

The Advisory Committee also publishes thematic commentaries in which they delve into some specific obligations under the Framework Convention. Between 2006 and 2016, the Committee published four thematic commentaries.

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60 Ibid.

commentaries, two of which are relevant to the subject of this Thesis. The 2006 thematic commentary focuses on education. In this commentary, the Committee discusses inter alia the obligations pursuant to article 14 (right to learn minority languages). In fact, the commentary recalls that, in term of minority-language education rights, states should not only protect these rights, they should also fulfil them. The 2006 commentary states that “States must actively pursue needs’ assessments and involve minorities in the design and implementation of measures to ensure the implementation of Article 14, including the right unequivocally guaranteed under Article 14 (1).”62 This phrasing, especially the use of words such as “actively” and “unequivocally,” does not leave any room for interpreting otherwise. Furthermore, this commentary explains the scope of Article 14 in that it clarifies what languages are covered under the article. In doing so, the commentary defines the notions of “minority language” and of “mother tongue.”63 The commentary also puts the Framework Convention within the broader framework of international human rights in linking the FC to obligations and rights under other international documents such as the CRC (e.g. CRC Article 29). Six years later, in 2012, the Advisory Committee published its third thematic commentary which was centred around the question of language rights.64 One key element of this commentary can be found in Part V.1, which deals with Use of Minority Languages in Public, in the Administration and in the Judicial System. In this section, the Advisory Committee sees fit to remark that: “Language rights are effective only if they can be enjoyed in the public sphere. Article 10 of the Framework Convention contains the main principles relating to the right to use minority languages orally and in writing, in private and in public, including – under certain conditions - in relations with administrative authorities. Given the importance of this right, it is essential that any decision related to language policies and the enjoyment of language rights is made in close consultation

63 Ibid.
with minority representatives to ensure that the concerns of persons belonging to national minorities are effectively duly taken into account.”65

This approach is in line with the approach this Thesis uses in the next chapter, which assess and monitor whether linguistic human rights regarding indigenous languages use in the public sphere are fulfilled for indigenous peoples living in different Arctic states. Although the rights embedded in the FC are only of use in a European context, the thematic commentary notes that “the right of every person belonging to a national minority to use freely and without interference his or her minority language, in private and in public, orally and in writing, as enshrined in Article 10.1 of the Framework Convention, also forms part of international human rights standards.”66 This link to the broader international framework of human rights is what constitutes the core and the entire raison d’être of the Framework Convention. Indeed, Article 1 of the FC states that the protection of minorities is an “integral part of the international protection of human rights, and as such falls within the scope of international co-operation.”

As mentioned above, following the examination of state reports, the Advisory Committee also publishes public opinions. Now in their fourth cycle, these public opinions deal with each country individually. Thus, the relevant opinion will be of use in the next chapter where they will be more relevant to deal with country-specific language right assessment.

On the other side of the Atlantic, although it would seem relevant to discuss the many rights protecting individuals’ and communities’ rights to use minority and indigenous languages embedded in the Inter-American Convention on Human Rights, neither Canada nor the United States have ratified the Convention. The US did sign the convention in 1977, and President Carter sent it to the US Senate for approval, but the Convention never got passed the Senate.67

65 Ibid 17.
66 Ibid 5.
In 2016, the Organisation of American States adopted the American Declaration on the Rights of Indigenous Peoples (ADRIP) after a 17-year wait from the onset of the first draft. As stated on the OAS’ website, “[t]he declaration is the first instrument in the history of the OAS to promote and protect the rights of the indigenous peoples of the Americas.”68 Once again, however, and each for different reasons and to different extents, the United States and Canada have rejected the ADRIP (their statements can be found in the footnotes of the definite text). Basically, the United States restated its position as being a persistent objector to the text of ADRIP. Nevertheless, in the same statement, the US found itself reiterating “its longstanding belief that implementation of the United Nations Declaration on the Rights of Indigenous Peoples (‘UN Declaration’) should remain the focus of the OAS and its Member States” as well as renewing its commitment to “continue its diligent and proactive efforts, which it has undertaken in close collaboration with indigenous peoples in the United States […] to promote achievement of the ends of the UN Declaration [(i.e. UNDRIP)] […]”69 As for Canada, it also reiterated its commitment to work “on advancing Indigenous issues across the Americas.”70 Furthermore, Canada also stated that it was committed “to move forward with the implementation of the UN Declaration on the Rights of Indigenous Peoples in accordance with Canada's Constitution.”71 From the perspective of international law, this new commitment furthers the claim that the UNDRIP is reaching a quasi, in parts or as a whole, customary status.

2.3.2 Other Approaches to Language Protection

Beyond the scope of human rights treaties, there are also other approaches to protecting minority and indigenous languages among international and regional legal instruments. They include approaches such as regarding languages as the object of protections, and they include treaties protecting

69 ADRIP (n 31).
70 Ibid.
71 Ibid.
endangered languages that “were a response to the rapid and even accelerating disappearance of languages globally,”72 such the UNESCO 2003 Convention for the Safeguard of Intangible Cultural Heritage73 and the 1992 Convention on Biological Diversity (CDB).74 The CBD “recognizes that linguistic diversity is a useful indicator of the retention and use of traditional knowledge, including knowledge of biodiversity.”75 However, De Varennes and Kuzborska do not seem to agree with this reading of the CBD as they observe that “[f]or its part the Convention on Biological Diversity only covers biological diversity and not directly the diversity of indigenous languages themselves. Its connection to and impact on indigenous languages facing extinction is for the former doubtful and for the latter insignificant since it also creates no right to use indigenous languages, and no real obligations on states to protect or promote indigenous languages in any concrete way.”76

Another approach to languages as objects of protections is to look at treaties dealing with protecting and promoting linguistic diversity,77 such as, for example, 1992 European Charter for Regional or Minority Languages.78 Although the Charter protects languages “traditionally used within a given territory of a state by the nationals of that State’ and thus, can be used to protect indigenous languages, that is all it does. The Charter is not a human rights treaty; it only creates state obligations to promote languages as objects and does not protect the communities and individuals using these languages. Whereas Russia only a signatory to the Charter, Finland, Sweden, Norway, and Denmark ratified it. However, upon ratification in 2000, Denmark made some reservations to the Charter and stated that under “Section 9 of Act No. 577 of 29 November 1978 on Greenland Home Rule Act the Greenlandic language enjoys a high degree of protection and the provisions of the Charter will

72 De Varennes and Kuzborska (n 35).
73 See Article 2 §2 ‘[t]he “intangible cultural heritage”, as defined in paragraph 1 above, is manifested inter alia in the following domains: (a) oral traditions and expressions, including language as a vehicle of the intangible cultural heritage.’
74 See the Convention’s preamble, ‘Conscious of the intrinsic value of […] social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its components.
75 Barry, Grenoble, Fróðriksson, Olsen, and Mustonen (n 5) 654.
76 De Varennes and Kuzborska (n 35).
77 Ibid.
78 European Charter for Regional or Minority Languages (1992) ETS No 148.
therefore not be applicable to the Greenlandic language.” Furthermore, Denmark also made a reservation to Art. 15 as the Danish Government stated that they did not intend to submit periodical reports “as far as the Greenlandic language is concerned.”
3 Indigenous Language Rights in the Arctic

“Today, the dominant languages in the North are Russian, English, Finnish and the Scandinavian languages.” However, although some are in a critical shape, most languages spoken in the Arctic are indigenous languages. The aims of this section are manifold but it primarily focuses on giving an overview of the different minority and indigenous languages spoken across the Circumpolar North as well as the cultural contexts in which these languages have evolved. As language and culture are often construed as two faces of the same coin, a contextualising approach helps shedding some light upon the different realities experienced by peoples living in the European, Russian, and North American Arctic. While it is vital not to attempt to amalgamate the various Arctic cultures and peoples, such an approach also helps highlighting the common challenges faced by indigenous and minority communities across the Arctic. In term, this section also aims at assessing the extent to which international human rights law concerning linguistic rights is being implemented at both the national and the regional levels highlighting how the Arctic states comply with these international standards. This chapter focuses on giving an overview of the evolution of language rights within the different Arctic jurisdictions where indigenous peoples live. In this chapter, the focus is also laid on the cultural aspects of linguistic rights as it aims to highlight the interconnection between protecting Arctic indigenous languages and the legal protection that ought to be given to indigenous peoples and communities in the public sphere. Furthermore, adopting a country-specific approach, this chapter also assesses how compliant Arctic States are when it comes to assuming their obligations and duties under international law to respect, to protect and to fulfil linguistic human rights. As mentioned in the introduction, the structure of this chapter goes as follow, the focus is first laid on linguistic rights for the Sámi peoples living in Norway (3.1), in Sweden (3.2), in Finland (3.3), and in the Kola Peninsula of the Russian Federation (3.4). Thereupon, this chapter delves into linguistic rights in Canada (3.5) and for indigenous peoples living in the Canadian territories (3.5.1 Northwest Territories; 3.5.2. Yukon; 3.5.3.

79 Barry, Grenoble, Friðriksson, Olsen, and Mustonen (n 5) 655.
80 All Arctic States except Iceland, which is not home to any indigenous people.
Nunavut), in Alaska (3.6), and in Greenland (3.7). In practice, this means analysing indigenous language issues as they arise in the field of education, court proceedings, and communications with the government at all the relevant levels of governance.\(^81\)

### 3.1 Norway

The Sámi are an indigenous people whose traditional territory includes parts of Norway, Sweden, Finland, and the Kola Peninsula in Russia. As Falch, Selle and Strømsnes point out only talking about one cross-border Sámi language is an oversimplification.\(^82\) Sámi languages are a sub-branch of Uralic languages and share common linguistic features with Finnish. In Norway, the most-spoken Sámi languages are North, South, and Lule Sámi. Amongst these three, Northern Sámi is the most-spoken Sámi variety with more than 90% of all Sámi speakers\(^83\) and with an estimated speaking population that ranges between 15,000 and 17,000 native speakers across Sápmi.\(^84\) Eastern, Skolt, and Pite Sámi are also spoken but in a lesser extent. In practice, “for Eastern Sámi/Skolt Sámi and Pite Sámi, efforts should be made to set up local and cross-border language [revitalization] projects based on these languages’ actual situations. [However], nowadays, it would be unrealistic to regard these

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\(^81\) Here, I try to expand a methodological framework used by Moria Paz in a research paper in which she demonstrates that the decisions of international bodies favour linguistic assimilation, thus her research challenges the validity of using human rights vocabulary to fulfil language rights; See Paz M, ‘The Failed Promise of Language Rights: A Critique of the International Language Rights Regime’ (2013) 54:1 Harvard International Law Journal 157.


languages as living languages in various areas in the same way that North, South and Lule Sámi are regarded as living languages.”

“Although the Sámi occupy territory in [Norway, Sweden, Finland, and Russia], they see themselves as one people, and call their land Sápmi,”

which means the land of the Sámi in Sámi. Since there is no official record or census, it is almost impossible to provide any accurate estimate of the Sámi population across the four different States.

Furthermore, “although regarded as one people, there are several kinds of Sámi based on their patterns of settlement and how they sustain themselves.”

In Norway, which is by far where most of the Sámi live, “[t]he Sámi are scattered throughout the country, but the most concentrated Sámi settlement areas are north of Saltfjellet.”

From the mid-nineteenth century to the 1960s, Norwegian Sámi were subjected to numerous assimilation policies: “Norwegian authorities carried out a policy of assimilation in education as part of the Norwegian nation-building process in which the idea of “one nation - one language” played a prominent role. This was followed by other measures involving state language preferences, which

85 Fornyings-, Administration, og Kirkedeparmentet, ‘Handlingsplan for Sámiske språk- status 2010 og videre innsats 2011’


Original quote in Norwegian: [For østSámisk/skolteSámisk og piteSámisk vil innsatsen måtte dreie seg om å sette i gang lokale og grenseoverskridende språkprosjekter som bygger på den faktiske situasjonen for disse språkene. I dag er det ikke realistisk å se disse språkene som levende språk på ulike samfunnsområder på samme måte som for nord-, sør- og luleSámisl.]


87 Statistik Sentralbyrå, ‘Samer, 2011-2013’

<https://www.ssb.no/befolkning/statistikker/Sámisk/hvert-2-aar/2014-02-06#content> accessed 23 January 2017 – Original quote in Norwegian: ”Fordi det ikke foretas offisiell registrering av hvem som har Sámisk identitet/bakgrunn, er det ingen som vet nøyaktig hvor mange samene er.”

88 United Nations Regional Information Centre for Western Europe, ‘The Sámi of Northern Europe – one people, four countries’


89 Statistik Sentralbyrå (n 87).
were to have a highly destructive impact on Sámi language, culture and identity.”

Moreover, “[i]n 1902, a law was passed to the effect that state-owned land in Finnmark could be sold or hired only to Norwegian citizens who were able to speak, read and write the Norwegian language and who used this language in everyday life. This regulation was primarily directed against Finnish immigrants, but its impact on the Sámi population was at least as severe.”

“[D]ue to this particular history […] the Sámi [do] not live separate from the Norwegian majority population, but lives in more or less ethnically mixed local communities.” For example, in the county of Finnmark, Sámi is only spoken in a small number of municipalities (i.e. Kautokeino, Karasjok, and parts of Tana, Porsanger and Nesseby) and many individuals who identify as Sámi cannot speak the language. However, during the 1960s, Sámi voices started to make themselves heard. Especially in the 1980s, during which the Sámi, alongside environmental and local groups, led the movement against the construction of a damn on the Alta-Kautokeino river in the county of Finnmark. As Henriette Sinding Aasen points out: “[the Alta affair] was soon identified with the fight for Sámi principles [and it] symbolized Sámi-Norwegian relations, with plans for the dam representing just one of a series of Norwegian interferences in Sámi cultural autonomy, and their right to decide for themselves how to manage their culture and future.”

One of the consequences of the Alta affair was that, in 1983, in the case of G. and E. v. Norway before the then European Commission of Human Rights,

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91 Lars S Vikør, The Nordic Languages: Their Status and Interrelations (Novus Press 1993) 90.
94 Ibid.
the Commission stated that although “the Convention does not guarantee any specific rights to minorities, disrespect of the particular life style of minorities may raise an issue under Article 8.” 96 This ultimately led to more legal recognition for the Sámi as the Norwegian government appointed a commission, whose task was to examine the rights of the Sámi people in Norway and the extent to which there was a need for constitutional protection. 97

In term of legislative change, Sámi rights in Norway gained momentum in 1987. The Norwegian parliament ratified the Sámi Act (Sámieloven), which allowed for the Sámi Assembly, called Sametinget, to be created. 98 The purpose of the Sámi Act, as stated in §1-1, is “to enable the Sámi people in Norway to safeguard and develop their language, culture and way of life.” 99 In this Act, it is also stated that Sámi and Norwegian languages are of equal worth. 100 Norway’s Constitution was amended the following year, in April 1988, to include a paragraph stating that “[i]t is the responsibility of the authorities of the State to create conditions enabling the Sámi people to preserve and develop its language, culture and way of life.” 101 These developments led to the creation of the Sámi Parliament (Sámediggi) in 1989. “The central government has transferred authority to the Sámediggi in some areas, primarily those concerning preservation of Sámi cultural heritage, education, language and culture. The Sámediggi is a mandatory body to be consulted on matters of special concern to the Sámi population.” 102 The same year, in 1989, Sámi communities became rather active in lobbying the Norwegian government into adopting the ILO 169, which Norway became the

96 The scope of Article 8 covers the rights to respect for private and family life and that “there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

97 See Aasen (n 93).

98 Lov av 12 juni 1987 nr 56 om Sametinget og Andre Sámiske Rettsforhold.

99 [Lovens formål er å legge forholdene til rette for at den Sámiske folkegruppe i Norge kan sikre og utvikle sitt språk, sin kultur og sitt samfunnsliv.]

100 Lov av 12 juni 1987 nr 56 om Sametinget og Andre Sámiske Rettsforhold (para 1 – 5).

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102 Josefsen, Søreng, and Selle (n 92).
first country to ratify. A Sámi language management area was created. In 1993, language management competencies were transferred to the Sámediggi as it took over Sámi language funds for “allocation to municipalities and county councils in the so-called Area of Sámi language management […] was given authority over the financial subsidies for children’s upbringing and education in the Sámi language.”\(^{103}\) Nowadays, the Sámi language enjoys an overall legal protection under Norwegian law and “a particularly strong protection within the so-called Sámi language management area (which includes 10 out of 428 Norwegian municipalities)” especially in the field of education and in the judiciary.\(^{104}\)

International Human Rights legislation has grown in importance in Norway insofar as they help strengthening the status of human rights in Norwegian law. In fact, pursuant to section 2 the Norwegian Human Rights Act, the ICCPR is given a quasi-constitutional status in the extent that it takes precedence over any other conflicting legislative provisions. For instance, as Øyvind Ravna points out, “[t]he internal importance of the ICCPR Article 27 in Norway is strengthening because of its association with Article 110a in Constitution. […] This forms a dual obligation to protect indigenous peoples’ language, culture and way of life in Norway, and at the same time the symbiosis between the provisions contributes to strengthen them both.”\(^{105}\) However, this description does not provide any substantial details about the extent to which there is a right to use the Sámi language.

