



# **Human Rights Law Clinic Memorandum 2020**

## **Indigenous Education and International Law**

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## ***i. Table of Legal Instruments***

### **International Instruments**

American Declaration on the Rights of Indigenous and Tribal Peoples (2016)

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171

International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 2

International Labour Organization (ILO), Indigenous and Tribal Peoples Convention, C169 (adopted 27 June 1989, entered into force 5 September 1991)

UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3

United Nations General Assembly, Declaration on the Rights of Indigenous Peoples (2007) UN Doc A/RES/61/295

### **Domestic Instruments**

#### ***India***

The Constitution of India, 1950

The Right of Children to Free and Compulsory Education Act, 2009

#### ***Brazil***

Constitution of Brazil, 1988

National Education Plan (NPE 2014-2024)

São Gabriel da Cachoeira Department of Education Municipal Law.87 (brought into force 24 May 1999).

Presidential Decree No.6861 issued on May 27, 2009

## ***ii. Table of Abbreviations***

FUNAI	National Foundation of the Indian
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO 169	UN General Assembly, Convention on the Rights of the Child
PNE	National Education Plan (Brazil)
RTE ACT	Right to Free and Compulsory Education Act
ST	Scheduled Tribes
UN	United Nations
UNCRC	United Nations Convention on Rights of the Child
UNDRIP	United Nations Declaration on Rights of Indigenous Peoples

# 1. Introduction and Background

Formal education is often considered a 'contradictory resource',<sup>1</sup> as it can offer fulfilment and opportunities, however it can also have profoundly negative impacts and reinforce existing socio-economic inequalities in addition to creating new ones. For indigenous peoples, factory schools have produced results of the latter kind. The term 'factory schools' may be a relatively new concept, however, the establishment of institutional schooling with the intention of 'civilising' indigenous peoples has occurred around the world for several centuries.<sup>2</sup> Factory schools involve the forced removal of children from their families and the context of their local communities, in order to 'inculcate them with the skills, subjectivities, and disciplines of the modern nation-state.'<sup>3</sup> This was certainly the intention of the residential schools established in Australia, Canada and the United States in the nineteenth century which sought to 'kill the Indian in the child.'<sup>4</sup> This assimilationist approach to indigenous education has continued to the present day; the founder of the world's largest residential school in India proudly announced that the school will transform indigenous peoples from 'liabilities and tax-consumers into assets and taxpayers.'<sup>5</sup> Such harmful and coercive forms of education have resulted in decades of trauma for indigenous peoples and led to countless deaths, sexual, physical and mental abuse, language extinction, and the deskilling and devaluation of indigenous knowledge.<sup>6</sup>

Yet, many countries today continue to violate the rights of indigenous peoples to determine and control their own education and fail to comply with their obligations under international human rights law. This memorandum will examine whether States are complying with or violating their obligations under international human rights law, using India and Brazil as case studies. Firstly, this memorandum will analyse how Brazil and India have integrated the international human rights laws and standards by which they are bound, into their national laws and policies with regards to education and the rights of indigenous peoples. This section

<sup>1</sup> Rob Higham and Alpa Shah, 'Conservative force or contradictory resource? Education and affirmative action in Jharkhand, India' [2013] 43(6) *Compare: A Journal of Comparative and International Education* 718

<sup>2</sup> Survival International, 'Factory Schools: Erasing indigenous identity' (*Survivalinternational.org*, 2019) <<https://assets.survivalinternational.org/documents/1810/factory-schools-full-report.pdf>> accessed 20 March 2020

<sup>3</sup> Bradley. A. Levinson, *The Cultural Production of the Educated Person: An Introduction*. in Levinson and others (eds), *The Cultural Production of the Educated Person: Critical Ethnographies of Schooling and Local Practice* (SUNY Press 1996) 1

<sup>4</sup> Roger Maaka and Chris Andersen, *The Indigenous Experience: Global Perspectives* (Canadian Scholars' Press 2006) 112

<sup>5</sup> Rajaraman Sundaresan, 'Achyuta Samanta, the Myth of being a Messiah' (*Countercurrents.org*, 2 May 2019) <<https://countercurrents.org/2019/05/achyuta-samanta-the-myth-of-being-a-messiah-rajaraman-sundaresan>> accessed 20 March 2020

<sup>6</sup> Survival International (n2)

will be divided into: indigenous peoples' right to education, education and the right to self-determination, education and the right to culture and language. It will draw upon examples from India and Brazil in order to explore these issues. In the absence of examples from these two countries, other positive case studies will be drawn from elsewhere in order to bolster analysis where needed. Finally, the memorandum will propose amendments in policy and law to end the use of factory schools and allow indigenous peoples to have true control over their education.

## 2. Indigenous Peoples' Right to Education

Education is a rewarding economic investment that can lift citizens out of poverty and plays an essential role in the development of children.<sup>7</sup> While a plurality of education models exist, the predominant form of education rolled out by States around the world is formal schooling which delivers a standardised form of education that reinforces the status quo.<sup>8</sup>

For indigenous peoples such a model of education has led to the creation of factory schools or at the very least the devaluation of their knowledge, languages, customs and traditions, which continues to this day.<sup>9</sup> For example, in 2008, the Australian government established an initiative called 'Closing the Gap' which sought to improve educational outcomes for Aboriginal and Torres Strait Islander children.<sup>10</sup> However, the standard methods used to measure success in this initiative were based on non-Aboriginal norms which resulted in the categorisation of students as failures and achievers, rather than a recognition of a broader scope of talents and abilities.<sup>11</sup> Crucially, neither the quality of teaching nor the school's ethics and principles are included as indicators in this initiative which perpetuates an existing discourse that 'underachievement' is the fault of Aboriginal children rather than an inappropriate model of education.<sup>12</sup> Such teachings are not unique to Australia as these methods are widely used in factory schools globally and continue to decimate indigenous languages and knowledge today.<sup>13</sup>

The fourth goal of the UN Sustainable Development Goals (SDGs) is solely dedicated to education and target 4.5 aims to achieve equal access to all levels of education for vulnerable groups including indigenous peoples by 2030.<sup>14</sup> Though this is not binding, States including

<sup>7</sup> General Comment No. 13: The right to education (article 13) (1999) (Adopted by the Committee on Economic, Social and Cultural Rights at the Twenty-first Session, E/C.12/1999/10, 8 December 1999)

<sup>8</sup> Leyla Acaroglu, 'System Failures: The Education System and the Proliferation of Reductive Thinking' (Mediumcom, 22 October 2018) <<https://medium.com/disruptive-design/system-failures-the-education-system-and-the-proliferation-of-reductive-thinking-dccf7dbb9b96>> accessed 21 May 2020

<sup>9</sup> Survival International (n2)

<sup>10</sup> Rosalie Schultz, 'Closing the Gap and the Sustainable Development Goals: listening to Aboriginal and Torres Strait Islander people' [2019] 44(1) Australia and New Zealand Journal of Public Health <<https://doi.org/10.1111/1753-6405.12958>> accessed 22 May 2020

<sup>11</sup> Elizabeth Jackson-Barrett, Education for Assimilation: A Brief History of Aboriginal Education in Australia. in , Sámi Educational History in a Comparative International Perspective (Springer Nature 2019) 308

<sup>12</sup> ibid

<sup>13</sup> United Nations Department of Public Information, 'The United Nations Permanent Forum on Indigenous Issues: Indigenous Languages' (UN.org/indigenous, 19 April 2018) <<https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/04/Indigenous-Languages.pdf>> accessed 22 May 2020

<sup>14</sup> United Nations, 'Sustainable Development Goal 4: Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all' (Sustainabledevelopment.un.org, June 2016) <<https://sustainabledevelopment.un.org/sdg4>> accessed 23 May 2020

India and Brazil have agreed to make progress towards the full achievement of the SDGs by 2030.<sup>15</sup> However, access to education stands in contrast to access to appropriate education. Factory schools offer indigenous peoples 'access to education' which is assimilationist and the Truth and Reconciliation Commission of Canada has described the latter as 'cultural genocide.'<sup>16</sup> It is therefore essential that indigenous peoples have access to a differentiated education which they can control. Articles 13 and 14 of International Covenant of Economic, Social, and Cultural Right (ICESCR) ensure that everyone has the right to education without discrimination and that education must focus on 'developing a person's personality and sense of dignity'.<sup>17</sup> Additionally, Article 28 of the Convention on the Rights of the Child (UNCRC) imposes a duty on the State to provide free primary education to all children.<sup>18</sup> Article 28 of UNCRC and Articles 13 and 14 of ICESCR can be interpreted together to mean that every child should be provided free primary education which is non-discriminatory and contributes to the overall development of the child.