The following analysis aims at providing a streamlined assessment framework through which it is possible to monitor language rights for Sámi communities in three different fields: (1) education; (2) court proceeding; (3) communication with the government. This analysis also allows for assessing what happens in case the authorities fail to comply.


\(^{104}\) Ibid.

Pursuant to section 6-2 of the 1998 Norwegian Education Act,106 which entered into force in 1999 for the 1999/2000 schoolyear, Sámi speakers have the right to have their primary education and lower secondary education with Sámi as the language of instruction in the so-called Sámi district. The Sámi district includes the six municipalities of Karasjok, Kautokeino, Nesseby, Porsanger, Tana and Kåfjord as well as other neighbouring communities.107 Although section 3-2 of the Sámi Act includes Northern Sámi, Lule Sámi, Southern Sámi, Eastern Sámi, and Skolt Sámi in defining the scope of the umbrella term “Sámi language,” the scope of the definition embedded within the Education Act is much more limited as it only comprises Northern Sámi, South Sámi and Lule Sámi. This could constitute a potential breach of Norway’s obligations under article 29 of the CRC. However, Norway has managed to shirk its responsibility to implement a coherent language policy regarding Eastern Sámi and Skolt Sámi in assessing that based on the current actual language situation of these two languages, it is unrealistic to regard these languages as living languages across various areas of society in the same extent as it is for Northern Sámi, Southern Sámi and Lule Sámi.108 However, there does not seem to be a comprehensive language policy from the Norwegian government. The responsibility of overseeing language training programs is still held by County governors’ offices, “and the Sámi Parliament has not been invited to play a part in oversight or evaluations.”109

In term of court proceedings, the 1987 Sámi Act grants Sámi people an extended right to use Sámi languages in the judicial system. Pursuant to section 3-4, everyone has the right to use Sámi languages in any court proceedings (e.g. pleadings, hearings, oral arguments) within the jurisdictions covering the

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106 Lov av 17 juli 1998 nr 61 om Grunnskolen og den Vidaregåande Opplæringa (Opplæringslova).
107 These municipalities are those grouped under the umbrella term of “Sámi language administrative district” under section 3 (1) of the 1987 Sámi Act; see Lov av 12 juni 1987 nr 56 om Sametinget og Andre Sámiske Rettsforhold (Sameloven).
above-mentioned Sámi district. In cases where Sámi is decided to be the language of proceedings, the courts may also decide to keep the record of the proceedings in Sámi providing the courts ensure these records are translated in Norwegian. The courts and tribunals also have an obligation to provide translation and interpretation services to anyone who is not able to speak or read Sámi. There are three district courts that have jurisdiction over parts of the Sámi District, namely the Inner Finnmark District Court (Sis-Finnmárkku diggegoddi), the Ofoten District Court and the Inntrøndelag District court. This is also highlighted in Norway’s response to the 2011 special rapporteur report about the Sámi people in the Sápmi region of Norway, Sweden and Finland, whose paragraph 88 suggested, inter alia, that States should “make efforts to strengthen Sámi language use before courts and other public authorities, and continue to improve access to public services in Sámi language.” In fact, in a 2014 follow-up document, Norway specified that specific measures were already in place to accommodate Sámi speakers in court. According to the report, this specific measures entail that “during the preparatory process the court sends out a form on which the parties are requested to register the language they wish to use. The court will then facilitate practical aspects of the implementation of the hearing including the use of interpreters.” Although judges, magistrates, and court workers were provided with training in dealing with Sámi language cases, basing its findings on a 2012 survey by the Norwegian Courts Administration (Domstoladministrasjonen), the 2014 report concludes that only a few cases involved parties requiring Sámi interpretation. However, these reports do

112 Statsministerens Kontor (n 110).
113 Ibid.
114 As the 2014 Statsministerens Kontor’s report remarks: “In 2012 the Norwegian Courts Administration (NCA) asked relevant courts – four district courts, two Courts of Appeal, four land consolidation courts and three land consolidation Courts of Appeal – in all 13 different courts about their use of Sámi 14 interpreters. Of the 13 courts, 8 replied. The replies indicated that there had been extremely few cases with interpretation in Sámi during the last years, examples: Since 1996 the Nord-Troms Land Consolidation Court has tried one case with Sámi interpretation: During the last
not specify whether there had been cases where Sámi was used as the language of proceedings. Nevertheless, Domstoladministrasjonen has committed itself many times to improving the quality of court language services.115

In 2008, pursuant to its obligations under article 22 of the ILO 169, the Norwegian government published a report regarding presenting and strengthening the measures taken to protect and develop strengthening of Sámi language, culture, and civil societies.116 This report acknowledges that these measures should include policies that aim at “strengthen[ing] Sámi language and the information in the Sámi language provided by public administration and services.”

3.2 Sweden

According to the statistics of the Swedish government, there would be around 20,000 Sámi individuals living in Sweden. Whereas Sweden is home to 5000 to 6000 Northern Sámi speakers, Southern Sámi and Lule Sámi are both estimated to each have around 500 speakers. Furthermore, “Southern Sámi and Lule Sámi are spoken on both sides of the Swedish–Norwegian border from Arjeplog-Saltfjäll in the north to Idre and Røros in the south.”117 However, due to government relocations and assimilation policies, Northern Sámi is now

30 years, the Ofoten and Sør-Troms Land Consolidation Court had tried two cases with Sámi parties. In neither of the cases, interpretation in Sámi was demanded […] From 2011 to 2012, the Hålogaland Court of Appeal had tried five cases with interpretation in Sámi.”; see above Statsministerens Kontor (n 110).

115 The most recent example can be found in their Strategic Plan 2014-2020 where the NCA said that it “will contribute to good-quality and accessible interpretation services in the courts.”; see Domstoladministrasjonen, ‘Strategic Plan 2014-2020’ <http://www.domstol.no/globalassets/upload/da/internett/domstol.no/domstoladministrasjonen/om-domstoladministrasjonen/org/strategisk-plan.pdf> accessed 23 March 2017.


more dominant in areas where Lule and Southern Sámi were traditionally spoken.  

Through history, Swedish assimilation policies were not constant. In seventeenth-century Sweden, several assimilation policies were being conducted in order for the Swedish government to control Sámi territories. These policies also aimed at spreading Christianity in educating Sámi-speaking priests in Swedish, so they could spread the Swedish language to the rest of the population. However, its eighteen-century policy towards Sámi people was much more based on trying to include Sámi languages.

Sari Pietikäinen et al. highlight how different nineteenth-century Sweden was. In fact, “Swedish policy towards the Sámi from the nineteenth century to the first decades of the twentieth century has been called protective segregationist, segregating the reindeer-herding Sámi from the rest of the Sámi population and from ethnic Swedes. According to this policy, the reindeer-herding Sámi were ‘the real Sámi’ whose culture was to be protected, whereas the other Sámi, the majority of the Sámi population, were to be assimilated into the Swedish population.”

As of 2017, the relevant International Human Rights documents to which Sweden is party are the ICCPR, the CRC and the Framework Convention. Sweden voted in favour of the UNDRIP, but it has yet to ratify the ILO 169. the Swedish Parliament recognised the Sámi as indigenous people in 1977 and the Sámi language was recognised as a minority language in 2000. In addition, the government financially support Sametinget so they can set up policies to preserve and to promote the Sámi language. However, in

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118 Ibid.
comparison to the Sámi Parliaments of Finland and Norway, the influence and power of the Sámi Parliament in Sweden is limited.\textsuperscript{122}

In term of education, “[t]he Sámi language was first introduced as a school subject in nomad schools on an experimental basis in 1953/5 […] [but] at present there are six Sámi schools (1st to 6th forms) in Karesuando, Lannavaara, Kiruna, Gällivare, Jokkmokk and Tärnaby, as well as “ordinary” schools that offer Sámi-language teaching.”\textsuperscript{123} Nowadays, it is even possible to study Sámi linguistics at university in Sweden. Although this does not mean that linguistic human rights have been fully realised for the different Sámi communities, it highlights the fact that policies aiming at assimilating the Sámi population, through the eradication of their languages and cultures, are not being enacted anymore. Several Swedish laws frame the legal context allowing Sámi students and pupils to learn Sámi and to be taught their languages. Section 7 of the 2010 Education Act\textsuperscript{124} states that students whose guardians’ (eg parents) native languages is different than Swedish should be offered tuition in their mother tongues or in the language spoken at home providing they have a basic knowledge of the language. However, no threshold is provided to define ‘basic language knowledge.’ Section 13 of the Act legislate on Sámi schools and the curriculum Sámi schools should follow.\textsuperscript{125} Sámi language teaching is provided for students within the curriculum.

After ratifying the both the COE Framework Convention for the Protection of National Minorities and the COE European Charter for Regional or Minority Languages in 2000, Sweden adapted its legislation to recognise Sámi (alongside Finnish, Yiddish, Meänkieli, Romany, and Chib) as a national minority language in enacting the National Minorities and Minority Languages Act (section 7). In Ratifying the two COE instruments, Sweden recognised the individual group rights of these minorities in linking linguistic rights to basic

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\textsuperscript{124} Skollag (2010:800).
\textsuperscript{125} See also the provisions in Skolförordning (2011:185) Svensk författningssamling 2011:185.
\end{flushright}
human rights. Under Section 14 (1) of the, there is a right for individuals belonging to national minorities “to learn, develop and use the minority language.” This right was confined to a specific administrative area, which comprised Arjeplog, Jokkmokk, Gällivare and Kiruna (Northern and Lule Sámi municipalities). Beside granting specific rights for child language education, this Act also gave Sámi the right to use their languages in court proceedings and with the local authorities. In practice, confining the Sámi linguistic rights to this specific area meant that no municipalities with a significant number of Southern Sámi were included within the scope of this Act. However, in 2009, the administrative area was expanded to add 13 other municipalities (Arvidsjaur, Berg, Härjedalen, Lycksele, Malå, Sorsele, Storuman, Strömsund, Umeå, Vilhelmina, Åre, Alvdalen and Östersund) with the enactment of a new Minority Languages Act. Although this is good progress, this still means that, at present, there is numerous Sámi groups and individuals for whom their linguistic rights are not as much fulfilled because they live in other parts of Sweden. However, although there is no obligation for municipalities outside the administrative area to hire qualified staff members who can speak Sámi, because of Sámi’s status as a national minority language, in theory, Sámi speakers’ cases can be handled by the administrative authorities in Sámi providing there is personnel proficient in the language.

In a statement during the United Nations Permanent Forum on Indigenous Issues Fourteenth session in New York in 2015, Josefina Lundgren Skerk, the vice President of the Sami Parliament in Sweden described Sweden has being in breach of its international and national obligations regarding the Sámi especially concerning non-discrimination. She stated that “Sweden has yet to stop forcibly assimilating children - the State continues to refuse the Sami language, culture and history being taught in most schools, and does so now,

128 Förordning om Nationella Minoriteter och Minoritetsspråk; Svensk Författningssamling (2009:1299).
in most cases, through structural discrimination. The lack of teachers, scheduled time, funding, adequate laws and systems leaves Sami children and youth without their language and identity.”

Furthermore, she added that there is a lack of willingness to implement the UNDRIP or to ratify the ILO 169, as Sweden seems to be claiming to wait for the Nordic Sami Convention.

### 3.3 Finland

In Finland, the three main varieties of Sámi languages are Northern Sámi, Inari Sámi and Skolt Sámi. Among the 8000-9000 Sámi people living in Finland, and “Northern Sámi is spoken by approximately 2000 people […] Inari Sámi is spoken exclusively in Finland. Skolt Sámi is spoken in Finland and in Russia. In Finland, both languages have approximately 300 speakers, most of whom live in Inari, the only municipality in Finland with four official languages: Finnish and three Sámi languages.”

The Sámi Parliament in Finland was established in 1973, but it did not have much importance before the 1990s. The Sámi were recognised as an indigenous people in 1995, and the Act on the Use of the Sámi Language before the Authorities, which was enacted in 1991 and entered into force in 1992, gives Sámi people the right to use Sámi when it comes to legal matters (before the courts and other public authorities) and to administrative matters – be it orally or in writing. The 1991 Act was renewed with the enactment of the 2003 Sámi Language Act (SLA) that entered into force in 2004.

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133 Ibid.

Article 1 of the 2003 SLL provides Sámi native speakers with the right to use their own language before the court and imposes a duty on the State to promote and accommodate Sámi language rights. However, these rights are confined to a specific area in Finland. This area comprises “the municipal organs of Enontekiö, Inari, Sodankylä, and Utjoki, as well as the joint municipal authorities where one or more of the said municipalities are members” as well the courts and State authorities whose jurisdictions cover these municipalities and the provincial government of Lapland (Article 2). However, several services are provided in Sámi. Article 19 provides Sámi native speakers access to the free assistance of an interpreter in every aspect of the proceedings of courts. However, the phrasing of Article 19 is interesting as it imposes a duty on the State to ensure that when Sámi is used in the oral hearing of a matter, the authorities shall seek to ensure that the matter is handled by an employee who can speak Sámi. If the local authorities fail to comply with this provision, they shall arrange free-of-charge interpretation services.\(^\text{135}\) The 1995 Sámi Parliament Act clearly recognised that Sámi people have “linguistic and cultural autonomy in the Sámi Homeland [which is the municipalities mentioned above].”\(^\text{136}\) The 1995 Act further adds that “the task of the Sámi Parliament is to look after the Sámi language and culture, as well as to take care of matters relating to their status as an indigenous people.”\(^\text{137}\) However, as the Sámi Parliament pointed out in one of its publication, “in practice […] the exercise of these linguistic rights by Sámi communities and individuals is based on translation and interpretation, creating crucial obstacles to dealing with authorities.”\(^\text{138}\) Moreover, ratifying the ILO 169 has been at the forefront of Finnish politics in recent years. It even was one of the themes of the 2011 Finnish parliamentary election.

In Finland, article 17 of the constitution provides rights for the Sámi to maintain and develop their own language and culture.\(^\text{139}\) Article 17 further adds that Sámi individuals have the right to use Sámi languages as enshrined in the

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\(^{135}\) 1086/2003 Saamen kiellaki, 1 luku.

\(^{136}\) 974/1995 Laki saamelaiskäräjistä, 1 luku, 1 (1).

\(^{137}\) 974/1995 Laki saamelaiskäräjistä, 2 luku, 5 (1).


\(^{139}\) 731/1999 Suomen perustuslaki, 17 luku.
SLA. Furthermore, in terms of devolution and self-governance, article 121.4 states that “in their native region, the Sámi have linguistic and cultural self-government, as provided in [the 1995 Sámi Parliament Act].”

The Finnish government also financially supports the Sámi Parliament. This allows the Sámi Parliament to have enough financial leverage for the implementation of policies aiming, inter alia, at preserving and promoting the Sámi language.

In term of Sámi education in Finland, the fourth cycle of the Advisory Committee for the Framework Convention’s Public Opinions provides an overview of the progress made in term of Sámi language education in Finland. Under its obligations to grant equal access to education, the Finnish parliament allocate funding to the Sámi Parliament to produce and publish educational material, such as textbooks, in Sámi languages and to train Sámi language teachers. Sámi languages and culture programs and teacher training programs have been developed in three universities in Finland. The Advisory Committee concludes that, despite scarcity of funding and of authors/translators, progress has been made. However, in practical terms, there is still a lack of material and of instructors for Inari Sámi and Skolt Sámi in upper secondary education, higher education, and adult education.

Primary and lower secondary education in the Sámi Homeland (ie the area defined by the 2003 SLA) is secured through the SLA and basic education funding in this area is provided for by the 1705/2009 Law on the Financing of Education and Culture. Section 6 Paragraph 45 details the special state subsidies in term of instruction of the Sámi language and education in Sámi. Furthermore, Finland has put a special emphasis on education in pursuing its 2014 Action Plan with the aim of taking revitalizing measures for Northern Sámi, Inari Sámi, and Skolt Sámi. These measures include supporting municipalities in the Sámi Homeland to make them able to provide education in these languages by 2025. As Finland representatives declared in their statement at the 33rd session of the UN Human Rights Council, “[o]ne of the

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140 731/1999 Suomen perustuslaki, 121 luku, 4.
142 1705/2009 Laki opetus- ja kulttuuritoimen rahoituksesta, 6 luku, 45.
Concrete measures include language nests, which are childcare units where everything takes place only in Sámi.”