Both India<sup>19</sup> and Brazil<sup>20</sup> have specific provisions in their respective constitutions that establish education as a right of children, and for the proper implementation of this right both States have specific laws that establish provisions for providing free and compulsory education to children. Additionally, they are State Parties to Covenants such as the ICESCR which requires them to enact specific education laws for children.

## 2.1. India

Currently, India's education laws strictly adhere to formal schooling and allow little room for different models of education. Education in India is governed by the Right to Free and Compulsory Education Act, 2009 (RTE) and states that children between the age of six to fourteen years have a right to free and compulsory education.<sup>21</sup> The RTE Act interprets education as elementary education, which is the education provided to children from the first to the eighth grades. However, home education or vocational education are not considered a part of the education included in its laws. Article 21 A of the Indian Constitution (Eighty-sixth

<sup>15</sup> *ibid*

<sup>16</sup> David. B Macdonald and Graham Hudson, 'The Genocide Question and Indian Residential Schools in Canada' [2012] 45(2) Canadian Journal of Political Science 429-430

<sup>17</sup> UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, 3

<sup>18</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://www.refworld.org/docid/3ae6b38f0.html> [accessed 26 May 2020]

<sup>19</sup> The Constitution of India, 1950, Art. 21A

<sup>20</sup> The Constitution of Brazil, 1988, Art. 205

<sup>21</sup> Right to Free and Compulsory Education Act, 2009

Amendment) Act, 2002) provides that every State has a responsibility to provide free and compulsory education to children aged between six to fourteen years. Such education can be provided in any manner it sees fit.<sup>22</sup>

The 2011 census highlighted the reality of indigenous education in India. It reported a fourteen percent gap between the literacy rates of indigenous people and the general population.<sup>23</sup> Additionally, nearly fifty percent of indigenous children dropped out after primary education and almost eighty percent dropped out after high school.<sup>24</sup> Although India partially fulfils its obligations under Article 28 of UNCRC by providing free primary education, the high dropout rates means that India is failing to adhere to all of its obligations under Article 28.<sup>25</sup> RTE Act excludes the needs of indigenous peoples as neither indigenous languages or cultural practices are taught, and emphasis is placed only on mainstream subjects like mathematics and science.<sup>26</sup> India has been credited for its progress towards SDGs on education by putting into action initiatives like Sarva Shiksha Abhiyan.<sup>27</sup> This initiative came from the 'Education For All' movement which ensures that every child who is between the age of six to fourteen goes to school, and Right to Education. However, India still faces major challenges such as the quality of education provided and a high number of drop-outs due to socio-economic barriers.<sup>28</sup> The focus of both education programmes is to provide formal education and currently both initiatives fail to consult indigenous communities on the curriculum, language, content and pedagogy, nor are academic calendars made compatible with key symbolic, spiritual and cultural events.<sup>29</sup>

In Odisha, the state government launched an education scheme to teach children in their mother tongue languages in 2007.<sup>30</sup> This programme currently includes 21 tribal languages present in that region.<sup>31</sup> In the Gajapati district of Odisha, the local tribal language Soura was used to teach children in primary classes.<sup>32</sup> However, many teachers possessed little to no

<sup>22</sup> ibid

<sup>23</sup> V Santhakumar and Amarendra Das, 'Schooling of the Scheduled Tribes in India: Lessons from the Education of Indigenous People in Brazil' (2016) University Practice Connect: Azim Premji University <<https://practiceconnect.azimpremjiuniversity.edu.in/schooling-of-scheduled-tribes-in-india/>> accessed on 29 April 2019

<sup>24</sup> ibid

<sup>25</sup> UNCRC (n18) Article 28.

<sup>26</sup> ibid.

<sup>27</sup> Department of School Education and Literacy, 'Elementary education: Samagra Shiksha Abhiyan' (*Mhrd.gov*, 9 April 2018) <<https://mhrd.gov.in/ssa>> accessed 1 June 2020

<sup>28</sup> Beena Pandey, 'Achieving SDG 4 in India: Moving from Quantity to Quality Education for All' [2018] 1(232) Research and Information System for Developing Countries <<https://ris.org.in/newasiaforum/achieving-sdg-4-india-moving-quantity-quality-education-all>> accessed 22 May 2020

<sup>29</sup> ibid

<sup>30</sup> V SanthaKumar (n23)

<sup>31</sup> ibid

<sup>32</sup> ibid

working knowledge of Soura and students were also taught Odia, English and Hindi as additional languages, in turn the learning of many students was hampered as they were unable to fully understand the subject matter being taught.<sup>33</sup> The lack of knowledge of the Soura language by teachers also contributes to its endangerment. While India is partially fulfilling its obligations under UNCRC, it urgently needs to address the discrepancies in the educational achievement of indigenous children and the general population. It is evident that domestic laws such as the RTE Act as it stands, delivers a one size fits all approach to education which hinders the development and dignity of indigenous children and therefore is not compliant with ICESCR. India could improve this by including provisions in the RTE Act that allows home education and include mother-tongue based education for children.

## 2.2. Brazil

The laws which Brazil has established with regards to indigenous education is a notable achievement due to hard fought campaigns by indigenous peoples, and in some regards is the most advanced legislation on the rights of indigenous peoples in the world.<sup>34</sup> Specific articles on indigenous peoples' right to education are mentioned in the 1988 Constitution such as article 210, paragraph two, that indigenous communities shall have the right to be taught through the medium of their native languages and methods, in addition to Portuguese.<sup>35</sup> This right guarantees indigenous peoples the right to a differentiated and bilingual education should they wish to pursue it.<sup>36</sup>

However, this only concerns elementary education and does not clarify whether indigenous peoples have the right to higher education using indigenous languages and learning methods.<sup>37</sup> This in turn impacts the rights of indigenous parents and communities to choose indigenous education for their children beyond an elementary level, and significantly reduces the opportunities for indigenous children to access further education in their native languages and learning methods at university levels. The specific laws that allow indigenous peoples to establish their own schools has prevented factory schools from being established in Brazil since the 1980s, however as education funding allocation is the responsibility of states and

<sup>33</sup> *ibid*

<sup>34</sup> Fabiana De Oliveira Godinho, 'The United Nations Declaration on the Rights of Indigenous Peoples and the Protection of Indigenous Rights in Brazil' [2008] 12(1) Max Planck Yearbook of United Nations Law 284

<sup>35</sup> 1988 Brazilian Constitution. Article 210, para.2.

<sup>36</sup> *ibid*

<sup>37</sup> *ibid*

municipalities, the quality of education that indigenous peoples receive varies greatly due to inconsistent funding from place to place, and means that bad practices still occur.<sup>38</sup>

In a 2005 school census, almost thirty five percent of indigenous schools were either located in the houses of teaching staff, religious buildings, warehouses or other schools and nearly 240 schools reported 'alternative settings.'<sup>39</sup> Therefore, a significant amount of indigenous schools were based in inadequate and inappropriate locations.<sup>40</sup> In addition to poor infrastructure due to inconsistent funding, there are also discrepancies in levels of training for teachers in indigenous schools or rigorous checks on their fluency and ability to teach in indigenous languages.<sup>41</sup> Indigenous teachers are often employed on temporary and insecure contracts which results in low job satisfaction and disruption to indigenous children's learning.<sup>42</sup>

Due to these structural failures, many indigenous children have poor learning outcomes, which further exacerbates existing inequalities.<sup>43</sup> The under-funding and inconsistencies in the quality of indigenous education at all levels, makes it difficult for indigenous children to complete the basic level of education and has led to a dramatic decline in the enrolment of indigenous children at the high school level in comparison to the enrolment rate at primary schools.<sup>44</sup> The 2010 National Census established that over 89,000 indigenous children completed primary school, however only 12,000 were enrolled at secondary level.<sup>45</sup> Although, indigenous peoples in Brazil make up less than one percent of the population, they constitute over thirty percent of its illiterate population.<sup>46</sup> Article 208 of the Constitution declares that the Brazilian State will provide free mandatory basic education from the ages of four to seventeen and assures free basic education provision to all those who did not access it at a proper age.<sup>47</sup> Additionally, it states that students will be provided with assistance in all grades of basic education through supplementation programmes, providing school materials, transportation, food, and health care.<sup>48</sup>

<sup>38</sup> Alexandre Guilherme, 'Indigenous Education in Brazil: The Issue of Contacted and Noncontacted Native Indians' [2015] 9(4) *Diaspora, Indigenous, and Minority Education: Studies of Migration, Integration, Equity, and Cultural Survival* 209-213

<sup>39</sup> *ibid*

<sup>40</sup> *ibid*

<sup>41</sup> *ibid*

<sup>42</sup> *ibid*

<sup>43</sup> Elisa Meirelles, 'Povos indigenas isolados do aprendizado' (*NOVA ESCOLA*, 1 February 2014) <<https://novaescola.org.br/conteudo/3575/povos-indigenas-isolados-do-aprendizado>> accessed 25 May 2020

<sup>44</sup> *ibid*

<sup>45</sup> *ibid*

<sup>46</sup> Cultural Survival, 'Observations on the State of Indigenous Human Rights in Brazil' (*Culturalsurvival.org*, 2016) <<https://www.culturalsurvival.org/sites/default/files/UPR2016Brazil%20final.pdf>> accessed 20 March 2020

<sup>47</sup> 1988 Brazilian Constitution. Article 208.

<sup>48</sup> *ibid*

However, many indigenous families move from rural to urban areas in pursuit of a quality education for their children and communities as indigenous schools with communities of less than ten families are often shut down by the government.<sup>49</sup> Brazil is obligated under UNCRC which it ratified in 1990 to rectify the discrepancies of educational outcomes between indigenous children and the general population.<sup>50</sup> Article 28 of the UNCRC emphasises that States Parties must take measures to encourage regular attendance at schools and reduce drop-out rates, this article is in conjunction with the non-discrimination clause which means there should be no discrepancy.<sup>51</sup>

Despite this, increasing funding for indigenous education and increasing access to indigenous schools has failed to materialise. In 2014, Brazil established a ten-year National Education Plan (PNE) with the aims of universalising school attendance, diminishing illiteracy, improving the quality of teaching and vocational training and establishing a commitment to spending ten percent of its GDP on public education resources.<sup>52</sup> However, in 2016 the proposal of the Constitutional Amendment-no.241 was put in place which proposed a twenty-year austerity plan to freeze public education and health spending regardless of an increase in population size.<sup>53</sup> Furthermore, a 2016 report by Cultural Survival established that twenty five percent of indigenous children in Brazil have no access to education and fifteen percent of indigenous children between the ages of ten and fifteen are illiterate.<sup>54</sup> This demonstrates that without the revocation of Constitutional Amendment 241, Brazil is not only failing to meet its obligation under the UNCRC, but as evidence shows, is increasingly unlikely to meet the targets and expectations for education set by its own government. Therefore, while factory schools are not currently present in Brazil, the current practices of the government demonstrate that indigenous children are still being significantly disadvantaged.

<sup>49</sup> Elisa Meirelles (n43)

<sup>50</sup> UNCRC (n18) Article 28.

<sup>51</sup> *ibid*

<sup>52</sup> PNE, "Plano Nacional de Educação - Plano Nacional de Educação - Lei N° 13.005/2014" ([pne.mec.gov.br](http://pne.mec.gov.br), 2014) <<http://pne.mec.gov.br/18-planos-subnacionais-de-educacao/543-plano-nacional-de-educacao-lei-n-13-005-2014>> accessed 30 April, 2020.

<sup>53</sup> Marcelo Lima and Samanta Lopes Maciel, "A Reforma Do Ensino Médio Do Governo Temer: Corrosão Do Direito à Educação No Contexto de Crise Do Capital No Brasil" (2018) 23 *Revista Brasileira de Educação*.

<sup>54</sup> Cultural Survival (n46)

### 3. Education and the Right to Self-Determination

Self-determination is central to the realisation of indigenous peoples' rights and allows indigenous peoples the freedom to decide how they want to live their lives, including determining their identity, political status and their 'economic, social, and cultural development'.<sup>55</sup> The right to self-determination is set out in Article 1 of the ICCPR and ICESCR.<sup>56</sup> The CCPR's General Comment 12 on Article 1 (Right to Self-determination) adopted at the Twenty-first Session of the Human Rights Committee forcefully establishes that the right to self-determination is fundamental to the fulfilment of all other rights in the Covenant.<sup>57</sup> However, this was written in 1984 and was held in the context of decolonial State formation and with reference to Trust and Non-Self-Governing Territories.<sup>58</sup> The right to self-determination for indigenous peoples has only been expressly included in Article 3 of UNDRIP.<sup>59</sup> However, unlike the two Covenants, UNDRIP is non-binding and actions to the fulfilment of UNDRIP are therefore voluntary.<sup>60</sup>

The right to self-determination can be broadly interpreted to provide indigenous peoples with the right to choose the kind of education they want for their children, as it gives them the right to freely pursue their social and cultural development. It was noted in the meeting of the Permanent Forum of Indigenous Issues that indigenous youth would be alienated from their culture if they are not provided the appropriate indigenous education.<sup>61</sup> It was also emphasised in this session that education is an essential element for the right to self-determination, and thus, steps should be taken to ensure education is available in various indigenous languages.<sup>62</sup> Education is fundamental for generations to pass on their knowledge, identity, culture, customs, traditions and values, therefore the interference of States and Non-State actors in indigenous education denies indigenous peoples the right to self-determination and education in the way they see fit.<sup>63</sup> Factory schools deny indigenous peoples the ability to

<sup>55</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171

<sup>56</sup> UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3

<sup>57</sup> UN Human Rights Committee (HRC), *CCPR General Comment No. 12: Article 1 (Right to Self-determination), The Right to Self-determination of Peoples*, 13 March 1984, available at: <https://www.refworld.org/docid/453883f822.html> [accessed 13 May 2020]

<sup>58</sup> *ibid.*

<sup>59</sup> UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples : resolution / adopted by the General Assembly, 2 October 2007, A/RES/61/295*, available at: <https://www.refworld.org/docid/471355a82.html> [accessed 13 May 2020]

<sup>60</sup> *ibid.*

<sup>61</sup> United Nations, 'Importance of Indigenous Education and Culture Highlighted, as Permanent Forum Continues Second Session' (21 May 2003) <<https://www.un.org/press/en/2003/hr4674.doc.htm>> accessed 15 March 2020.