Changing focus to communications with the authorities, The SLA Section 5 and Section 6 both grant the right to use Sámi languages before the authorities. Section 6 states that “The Sámi members of the representative bodies of the municipalities of Enontekiö, Inari, Sodankylä and Utsjoki have the right to use Sámi languages in meetings and in written statements to be appended to the record.” Moreover, this right is also ensured outside the Sámi Homeland “when matters of special concern to the Sámi are being discussed[.]” Furthermore, the Advisory Committee for the Framework Convention noticed in 2011 that “the legal guarantees for the use of the Sámi languages before the authorities in the Sámi Homeland remain only very partially implemented.” There is a lack of staff members who can speak Sámi in public services even in the Sámi Homeland. Most of the time, communicating with the authorities has to be done through interpretation and translation, which “results in delays in the handling process and discourages many Sámi speakers from actually using their languages.”

3.4 Russian Federation

Languages and language policies were one of the central points in the Soviet Union era as it was built as a multilingual and multi-ethnic State. As Grenoble notes, “[a]t its point of greatest expansion, the USSR’s territory encompassed some 8,649,490 square miles with a total population of just under 286,000,000.

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143 United Nations Human Rights Council (33rd session) Item 3 and item 5 Clustered dialogue with the Special Rapporteur on the Rights of Indigenous Peoples and the Expert Mechanism on the Rights of Indigenous Peoples; Report of the Special Rapporteur on the rights of Indigenous Peoples on the human rights situation of the Sámi people in the Sámi region of Norway, Sweden and Finland; Statement by Finland (2016);


145 Ibid.
The 1989 Soviet census cites approximately 130 ethnic groups, including indigenous and immigrant people, with a varying percentage of each group speaking its heritage language, and an official language count of about 150 languages.\textsuperscript{146} However, the Soviet way of dealing with indigenous languages led to the assimilation and the disappearance of some indigenous groups.\textsuperscript{147} Although the situation has slightly changed since the collapse of the Soviet Union, focusing on each individual indigenous language spoken in Siberia and Arctic Russia would go beyond the scope of this Thesis. Therefore, this subsection only aims at giving a few examples of language policies in place in the Russian Federation, more specifically for the Sámi people living in the Kola Peninsula.

At the end of the Soviet Union era, Mikhail Gorbachev brought, as Knyazeva points out, “significant positive changes to language policy and legislation such as the 1991 Law on the Languages of the Peoples of the Russian Soviet Federative Socialist Republic.”\textsuperscript{148} Nevertheless, focusing on indigenous language law in Russia is rather difficult as there is no definition of the term of “indigenous peoples” in the Russian legislation. The umbrella term used in Russian law is “indigenous numerically-small peoples” (art. 69).\textsuperscript{149} In addition, indigenous peoples are only recognised as indigenous if they are a group of less than 50,000 individuals. The 2011 Act No 1145 On the Common List of Numerically Small Indigenous Peoples of Russia recognises 46 numerically small Indigenous peoples living in the Russian Federation who fulfil these criteria.\textsuperscript{150} In addition, Article 68.1 of the Russian Constitution states that Russian is the State language on the entire territory of the Russian Federation. The following paragraphs of Article 68 also state that Republics have the right to establish their own official languages together with the

\textsuperscript{147} Knyazeva E, ‘Language Rights for Indigenous Peoples: The Case of the Russian Federation’ in Gudmundur Alfredsson, Timo Koivurova and Adam Stepien (eds) \textit{The Yearbook of Polar Law Volume 5, 2013} (Brill 2013) 523
\textsuperscript{148} Ibid.
\textsuperscript{149} St 69 Konstitutsii Rossiiskoi Federatsii ot 12 dekabrya 1993 goda // Rossiiskaya Gazeta, 25 dekabrya 1993.
Russian language (68.2). In addition, Article 68 goes even further in “[guaranteeing] all of its peoples the right to preserve their native language and to create conditions for its study and development.” Furthermore, Article 9.2 of the 1991 Law on Languages of the Peoples of the Russian Federation provides the right to be educated in one’s native language as well as the right to choose the language of instruction. This leaves a lot of leverage to regional language planning. However, apart from a few examples, indigenous languages are not taught at school and there is almost no Russian case law about indigenous language protection.

In terms of numbers, “there are about 170,000 people in the North from ‘smaller’ nationalities, nationalities with populations numbering less than 40,000. Of these minorities, approximately 50% (86,000) consider their ethnic language to be their primary, first language.” For example, there are about 2,000 Sámi people living in the Kola peninsula. However, whereas the Russian government has repeatedly declared that it is necessary to safeguard indigenous languages, the Russian language is always being prioritized.

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152 Ibid.
154 This can be explained, as Chertova and Zadorin note, because ‘[t]he court[s] practice traditionally is not considered as a legal source in the Russian Federation. Russian legal system is related to the Roman-Germanic legal family where a normative act is a basic source of law. However, pursuant to provisions of the Russian legislation it can be concluded that the high courts’ decisions in Russia have a binding legal force.’; see Chertova N A and Zadorin M Yu, ‘The Rights of the Indigenous Numerically-Small Peoples of the Russian Federation in Practice of High and Regional Courts’ (2015) 5:1 Scientific Enquiry in the Contemporary World: Theoretical Basis and Innovative Approach 83.
The Soviet Union and the Russian Federation as its successor state, signed the ICCPR in 1968 and ratified the Covenant five years later in 1973. It also ratified the CRC in 1990. Like Sweden and Finland, Russia is not a party to the ILO Convention 169. Furthermore, Russia participated in the discussions but abstained from voting on the UNDRIP. Russia’s reluctance to become a party to the ILO 169 can be explained because the concept of “indigenous peoples” does not exist in Russian law, and this makes adapting international law to federal legislation rather tricky. This is due to a matter of semantics interpretation. As the Russian Federation is not party to any treaty that gives a concrete definition of “indigenous peoples,” federal Russian law relies on its own definitions, which are different from those of other Arctic States. Russian legal scholars argue that because there are no universal legally-binding definitions of “indigenous peoples,” it is difficult to adapt international legislation to Russian law.\footnote{Email from Maksim Zadorin, Expert on legal issues of Arctic Development Arctic Centre for Strategic Studies at NArFU, Arkhangelsk, Russia to author (2 March 2017); see also Zadorin M, ‘The Status of Unrecognised Indigenous Communities and Rural Old-Residents of the Russian Arctic’ in Alfredsson, Koivurova, Stepien (eds) (n 147).} Although, in theory, it is possible to use international instruments such as the Framework Convention for protecting "indigenous numerically-small peoples" under the definition given by Article 69 of the Russian Constitution but not for protecting “indigenous peoples” per se as the term is construed elsewhere in the Arctic. The basic feature of Russian judicial practice on indigenous issues is that it does not seem consistent. In fact, the practice of recognising rights to “indigenous peoples” and of these rights being upheld by the Courts and by the local authorities depends on numerous factors including the federal unit individuals live in.\footnote{Ст 69 Конституции Российской Федерации от 12 декабря 1993 года.} As of 2015, there were 47 indigenous peoples who match the criteria set under the Federal Government’s Unified List of Indigenous Minorities of the Russian Federation.\footnote{О Едином перечне коренных малочисленных народов Российской Федерации (с изменениями на 25 августа 2015 года) Правительство Российской Федерации Постановление от 24 марта 2000 года N 255 <http://docs.cntd.ru/document/901757631> accessed 31 March 2017.} As Maksim Zadorin points out, the practises also depend on the real on-the-ground legal developments and on the political will of non-governmental organisations to challenge the federal government for the government to include more indigenous peoples and communities within the
scope of the definition enshrined in the Russian Constitution. Under Russian legislation it is not enough to identify yourself as indigenous to get protection of your rights, therefore, in every Russian federalized entity, there is a legal procedure for indigenous communities to be recognized as indigenous. This also requires a concrete level of state financial and administrative support.

Conversely, in recent years, RAIPON, the Russian Association of Indigenous Peoples of the North, a particularly powerful stakeholder who represent the interests of Russian indigenous peoples at the Arctic Council, has been at the forefront of challenging both the political and legal status quos and the association’s work has helped improving the relationship between the government and indigenous communities. Moreover, RAIPON has tried to find the right balance between the Federal government’s needs to establish energy (oil and gas) policy and a unified ethnocultural state policy and interests and needs of indigenous numerically-small peoples. However, as of 2017, the Russian Government legal reasoning is to promote the idea and to adopt the Law on United Civil Nation of the Russian Federation. Pursuant to this legal reasoning, it would become more difficult for indigenous peoples and communities to gain recognition in Russian law. However, according to Zadorin, “it is possible to ascertain that if indigenous groups wished to gain protection in terms of land, linguistic, or cultural rights, there would be several steps the representatives of these indigenous communities would have to follow. First, the communities should register themselves at the Federal Ministry of Justice’s registry. Furthermore, the concrete group should be in the federal unified list of indigenous numerically-small peoples under Governmental Resolution, living in accordance of ‘traditional way of life.’160 Second, it is vital for indigenous communities to have connections with RAIPON. Third, indigenous communities should also strengthen their ties and

As mentioned earlier in this chapter, there are approximately 2000 Sámi individuals living in the Kola peninsula. Moreover, several Sámi languages are spoken in the region: “Skolt (Notozero), Akkala (Babino), Kildin Sámi and Ter (Iokanga) Sámi. Most of the Sámi speak in Kildin Sámi (800 speakers).” However, each of these languages is endangered due to a language shift from Sámi to Russian. Furthermore, “[m]ost Kola Sámi language users today live as a minority group in the centralised multiethnic municipality of Lovozero [in the administrative district of Lovozersky].” Before the various assimilation policies and the forced relocations took place, Kildin was spoken in most parts of the central Kola Peninsula. Nowadays, “more or less compact Kildin Sámi settlements in or close to their original villages are found only in Lujavv’r, Revda, Kola, and Teriberka. [However,] small Kildin Sámi speach [sic] communities are found today in all larger settlements, such as in Murmansk, Olenegorsk, Apatity […] As a result of the forced resettlement of most of the Kola Saami population to Lujavv’r, this village is nowadays usually regarded as the ‘Sámi capital’ of Russia. Lujavv’r in fact has by far the densest Saami population today, [nevertheless] the amount of Saami speakers among these is considerably lower.”

Sámi people are recognized as "indigenous numerically-small people" under Russian law. Therefore, they can use legal mechanism for protection of their

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161 Email from Maksim Zadorin, Expert on legal issues of Arctic Development Arctic Centre for Strategic Studies, at NArFU, Arkhangelsk, Russia to author (3 March 2017).
164 Ibid 81.
165 See Anna Afanasyeva, ‘Forced relocations of the Kola Sámi people: background and consequences’ (MA Thesis, Faculty of Humanities, Social Sciences and Education University of Tromsø 2013).
rights at the domestic level in the Kola Peninsula for example. Under Article 15 of the Russian Constitution, in cases when international treaties ratified by the Russian Federation fixes other rules than those envisaged by law, it is the international treaties that shall prevails. Although, “quite possibly it was designed to ease the application of multi- and bilateral trade and investment agreements rather than human rights instruments,” in theory, this also grants human rights legislation and norms a superior status over Russian law.\footnote{167} Moreover, “The relevant clauses regulating the use of languages in the country are detailed in the special Law on Languages of the Peoples of the Russian Federation, adapted during the late Soviet times and amended in 1998.”\footnote{168} Although there is no Sámi-specific language law, “according to this special law, each Republic-Member of the Russian Federation has [the] right to establish its own state language.”\footnote{169} In the case of the Russian Sámi, “the regional assembly (Duma) [of Murmansk region] has declared that Sámi are the only indigenous people of the region and that governmental bodies in the region must help the Sámi maintain and develop their mother tongue, their people’s culture, traditions and settlement.”\footnote{170} The Murmansk regional administration has set up a Committee for Indigenous Peoples whose task is to be a mediator between the Sámi and the authorities.\footnote{171}

Education in the language of the federalized entities is guaranteed under the Federal Law on Education in Russian Federation No. 273-FZ that entered into force in 2013.\footnote{172} However, the law explicitly states that teaching and learning of state languages in the Russian Federation should not be done at the expense of teaching and studying the official language of the Russian Federation. This

\footnote{169} Ibid.
\footnote{170} Ibid.
\footnote{171} See Vakhtin N an Lyarskaya E, ‘Языковая Ситуация и Проблемы Образования Obrazovaniya’ in Valery Tishkov (ed), \textit{Современное Положение и Перспективы Развития Малочисленных Народов Севера, Сибири и Дальнего Востока} (RAN Институт этнологии и антропологии 2004) 133.
law has had several human rights associations to react against it because it means that many indigenous children are denied the opportunity to learn their own languages and to be taught in their own languages.\(^{173}\)

Within its mandate to monitor state compliance under the Framework Convention, the Advisory Committee has managed to assess the progress made by Russia to fulfil its linguistic obligations towards its indigenous peoples. However, in recent years, the State report does not specifically mention the Sámi.

### 3.5 Canada

This section discusses the linguistic rights and linguistic policies for the Arctic indigenous communities of Canada at both the federal level and the territorial level. Nevertheless, when discussing indigenous rights in a Canadian context, one must start with discussing two correlated, although antithetical, matters. First, one must understand the assimilation policies that were set up during Canada’s nation-building process in the late nineteenth and twentieth century. Aboriginal religious ceremonies were forbidden and pupils were banned from using their aboriginal languages at school.\(^{174}\) Assimilation policies were implemented, via residential schools for example, to take Aboriginal children away from their communities and to eradicate and destroy their connections to their traditional cultures and languages.\(^{175}\) There was no official language policy, thus schools were left to their own devices. “The [language] policies and their enforcement varied significantly [from school to school.]”\(^{176}\) Nevertheless, the examples given by the Truth and Reconciliation Commission’s final report (“TRC #5”) “make it clear that in schools across

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\(^{176}\) Ibid 104.
Canada, children were told that it violated school policy to speak their own language.”

This led to the erosion of many aboriginal languages and cultures. As pointed out in TRC #5: “Aboriginal languages have survived. But only barely. Very few Aboriginal languages are in good health today. The largest and "most viable” languages are Inuktitut, Cree, and Ojibway, but all Aboriginal languages spoken in Canada are considered vulnerable to extinction. In 1998, the Assembly of First Nations declared a state of emergency regarding First Nation languages, and called on Canada to act immediately to recognize, officially and legally, the First Nation languages of Canada, and to make a commitment to provide the resources necessary to reverse First Nation language loss and prevent their extinction.”

At the constitutional level, indigenous language rights were left out of the patriation process that led to the enactment of the constitutional documents, which includes the 1982 Constitution Act and the Charter of Rights and Freedoms. However, since 2007, successive governments have taken steps in order to apologise for and to repair the damages that have been done to Aboriginal peoples across Canada. The implementation of the Indian Residential Schools Settlement Agreement began in 2007. In 2008, then-Prime Minister Stephen Harper issued a statement in which he offered a “full

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177 Ibid.
178 Ibid 112.
179 As Fernand de Varennes points out, only the Liberal Party made a recommendation on the matter during the patriation process, but this recommendation was not taken into account. De Varennes further remarks that the 1992 Charlottetown Accord could have brought interesting precisions as it explicitly mentioned Aboriginal languages, but the Accord was rejected; see De Varennes F (n 174)

As a matter of fact, the draft of the Charlottetown Act aimed at amending the constitution in adding that, inter alia, “the Aboriginal peoples of Canada, being the first peoples to govern this land, have the right to promote their language, cultures and traditions and to ensure the integrity of their societies, and their governments constitute one of the three orders of government in Canada[.]”

180 see Charlottetown Accord, Draft Legal Text October 9, 1992 <http://www.efc.ca/pages/law/cons/Constitutions/Canada/English/Proposals/CharlottetownLegalDraft.html> accessed 9 March 2017

181 As specified in Gottfriedson v. Canada, 2015 FC 766, ‘The Indian Residential Schools Settlement Agreement dated May 10, 2006 entered into by Canada to settle claims relating to Residential Schools as approved in the orders granted in various jurisdictions across Canada’
apology on behalf of Canadians for the Indian Residential Schools system.”182 In his statement Harper recognised that the Indian Residential Schools Truth and Reconciliation Commission was a cornerstone of the Settlement Agreement. In TRC #5, the TRC acknowledges the UNDRIP as making “one of the most powerful and persuasive cases for governments to make reparations for forced assimilation.”183 This loss of culture and of languages due to forced assimilation is also reflected in Canadian case law. For example, in Brown v. Canada (Attorney General), the Ontario Superior Court of Justice, the chairperson of the Canadian Psychiatric Association Section on Native Mental Health, called in his quality of expert witness, stated that “[i]n the early part of the 20th century, Canada applied a policy of cultural extermination [and] punished [native children] for expressing their Indian customs, traditions and languages […] the effect of this policy was loss of culture, loss of language, loss of ability to parent as an aboriginal person, loss of identity, increased rate of psychopathology, confused identity formulation, psychiatric disorders, substance abuse, emotional isolation, violence, unemployment, feelings of betrayal and extreme lack of emotional attachment.”184

Canadian case law now starts to reflect that the fulfilment of Aboriginal languages rights plays a vital role in indigenous cultural wellbeing. At same time that Canada supported and endorsed this important international declaration, it has backtracked on promises of increased funding for Aboriginal languages, and has treated Aboriginal languages as a minor part of a larger governmental portfolio devoted to all matters of Canadian heritage. Many provisions in the UN Declaration make clear that Canada is under several obligations to change course and to provide redress for its past policies.