<sup>62</sup> *ibid.*

<sup>63</sup> UNHRC (n56)

enjoy the right to self-determination by coercing them into 'mainstream' education which fails to meet their needs or enhance their prospects and development.

### 3.1. India

When the UN adopted two international Covenants in 1966, India was among the countries that insisted on recognising and including self-determination as a right in them.<sup>64</sup> However, neither the Indian Constitution nor any other law in India provides the right to self-determination. While India has ratified ILO Convention 107, and voted in favour of UNDRIP, it is against providing any special status or recognition to indigenous minorities or right to self-determination or autonomy, and is yet to ratify ILO Convention 169.<sup>65</sup> India is estimated to have over 104 million indigenous population, however, none of them are officially recognized as indigenous peoples.<sup>66</sup> India only recognises 704 ethnic groups known as 'Schedule Tribes', but there are many more tribal groups that are not officially recognised.<sup>67</sup> The lack of any expressly written provision in the domestic laws of India and their failure to recognise 'indigenous peoples' makes it difficult for indigenous peoples to exercise this right for their own development.<sup>68</sup> Nonetheless, for the protection and development of their culture, indigenous peoples can claim the right to self-determination in India on the basis of the fact that India is a party to both Covenants and can be held accountable under international law.<sup>69</sup>

The Kalinga Institute of Social Sciences (KISS) in India is the world's largest residential school for indigenous children.<sup>70</sup> KISS educates almost 30,000 indigenous children today.<sup>71</sup> KISS has openly stated that its purpose is to transform indigenous children from being 'a liability on the State to an asset for the State'.<sup>72</sup> The discourse behind such schools is that indigenous peoples are a liability for the State because they practice their own culture and ways of living, this discrimination has directly contributed to the reduction in the number of indigenous minorities.<sup>73</sup> This makes it essential for India to ensure that indigenous peoples enjoy the right

<sup>64</sup> Balraj Puri, 'Sovereignty, Territorial Integrity and Right of Self-Determination (27 January 2001) 36(4) Economic & Political Weekly <[https://www.epw.in/journal/2001/04/commentary/sovereignty-territorial-integrity-and-right-self-determination.html?0=ip\\_login\\_no\\_cache%3D73c72dda39f31b57471f9ebddc9b21a](https://www.epw.in/journal/2001/04/commentary/sovereignty-territorial-integrity-and-right-self-determination.html?0=ip_login_no_cache%3D73c72dda39f31b57471f9ebddc9b21a)> accessed on 27 April 2020.

<sup>65</sup> International Labour Organization (ILO), Indigenous and Tribal Peoples Convention, C169 (adopted 27 June 1989, entered into force 5 September 1991)

<sup>66</sup> *ibid*

<sup>67</sup> United Nations (n60)

<sup>68</sup> IWGIA, 'Indigenous people in India', (2016) IWGIA <<https://www.iwgia.org/en/india.html>> accessed 10 April 2019

<sup>69</sup> *ibid*

<sup>70</sup> Kalinga Institute of Social Sciences, 'What they say' (*KISS- Kalinga Institute of Social Sciences*, 2012) <<https://kiss.ac.in/>> accessed 22 May 2020

<sup>71</sup> *ibid*

<sup>72</sup> Rajaraman Sundaresan (n5)

<sup>73</sup> *ibid*

to self-determination, including the right to establish their own means to education as it would ensure the protection for their way of life for generations to come. This right should also act as a protection against the existence of factory schools like KISS whose primary aim is to assimilate indigenous children into the dominant society.

KISS is harmful not only because of its ideology but also because of its treatment of indigenous children. In 2017, the Child Welfare Committee conducted an inquiry and found atrocious living conditions causing illnesses such as tuberculosis amongst children.<sup>74</sup> Factory schools like KISS dismantle indigenous families by taking indigenous children away from their families into an environment where they are indoctrinated and shaped to become an alienated and docile workforce for the country. A significant number of children also drop out of factory schools or try to run away, and in certain cases they die because of the uninhabitable conditions.<sup>75</sup> KISS's appreciation by many Parliamentary Ministers, despite the controversies, shows that education is being valued for its potential as a profitable outcome rather than an essential right.<sup>76</sup> This is evidenced further by KISS's recent collaboration with Adani, a mining corporation which recently established a new factory school in India.<sup>77</sup> This particular collaboration threatens the lands and livelihoods of Adivasis as the sole purpose of this factory school is to alienate Adivasis from their cultural identity and minimise their voices by disconnecting them from their lands.<sup>78</sup> These conditions show a breach of Article 29 of UNCRC which clearly states that education provided to children should aid the development of their personalities, talents and mental and physical abilities to their fullest potential.<sup>79</sup> Thus, to protect the indigenous population and their prospects, it is necessary that the government take proper measures by ensuring their right to determine their own education.

It is necessary to ensure that indigenous peoples are able to put legal weight to their claim to self-determination as it will ensure their survival and the preservation of languages and culture. It will also protect them from factory schools like KISS that deprive them of their families and culture. This right can be further interpreted as their right to choose the education their children receive. In India, the education of children is dealt with according to the provisions established

<sup>74</sup> Debabrata Mohanty, 'Odisha tribal school, one of country's largest, found to be 'untidy, unhygienic': Govt report *Hindustan Times* (Bhubaneswar, 28 October 2017) <<https://www.hindustantimes.com/india-news/odisha-tribal-school-one-of-country-s-largest-found-to-be-untidy-unhygienic/story-AHi0uX9ecToFDeTfh1FvKO.html>> accessed on 28 April 2020.

<sup>75</sup> *ibid*

<sup>76</sup> Kalinga Institute of Social Sciences (n70)

<sup>77</sup> Survival International, "Brazen and shameless:" outrage as controversial Indian mining company opens tribal school' (*Survival Internationalorg*, 12 January 2020) <<https://www.survivalinternational.org/news/12316>> accessed 22 May 2020

<sup>78</sup> *ibid*

<sup>79</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, Art.29

by the RTE Act.<sup>80</sup> RTE Act provides free 'elementary education'<sup>81</sup> and takes the right of parents to choose suitable education for their children which is provided to them under Article 14 of UNDRIP. Furthermore, India is also obligated under the provisions of Article 13 ICESCR to grant parents the rights to choose the kind of education they want for their children, instead of sending them to mainstream schools established by the public authorities.<sup>82</sup>

SECMOL foundation's Operation New Hope (ONH), provides a positive example on how active community involvement and participation in establishing education standards can significantly improve educational outcomes.<sup>83</sup> ONH focused on involving villagers in the administration and functioning of schools, as they understood that the major reason behind the failure of the education system in Ladakh was that it lacked community involvement.<sup>84</sup> Such inclusion not only helped in improving the education standards but also strengthened community bonds.<sup>85</sup> Similarly, to help indigenous peoples progress it is necessary to involve them in decisions involving them, their children and communities.

### 3.2. Brazil

Brazil is a State party to UNDRIP and has ratified ICESCR, ICCPR and ILO 169. However, during the drafting of UNDRIP, Brazil was amongst the States that was reluctant to include 'indigenous peoples' as the term 'peoples' infers rights such as the right to autonomy, self-government and the need for free, prior and informed consent before any national projects that may affect them takes place.<sup>86</sup> Though Brazil became a State Party to UNDRIP, in Brazil's 1988 Constitution, articles regarding indigenous peoples' rights refer to indigenous 'communities' or groups, rather than peoples due to this concern for 'national interests.'<sup>87</sup>

The respect for the right to autonomy and self-government has a direct impact on indigenous people's enjoyment of the right to education.<sup>88</sup> Many indigenous schools in Brazil are situated within indigenous lands which continue to be threatened by the illegal activities of mining companies, loggers and cattle ranchers.<sup>89</sup> Destructive acts illegally carried out by agri-

<sup>80</sup> *ibid.*

<sup>81</sup> *ibid.*

<sup>82</sup> ICESCR Article 13

<sup>83</sup> Secmol, 'Education Reforms and ONH' (*SECMOLorg*, 2012) <<https://secmol.org/about/education-reforms/education-in-ladakh/>> accessed 22 May 2020

<sup>84</sup> *ibid.*

<sup>85</sup> *ibid.*

<sup>86</sup> Fabiana De Oliveira Godinho (n34) 253

<sup>87</sup> *ibid.*

<sup>88</sup> Dominic O'sullivan, 'Maori Education and Principles of Self-Determination in the Twenty-First Century' [2001] 7(1) *Waikato Journal of Education* <<https://core.ac.uk/download/pdf/29200056.pdf>> accessed 1 June 2020

<sup>89</sup> *Survival International* (n2)

businesses on indigenous lands has resulted in increased homicides and violence against indigenous peoples, river and soil pollution which has led to diseases and infant mortalities and the extinction of plants and animals which are sacred to indigenous peoples.<sup>90</sup> This is further worsened by the current president Jair Bolsonaro's anti-indigenous stance and the number of indigenous lands demarcated has not increased since 2016.<sup>91</sup> Additionally, Bolsonaro has attempted to functionally deactivate the government organ FUNAI (National Foundation of Indigenous Peoples) by heavily cutting funding.<sup>92</sup>

The continuous encroachment of indigenous lands and violation of indigenous people's rights has resulted in the displacement of many indigenous communities such as the Guarani Kaiowá. The Guarani Kaiowá in Dourados in the State of Mato Grosso Do Sul have high numbers of youth suicides and many children are forcibly taken away by authorities to be placed into culturally inappropriate institutions such as urban shelters. <sup>93</sup> In these institutions, the native languages of Guarani Kaiowá are not spoken at all, references to their culture are non-existent, even the consumption of foods are imposed on the children such as eating meat for every meal and consuming dairy products.<sup>94</sup> A report published by FUNAI revealed that during a visit to one of the institutions, a staff member working there had said 'children here become so beautiful that they do not even look indigenous.'<sup>95</sup> Such assimilationist practices contradicts the provisions outlined in Article 28 of Brazil's 1990 Statue of Children and Adolescents.<sup>96</sup> In the instance that indigenous children are removed from their parents and placed into care institutions, paragraph one and two of article 28 of the Statute advocates for the right of indigenous children to be placed in families within their own community and for their social identity, culture, customs and traditions to be respected.<sup>97</sup> This is also in line with Brazil's obligations under Article 17 of the 2016 American Declaration on the Rights of Indigenous and Tribal Peoples. This Article states that in matters related to family separation,

<sup>90</sup> Clarissa Beretz, 'Violence against indigenous peoples explodes in Brazil' (*newsmongabay.com*, 17 October 2019) <<https://news.mongabay.com/2019/10/violence-against-indigenous-peoples-explodes-in-brazil/>> accessed 1 June 2020

<sup>91</sup> *ibid*

<sup>92</sup> Sam Cowie, 'Jair Bolsonaro Praised The Genocide Of Indigenous Peoples Now He's Emboldening Attackers Of Brazil's Amazonian Communities' (*The Intercept.org*, 16 February 2019) <<https://theintercept.com/2019/02/16/brazil-bolsonaro-indigenous-land/>> accessed 1 June 2020

<sup>93</sup> Antonio A.R. Ioris, Political agency of indigenous peoples: the Guarani-Kaiowa's fight for survival and recognition. *Vibrant: Virtual Braz. Anthropology*. [online]. 2019, vol.16. Available from: <[http://www.scielo.br/scielo.php?script=sci\\_arttext&pid=S180943412019000100207&Ing=en&nrm=iso](http://www.scielo.br/scielo.php?script=sci_arttext&pid=S180943412019000100207&Ing=en&nrm=iso)>. Epub Oct 17, 2019. ISSN 1809-4341

<sup>94</sup> Jaqueline Naujorks, 'Funai afirma que das 34 crianças indígenas recolhidas a abrigos de Dourados, apenas 1 pode ser adotada' (*GLOBO*, 15 August 2018) <<https://g1.globo.com/ms/mato-grosso-do-sul/noticia/2018/08/15/funai-afirma-que-das-34-criancas-indigenas-recolhidas-a-abrigos-de-dourados-apenas-1-pode-ser-adotada.ghtml>> accessed 3 June 2020

<sup>95</sup> Verônica Nunes de Holanda, 'Racismo institucional e repressão cultural: "Tão bonito que nem parece índio"' (*Conselha Indigenista Missionario*, 5th of September 2018) <<https://cimi.org.br/2018/05/racismo-institucional-e-repressao-cultural-tao-bonito-que-nem-parece-indio/>> accessed 1 June 2020

<sup>96</sup> Brazil's 1990 Statue of Children and Adolescents, Art. 28

<sup>97</sup> *ibid*

courts and related bodies shall consider the right of every indigenous child to retain ties with their indigenous community, language and culture and due account shall be given to indigenous law, perspectives and principles.<sup>98</sup> This is also in line with Brazil's obligations under UNCRC as stated by General Comment No.11 in 2009, unlike the American Declaration on the Rights of Indigenous and Tribal Peoples, Brazil is bound by UNCRC.<sup>99</sup> Furthermore, Article 5 of the 2016 American Declaration of Indigenous and Tribal Peoples ensures that indigenous peoples will be free from 'external attempts of assimilation'<sup>100</sup> which Brazilian authorities are currently contravening through placing indigenous children in urban shelters which resemble factory schools.

While, Brazil's 1988 Constitution and Presidential Decrees such as No.6.861 (passed in 2009) specifically references the right of indigenous communities to determine their own education and establish schools which caters to the particularities of each indigenous community.<sup>101</sup> It becomes immensely difficult for indigenous peoples to determine their education when rights that are essential to their survival are flagrantly violated. Despite this, examples such as the Khumuno Wu'u Kotiria Indigenous Municipal School in São Gabriel da Cachoeira, provide a positive example of indigenous peoples exercising their right to determine their own education in Brazil. Through a municipal law passed in 1999 in São Gabriel da Cachoeira in the Northern state of Amazonas, indigenous peoples were granted the right to establish school education of different levels in line with their cultural traditions, values and social organisation.<sup>102</sup> After lengthy campaigning the Kotiria gained ownership of the school in 2006, developing a community led framework for education, including teachers that speak Kotiria and Eastern Tukano (dominant languages in the area).<sup>103</sup> This proved beneficial as the Kotiria were able to tailor the learning process to include modules that are relevant for their livelihoods, such as agroforestry which included harvesting cassava in the field next to the school.<sup>104</sup> This is a positive local example of good practice in line with international legal obligations which allow indigenous peoples to determine their own education at a local level. It is clear that more municipalities and States in Brazil need to follow suit for Brazil to be fully compliant with both its obligations of international laws and standards and national laws and policies.