This leads to the second matter there is to understand to fully grasp the situation in which Canada finds itself at present regarding indigenous rights: the developments in Canada publicly endorsing and promising to implement the UNDRIP. Nigel Bankes and Amy Matychuk from Calgary University describe

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183 The Truth and Reconciliation Commission of Canada (n 175) 124.
these changes in three phases (phase one: voting against adoption of the Declaration; phase two: endorsement with reservation, phase three: enthusiastic endorsement. Canada has not always been in favour of implementing the Declaration.) At its adoption by the UN General Assembly in 2007, Canada voted against the UNDRIP. Canada representatives stated that the Declaration was not a legally binding instrument and that it had no legal effect on Canada. Nevertheless, three years later, in March 2010, Governor General Michaëlle Jean delivered the Speech from the Throne on behalf of the Harper Government in which she said that “growing number of states have given qualified recognition to the United Nations Declaration on the Rights of Indigenous Peoples. Our Government will take steps to endorse this aspirational document in a manner fully consistent with Canada’s Constitution and laws.” In November of the same year, the federal government released a statement on the Indian and Northern Affairs Canada website saying Canada had formally endorsed the UNDRIP. Notwithstanding these developments, the document was always regarded as being no more than an aspirational, nonbinding instrument during the Harper years. More substantial steps were taken in 2016 by the Trudeau government to further this endorsement. In May 2016, the Minister for Indigenous and Northern Affairs of Canada, Carolyn Bennett, delivered a speech at the United Nations Permanent Forum on Indigenous Issues in which she declared that Canada was now a “full supporter of the Declaration without qualification.” She continued by stating that “[Canada] intend[s] nothing less than to adopt and implement the declaration in accordance with the Canadian Constitution.”

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the ADRIP in June 2016, one of the outcomes of the ADRIP was Canada reaffirming its commitment to implement the UNDRIP in accordance with the Constitution of Canada. Lastly, the Minister of Justice, Wilson-Raybould attended the Assembly of First Nations. In addressing the Assembly, she stated that “simplistic approaches, such as adopting the UNDRIP as being Canadian law are unworkable and, respectfully, a political distraction to undertaking the hard work required to actually implement it.” She continued by declaring that “the way UNDRIP will get implemented in Canada will be through a mixture of legislation, policy and action initiated and taken by Indigenous Nations themselves. Ultimately, the UNDRIP will be articulated through the constitutional framework of section 35.”

Although this somehow shows state practice on the part of Canada and could be interpreted to further the claim that the UNDRIP could potentially be regarded as a customary law, state practice means nothing without opinio juris. At present, it is too soon to draw any substantial conclusions.

Although research has shown that there are between 56 and 70 aboriginal languages in Canada, article 16 of the Charter of Rights and Freedoms/La Charte des droits et libertés recognises that English and French the two official languages that are to be used at the federal level. Both languages ‘have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and [federal] government of Canada.’ As the Office of the Commissioner of Official Languages sees fit to recall ‘English and French are a fundamental characteristic of the Canadian identity, and the importance of


190 However, Canadian case law might help understanding the growing importance the UNDRIP has in term of statutory interpretation. In Canada (Human Rights Commission) v Canada (Attorney General), 2012 FC 445, the Federal Court adjudged that “International instruments such as the UNDRIP and the Convention on the Rights of the Child may also inform the contextual approach to statutory interpretation” (353). Indeed, UNDRIP’s usefulness in interpreting the Constitution was also confirmed in Nunatavut Community Council Inc. v. Canada (Attorney General) 2015 FC 981.


language rights is clearly recognized in the Canadian Charter of Rights and Freedoms.\textsuperscript{193} Notwithstanding this federal bilingualism, as mentioned above, Canada is home to more than 60 indigenous languages.\textsuperscript{194} However, as Canada has evolved into a complex federal system in which the provinces and the territories do not share the same rights, the realisation of linguistic rights for indigenous communities across Canada can hardly be assessed on a federal basis.

When it comes to land and resources, “[C]anada's federal government has transferred jurisdiction over lands and resources to new provinces – by constitutional amendment – and to new territories – by statute.”\textsuperscript{195} However, as former Premier of Yukon, Tony Penikett, points out: “Over the last forty years, American and Canadian governments made much progress on the land question in the Arctic and sub-Arctic; however, from an irrational fear of the unknown, politicians in Washington, D.C. and Ottawa have effectively blocked the pathways to aboriginal jurisdiction or self-government. In Arctic North America, indigenous land issues have largely been settled, but indigenous governments still seek to restore jurisdiction over their lands and citizens. During the late-twentieth century in the Yukon, Northwest Territories, and Nunavut, as well as in Nisga’a territory in the northwest corner of British Columbia, First Nations negotiated provincial and local government powers. But, faced with both federal and provincial opposition, continent-wide progress on the question of indigenous jurisdiction has since stalled.”\textsuperscript{196}

Regarding language planning in the Canadian Arctic, as mentioned above, “[f]ormal education came […] in the 1940s and 1950s in the form of mission


schools, introducing a new way of learning that was in direct conflict with traditional Inuit modes of transmitting knowledge across generations [...] Only English could be spoken in schools; native languages were forbidden.”

However, from 1963 to 1968, the Canadian government, led by then-Prime Minister, Lester B. Pearson, established the Royal Commission on Bilingualism and Biculturalism, which led, under the Trudeau government, to the enactment of the first Official Language Act in 1969. The 1969 Act was revised with the 1985 Official Languages Act. As a communication from the government points out, “this thorough revision of the 1969 Act was necessary because of the 1982 enactment of the Canadian Charter of Rights and Freedoms.” The Constitutional Charter and the Official Languages Acts have created a legal framework that requires bilingualism to be implemented in all federal institutions. However, this does not mean that Canada is a bilingual country. As mentioned above, Canada has evolved into a highly decentralized state that is best described as an asymmetrically, regionally managed country.

The current amended version of the Official Languages Act clearly states that it does apply to federal institutions but this does not include “any institution of the Legislative Assembly or government of Yukon, the Northwest Territories or Nunavut, or [...] any Indian band, band council or other body established to perform a governmental function in relation to an Indian band or other group of aboriginal people” (section 3 (1) (i) and section 3 (1) (j)).

The question of what obligations linguistic rights do imply still stands. The Supreme Court of Canada gave its own take on the matter at the end of the 1990s. In fact, in light of the 1999 case of R. v. Beaulac, it is possible to

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198 Official Languages Act (RSC, 1985, c 31 (4th Supp))
200 As Professor Stéphane Beaulac suggests, asymmetrical management is fully accepted and it is acceptable in term of linguistic rights - [l’asymétrie est pleinement acceptée et acceptable en matière de droits linguistiques]; see Stéphane Beaulac, ‘Asymétrie Canada-Québec en droits linguistiques’ (National Observatory on Language Rights May 12, 2016) <http://odl.openum.ca/asymetrie-canada-quebec-en-droits-linguistiques/> accessed 1 March 2017.
interpret that linguistic rights should not only be respected (negative obligations) but imply positive obligations to be implemented.\footnote{In R v Beaulac, [1999] 1 SCR 768, para 20, the Court stated “Language rights are not negative rights, or passive rights; they can only be enjoyed if the means are provided. This is consistent with the notion favoured in the area of international law that the freedom to choose is meaningless in the absence of a duty of the State to take positive steps to implement language guarantees[.]”; see also Karen Drake, ‘Language Rights as Aboriginal Rights: From Words to Action’ (National Observatory on Language Rights July 26, 2016) <http://odl.openum.ca/language-rights-as-aboriginal-rights-from-words-to-action> accessed 1 March 2017.}

In December 2016, in an address at the Assembly of First Nations annual meeting in Gatineau, Prime Minister, Justin Trudeau, assured that his government was committed to “enact an Indigenous Languages Act, co-developed with Indigenous Peoples, with the goal of ensuring the preservation, protection, and revitalization of First Nations, Métis, and Inuit languages in this country.”\footnote{Prime Minister of Canada, ‘Prime Minister Justin Trudeau’s Speech to the Assembly of First Nations Special Chiefs Assembly’ (December 6, 2016) <http://pm.gc.ca/eng/news/2016/12/06/prime-minister-justin-trudeaus-speech-assembly-first-nations-special-chiefs-assembly> accessed 20 March 2017.} Although it is too soon to assess whether the Canadian government will enact such an act and the kind of rights and obligations that will be embedded in such an act, this shows intent on the part of the Canadian government to go further into the reconciliation process. Nevertheless, it seems judicious to wonder whether obligations towards indigenous peoples and their languages are not already embedded in the Charter. This argument has been put forward by some scholars and legal practitioners, such as Gabriel Poliquin, who interpret section 35 of the Charter considering the principles found in the Supreme Court’s jurisprudence about section 23 of the Charter. Poliquin argues that “aboriginal rights in section 35 create language rights and impose a positive obligation on the state to promote the vitality of aboriginal languages. This obligation is distinct from the state’s obligation concerning official languages, which serves to ensure equality between the two official linguistic communities. The state’s positive obligation toward aboriginal linguistic communities requires the development of structures necessary for the preservation of aboriginal linguistic heritage in order to ensure its transmission from one generation to the next. The content of this obligation
may vary from one linguistic community to another, depending on the linguistic environment specific to a given community.”

Putting the link between culture and language forward, an approach consistent to the linguistic human right approach, and arguing that Aboriginal languages reflect Aboriginal laws and traditions have led legal experts and academics to think that section 35 “also grant aboriginal people in Canada the right to schooling and public services in their ancestral languages.” These scholars argue this could constitute a good constitutional challenge, nevertheless, Karen Drake points out, as the Trudeau government seems willing to support and implement international instruments, such as UNDRIP, to fulfil its internal linguistic obligations, court actions might not be needed. In its final report, the Truth and Reconciliation Commission made some recommendations in order to make Canadian law evolve to include Aboriginal language rights as part of Aboriginal rights. Among these Call to Actions, the TRC recognised the need to enact an Aboriginal Languages Act that incorporates key points such as 1) Acknowledging Aboriginal languages are a fundamental and valued element of Canadian culture and society; 2) Reinforcing Aboriginal languages rights through treaty law; 3) Sufficient funds should be provided by Ottawa to revitalize aboriginal languages; 4) The preservation, revitalization and strengthening of Aboriginal languages are best managed by Aboriginal people; 5) Funding for Aboriginal language initiatives must reflect the diversity of Aboriginal languages. These conclusions, challenges and calls for action highlights that notwithstanding Canada’s international obligations to further the development of language rights, it seems more likely that Canadian jurisprudence on the matter is going to evolve pursuant to domestic


206 The Truth and Reconciliation Commission of Canada (n 175) 321.
obligations. Aboriginal linguistic rights are going to be fully fulfilled through the evolution of Canadian domestic laws.

The following subsections try to give an overview of the languages spoken in Canada’s three northern territories and how the legislations in place to protect and promote these languages in the field of 1) education; 2) court proceedings; 3) communications to and from the governments and their agencies. In assessing and monitoring the fulfilment of linguistic rights for indigenous communities, it is possible to assess whether indigenous linguistic rights in Canada derive from linguistic human rights obligations.

### 3.5.1 Northwest Territories

As mentioned above, the federal Official Languages Act does not apply to any territorial institution. In fact, the case of language rights in the Northwest Territories is rather unique as the NWT gave official status, through statutory law, to all the aboriginal languages spoken within its jurisdiction. In terms of statistics, in 2011, there were 2000 speakers of Tłı̨chǫ. South and North Slavey were spoken by 405 and 205 individuals whereas there were 260 native speakers of Gwich’in. In terms of Inuit languages, there were 545 individuals who spoke Inuvialuktun as a native language while there were 240 native speakers for Inuktitut. In addition, Yellowknife is where most people, who speak Inuktitut live in the Northwest Territories.

Under the 1988 Official Languages Act (NWTOLA), there are eleven official languages in the Northwest Territories (section 4). This strongly highlights the fact that Canada is asymmetrically managed. Among these

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207 See also Fédération Franco-Ténoise v. Canada, [2001] 1 FCR 241, 2000, in which the Court stated that ‘the federal Official Languages Act, the mechanism chosen by the Canadian government to promote the language rights established in the Charter, does not apply to the Government of the Northwest Territories.’


210 Northwest Territories Official Languages Act, RSNWT 1988, C O-1
eleven language, nine are Aboriginal languages and can be divided into three categories: Inuit (Inuktitut, Inuvialuktun, Inuinnaqtun), Dene (Gwich'in, North Slavey, South Slavey, Tłı̨chǫ, Chipewyan) and Cree, a language which belongs to the Algonquian family.\(^{211}\) The two other official languages are English and French. Under NWTOLA, this official status means that aboriginal languages have equal rights and privileges as to their use in all government institutions” and they can be used by anyone during the proceedings of the Legislative Assembly (section 5 and 6). Through the NWTOLA, any individual can use any official languages in a court established by the LA. Interpretation services can be made available to the public, and orders and judgements of a court are available languages other than French and English in certain circumstances (eg if sufficient demand).\(^{212}\) Under the NWTOLA, English and French still have a considerable edge over the other official languages. Whereas section 9.1 states that “English or French may be used by any person in, or in any pleading in or process issuing from, any court established by the Legislature,” section 9.2 states that the official aboriginal languages may be used by any person in any court established by the Legislature.” Compared to Section 9.2’s phrasing, Section 9.1’s is rather unambiguous in granting the right to use English and French in person while aboriginal languages shall be used with the help of interpretation services. As it is the case in most territories, this might be due to a lack of judges able to speak an aboriginal language at the fluency required in such proceedings.

### 3.5.2 Yukon

Although the Education Act was passed in 1995,\(^{213}\) the fulfilment of linguistic obligations through education is also dealt with within the NWTOLA. In fact, pursuant to section 9, one of the duties of the Minister responsible for Official Languages is the promotion of “Official Languages education in schools and post-secondary institutions and in adult education and literacy training programs” (9 (2) (c)). As for the Education Act, it is possible to notice the


\(^{213}\) Education Act, SNWT 1995, c 28
benefits of officialising indigenous languages within the territorial legislation. In fact, the language requirements of the Education Act are that the languages of instruction must be official languages (section 70 (1)). “The Education Act […] allows the ability to provide Aboriginal language learning through first language instruction, immersion and second language instruction.” However, in instances where an official language other than English is the language of instruction, English must be taught as a second language as of part the education program (section 73 (2)). In reverse, where English is the language of instruction, the following subsection requires another official language to be taught as well (section 73 (3)). Aboriginal language teaching depends on sufficient demands and more importantly on the availability of qualified language instructors. At present, there is no school in the NWT that offers a curriculum with an aboriginal language as the first and main language of instruction. In most schools, English is the main language of instruction and French or an aboriginal language is taught as a second language.

According to a 2016 census, Statistics Canada estimated Yukon’s population to be around 35,874. Although data have not been provided for 2016, in 2011, the Aboriginal population of Yukon was around 7,705 individuals with more than half of these individuals (53%) resided in Whitehorse, where they


216 Ibid.


represented 16% of the total population living there. Mirroring the federal legislation, the Yukon Language Act made English and French the official languages. However, the Yukon is also home to eight aboriginal languages, seven of which belong to the Athapaskan family – namely Gwich'in, Hän, Kaska, Northern Tutchone, Southern Tutchone, Tagish, and Upper Tanana. This language family spreads from central Alaska through north-western Canada to Hudson Bay. According to 2011 Census Language Data, “[i]n 2011, 3,625 individuals, or 10.8% of the non-institutional Yukon population, listed a non-official language as their only mother tongue. Of those, 23.0% reported an aboriginal language and 77.0% a non-aboriginal language as their only mother tongue.” Compared to English and French speakers, Aboriginal-language speakers constitute a small minority of Yukoners. In 2011, the National Household Survey reported that “the Aboriginal languages most frequently reported by Aboriginal people were: Kaska (Nahani) (305), Northern Tutchone (200) and Tlingit (150).”

The 2002 Yukon Language Act (YLA), which entered into force in 2003, officialised the equality of status given to English and French in the Yukon. To that extent, YLA section 6 provides for English speakers and French speakers “the right to communicate with, and to receive available services from, any head or central office of an institution of the Legislative Assembly or of the Government of the Yukon” in both languages. As the Yukon Court of Appeal’s justices pointed out in the Commission scolaire francophone du Yukon no. 23 case, “[YLA] section 6 appears to be modelled on [section] 20

221 Yukon Native Language Centre, ‘Native Languages in the Yukon’ <http://www.ynlc.ca/languages> accessed 12 February 2017
224 Languages Act, RSY 2002, c 133.
of the Canadian Charter of Rights and Freedoms, which establishes a constitutional right to communications and services in both official languages in respect of dealings with the Government of Canada and the Government of New Brunswick” and section 6 bares resemblance with section 16 (1) of the Charter.\textsuperscript{225} Furthermore, English and French can be used interchangeably during court proceedings (section 5).