<sup>98</sup> American Declaration on the Rights of Indigenous Peoples: AG/RES.2888 (XLVI-O/16) : (Adopted at the thirds plenary session, held on June 15, 2016). Art.17.

<sup>99</sup> General comment No.11 (2009) on indigenous children and their rights under the Convention, para. 30.

<sup>100</sup> American Declaration on the Rights of Indigenous Peoples: AG/RES.2888 (XLVI-O/16) : (Adopted at the thirds plenary session, held on June 15, 2016). Art.5.

<sup>101</sup> Brazil. Presidential Decree No.6861 issued on May 27 2009

<sup>102</sup> São Gabriel da Cachoeira Department of Education Muncipal Law.87 (brought into force 24 May 1999).

<sup>103</sup> Sarah Shulist, *Transforming Indigeneity: Urbanization and Language Revitalization in the Brazilian Amazon* (University of Toronto Press 2018) 141-142

<sup>104</sup> Aline Abbonizio and Elie Ghanem, 'Indigenous school education and community projects for the future' [2016] 42(4) *Educação e Pesquisa* <[https://www.scielo.br/scielo.php?pid=S1517-97022016000400887&script=sci\\_arttext&lng=en](https://www.scielo.br/scielo.php?pid=S1517-97022016000400887&script=sci_arttext&lng=en)> accessed 1 June 2020

## 4. Education, Language and Culture

Languages play an essential part in all societies and have the ability of developing knowledge of human beings and using it for the benefit of mankind.<sup>105</sup> It is the essential element that is required to really understand and connect with an indigenous environment.<sup>106</sup> Language and culture are said to be connected to each other as language 'envelopes culture and codifies thoughts of people.'<sup>107</sup> Therefore, it is necessary to consider that for the protection and promotion of indigenous culture, their language is taught not only to their own future generations but to all willing to learn.

Article 11 of UNDRIP and Article 31 of the ILO 169 Convention provides that indigenous peoples have the right to practice and develop their culture and that the children of indigenous peoples must be educated about their culture. Article 27 of the ICCPR also provides similar protection to people belonging to a particular minority as it states that the people who belong to a particular minority in a State shall not be denied the right to enjoy their own culture, religion and language.<sup>108</sup> Both India and Brazil voted in favour of UNDRIP and have ratified ICCPR, however the rapid rate that languages are disappearing in both States showcases they are not being fully compliant with their obligations and need to do more to protect and promote the languages of indigenous peoples in schools and wider society.

The right to language is considered an essential right for indigenous peoples.<sup>109</sup> The international laws and treaties that focus on the rights of indigenous peoples explicitly state that indigenous peoples should have the right to educate their children in their own language (Article 14 UNDRIP). There are specific Articles under UNCRC (Article 29) and ILO 169 (Article 28) that establish the necessity of including indigenous languages in the education of indigenous peoples.<sup>110</sup> Language is the transmitter of knowledge and culture and its protection and promotion is imperative for indigenous peoples to continue transferring vital knowledge to

<sup>105</sup> Zedan, Ashraf M., Fakhru Adabi Bin Abdul Kadir, Mouhammed Bin Yusof, Yusmini Binti Md Yusoff, Norrodzoh Binti Hj Siren, Roslan Bin Mohamed, and Sekou Toure. "The role of language in education: Arabic as case study." *Procedia-Social and Behavioral Sciences* 70 (2013): 1002-1008. <<https://reader.elsevier.com/reader/sd/pii/S1877042813001523?token=875D451CCFB372B7893AE06D988C1338882000D779CAF139368FF2A1EB85A8DCE335ACE645557198E5051CB55E9ED95C>> accessed on 21 May 2019

<sup>106</sup> Kantuta Conde, 'Towards the teaching of indigenous languages in schools' (8 May 2019) Voices of Youth <<https://www.voicesofyouth.org/blog/towards-teaching-indigenous-languages-schools>> accessed on 14 April 2020.

<sup>107</sup> S. Maturah Ismail & Courtney B. Cazden, 'Struggles for Indigenous Education and Self-Determination: Culture, Context, and Collaboration' (2005) Vol.36, No.1 *Anthropology and Education Quarterly* <<file:///media/fuse/drivefs-9200c177fd4df9ec5280ae8cefa91582/root/jamerindieduc.54.1.0010.pdf>> accessed on 22 April 2020.

<sup>108</sup> ICCPR. Art.27

<sup>109</sup> C.R. Bijoy, Shankar Gopalakrishnan and Shomona Khanna, 'India and the Rights of Indigenous Peoples.', (Asia Indigenous Peoples Pact (AIPP) Foundation, 2010)

<sup>110</sup> *ibid*

future generations. States must respect this by putting provisions in place to ensure indigenous peoples can enjoy this right and provide education in their mother tongues. Recently, the UN Special Rapporteur on Minority Issues presented his report to the Human Rights Council and stated that 'studies show that the inclusion of indigenous languages in their children's education gives them a sense of inclusion, helps reduce the drop-out rate, and will eventually improve literacy rates.'<sup>111</sup>

India is a country that is rich in languages and has around 450 languages that are still being practised today.<sup>112</sup> However, indigenous languages are not protected by statutory provisions in India and there are around 197 languages in India that are either extinct or endangered.<sup>113</sup> However, the Eighth Schedule of the Constitution, which includes all the official languages that are used in India, includes two indigenous or tribal languages, namely, Bodo and Santhali.<sup>114</sup> Article 29 of the Indian Constitution also provides people who speak a distinct language the right to conserve it but does not specify whether it can be applied to all STs or not.<sup>115</sup> In India, the specification of whether the rights are applicable to all tribal and indigenous peoples is lacking. Many states in India allow indigenous languages to be used in official documents of the government (such as Mizo in Mizoram, Kokborok in Tripura, Khasi in Meghalaya, etc).<sup>116</sup> The inclusion of indigenous languages for official purposes can be used as a medium to endorse the need to provide education to indigenous children in their own language. However, such control over the use of language is seen only in the North-eastern states that have a large population of indigenous peoples.<sup>117</sup> It is essential that this right is applied and provided to all indigenous and tribal peoples in India. This would not only protect the languages that are on the verge of going extinct but also promote it so that the language can flourish. Many organisations including NGOs that work with indigenous peoples, have made efforts to protect and promote the indigenous languages by printing textbooks, newspapers and journals.<sup>118</sup>

<sup>111</sup> UN Expert, 'States must teach indigenous and minority children in their own language', United Nations Human Rights Office of The High Commissioner (Geneva, 11 March 2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25705&LangID=E&fbclid=IwAR2rCAN1O719DaUq9HEy-72WE3Czs4Wq35AVHJJMQX8I3TLYhjd6lglUdccc>> accessed 20 March 2019; See also, example of Rakaumanga School in New Zealand which showed that inclusion of language in education and also for teaching indigenous children about their culture helps in strengthening the cultural basis of education.