Nevertheless, YLA section 1(3) also recognises “the significance of aboriginal languages in the Yukon,” and calls for special measures to be implemented in order to “preserve, develop and enhance those languages in the Yukon.” Notwithstanding no aboriginal language having been granted an official status, as it is the case in the NWT and in Nunavut, this does not mean Yukon legislation has not managed to build an inclusive framework for First Nations to enjoy their languages in the public sphere. In fact, although neither YLA nor the Yukon Act (YA)\textsuperscript{226} create new linguistic obligations for the Yukon Government, this acknowledgment in YLA section 1(3) of the importance of aboriginal languages has led to these languages acquiring a particular status in Yukon legislation. Therefore, although YLA does not recognise any specific aboriginal language, under YLA everyone has a right to speak a Yukon aboriginal language in any debates or other proceedings of the Yukon Legislative Assembly (section 3 (1)) Moreover, translations of the Legislative Assembly’s proceedings may be provided when authorized by the Legislature.

This particular status is more prominent in the field of education. However, to understand the relationship between the education system and Yukon First Nations, it is necessary to understand the historical relationship between the federal and territorial governments and Yukon First Nations. In fact, “for more than a hundred years, government policies and practices have shaped the approach to education in the territory.”\textsuperscript{227} Along the lines of the instances mentioned above in quoting the TRC #5, western schooling was introduced in the Yukon through missionaries and with the legal assistance of the federal

\textsuperscript{225} Commission scolaire francophone du Yukon no. 23 v. Yukon (Procureure générale), 2014 YKCA 4.
\textsuperscript{226} Yukon Act, SC 2002, c 7.
government. This was mostly done via church-run boarding institutions whose policies were orientated towards assimilation and systematically forbade aboriginal languages to be spoken.

However, progress has been made since the days of the residential schools. In fact, the preamble of the 2002 Education Act (YEA) recognises the need for the Yukon curriculum to include the cultural and linguistic heritage of Yukon aboriginal peoples.\textsuperscript{228} The YEA relies on a robust process of devolution of power to the local relevant authorities (ie school boards, councils, school committees, Local Indian Education Authority, or directly to a Yukon First Nation). In fact, under YEA section 50 (1), after receiving a request from the relevant authority, the Education Minister may authorize educational programs to be provided in an aboriginal language. However, there are a few key factors the minister shall take into account, such as the number of students enrolled, staff availability, the programs’ feasibility, and the impact these programs might have on students whose language of instruction is English. Part 5 of the EA requires that First Nations languages be taught in schools throughout the Yukon. As of November 2015, all Yukon First Nations languages, except for Tagish, were being taught as second-language programs in twenty Yukon schools.\textsuperscript{229} Thirteen out of twenty schools are in rural communities and seven are in Whitehorse.\textsuperscript{230} Besides teaching First Nation languages, these programs also aim at promoting the history and culture of Yukon First Nations through learning one specific language. This is still the result of the YEA, more specifically section 52, which imposes an obligation upon the Education Minister to provide aboriginal language teaching, in providing for the development of instructional material (52 (1)), in employing qualified teachers (52 (2)), and in establishing policies and guidelines of the amount of instruction and the timetable in consultations with the relevant local authorities (52 (5)). In addition to these duties, the Education Minister “shall also meet on annual basis with Central Indian Education Authority to review the status of aboriginal

\textsuperscript{228} Education Act, RSY 2002, c 61.
\textsuperscript{229} Yukon First Nations Language Resources \url{<http://www.yesnet.yk.ca/firstnations/sc_lang_programs.html>} accessed 17 March 2017.
language instruction in Yukon schools and shall make appropriate modifications if necessary” (section 52 (6)).

Yukon First Nations (ie Carcross/Tagish First Nation, Champagne and Aishihik First Nations, Dawson First Nation, Kluane Tribal Council, Kwanlin Dun First Nation, Liard First Nation, Little Salmon/Carmacks First Nation, First Nation of Na-Cho Ny'ak Dun, Ross River Dena Council, Selkirk First Nation, Ta'an Kwach'an Council, Teslin Tlingit Council, Vuntut Gwich'in First Nation, White River First Nation) enjoy special rights that have been devolved to them through several self-government agreements. In many instances, these agreements grant First Nations legislative power to enact their own laws. Prior to the enactment of the 1994 Yukon First Nations Self-Government Act (YFNSGA),\(^{231}\) four First Nations legal representatives\(^ {232}\) had each entered into a final agreement that includes specific provision to each first nation under the framework of the 1993 Umbrella Final Agreement (UFA).\(^ {233}\) Besides granting First Nations with legislative and decision-making powers through Self-Government Agreements, this framework also allowed for the negotiations of the Final (land claim) Agreements, which are constitutionally protected under Section 35 of the Canadian Charter and regarded as modern-day treaties. Furthermore, the YFNSGA aims at being a territorial legislation that can be

\(^{231}\) Yukon First Nations Self-Government Act, SC 1994, c 35.

\(^{232}\) “The formal modern land claims process started in 1973 when a delegation of Yukon First Nations Chiefs presented ‘Together Today for our Children Tomorrow: A Statement of Grievances and an Approach to Settlement by the Yukon Indian People’ to then Canadian Prime Minister Pierre Trudeau. After many years of negotiation and the hard work of many visionary leaders, the historic [UFA] was signed in 1993 [between the Government of Canada, the Council for Yukon Indians and the Government of The Yukon.] It provided the template to negotiate individual land claim agreements [...] with each Yukon First Nation. Since 1993, eleven Yukon First Nations have settled their land claims and are self-governing. The federal Indian Act [Indian Act, RSC 1985, c I-5] no longer applies to them.” In fact, the Champagne and Aishihik First Nations, the First Nation of Na-Cho Ny'ak Dun, the Teslin Tlingit Council, and the Vuntut Gwich'in First Nation all had sign their own agreements with the Crown in 1993. After the YFNSGA was enacted, the Little Salmon/Carmacks First Nation and the Selkirk First Nation signed their agreements in 1997, the Tr'ondëk Hwëch'in in 1998, the Ta'an Kwäch'än Council in 2002, the followed by the Kluane First Nation in 2003, the Kwanlin Dün First Nation in 2005, and the Carcross/Tagish First Nation in 2006; see Yukon First Nation Self-Government, ‘Our Agreements’ <http://mappingtheway.ca/our-agreements> accessed 17 March 2017.

applied to all First Nations. YFNSGA and the Self-Government Agreements generally include the power to legislate on matters in relations to, inter alia, “provision of programs and services for citizens of the first nation in relation to their aboriginal languages” (YFNSGA part II, section 2).

Under this kind of provisions, First Nations have been able to enact their own language legislation as the Council of Champagne and Aishihik First Nation did with the Dákwänje Nàts’ùal Act in 2014.²³⁴ Far from only recognizing the vital importance language has in relation to livelihoods and culture, the Act also recognizes that there is a shared moral responsibility between Government (ie the four branches of Champagne and Aishihik First Nations’ Governments: the General Assembly, First Nations Council, Elders Senate, and Youth Council) and the citizens (ie Champagne and Aishihik First Nations’ people) to act to revitalize the Southern Tutchone language and other traditional languages of the Champagne and Aishihik First Nations.

Thus far, the approach to language rights is different than that of the NWT since fulfilling language rights in the Yukon does not seem to revolve around granting official status to indigenous languages. Therefore, this is what can be concluded through the through the assessment framework:

Education seems by far to be the pivot around which the Yukon manages to implement its language planning (positive obligations) for indigenous communities to use and revitalize their languages. Although these obligations resemble Canada’s obligations to uphold international human rights standards (eg CRC art.29), more of the time this seems to be the result of a careful devolution of language planning to key local stakeholders. This devolution appears to derive from land claims settlements and federal obligations (eg section 35 of the Charter) rather than being a result of compliance with international human rights.

²³⁴ Dákwänje Nàts’ùal Act Yoo X’atángí Dákhwänji Nats’ú’aw (Language Act) 2014
Court proceedings may only be conducted in the two official languages. As no Yukon status legislates on translation and interpretation, it is not possible to know whether these services are not available for indigenous native speakers. As Canada has several times showed intent to implement the UNDRIP within Canadian law, or at least to work within the spirit of the Declaration, this potential lack of support for indigenous language speakers during court proceedings could prove to be contrary to the UNDRIP’s art.13.1 and art. 13.2, which, as mentioned above, grant Indigenous Peoples rights such as the rights to be able to understand political and legal life. The wording of these articles suggests that court proceedings ought to be conducted in indigenous languages or interpretation services should be made available.

The situation communications with and services from the government is the same as for the proceedings of the Courts may only be dealt with in one of the two official languages. However, Yukon aboriginal language can be used in any debates and other proceedings of the Legislative Assembly. Furthermore, translation of “records and journals of the [Legislative] Assembly, Hansard, Standing Orders, and all other proceedings [of the Assembly]” can be authorised by the Legislature.
3.5.3 Nunavut

The territory of Nunavut accounts for one fifth of Canada’s superficies. In term of population, there were an estimated 37,146 individuals living in Nunavut in the last quarter of 2016.\textsuperscript{235} Statistics Canada estimated that 27,360 individuals, 2\% of the Aboriginal population of Canada lived in Nunavut in 2011.\textsuperscript{236} This also accounts for slightly under half of the Canadian Inuit population, making Nunavut the territory where, by far, most Inuit live. In 2008, the then Ministry of Indian Affairs and Northern Development noted that “for 75 per cent of the Inuit, Inuktitut\textsuperscript{237} is still their first language spoken in the home, and fully 15\% of Inuit (mostly living in the smaller communities) have no other language.”\textsuperscript{238} The data provided by the 2011 National Household Survey seems to concur with the 2008 report. In fact, according to the 2011 survey, there were 24,465 individuals who could speak at least one Inuit language (Inuktitut: 23,800; Inuinnaqtun: 545; Inuvialuktun: 65; Inuit languages, n.ie: 65).\textsuperscript{239}

\textsuperscript{235} Statistics Canada Table 051-0005 - Estimates of population, Canada, provinces and territories, quarterly (persons), CANSIM (database) <http://www5.statcan.gc.ca/cansim/a26?id=0510005&pattern=&p2=31&tabMode=dataTable&p1=1&stByVal=1&paSer=&retrLang=eng&csid=&lang=eng> accessed 6 March 2017.


\textsuperscript{237} In a footnote, the report specifies that the term Inuktitut also encompasses “Inuinnaqtun, the dialect of the Kitikmeot region, which includes Kugluktuk and Cambridge Bay.”


From a more sociolinguistic standpoint, the Inuit language family comprises languages such as Inuvialuktun, Inuinnaqtun and Inuktitut. Inuvialuktun is considered an endangered language and it is spoken by less than half of the population with most of its speakers being elderly people.\textsuperscript{240} In addition, according to a 2006 survey by Statistics Canada, \textsuperscript{241} 69\% of the people, who identified themselves as Inuit, said they knew Inuit. This represents a slight drop with the previous census, made ten years earlier, where 72\% of the Inuit population said they knew an Inuit language.

To better understand the different linguistic questions concerning the use of indigenous languages (mainly Inuktitut) in Nunavut, one must go back to the history of the creation of Nunavut as an official territory. As mentioned above, the process of transferring jurisdiction to territories is different from this of provinces. Whereas creating new provinces requires constitutional amendments, the creation of new territories can be done through statutory law. Prior to 1999, what is known today as the territory of Nunavut was part of the Northwest Territories.\textsuperscript{242} However, in the 1970s, Inuit activism for the establishment of a new territory in the central and eastern Canadian Arctic was channelled by Inuit organisations, such the Inuit Tapiriit Kanatam (ITK), which was then known as the Inuit Tapirisat of Canada (ITC). As part of the then federal policy on Native comprehensive claims, which started in 1973, the ITC submitted the idea of creating the official territory of Nunavut in a 1976 document called Nunavut: A Proposal for the Settlement of Inuit Lands in the Northwest Territories. The idea was to reshuffle the border of the NWT to

\begin{thebibliography}{99}
\item hyperref{AMEE=\&VNAMEF=\&D1=o\&D2=o\&D3=o\&D4=o\&D5=o\&D6=o> accessed 8 March 2017.}
\end{thebibliography}
create a new predominantly Inuit territory. In this document, the ITC laid out four goals for the Inuit Land Claims Settlement Proposal: “(1) preserve Inuit identity and the traditional way-of-life so far as possible; (2) enable Inuit to be equal and meaningful participants in the changing North and in Canadian society; (3) achieve fair and reasonable compensation or benefits to the Inuit in exchange for the extinguishment of Inuit claims; (4) protect and preserve the Arctic ecology and environment.”

Among the proposed solution to achieve the first goal, the ITC suggested “the creation of Nunavut Territory, where the Inuit will be a majority for the foreseeable future.” These proposals were officially agreed upon between the government of Canada and the ITC and formalised in the Agreement-in-Principle as to the Settlement of Inuit Land Claims in the Northwest Territories and the Yukon Territory between the Government of Canada and the Inuit Tapirisat of Canada. In the 1980s, this led the ninth NWT Legislative Assembly, which had gained a majority of Native members after the 1979 election, to survey the population about the issue of dividing the NWT. This, in turn, led the Legislative Assembly to vote in favour of putting the question to the people of the NWT. The plebiscite was held in 1982, and a majority voted in favour of the territorial division. This chain of events forced Ottawa, which had not been keen on the idea of the creation of a second political entity with a majority of non-English speakers at a time when the political scene was already much more occupied by Québec’s secessionist tendencies, to become part of the negotiations. Nevertheless, the federal government joined the

243 As pointed out by André Légaré, the reshuffling of the NWT borders should not be regarded as a unique situation. “In fact, the NWT borders shifted numerous times in the past to create other provincial or territorial jurisdictions in Canada e.g., Manitoba (1870), Yukon (1898), Alberta and Saskatchewan (1905).” See Légaré A, ‘An Assessment of Recent Political Development in Nunavut: The Challenges and Dilemmas of Inuit Self-Government’ (1998) 18:2 The Canadian Journal of Native Studies 271; For a more detailed historical overview of the evolution of Canadian treaty law regarding the reshuffling of the NWT borders, see Jean-Michel Richardson, ‘Constitutionnaliser la Langue Inuit au Nunavut’ (LLM Thesis, University of Ottawa 2016) 9 – 15.


245 See Thierry Rodon (ed), Peter Ittinuar: Teach an Eskimo How to Read, Life and Stories of Northern Leaders, vol 5 (Nunavut Arctic College 2008) 107
negotiation table with the Tunngavik Federation of Nunavut, which acted as the legal representative of the Inuit of Nunavut. Fast forward ten years and the outcome of these negotiations finally came in the form the Agreement Between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in Right of Canada (Nunavut Land Claims Agreement), which received the approval of the Inuit of the NWT, who authorized the Tunngavik Federation of Nunavut to sign the Agreement on behalf of the Inuit. In terms of languages, article 2.8.1 of the Nunavut Land Claims Agreement is interesting insofar as it states that there shall be an Inuktitut version on top of the English and French versions, but only the English and French versions shall have legal authority. Furthermore, as Jean-Michel Richardson points out, both articles 23 and 32 of the Nunavut Land Claims Agreement are important in looking at language policies affecting the Inuit language in Nunavut. In relation to article 23, which deals with Inuit employment within government, the 2004-2006 Annual Report for the Implementation of the Nunavut Land Claims Agreement identified that “given the demographics of the new territory Inuktitut ought, generally speaking, to be the language of the governmental workplace in Nunavut and the language of the delivery of government services.” Furthermore, article 23.4.2 (d)(iii) – paragraph 4 of article 23 dealing with the implementation of Inuit employment plans – requires that, in order to increase the recruitment and promotion of Inuit, jobs criteria should include fluency in Inuktitut as one of the requirements. Considering linguistic rights,

246 The Tunngavik Federation of Nunavut has been known as the Nunavut Tunngavik Incorporated since 1993.

247 Richardson (n 243).

248 As Richardson notes, in light of both the definitions in article 1.1.1 and in article 23.1.1, the word “government” ought to be construed as to also include the federal government; see Richardson (n 243).