<sup>112</sup> 'Extinct, endangered, vulnerable: Tale of India's linguistic heritage' The Economic Times (India, 09 August 2019) <<https://economictimes.indiatimes.com/news/politics-and-nation/extinct-endangered-vulnerable-tale-of-indias-linguistic-heritage/indias-linguistic-heritage/slideshow/70601912.cms>> accessed 14 May 2020

<sup>113</sup> *ibid*

<sup>114</sup> C.R. Bijoy (n109)

<sup>115</sup> Constitution of India. art. 29

<sup>116</sup> C.R. Bijoy (n109)

<sup>117</sup> *ibid*

<sup>118</sup> *ibid*

A further positive action is the Draft National Educational Policy which India created in 2019 which incorporates the inclusion of various languages in the curriculum. However, the languages that are recognised in the draft are mainly state languages and not tribal. This draft policy acts as a first step toward officially including the languages used locally in the state. While this is a good step taken by the government, this policy could be improved further by including tribal languages in order to comply with Article 27 of ICCPR. Hawaii sets a positive example for indigenous cultural and language preservation. Since 1987, the Hawaiian Language Immersion Programme (HLIP) has been managed by the Hawai'i State Department of Education in their public schools.<sup>119</sup> The HLIP programme focuses on delivering education to students up to the fifth grade, exclusively in the Hawaiian language, thereafter, the students are also introduced to the English language.<sup>120</sup> All families have the choice to enrol their children to learn the language. The promotion of language is also seen in administrative offices and is supported by the Hawai'i State Department of Education.<sup>121</sup> India should learn from this example of Hawaii and amend its draft policy by making it more inclusive of indigenous languages. Such inclusion will not only aid the preservation of those languages but would also be useful in their development and growth. Unfortunately, India has very few statutes and legal instruments regarding the protection of the culture of indigenous peoples. The provisions which do exist are vague and easily breached as the Government of India does not consider the protection of cultural rights of indigenous peoples as a matter of great significance. Although the Sixth Schedule of the Constitution protects the cultural rights of indigenous peoples; however, it is limited to the people of Mizoram and Meghalaya; for indigenous peoples in the rest of India, there is no such specific provision.<sup>122</sup>

Brazil has significant linguistic diversity with the existence of over 247 languages.<sup>123</sup> However, according to the 2010 census of Brazilian Institute of Geography and Statistics, less than forty percent of indigenous peoples over the age of five speak an indigenous language, while almost eighty percent speak Portuguese.<sup>124</sup> Paragraph 2 of Article 210 states plainly that indigenous peoples shall have the opportunity to receive elementary education in their indigenous languages and learning methods.<sup>125</sup> Article 231 in the 1988 Brazilian Constitution declares that indigenous languages, customs and cultures are recognised by the State.<sup>126</sup>

<sup>119</sup> Hawaii DOE, 'Hawaiian language immersion program' (*Hawaii State Department of Education*, 2012) <<http://www.hawaiipublicschools.org/TeachingAndLearning/StudentLearning/HawaiianEducation/Pages/translation.aspx>> accessed 23 May 2020

<sup>120</sup> *ibid*

<sup>121</sup> *ibid*

<sup>122</sup> C.R. Bijoy (n109)

<sup>123</sup> IWGIA, 'Indigenous World 2019: Brazil' (*IWGIAorg*, 24 April 2019) <<https://www.iwgia.org/en/brazil/3391-iw2019-brazil.html>> accessed 11 April 2020

<sup>124</sup> *ibid*

<sup>125</sup> Brazilian 1988 Constitution. Article 210.

<sup>126</sup> Brazilian 1988 Constitution. Article 231.

However, Brazil is the second country with the most endangered languages, with 190 languages at risk and in 2012, the UNESCO Atlas declared twelve indigenous languages extinct.<sup>127</sup> The rapid rate that indigenous languages are disappearing and the inadequate provisions of indigenous education highlight that the implementation of these laws are not good enough and further action is needed for Brazil to meet international standards.

One of the reasons behind the disappearance of indigenous languages in Brazil is that many are based on oral traditions alone with no written record.<sup>128</sup> This means for indigenous languages with few remaining speakers that the languages and vital knowledge will cease to exist once the members of that indigenous community pass away. This is also in conjunction with the issue of many municipalities lacking in funds or resources to establish and print teaching materials in indigenous languages for indigenous schools.<sup>129</sup> However, there are positive examples of language rejuvenation taking place in Brazil. The Juruna in the Xingu Indigenous Park in Mato Grosso grew from fifty speakers to more than five hundred speakers within fifty years, due to the efforts of the Juruna community and linguist researchers to establish a written version of the language and produce teaching materials.<sup>130</sup> This rejuvenation project has strengthened bonds between the younger members of the community and the elders, as the written versions of stories were reduced and modified versions of oral traditions, which has resulted in a peaked interest and appreciation of the oral stories and myths as told by their elders in a spirited manner.<sup>131</sup> The project has been so successful, the Juruna now only use Portuguese to communicate with visitors from outside of the community.<sup>132</sup>

Although Brazil does not declare itself a multicultural State, it has specific provisions for the cultural rights of indigenous peoples.<sup>133</sup> Paragraph one of Article 215 of the 1988 Constitution guarantees indigenous cultures State protection.<sup>134</sup> Additionally, paragraph one of Article 242, importantly affirms that the 'teaching of Brazilian History will include the significant contribution of indigenous peoples to the formation of the Brazilian people.'<sup>135</sup> Culture is often wrongly

<sup>127</sup>UNESCO. (2012). Atlas of the world's languages in danger. <<http://www.unesco.org/culture/languages-atlas/index.php>> accesses 23 May 2020

<sup>128</sup> Luisa Destri, 'Toward the survival of indigenous languages' (*Revista Pesquisa*, November 2018) <<https://revistapesquisa.fapesp.br/en/2019/06/18/toward-the-survival-of-indigenous-languages/>> accessed 25 May 2020

<sup>129</sup> *ibid*

<sup>130</sup> *ibid*

<sup>131</sup> *ibid*

<sup>132</sup> *ibid*

<sup>133</sup> *ibid*

<sup>134</sup> Brazilian 1988 Constitution. Article 215.Para 1.

<sup>135</sup> Brazilian 1988 Constitution. Article 242. Para.1.

assumed to be static and fixed, rather than a fluid and changing process.<sup>136</sup> In Brazil, unfortunately many members of mainstream society view indigenous peoples as 'backwards', a view which is currently justified by Jair Bolsonaro.<sup>137</sup> However, the example of the Kaingang in Rio Grande do Sul exemplifies how indigenous peoples have chosen to incorporate technology in their communities and teaching, both to further the learning of their communities and wider societies. In collaboration with researchers, the Kaingang established the first website written in Brazil entirely in an indigenous language in 2008 called Kanhgág Jógo.<sup>138</sup> This has been such a success that several indigenous groups have since established their own websites in their native languages.<sup>139</sup> The Kaingang, upon their request, were also granted the publication of a dictionary last year which demonstrates the meaning of each Kainang term in the context of Kainang culture rather than the issuing of terms in the Kainang language and Portuguese.<sup>140</sup>

<sup>136</sup> Simone Redaelli, 'The cultural fluidity: is history static or dynamic?' (*Culturico*, 2 November 2018) <<https://culturico.com/2018/11/02/the-cultural-fluidity-is-history-static-or-dynamic/>> accessed 1 June 2020

<sup>137</sup> Sam Cowie (n88)

<sup>138</sup> Wilmar Da Rocha D'Angelis, 'Do Índio na Web à Web Indígena ' (*Webindigena.org*, 28 May 2010) <<http://www.webindigena.org/Imagens/Noticias/Arquivos/Do%20Indio%20na%20Web%20%C3%A0%20Web%20Indigena.pdf>> accessed 25 May 2020

<sup>139</sup> *ibid*

<sup>140</sup> *ibid*

## 5. Conclusion and Recommendations

The challenges of providing consistent and good quality indigenous education have been widely discussed both in national and international stages. However, as shown in this memorandum, there is much work to be done. International laws and standards provide various rights that ensure that indigenous peoples have control and choice over their education and can access education which is inclusive of their language and culture. These rights were established to ensure that indigenous peoples can practise their own pedagogies without discrimination and that indigenous cultures and languages are protected from further harm. However, at the national level, we have shown these rights are not respected. In India, factory schools are seen as solutions for the State rather than serious human rights abuses. While in Brazil, despite notable legal advancements, imperialist thinking has continued to inform how the State treats indigenous peoples and years of austerity measures and continuous environmental degradation has left indigenous peoples displaced and without access to education as they are guaranteed by the Constitution.