250 The article states the following: “23.4.2 An Inuit employment plan shall include the following: […] (d) measures consistent with the merit principle designed to increase the recruitment and promotion of Inuit, such as […] (iii) inclusion in appropriate search criteria and job descriptions of requirements for an understanding of the social and cultural milieu of the Nunavut Settlement Area, including but not limited to - knowledge of Inuit culture, society and economy, - community awareness, - fluency in Inuktitut, - knowledge of environmental characteristics of the Nunavut Settlement Area, - northern experience[.]”
Richardson furthers his analysis of the Nunavut Land Claims Agreement by construing the obligations embedded in article 32.1.1\textsuperscript{251} as including linguistic policies, such as policies aiming at creating programs and services promoting and protecting the Inuit language.\textsuperscript{252} Moreover, pursuant to article 34.3.4, Nunavut Tunngavik Inc. (NTI) is able to submit an annual report, which in 2009/2010 focused on Inuit languages in Nunavut.\textsuperscript{253} In the report, NTI identified three key elements that should be achieved to provide a robust framework in which the Inuit language can grow and evolve. These key elements were: “1) raising the status of the Inuit language in society from the perspective of Nunavummiut in the immediate future, particularly youth; 2) Promoting language learning and use in the home; 3) The development of a bilingual education system and the capabilities of bilingual post-secondary school graduates.” Here it is possible to notice that the protection of languages rights is linked to the cultural well-being of Nunavummiut and is regarded as a way to give every opportunity for indigenous children to develop and to achieve their academic potential while not having to put their mother tongues aside.

One year after the Nunavut Land Claims Agreement was signed, the federal government enacted the Nunavut Act (NA), an act establishing the Territory of Nunavut.\textsuperscript{254} The NA entered into force in 1999, and Nunavut ceased to be part of the Northwest Territories to officially become the third Canadian territory. As noted by the Legislative Assembly of the Northwest Territories’ website, “[t]his change marked the first significant change to the map of Canada since Newfoundland joined Confederation in 1949.”\textsuperscript{255}

\begin{itemize}
\item \textsuperscript{251} Article 32.1.1 reads that “[w]ithout limiting any rights of Inuit or any obligations of Government, outside of the Agreement, Inuit have the right as set out in this Article to participate in the development of social and cultural policies, and in the design of social and cultural programs and services, including their method of delivery, within the Nunavut Settlement Area.”
\item \textsuperscript{252} Richardson (n 243) 19.
\item \textsuperscript{254} Nunavut Act, SC 1993, c 28.
\end{itemize}
As a territory, Nunavut is allowed to have its own legislative assembly. In fact, the NA grants the legislature with a broad range of legislative powers. Regarding Inuktitut language, section 23 (1) (n) enables the legislature to make laws in relations to “the preservation, use and promotion of the Inuktitut language, to the extent that the laws do not diminish the legal status of, or any rights in respect of, the English and French languages[.]” However, under section 29 (1), which states that the NWT laws, which have been made and not repealed prior the enactment of the NA, “are duplicated to the extent that they can apply in relation to Nunavut, with any modifications that the circumstances require. The duplicates are deemed to be laws of the Legislature and the laws made under them.” Therefore, pursuant to section 29(1), and as stated under section 38 of the Nunavut Act, the 1988 NWT’s Official Languages Act was still part of the legislation of Nunavut prior to 2008. Besides ensuring equality of status between the two federal languages, the NWT Official Languages Act established that Aboriginal languages were given recognition (preamble). In spite of the word “recognition” being vague, this also led to a bizarre situation in which five out the eight languages spoken in the NWT (ie Chipewyan, Cree, Dogrib, Gwich’in, and Slavey) were not spoken in Nunavut, but still had a de jure official status in Nunavut. In practice, however, these languages were never used as the NWT Official Language Act only expect the Government, “its boards and agencies, the courts, and the Legislative Assembly to provide services in an official language where there is a significant demand” (section 14). Nevertheless, the government of Nunavut recognized the need to enact its own language laws. Under section 18 of the NWTOLLA, a Languages Commissioner took office in 1999, and the following

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256 Official Languages Act, RSNWT (Nu) 1988, c O-1.
257 Nunavut Act SC 1993, c 28 section 38 reads ‘[t]he law of the Legislature that, under subsection 29(1), is the duplicate of the ordinance of the Northwest Territories entitled the Official Languages Act may not be repealed, amended or otherwise rendered inoperable by the Legislature without the concurrence of Parliament by way of a resolution, if that repeal, amendment or measure that otherwise renders that law inoperable would have the effect of diminishing the rights and services provided for in that ordinance as enacted on June 28, 1984 and amended on June 26, 1986.’
In 2008, the Nunavut legislature enacted a new Official Languages Act specific to the languages spoken in Nunavut (hereinafter “NOLA”).

“On April 1 [2013], as Nunavut celebrated its 14th anniversary, the territory’s Official Languages Act finally came into force, five years after it was passed.” NOLA’s preamble recalls that, under Article 32 of the Nunavut Land Claims Agreement, there is an obligation for territorial institutions “to design and deliver programs and services that are responsive to the linguistic goals and objectives of Inuit[.]” Besides embedding the official status of the Inuit language, English, and French (section 3(1)), there are a few interesting points concerning the advancement of linguistic rights for the Inuit. Section 1 states that the purpose of NOLA is “to advocate for and to achieve the national recognition and constitutional entrenchment of the Inuit Language as a founding and official language of Canada within Nunavut.”

2008 was a pivotal year for the enactment linguistic rights within the territorial legislation. Beside enacting NOLA, two other statuses were passed by the Legislative Assembly, namely the 2008 Education Act and the 2008 Inuit Language Protection Act (ILPA). Using different approaches, both acts aim at promoting and protecting Inuit languages within Nunavut’s jurisdiction. Both ILPA and NOLA enjoy a quasi-constitutional status. This quasi-

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262 Education Act, SNu 2008, c15.

263 Inuit Language Protection Act, SNu 2008, c17.

264 See NOLA (preamble): ‘[u]nderstanding, because of the fundamental character of the values expressed and the important federal, territorial and Inuit objectives reflected in this Act, that the Official Languages Act shall enjoy quasi-constitutional status in law[.]’; see also ILPA (preamble): ‘[u]nderstanding, because of the fundamental character of the values expressed and the important objectives of this Act, and on legal authority including sections 15, 25 to 27 and 35 of the Constitution Act,
constitutional status was confirmed by the Court of Justice of Nunavut in 2013 in the WSCC case. In this case involving judicial review of a decision of the Worker’s Safety and Compensation Commission and the Chief Safety Officer, the Court had to ponder over, inter alia, how to identify quasi-constitution legislations, the Court remarked that: “quasi-constitutional legislation is identified by canvassing the jurisprudence or by reading the legislation in question. Some legislation, such as human rights legislation, has long been identified by the courts as being quasi-constitutional in nature. On occasion, the legislation in question may state that it is quasi-constitutional in nature. Such is the case with the Official Languages Act, R.S.N.W.T. 1988, c. O-1, as duplicated for Nunavut by [section 29] of the Nunavut Act, S.C. 1993, c.28, and the Inuit Language Protection Act, S.Nu. 2008, c.17” (25).

The Court’s mention of human rights legislation in the WSCC case offers a good transition to discussing the nature of the Inuit Language Protection Act. Indeed, could the ILPA fall within the category? In section 2 (2), the ILPA does include itself within the framework of Nunavut’s human rights legislations in stating that ILPA shall prevail in case one of its provisions was inconsistent with or in conflict with a provision of another Act other than Nunavut’s Human Rights Act.

In its preamble, the Education Act acknowledges, inter alia, two crucial notions. First, the Act recognises the “relationship between learning and language and culture, and the importance of the curriculum and school programs being developed and delivered accordingly[.]” Second, the preamble further states that “bilingual education can contribute to the preservation, use and promotion of Inuit language and culture and provide students with multiple opportunities[.]” To this effect, the Education Act aims at creating bilingual programmes by the school year 2019-20. Regarding Inuinnaqtun, the Education Act emphasizes the revitalisation of Inuinnaqtun through “the improvement of access to communication, services, instruction and Inuit

1982, that the Inuit Language Protection Act shall enjoy quasi-constitutional status in law[.]

265 Richardson (n 243) at 32.
266 Nunavut (Minister of the Environment) v WSCC, 2013 NUCJ 11.
267 Education Act, SNu 2008, c 15, Preamble.
Language programs in Inuinnaqtun in the communities where Inuinnaqtun is indigenous” (section 3 (2)).

Pursuant to NOLA section 16, a Language Commissioner shall be appointed and their role is to “exercise the powers and perform the duties set out in [NOLA].” The role of the Language Commissioner is also to monitor the implementation of NOLA through the annual publication of a report. As pointed out in its latest report, “under section 24 of the Official Languages Act and section 28.4 of the Inuit Language Protection Act, the Languages Commissioner is required to submit an annual report to the Legislative Assembly on the activities of the Office of the Languages Commissioner during the preceding fiscal year, including a detailed account of the status of any investigations undertaken by the Languages Commissioner.” ²⁶⁸

ILPA can be regarded as consolidating rights which had been enacted in NOLA, nevertheless ILPA specifically focuses on the importance of the Inuit language at all levels of Nunavut’s society. In its preamble, ILPA recalls that the Inuit language is “foundation necessary to a sustainable future for the Inuit of Nunavut as a people of distinct cultural and linguistic identity within Canada.” ILPA covers the use of Inuit for example, upon implementation, the Inuit Language Protection Act gave parents the right to have their children educated in Inuktitut. Instruction in Inuktitut/Inuinnaqtun has been available up to Grade 3 since 2009, and by 2019 it should be available to all grades.” ²⁶⁹

In November 2015, a special committee reviewed the Education Act and found out that legislating had been beneficial to indigenous languages.²⁷⁰

²⁷⁰ Special Committee to Review the Education Act Final Report, 3rd Session, 4th Legislative Assembly, Legislative Assembly of Nunavut, November 2015.
Thus far, the legislation in place in Nunavut in terms of linguistic rights seems to tick all the boxes to fulfilling and respecting indigenous language rights for indigenous language speakers within its jurisdiction while still respecting its three official languages. This has mainly been done through consolidating the territorial legislation (NOLA, Education Act, ILPA). In applying the framework, which has been applied above to other jurisdictions, one can clearly see that Nunavut has put together a solid and comprehensive system of protection for both its Inuit languages and their native speakers. Therefore, it is possible to conclude that:

1) Although NOLA and ILPA can be regarded as the territory’s only official languages legislation, the Education Act has played a massive role in establishing a framework that allows education to be placed at the centre of this language policy. The focus here is not to revitalize or safeguard the language at all cost, but to form bilingual students who will be able to further their educations if need be. Although no international documents are mentioned in these Acts, this approach to language rights is consistent with the approach found in the Linguistic Human Rights documents aimed at protecting indigenous peoples. In fact, a parallel can be made between this approach and Article 29 (d) of the CRC through which States agree that “the education of the child shall be directed to: […] (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin.” However, in practice, the 2013 Report of the Auditor General of Canada to the Legislative Assembly of Nunavut suggested that the Education Department had not developed the tools and put resources in place to implement the bilingual requirements of the Education Act.²⁷¹

There is a lack of bilingual teachers, and the 2019-2020 deadline for implementing bilingual education throughout Nunavut will not be met. In March 2017, the Government of Nunavut amended the Education Act. Among the several amendments, the Legislative Assembly revised the 2019-2020 deadline. These amendments known as Bill 37 establish 2030 as the new target to implement fully bilingual education up to Grade 9. Furthermore, Bill 37 also includes amendments to ILPA. As noted in the bill, these amendments were made “in response to the report of the Special Committee of the Legislative Assembly on the Education Act and subsequent consultations with stakeholders, including designated Inuit organizations, district education authorities and the community at large.”

The amendment made to section 8 of ILPA is that “in subsection (1) ‘receive Inuit Language instruction’ is struck out and substituted with ‘receive the majority of the child's school instruction in the Inuit Language.’” Whereas this amendment creates more achievable goals, in scaling down its objectives the Nunavut government has also managed to weaken the objective of full instruction in Inuktitut as enshrined in the Education Act. Furthermore, Nunavut already seems in breach of the law as most schools fall behind the linguistic educational standards laid in the Education Act. Indeed, “the Education Act says Nunavut’s school system is supposed to be ‘bilingual,’ offering courses in the Inuit language and English in equal measure, from kindergarten to grade 12.” However, there is still no school in Nunavut that offers K-12 education in Inuktitut, and there are only two schools offer Inuktitut instruction beyond Grade 3 and only one beyond Grade 6, with the remaining schools offer only 45 minutes a day of Inuktitut. However, as mentioned above, this is mainly due to a lack of qualified and certified language instructors.


275 See Nunavut Tunngavik Incorporated, Saqqiqpuq: Kindergarten to Grade 12 Education in Nunavut; the Annual Report on the State of Inuit Culture and Society (2007); see also Rasmussen D, “Forty Years of Struggle and Still No Right to Inuit
2) In the proceedings of the courts, Inuit languages are given the same status as French and English, through NOLA. Before NOLA came into force, the NWTOL A section 12 (1) stated that “[e]ither English or French may be used by any person in, or in any pleading in or process issuing from, any court established by the Legislature.” On indigenous languages, section 12 (2) continues by stating “Chipewyan, Cree, Dogrib, Gwich’in, Inuktitut and Slavey may be used by any person in any court established by the Commissioner acting by and with the advice and consent of the Legislative Assembly.” Although, in practice, this had to be done through the help of an interpreter. A brief look at the case law of Nunavut’s courts and tribunals can help drawing a clearer picture of what the situation before and after the coming into force of NOLA. In R v. Shaa in 2011, the Nunavut Court of Justice pointed out the defendant’s limited comprehension of the proceedings and English language skills. Mr. Shaa had to testify with the help an interpreter. The Court said that “his primary language is Inuktitut. He has some ability to speak in English, though his comprehension under these circumstances is questionable. No interpreter was available to help the Defendant’s new lawyer interview Mr. Shaa in preparation for the trial. Defense counsel was concerned about his client’s comprehension of English during this interview” (17). This highlights that Inuktitut could only be spoken during the proceedings through an interpreter. In 2016, in R. v. Kingwatsiak, the court agreed that “[a]s is Mr. Kingwatsiak’s right, he chose to testify in Inuktitut using the services of qualified, experienced, and professional court interpreters” (193). Moreover, in this case, the transcript of the proceedings later states that “Shortly after commencing his testimony, an issue arose with respect to the quality of interpretation. The accused advised the Court that he was having some difficulty agreeing to the words the interpreters were using when translating to the Court in English what he had just said in Inuktitut” (195). These two cases show that there was (and still is) a need for a solid interpreting system to streamline all verbal exchanges with the judiciary.


277 R v Kingwatsiak, 2016 NUCJ 2.
Zooming back on linguistic human rights at the international level, it is possible to see that these more pragmatic answers are also found in international documents. In theory, giving an official status to Inuktitut and Inuinnaqtun should be enough for the proceedings to also take place in these two languages. Nevertheless, in practice, the lack of judges and court official being able to speak Inuktitut and Inuinnaqtun limits the possibility of due process in languages other than French and English. In fact, at present, none of the resident judges of the Nunavut Court of Justice, which is both the superior court and territorial court of Nunavut, speaks Inuktitut. However, interpretation is available for all court matters in both Inuktitut and Inuinnaqtun. Court proceedings are interpreted frequently (eg individuals appearing in court to testify in Inuktitut or Inuinnaqtun and interpretation is provided for all parties). As Nunavut’s first senior judge, Beverly Browne, pointed out in an interview on the future of Nunavut’s justice system with Nunatsiaq News, an Iqaluit-based news company, “I can’t focus enough on language. When people are speaking about emotional issues, it’s a different story in English than in Inuktitut. Court workers and interpreters, they do a great job, but that’s a band-aid solution to make it work […] the ideal is to get an Inuit judge.” Moreover, on the matter of translating judgments, pursuant to both NOLA section 9 (1) and section 9 (2), the quasi-judicial and judicial bodies offer translation of their decisions in English, French, and Inuktitut, and translations in Inuinnaqtun is available upon request, as recalled at the end of the Court of Appeal of Nunavut’s decision in Nunavut Tunngavik Incorporated v. Canada (Attorney General).

3) Rights to use Inuktitut and Inuinnaqtun in communications and services to and from Nunavut’s government and public agencies are ensured through

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278 Email from Clare Henderson, Executive Legal Officer to author (31 March 2017).
280 At the end of the document, it is mentioned that “Translation of this decision in Inuktitut and French is pending. Translation of this decision in Inuinnaqtun is available upon request. Official Languages Act S.Nu. 2008, c.10”; see Nunavut Tunngavik Incorporated v Canada (Attorney General), 2014 NUCA 2.
ILPA. The wording of the Act could not be clearer; services shall be provided in the Inuit language. Furthermore, there are translation requirement for Government of Nunavut to meet; under section 7, “[d]ocuments, including notices or guidelines, directed to a municipality by the Government of Nunavut for public circulation, review or comment at the municipal level, shall be provided with Inuit Language translations.” Insofar as assessing and monitoring compliance with the ILPA, it is difficult to come up with a clear picture. Individual communications are difficult to trace, but all public communications are translated in all official languages. Translations of the Legislative Assembly’s reports are also provided in English, French, and both Inuit languages. In addition, the official website of the Government of Nunavut provides four versions of the website, with every webpage translated in the four official languages.\(^{281}\)

### 3.6 United States: Alaska

The United States of America had a brutal assimilation policy toward native American communities in the process of creating and establishing its Union. The rationale behind such policies was to “civilise” the native communities for them to become part of the country. To do so, education was placed at the centre of these assimilation and acculturation strategies. ‘[M]issionary and government-sponsored schools in Alaska and the Arctic attempted to eradicate Indigenous languages and ways of knowing by punishing students for speaking their languages.’\(^{282}\)

There are four main language families spoken in Alaska. The first language family is Eskimo-Aleut and comprises languages such as Inupiaq, Central Yupik, Ungangan, and Sugpiaq. Moreover, these languages count slightly


under 13,000 speakers in Alaska. The second language family is Tsimshianic and is made of two languages, namely Coast Tsimshian and Nisga-Gitskan. The former is spoken by less than thirty speakers – among a population of 1,400 people - and the latter is almost extinct in Alaska. However, Nisga-Gitskan is still spoken in Canada by less than a thousand speakers. Haida, and its language Northern Haida, forms the third family of language. Among a population of 650 individuals, Northern Haida is spoken by around 10 native speakers. The fourth and largest language family is Athabascan-Eyak-Tlingit. In Alaska, 175 individuals speak Tlingit, 25 speak Ahtna and Dena'ina is spoken by about 50 native speakers. The Tanana languages (Lower, Upper, and Tanacross) have less than a hundred speakers, while there are respectively 12 and 150 individuals speaking Han and Gwich’in. The remaining languages are Deg Xinag (14 speakers), Holikachuk (5 speakers), and Koyukon (150 speakers). Eyak is viewed as an extinct language, and all of the others are either described as being moribund (nearly extinct) languages or dormant languages. Only Upper Tanana is considered a shifting language. However, as Michael E. Krauss points out, “[a]rriving at statistics of a number of speakers of indigenous languages out of total relevant population is complicated by two types of major factors. The first type is of course in the determination of who is a speaker, and the second is in counting who is a member of the indigenous community.” Furthermore, Alaska is a prime example in highlighting the difficulty of language retention in the Arctic; between 1997 and 2007, “all but one Alaska Native language had a lower proportion of speakers.” In addition, language retention indicators have been showing some decline in all Inuit regions of Alaska since the 1980s. In contrast, ‘since 1970 […] many Arctic communities implemented and

283 All the figures in this paragraph are from the Alaska Native Language Center of the University of Alaska Fairbanks <http://www.uaf.edu/anlc/languages/stats> accessed 27 September 2016.
institutionalized heritage language programs. Alaskan bilingual education programs were first established in elementary schools in the Yup’ik region in 1971.  

State and federal legislations have also evolved toward enacting more rights for indigenous peoples. In 1971, the US Congress passed the Alaska Native Claims Settlement Act that provided a solid answer to land and settlement claims. However, in 1998, “Alaskans for a Common Language, Inc. (ACL), an Alaskan non-profit corporation, sponsored a ballot initiative to adopt English as the state's official language and to require its sole use in “all government functions and actions[.]” the State of Alaska passed an English-only law. “The law did not go into effect because the legal challenge came almost immediately.”

In 2002, the Superior Court of Alaska had another take upon this issue and it ruled that the 1998 state’s English-only initiative was in violation of the free speech rights under Alaska’s constitution. The ACL’s line of defence was to claim “that any potential constitutional problems can be avoided if we interpret the [bill] as requiring the use of English only in the ‘formal’ and ‘official’ acts of government rather than as a categorical ban on speech in other languages in all aspects of government” (which is what the many law suits filled by non-English speaking communities were arguing.) However, the decision of the Superior Court of Alaska was appealed in 2007, and the Alaska Supreme Court ruled in favour of the bill and it entered into force the following year in 2008. Further developments were seen in 2014, the legislature of Alaska passed the

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292 Ibid.
293 See also Tiersma PM, ‘Language Policy in the United States’ in Lawrence M. Solan and Peter M. Tiersma (eds) The Oxford Handbook of Language and Law (Oxford University Press 2012)
H.B. 216, which amended the law to include twenty indigenous languages and to grant them the status of official language. Although this officialising of status could be considered as a leap forward toward some degree of realisation and of fulfilment of linguistic rights in Alaska, the 2014 “English+20” Act might not be as progressive as it seems. In fact, subsection (b) of the Act waves any obligation or duty for the public authorities to use any languages other than English in pursuing their activities. This concurs with a conclusion brought by Fernand de Varennes in which he remarks that officialising languages is beneficial in as much as the scope given by the officialising law, which can be the subject of limitations and of various considerations.

English is still the most spoken language and it is the one that is primarily used for education purposes as well, but progress has been made since the enactment of the 1990 federal Native American Languages Act initiatives, (such as the Alaska Native Education Program that aims at revitalising Alaska native languages) have been put forward through the financial support of the US Department of Education. In fact, the 1990 Native American Language Act (NALA) has a like-minded approach to language and culture to the one found in international document. Under NALA, it is acknowledged that “the


296 Alaska Legislature Sec 44 12 310 Official languages; Text: (a) The English, Inupiaq, Siberian Yupik, Central Alaskan Yup’ik, Alutiiq, Unanga/Cx, Dena’ina, Deg Xinag, Holikachuk, Koyukon, Upper Kuskokwim, Gwich’in, Tanana, Upper Tanana, Tanacross, H/Uan, Ahtna, Eyak, Tlingit, Haida, and Tsimshian languages are the official languages of the State of Alaska. (b) The designation of languages other than English as official languages of the state under (a) of this section does not require or place a duty or responsibility on the state or a municipal government to print a document or record or conduct a meeting, assembly, or other government activity in any language other than English.

297 Kristin Henrard also expands on the duality of granting a language with official status: “The status official language is neither the only possible way of granting minority languages some kind of recognition, nor a panacea for all the demands of linguistic minorities, since ‘official language status does not signal that the use of such a language in a state is provided by law […] the exact scope of a right to use an official language can always be subjected to various limitations and considerations; see also Fernand de Varennes, Language, Minorities and Human Rights (Brill 1996); see also Henrard K, ‘Minority Protection in the Area of Language Rights’ in Gabrielle Hogan-Brun and Stefan Wolff (eds) Minority Languages in Europe Frameworks, Status, Prospects (Palgrave Macmillan 2003) 41.
traditional languages of Native Americans are an integral part of their cultures and identities and form the basic medium for the transmission, and thus survival, of Native American cultures, literatures, histories, religions, political institutions, and values” (section 102 (3)). Furthermore, through the enactment of NALA, Congress recognised that the “United States has the responsibility to act together with Native Americans [including Native Alaska communities] to ensure the survival of these unique cultures and languages” (section 101). To do so, NALA requires, inter alia, the development of educational programs, as the one mentioned at the beginning of this paragraph. Nevertheless, NALA is not the only law that can be applied in Alaska and whose scope aims at fulfilling linguistic human rights through education. The State of Alaska also guarantees a certain amount of devolution to districts and school boards for them to establish their own native language curricula through a 2014 Alaska Statute on Native Language Education. This statute grants school boards the right to “establish a local Native language curriculum advisory board for each school in the district in which a majority of the students are Alaska Natives and any school district with Alaska Native students may establish a local Native language curriculum advisory board for each school with Alaska Native students in their districts.”

In the United States, linguistic obligations also exist through anti-discrimination clauses embedded in federal law. Under the language minority requirements of Section 203 of the Voting Rights Act (VRA), 42 U.S.C. § 1973aa-1a (Section 203), the State of Alaska has an obligation to provide translated materials and assistance in Alaskan native languages during election time. However, the services provided by the State of Alaska were challenged as being insufficient in the Toyukakk v. Mallot/Treadwell case in which the plaintiffs, two individual Alaska Native voters and four Alaska Native tribal entities, argued that Alaska was violating Section 203 in ‘failing to translate all the election materials and information provided in English into the covered native languages and appropriate dialects in the Dillingham Census Area (DCA), Wade Hampton Census Area (WHCA), and the Yukon-Koyukuk Census Area (YKCA).’ In failing to provide translated election material, the

298 Native American Language Act of 1990 (NALA), 25 USC 2903.
299 AK Stat § 14 30 420 (2014).
State of Alaska was stopping limited-English proficient Alaska natives from voting. Although the VRA cannot be regarded as granting language rights, section 203 is an anti-discrimination clause which can be interpreted as involving a positive obligation towards languages when it comes to the voting process. After the trial, the parties entered into a settlement that was approved by the Court in September 2015. The settlement’s outcome was that the State of Alaska agreed to provide a range of pre-election and election services in Alaskan native languages, such as pre-election and election publicity, translated voting materials, and bilingual language assistance at the polling stations.\footnote{Stipulated Judgment and Order in Mike Toyukakk, et al v Byron Mallott, et al, in the United States District Court for the District of Alaska, Case No 3:313-cv-00137-SLG.}

In recent years, two indigenous-language-related bipartisan bills were put before the US Senate, namely the Native American Languages Reauthorization Act (2014 and 2015), which aimed at amending “the Native American Programs Act of 1974 to provide flexibility and reauthorization to ensure the survival and continuing vitality of Native American languages” and the 2014 Native Language Immersion Student Achievement Act whose purpose was to amend the 1965 Elementary and Secondary Education Act to allow the Department of Education to award grants to any education agency “to develop and maintain, or improve and expand, programs that support the use by schools, from prekindergarten through postsecondary education, of Native American languages as their primary language of instruction.”

3.7 Kingdom of Denmark: Greenland

Greenland’s situation within the Kingdom of Denmark (KoD) provides an interesting case study to finish this Thesis. Greenland has a population of roughly 57,000 inhabitants, and about eighty-eight percent of Greenland’s population is Inuit. Bent Ole Gram Mortensen and Ulrike Barten remark that this situation is unique as Inuit in other Arctic states are a numerical
The majority of Greenland’s population uses West Greenlandic (Kalaallisut) as their first language. Greenlandic speakers are a minority within the Kingdom of Denmark, but through a slow devolution process, the Greenlandic language has found itself being the official language of the federalised unit that Greenland is within the KoD. Whereas the rest of the native population speaks East Greenlandic (Tunumiisut) or North Greenlandic (Inuktun), there is also a small number of the population who speaks Danish as their first language. Notwithstanding the outcome of a 2003 case brought before the Danish Supreme Court in which the Court decided that the Thule people from Northwest Greenland was not to be regarded as a separate indigenous people, North Greenlandic speakers seem to have different cultural characteristics, beside their languages, than the other Greenlandic communities who live in the South. However, this approach was consistent with the rationale of seeing Greenland as whole, which Denmark had put forward in the 1933 Permanent Court of International Justice Case on East Greenland.

From a legal standpoint, although the several government policies aim at viewing Greenland as “one land, one nation, one language,” these minority languages still exist, and the cultures of North and East Greenland are different from that of West Greenland. Kalaallisut, Tunumiisut, and Inuktun are closely related to the different Inuit languages spoken in Alaska and Canada. The

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number of individuals who speaks ‘Greenlandic’ as their mother tongues is estimated to be around 50,000. Through the 2009 Self-Government Act, Greenland is still part of the Danish Realm, but enjoys parliamentary devolution. In fact, the Self-Government Act, which has arguably gained a quasi-constitutional status, states that “Greenlandic is the official language of Greenland.”

At the international level, “Greenland [was] actively involved in drafting the UNDRIP, [and in revising and updating] the 1957 ILO convention 107, [which later led to the creation of the ILO 169].” This led to Denmark ratifying the ILO 169 in 1996 and to the signing of a joint declaration, co-signed by both Greenland and Denmark, which states that “[t]here is only one indigenous people in Denmark in the sense of the Convention 169, viz the original population of Greenland, the Inuit.” This status evolved with the enactment of the Self-Government Act whose preamble recognized that the Greenlandic people was a people in the meaning understood in international law. Since having been recognised as “a people” in the legal sense of the term, Greenlanders have been far ahead on the path of becoming independent than any other indigenous community across the Western Arctic.

The KoD ratified the Framework Convention in 1997 and it has been monitored by the Advisory Committee since 1999. In the first State Report, Copenhagen shirked its responsibility to protect, respect, and fulfil the rights of the Greenlandic population by being of the view that the FC did not apply to either of its overseas territories, because the populations of these territories

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307 Ibid.
308 Ibid.
were not defined as a minority under international law.\textsuperscript{312} Five years later, in the second State Report, Denmark furthered its view in stating that the “Home Rule Government remained in agreement with the Danish Government that the German minority in South Jutland is the only national minority in Denmark within the meaning of the Convention.”\textsuperscript{313} Therefore, the Advisory Committee’s monitoring process has instead been focusing on minority language rights for Greenlandic individuals living in Denmark. As this chapter only focuses on language rights in Greenland, the findings of these reports fall beyond the intended scope of this Thesis.

Additionally, being a nation where most of the population does speak an indigenous language, Greenland is not faced with language retention problems to the same extent as in Alaska and in the northern regions of Canada. Notwithstanding the Danish language still being taught at every level of education in Greenland, West Greenlandic remains the main language at primary and secondary levels, with opportunities for pupils to add Danish and English to their curriculums. However, “the challenge Greenland [sic] students face is developing sufficient proficiency in Danish and English so that they can pursue a post-secondary education, because even within Greenland most of the [upper-secondary] high school [(gymnasium)] and post-secondary education offerings are in Danish, not in Greenlandic.”\textsuperscript{314} There is still a lack of continuing/higher education in Greenlandic. Indeed, even though primary and lower-secondary education (folkeskole) are taught in Greenlandic, the situation is different in vocational schools (handelskole) and gymnasium where Greenlandic is used as a teaching language to the extent that there are qualified teachers who speak the language, but there are also many native Danish teachers. At the post-secondary level, although the University of Greenland offers courses in Greenlandic, Danish, and English, in most degrees

\textsuperscript{312} Report Submitted by Denmark Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities ACFC/SR (99) 9.


Danish is the predominant language. In all these cases, “Greenlandic” means West Greenlandic, and there is neither upper-secondary nor post-secondary education opportunity in Northern or Eastern Greenlandic. The problem, which East and North Greenlanders face, is the lack of education opportunities in these two languages as West Greenlandic is taught as the main language in these two regions too, although, as it is often the case in Greenland, the situation in each individual school might be more nuanced. Under international law standards, this lack of opportunities for these two languages may fall under many anti-discrimination provisions, nonetheless, with such a small population and so few speakers of Eastern and Northern Greenlandic, Greenland finds itself in a rather difficult position as it may seem nearly impossible to provide the same range of upper-secondary and post-secondary opportunities in these two languages due to a lack of qualified instructors. Furthermore, in spite of the Greenlandic/Danish debates, in Autumn 2016, a Greenlandic MP suggested that English should be taught as the first foreign language at school instead of Danish, which led to a debate that has reached every layer of society and it has been the subject of countless newspapers’ articles.315

From a constitutional standpoint, neither the lawmakers of the 1849 Constitutional Act of Denmark nor those who revised it in 1953 saw fit to enshrine the Danish language into constitutional law leaving the Kingdom of Denmark with a de facto official language, which can change at the different levels of devolution and parliamentary jurisdictions in place throughout the Kingdom.316 The 1978 Greenland’s Home Rules Bill, and the substantive 1979 Home Rules Act, stated that the Greenlandic language was the ‘main language’ while Danish still had to be taught extensively (art. 2.9). It was also stated that both languages could be used for official purposes (art.2.9.2).317 Under the

316 Grundlov Lov nr 169 af 5 juni 1953.
Home Rules Act, Danish had to be the main medium of education whereas both Greenlandic and Danish could be used in dealing with the authorities.

The 2009 Self-Government Act states that “Greenlandic” is the official language of Greenland.\textsuperscript{318} Nevertheless, this could be regarded as a semantic failure of the 2009 Self-Government Act, which, in using the umbrella term ‘the Greenlandic language’ to cover Kalaallisut, Tunumiisut, and Inuktun fails to recognise the plurality of the languages spoken throughout Greenland.\textsuperscript{319} In this regard, the legislative branch of the government of Greenland enacted a law on language policy in 2010 clarifying that, legally-speaking, the umbrella-term “Greenlandic language” includes the three main dialects spoken in North Greenland, in East Greenland, and in West Greenland (article 2.3.2).\textsuperscript{320} As Thomsen’s research shows “[t]here is one written Greenlandic language, derived from but not identical to the Central West Greenlandic dialect, which has become the standard language. One of the objectives of the Act is to promote language integration and the strengthening of community and identity by providing the framework for language training, in order to eliminate various language barriers in the society, which are also perceived as barriers to cultural and social integration.”\textsuperscript{321} Nevertheless, in practice, Tunumiisut speakers and Inuktun speakers are still discriminated against and they still have to learn West Greenlandic and Danish if they want equal access to higher education and in dealings involving reaching out to the Self-Government authorities or involving the judiciary.