This memorandum has focused on two States with large indigenous populations, and it has evaluated the education policies and practices that are in place in these States regarding indigenous children. This memorandum also evaluated the relationship between right to education and right to self-determination, culture, and language, while demonstrating both negative and positive examples to showcase good and bad practices. This memorandum also comes up with recommendations (see Annex 1) for both India and Brazil, which are aimed at improving the standards of indigenous education in their countries.

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## Annex

<b>RECOMMENDATIONS</b>		
<b>Recommendations for:</b>	<b>Legal Recommendations</b>	<b>Policy Recommendations</b>
India	<p>1. The provisions laid down in Fifth and Sixth Schedule of the Indian Constitution should be expressly applied to all the indigenous peoples in the country.</p> <p>2. The Draft Educational Act should lay down provisions to include indigenous languages, culture and history in the curriculam and teaching for indigenous children and also for other who want to learn.</p> <p>3. The Draft Act should also include the requirement for teachers to learn indigenous languages specific to the area they are teaching in.</p>	<p>1. Intrepret the exsiting provisions of Sixth Schedule and Article 35 for protection and development of indigenous peoples.</p> <p>2. Option of Home-schooling should be inserted in the existing education laws such as RTE.</p> <p>3. Factory schools such as Kiss should be strictly regulated.</p>
Brazil	<p>1. Revoke amendment 241 and twenty-year austerity plan and increase spending on the training and management of teachers, increase production of school materials and improve infrastructure in line with the aims of the National Education Plan 2014-2024.</p> <p>2. Restore funding and powers to the National Foundation for Indigenous Peoples (FUNAI).</p>	<p>1. Adoption of indigenous children carried out by authorities must be acted upon in line with the CRC and in a transparent manner.</p> <p>2. Indigenous children must be supported in culturally sensitive and appropriate environments.</p> <p>3. Improve job security for indigenous teachers by offering permanent and secure contracts.</p> <p>It is imperative that all indigenous schools have access to resources such as textbooks and other study materials in their respective languages.</p>

**Comparison of indigenous peoples' rights to education in India and Brazil**

Key factors	Brazil	India
Number of recognised and non recognised indigenous peoples and minorities	There are 896,917 indigenous persons according to the 2010 National Census of Brazil. However, 100 groups are uncontacted tribes.	104 million indigenous persons can be found in India. However, only 705 tribes have been officially recognised by the government.
International treaties relating to indigenous education they are state party to	5 (UNDRIP, UNCRC, ILO 169, ICCPR, ICESCR)	4 (UNDRIP, UNCRC, ICCPR, ICESCR)
Domestic laws for indigenous education	Articles 231 of the Brazilian 1988 Constitution guarantee the right for indigenous peoples to be taught in their respective languages and learning methods.	RTE Act, 2009 (No law specifically for education of indigenous children). Schedule Fifth & Sixth of the Indian Constitution provides certain Tribal populations the right to administer and control their areas.

**International Laws & Standards and Indigenous peoples education.**

International Laws	Articles regarding Indigenous education	Status in India & Brazil
Declaration on Rights of Indigenous People (UNDRIP)	<p>Article 11- Right to Cultural Practices: Indigenous people can practice their own religion and culture.</p> <p>Article 12- Spiritual and Religious Freedom: Indigenous people can practice their own religion and work towards its development.</p> <p>Article 13- Right to Language: Indigenous peoples have right to develop and transmit their own language to their future generations.</p>	Both India and Brazil voted in favour of UNDRIP.
UN Convention of Rights of Child (UNCRC)	<p>Article 28- Right to Education: Every state should provide free primary education to all the children.</p> <p>Article 29- Aims of Education: Overall development of child.</p>	<p>India ratified it in 1993.</p> <p>Brazil ratified it in 1990</p>
Indigenous & Tribal People's Convention (ILO) 169	<p>Article 26- Members of indigenous peoples should have the equal opportunity to acquire equal education at all levels.</p> <p>Article 27- Education programs should be developed to include indigenous peoples histories, knowledge and technologies, and should also incorporate their economic, social &amp; cultural aspirations.</p> <p>Article 28- Indigenous children should be taught to read and write in their own language.</p> <p>Article 29- The knowledge imparted should help the children to equally participate in their own community and national community.</p> <p>Article 30- Governments should take appropriate measures to make the indigenous peoples aware of their rights and duties.</p> <p>Article 31- Educational measures should be taken to end the prejudices against these peoples and to harbour respect for them. It should also be ensured that history textbooks and other educational books contain accurate and informative portrait of the history of indigenous peoples.</p>	<p>India has neither signed nor ratified this convention.</p> <p>Brazil ratified it in 2002</p>
The International Covenant on Civil and Political Rights (ICCPR)	Article 27- States that have ethnic minorities shall not deny them their right to enjoy their own culture, practice their own religion and use their own language.	<p>India ratified it in 1979.</p> <p>Brazil ratified it in 1992.</p>
The International Covenant on Social, Economic, and Cultural Rights (ICESCR)	Article 13- Right to Education: It should focus on the overall development of the child.	<p>India ratified it in 1979.</p> <p>Brazil ratified it in 1992.</p>

<b>Effects of factory schools on indigenous peoples</b>		
<b>Key factors</b>	<b>Brazil</b>	<b>India</b>
Effects on language	<p>1. Colonisation and the actions of missionaries led to the decimation of hundreds of indigenous languages. Worryingly, UNESCO's Atlas of Indigenous and Endangered Languages in 2012 declared twelve indigenous languages extinct and 190 indigenous languages are at risk in Brazil.</p> <p>2. Less than forty percent of indigenous peoples over the age of five have a fluent grasp of an indigenous language and almost eighty percent can speak Portuguese.</p> <p>3. The loss of language leads to a loss of communication, knowledge, culture and identity. Brazil needs to ensure that all indigenous education is delivered in bilingual if not multi-lingual as it is obliged according to its national legislation and international obligations.</p>	<p>Lack of inclusion of indigenous languages in education, their extinction and endangerment. Out of 450 languages there are out 197 that fall under the vulnerable category.</p> <p>2. Language has been considered as one of the biggest challenges that stand in the way of indigenous education and is one of the main reasons for high drop-out rates.</p>
Effects on culture	Teaching children that their cultural practices are backwards or uncivilised is discriminatory and leads to trauma, dysphoria, and alienation with one's sense of self and identity.	Factory schools take the children away from their homes and focus on erasing any traces of their culture on them. They try to change them into assets for the country by making them feel ashamed of their own backgrounds.
Socio-economic status of indigenous peoples	Due to being marginalised and discriminated against, despite legal protections, many indigenous peoples who live in urban areas particularly in the South and North East of Brazil, live in extreme poverty, do not have access to their land and cannot access adequate nutrition as a result and are more likely to live in unsanitary conditions.	Due to lack of recognition of all minorities that are present in India 80% of them live below the poverty index of the country.
Effects on health	The Guaraní-Kaiowa of southern Brazil report a suicide rate 34 times higher than the national average. The youngest suicide was a boy of nine years old.	Psychological Trauma, Various diseases caused due to poor sanitation and living conditions.