The Greenlandic judiciary consists of three different court levels (Kredsret, Retten I Grønland, and Landsret). At the bottom of the court hierarchy are the district courts (Kredsret). Although district court judges are lay judges and they do not need to hold a Master degree in Law, one of the prerequisites to hold

\begin{itemize}
  \item \textsuperscript{318} Lov om Grønlands Selvstyre, Lov nr. 473 af 21 juni 2009.
  \item \textsuperscript{319} Lov om Grønlands Selvstyre, Lov nr. 473 af 21 juni 2009 chapter 7 §20 [Danish text]: ’[d]et grønlandske sprog er det officielle sprog i Grønland.’
  \item \textsuperscript{320} Inatsisartutlov nr 7 af 19 maj 2010 om Sprogpolitik.
  \item \textsuperscript{321} Thomsen ML, ‘Greenland and the United Nations Declaration on the Rights of Indigenous Peoples’ in Natalia Loukacheva (ed) Polar Law Textbook II (Nordic Council of Ministers, 2013) 261
\end{itemize}
such a position is to be bilingual in both Greenlandic and Danish. The language of the Kredsret depends on the Court’s location. The judges and court working in the districts courts whose jurisdictions cover East and North Greenland speak East and North Greenlandic respectively. “The Court of Greenland (Retten i Grønland) processes legally complicated cases in the first instance and handles the supervision and education of district judges.” The last level of Greenland’s judicial system is the Landsret, which is the High Court of Greenland. It works as an appeal court insofar as “rulings issued by the district courts and the Court of Greenland may be brought before the [Landsret].”

Pursuant to the Administration of Justice Act, the languages of the courts are Danish and Greenlandic. Court workers at every level of the judiciary speak both Greenlandic and Danish (95). Furthermore, if not all members of the court and the parties understand the language used, interpretation must be provided. In the eventually qualified interpreters are not available, members of the court can provide interpretation services on a case-by-case basis (95.2). Indeed, as the government of Denmark highlighted in a 2013 report under article 22 of the ILO 169 “[in] cases heard by the judges or deputy judges in the Court of Greenland and the High Court of Greenland, interpreters will participate to ensure that the Greenlandic parties understand each other and the case. [...] [I]t is now statutory, that a number of essential legal documents must be translated into a language which the person in question understands, and it is generally presupposed that increasingly legal documents will be translated into Greenlandic.” The judiciary is still one of the areas held by the Kingdom

324 Retsplejelov for Grønland, jf. lov nr. 305 af 30. april 2008.
325 Ibid.
of Denmark, and therefore, this means that to appeal a High Court’s judgment, a case has to go before the Danish Supreme Court, where all the proceedings are in Danish.

It is possible to see that the fulfilment of language rights is a central problematic to Greenland as nation on its path to independence. Protecting the Greenlandic language is all areas of the public sphere has been used as tool to make the case for more devolution from Copenhagen to Nuuk, and vice versa, the Greenlandic language is only protected through the autonomy granted to Greenland. Of all the Arctic regions discussed throughout this Thesis, Greenland seems the most likely to gain independence at some point in the future since the right legal framework and tools were created through the 2009 Self-Government Act that allows Greenland to trigger its own independence whenever the right situation occurs. Since the Greenlandic people has been recognised as a people, pursuant to international law standards, under the Self-Government Act, few questions arise on whether there is more than one people living in Greenland, and how to extend linguistic human rights to Inuktun and Tunumiisut speakers. Barten and Gram Mortensen claim that the question of whether there are several peoples in Greenland is of no practical value (for now), as no group within the Inuit community has claimed distinct status of a people. However, it seems likely that these questions may arise in an independent Greenland. The following questions thus require a certain degree of effort of the imagination to picture Greenland as an independent state. First, as Greenlanders are a people under international law, is it still judicious to discuss the Greenlandic language as an indigenous language? In fact, in an independent Greenland, it seems unlikely that labelling the State’s main language as indigenous will be required. West Greenlandic speakers will not be in a state in which international law protection regarding indigenous rights will be needed anymore. In the present context, although West Greenlandic

328 Mortensen and Barten (n 302).
speakers’ rights to use their own language in the public sphere seem to be protected and fulfilled under both Danish law and the ever-evolving Greenlandic law, there is still a lack of legal instruments protecting Northern and Eastern Greenlandic speakers. As mentioned above, in 2003, the Danish Supreme Court had a chance to right this wrong in recognising the Thule people (North Greenland) as an indigenous people. However, the outcome of this case was that there was only one indigenous people in Greenland: the Greenlandic people. In an independent Greenland fulfilling the linguistic obligations for indigenous peoples pursuant to human rights standards (eg ILO 169) might become a key issue. The Greenlandic State will have to recognise the plurality of indigenous cultures and languages spoken within its borders and there will be a need for implementing+ of a legal framework allowing these languages to be spoken in the public sphere – be it through creating a constitutional framework that would include these two languages or through statutory law. In international law, the legal mechanisms already exist to protect minority language speakers and they could be applicable to Greenland (eg Framework Convention). As long as Greenland is not independent, the responsibility of fulfilling minority language right for both Inuktun and the Tunumiisut still falls on Copenhagen as any recognition would have to be done by or at least pre-negotiated with Denmark. At present, Copenhagen still falls short of its international obligations to fully fulfil linguistic human right in Greenland.

329 Ibid.
4 Conclusion

Thus far, this Thesis has highlighted the different international human rights documents that can be used to fulfil the rights of indigenous language speakers in the public spheres of different Arctic jurisdictions. They include legally-binding instruments such as the CRC, the ICCPR, the ILO 169, the COE Framework Convention for the Protection of National Minorities as well as non-legally-binding documents such the UNDRIP and the OAS American Declaration on the Rights of Indigenous Peoples. Although, documents like the UNDRIP are not legally-binding, some provisions reflect other pre-existing obligations embedded in other international documents or within domestic laws. In the Arctic, the use of an international human rights approach to language rights seems best suited to protect the needs of Indigenous Peoples living in the different Arctic jurisdictions as this approach adds a layer of protection and of international monitoring. The concept behind the human rights approach is to treat linguistic rights as undeniable and indivisible from other human rights. Thus, individuals or groups deprived of their linguistic rights are prevented from enjoying other human rights, such as access to education, or to a fair trial, or the right to political representation and being involved in political life. In the Arctic, the geographical situation is such that fulfilling linguistic rights means devolving more decision-making power to regions where the federal indigenous minorities constitute the majority.

This thesis has tried to develop a country-specific framework to monitor and assess the fulfilment of linguistic human rights at the domestic level in three areas which are regarded as being basic human rights in international documents and jurisprudence. In doing so, the aim has been to assess whether the use of an international human rights approach is best suited to protect the linguistic planning needs of Indigenous Peoples living in seven Arctic states. Although the Arctic states have now adopted different policies regarding languages, they all have a common history insofar as they all carried out assimilation policies in education as part of their own nation-building processes.
In Norway, the ICCPR is given a quasi-constitutional status. This international treaty can help strengthen the interpretation of the constitution — e.g. ICCPR article 27 coupled with section 110a of the Norwegian constitution — and that has fostered a dual obligation to protect indigenous language speakers in Norway, especially the Sámi people. Pursuant to its international obligations, such as the ratification of the ILO 169, Norway has built a robust legal framework that helps protecting and fulfilling these rights. So far, the approach used by the Norwegian government in matters touching upon Sámi language rights has been to confine these rights to a specific administrative area. Through the 1998 Education Act, Northern, Southern, and Lule Sámi can be taught at primary and lower-secondary education levels in the Sámi district. In terms of education in Sámi languages outside the administrative area, there does not seem to be any comprehensive language policy. Pursuant to the 1987 Sámi Act, Sámi speakers also have a right to use their language in any court proceedings in three district courts whose jurisdictions cover the Sámi district — the Inner Finnmark District Court, the Ofoten District Court, and the Inntrøndelag District Court. Moreover, pursuant to its obligations under article 22 of the ILO 169, the Norwegian government closely monitors the rights of Sámi speakers to use their native languages in dealing with the authorities. This highlights a key element of international human rights documents. They do not always create specific language rights for indigenous peoples, but they create obligations for states to monitor these rights and to make sure that they are fulfilled through domestic law.

In Sweden, several laws frame the legal context allowing Sámi languages to be learnt and taught at schools. The 2010 Education Act has legislated on the rights to use Sámi languages at schools in stating that children whose guardians’ native language is different than Swedish should be offered tuition in these languages providing they have a basic understanding of the language. However, the main legislative approach favoured by Sweden has been to protect the minority languages themselves in granting them a minority language status pursuant to the ratification of the European Charter for Regional and Minority Languages. Although the rationale and the approach are different, in practice this gives Sámi speakers the right to use their languages in both the proceedings of the courts and with local authorities. Conversely, this legislative change also came to life because Sweden ratified
the Framework Convention at the same time as it ratified the European Charter for Regional and Minority Languages. The approach of the Framework Convention allowed Sweden to regard linguistic rights as belonging to realm of basic human rights. Like in Norway, Sweden has confined these rights to a specific area which comprises the municipalities of Arjeplog, Jokkmokk, Gällivare, Kiruna, Arvidsjaur, Berg, Härjedalen, Lycksele, Malå, Sorsele, Storuman, Strömsund, Umeå, Vilhelmina, Åre, Älvdalen and Östersund where Sámi languages are the most spoken. Furthermore, although municipalities outside this administrative area are under no obligation to hire Sámi-speaking personal, in theory, because Sámi has a national minority language status, Sámi speakers’ cases could be handled in Sámi outside the special area. However, the lack of teachers, scheduled time, funding, adequate laws and systems seem to point out to certain degree of structural discrimination as Sámi speakers do not seem able to enjoy the rights they are entitled to under the minority language law.

In Finland, the domestic legislation has evolved towards enacting a specific Sámi language law in 2003 that creates duties for the Finnish State to promote and accommodate Sámi linguistic rights. These rights are also confined to a specific area as it is the case in Norway and in Sweden. In this area, Sámi have the right to be educated in their own languages as well as using Sámi in court proceedings and in dealing with the local authorities. The Sámi have also gained linguistic and cultural autonomy through the 1995 Sámi Parliament Act, which imposes a duty on the Finnish parliament to financially support the Finnish Sámi Parliament for it to implement policies that promote and preserve the Sámi languages.

The situation is more complexed when it comes to indigenous communities living in the Russian Federation mainly because it is difficult to adapt international law to Russian constitutional law. Due to different interpretations, Russian law has come with definitions for the concept of “indigenous people” that are different from the ones found in international jurisprudence. Under Russian law it is not enough to identify as indigenous, and in every federal unit there is a legal procedure for indigenous communities to be granted special rights. Sámi people are recognised as “indigenous numerically-small people” and they can use the legal mechanisms
(communication with the local authorities and court proceedings are both done through interpretation) for such groups in place in the Kola peninsula where most Russian Sámi speakers live. Under Law No. 273-FZ, education in minority languages can be made available, but it should not be done at the expense of studying the Russian language.

In Canada, the recent evolution of language rights for indigenous peoples is more due to Canada’s own realisation of righting the wrongs of past assimilation policies. At the federal level, Prime Minister Justin Trudeau has stated his government’s willingness to enact an Indigenous Language Rights Act. However, some legal scholars argue that the protection of indigenous linguistic rights already exists in Canadian domestic law as it is possible to interpret section 35 of the Charter as creating language rights and imposing a positive obligation on Canada to promote the vitality of aboriginal languages. Nunavut, the NWT, and the Yukon also provide interesting examples in terms of language planning and language legislations at the territorial level. All three territories have enacted their own Education Act which create room for the implementation of indigenous language curricula. However, English is still the main language of instruction.

The NWT approach to indigenous language rights has been to grant an official status to nine aboriginal languages – on top of English and French – through the enactment of the 1988 Official Language Act. This equality of status has allowed these aboriginal languages to be used in all government institutions and by anyone during the proceedings of the territory’s courts. However, due to practical circumstances (lack of public officials speaking aboriginal languages) English and French still have a considerable edge over the other official languages.

In Yukon, the 2002 Yukon Language Act only recognises English and French as the official language of the territory, nevertheless under the Act everyone has the right to speak a Yukon aboriginal language in any debates or proceedings of the Legislative Assembly. Furthermore, Yukon First Nations enjoy special rights that have been devolved to them through several self-government agreements pursuant to the 1994 Yukon First Nations Self-Government Act. These rights include the power to legislate on matters related
to service in aboriginal languages, which has allowed some First Nations to enact their own language act. However, court proceedings in Yukon courts can only be dealt with in the two official languages.

Since its creation, Nunavut has consolidated its language legislation in enacting several key statuses (NOLA, Education Act, and ILPA). Although no international human rights documents are mentioned in these acts, the approach to language rights is consistent with approach found in human rights documents such the CRC as it puts education in indigenous languages at the centre of Nunavut language policy. In the judiciary, the lack of judges and court official speaking languages other than French and English makes it difficult not to have to rely on a solid interpreting system to streamline A common problem that indigenous language speakers run into is the lack of qualified government employees that speak their languages. In every jurisdiction analysed in this thesis, public services such as communication with the authorities has to be done to interpretation and translation. This results in delays and may discourage indigenous speakers for using their languages even though they are legally allowed to do so. Moreover, Nunavut already seems in breach of the law as most schools fall behind the linguistic educational standards laid in the Education Act, mainly because of a shortage of certified language instructors. Indeed, there is still no school in Nunavut that offers K-12 education in Inuktitut, and there are only two schools offer Inuktitut instruction beyond Grade 3 and only one beyond Grade 6, with the remaining schools offer only 45 minutes a day of Inuktitut. This violation of the law by the Nunavut government is unlikely to change, and it could potentially worsen with Bill 37 as the bill would likely weaken the goal of bilingual education as laid out in the Education Act.

English is still the most spoken language in Alaska and it is the one that is primarily used for education purposes as well. Federal law such as the Native American Languages Act has managed to implement financial scheme to support education in indigenous languages. Furthermore, in 2014 the State of Alaska grant official status to twenty indigenous languages. Nevertheless, this official recognition is void of meaning as it does not impose any obligation on the State of Alaska to use these languages. The Alaska English+20 law
provides a good example of weak legislative language, which, at first glance, appears to promote the use of indigenous languages in the public sphere but that does not make any significant change in term of actual language use. It is possible to rather quickly conclude that granting indigenous languages an official status is meaningless if the legislature shirks its responsibility to provide services in indigenous languages at the state-level in drafting such opt-outs in its official language act.

In Greenland, the 2009 Self-Government Act states that Greenlandic is the official language of Greenland, and the 2010 Inatsisartutlov om Sprogpolitik has defined the Greenlandic language as comprising the Greenlandic languages spoken in North, East, and West Greenland. In term of education, West Greenlandic and Danish are the most taught languages throughout the country, and this results in Northern and Eastern Greenlandic speakers being obliged to learn both languages if they want access to the same education opportunities. In the judiciary, District courts’ personal and judges generally speak the local language, and, even though it is possible for court proceedings to be interpreted in Northern or Eastern Greenlandic at higher levels of the Greenlandic judiciary (Retten i Grønland and Landsret), the proceedings are mainly in Danish and in West Greenlandic depending on available personal. Furthermore, because Greenland is still part of the Kingdom of Denmark, any appeal to the KoD’s highest instance – ie the Danish Supreme Court – is dealt with in Danish. To conclude, protecting the Greenlandic language in all areas of the public sphere has been used as a tool of devolution, but conversely the Greenlandic language is only protected through the autonomy granted to Greenland as there are no Danish laws protecting Greenlandic language speakers outside Greenland.

In conclusion, it is possible to use the human rights approach to fulfil indigenous linguistic rights in the Arctic. Linking language and culture is vital to all communities and this is reflected in using human rights vocabulary. Nevertheless, what this research has shown is that it is equally important that these rights are matched with practical linguistic accommodations. Human rights language can reflect pre-existing obligations through domestic law, and ratifying international treaties can help States understand the need to monitor linguistic rights for their minorities as well as complying with these
instruments in creating new rights. Most of the time, these rights are confined to the specific area and territory where most indigenous language speakers live. This devolution of language planning to the relevant local authorities often make sense from a state viewpoint. Asymmetrical management is key to fulfilling indigenous linguistic rights, nonetheless this form of management also means that indigenous peoples are discriminated against outside these specific areas. However, in most cases, international human rights vocabulary is not enough to fulfil these rights as it forgets the needs to implement specific measures to match linguistic demands. Furthermore, the fulfilment of linguistic rights in the public sphere of these seven Arctic States seems to suffer from a lack of qualified personal more than from a lack of relevant legislations. In addition, as highlighted in the English+20 language law in Alaska and the Education Act in Nunavut, it seems that in some cases, legislations, which may seem to recognize the need to respect indigenous language speakers’ rights to use their languages in the public sphere, are worded in weak fashions, are ignored, or even clearly violated by the authorities. To some extent, it is also possible to regard the shortage of qualified staff as a failure to fulfil language rights, and thus as a failure from the local authorities to comply with law.
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