

# Haiti and Creole: The Violation of Human Rights in Education

*This Note analyzes the linguistic policy of Haiti as it relates to the nation's education system and the international education and linguistic rights of Haiti's citizens. Part I describes Haiti's complicated linguistic history, the present attitudes toward Haitian Creole, and the current preference for French in Haiti's education system. Part II looks at Haiti's international treaty obligations to provide a fundamental education to its population and how Haiti's policies violate those obligations. Part III considers the linguistic rights of Haitian Creole speakers and shows how Haiti's policies violate those rights as a matter of international treaty and linguistic rights theory.*

*Overall, this Note shows that Haiti's education policy is woefully inadequate in its attempts to meet the needs of the Haitian people. By preferring French to the detriment of Haitian Creole, the Haitian government perpetuates cycles of poverty and inequality and denies its people the opportunity to forge a better society through education. This Note concludes by recommending that the international community continue to raise awareness regarding the linguistic divide in Haiti and help Haiti toward a Creole-based education system.*

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## INTRODUCTION

Establishing an education system that adequately serves all members of a society is a difficult task. Among others, the United States, Canada, China, and Belgium have all had their fair share of education challenges in the last century. In Haiti, the difficulty of providing an adequate education for all is compounded by generations inflicted by slavery, discrimination, war, revolution, debt, and natural disaster. Haiti’s turbulent history, from early colonization to being the first and only successful colonial slave revolt to the devastating earthquake of 2010, has left the nation one of the poorest countries in the

world.

Below the surface of Haiti's social, political, and economic turmoil is a linguistic divide that draws on its centuries-old history as a slave colony. French, the language of the elite, is contrasted with Haitian Creole ("Creole"), the language developed by enslaved peoples taken from their homes to work in sugar fields. Even after the Haitian Revolution in 1804, which drove France from the island and brought Haitian independence, many in Haiti failed to recognize the value of Creole as the country's unifying language. Until 1987, French alone was the official language of Haiti despite Creole's widespread use.<sup>1</sup> While attitudes have finally started to shift toward recognizing the importance of Creole to Haiti's long-term success, much work remains to be done. Government, academia, and news media are still dominated by the French language.<sup>2</sup>

In particular, Haiti's education system predominately uses French as the language of instruction, in spite of the fact that less than ten percent of the population speaks French.<sup>3</sup> As with many of the problems confronting Haiti, this issue is exacerbated by constant changes in leadership; between 1980 and 2000 Haiti had twenty-three Ministers of Education.<sup>4</sup> Recent policy from Haiti's Ministry of National Education and Professional Training has set a goal of "balanced bilingualism," which seeks to achieve fluency in both French and Creole for the entire country.<sup>5</sup> While the goal may be admirable and even ultimately desirable, countries that have attempted to implement a dual-language society face immense struggle in doing so.<sup>6</sup> For a nation

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1. Flore Zéphir, *The Languages of Haitians and the History of Creole: Haiti and Its Diaspora*, in *THE HAITIAN CREOLE LANGUAGE: HISTORY, STRUCTURE, USE, AND EDUCATION* 55, 61–62 (Arthur K. Spears & Carole M. Barotte Joseph eds., 2010).

2. Michel DeGraff, *Haiti's "Linguistic Apartheid" Violates Children's Rights and Hampers Development*, OPEN GLOBAL RTS. (Jan. 21, 2017), <https://www.openglobalrights.org/haiti-s-linguistic-apartheid-violates-children-s-rights-and-hampers/> [<https://perma.cc/MW5E-S4UW>].

3. Estimates of French fluency in Haiti consistently range between five and ten percent of the population. See, e.g., *id.*; see also Joyce Chepkemoui, *What Languages Are Spoken in Haiti?*, *WORLDATLAS* (July 29, 2019), <https://www.worldatlas.com/articles/what-languages-are-spoken-in-haiti.html> [<https://perma.cc/QX78-2E5D>].

4. Benjamin Hebblethwaite, *French and Underdevelopment, Haitian Creole and Development*, 27 *J. PIDGIN & CREOLE LANGUAGES* 255, 256 (2012).

5. DeGraff, *supra* note 2.

6. Canada and Belgium, in particular, have struggled with the difficulties of fully implementing a dual-language system. See, e.g., Jack Jedwab, *Canada's Enduring Linguistic Divide*, *WORLD POL. REV.* (May 6, 2014), <https://www.worldpoliticsreview.com/articles/13761/canada-s-enduring-language-divide> [<https://perma.cc/SJ33-ANJ5>]; Ian

with vast infrastructure difficulties like those confronting Haiti, balanced bilingualism may be impossible for the foreseeable future.<sup>7</sup> The reality is that the Haitian government's continued insistence on educating its citizens in a language that ninety percent of the population does not understand undermines the nation's growth and inhibits the progress of its students.<sup>8</sup>

This Note argues that Haiti's education policy and practice violate its children's international human rights. Part I presents a brief history of Haiti, outlining the circumstances that have generated the country's linguistic divide and the present state of Haiti's education system. Part II addresses how the Haitian government's actions and policy violate its citizens' fundamental right to education by violating Haiti's obligations under the International Covenant on Economic, Social and Cultural Rights ("ICESCR"). Part III analyzes the linguistic considerations of Haiti's education policy and how the policy violates international law—in particular the International Covenant on Civil and Political Rights ("ICCPR")—and various proposed models of linguistic rights. In a similar vein, the Note presents how Haiti's policy violates its students' language rights and Haiti's own Constitution by holding out two national languages but not treating the two languages equally.

Ultimately, these violations impose a duty on the international community to promote a transition in Haiti toward a monolingual education system which adequately addresses the needs of the Haitian people. While some of the human rights issues this Note discusses could be resolved without implementing a monolingual education system, Haiti's well-documented struggles make national bilingualism nothing more than a "socially and economically costly pipe dream."<sup>9</sup> Francophone dominance dramatically stifles the growth of Haiti's young people, exacerbating the social and political problems the Haitian people already face.<sup>10</sup> Political and legal considerations demand that Haiti continue shifting toward providing education in Haitian Creole, allowing the nation's youth to learn in a language which facilitates, rather than hinders, their educational goals.

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Traynor, *The Language Divide That Is Tearing Belgium Apart*, GUARDIAN (May 8, 2010), <https://www.theguardian.com/world/2010/may/09/belgium-flanders-wallonia-french-dutch> [<https://perma.cc/8M3E-HTD9>].

7. DeGraff, *supra* note 2.

8. *Id.*

9. DeGraff, *supra* note 2.

10. Hebblethwaite, *supra* note 4, at 257.

## I. HISTORICAL CONTEXT OF HAITIAN CREOLE

### A. A Brief History of Haiti

Haiti's history, though relatively short, is complex and filled with adversity. Governmental regime changes, widespread discrimination, and natural disasters have left the country in a state of continuous poverty, with the majority of its population living well below the poverty line.<sup>11</sup> These problems are amplified by Haiti's "linguistic apartheid," which divides its people and cripples its education system.<sup>12</sup>

#### 1. Early European Conquest and Revolt

European conquest of the island on which Haiti resides began in the 16th century when Spanish explorers entered the territory, enslaved the indigenous population, and began mining gold.<sup>13</sup> In 1697, Spain conceded a portion of the island to France, which the French named Saint-Domingue.<sup>14</sup> The French continued the Spanish tradition of importing slaves to the Caribbean, and by 1789 roughly ninety percent of Saint-Domingue's population were enslaved Africans.<sup>15</sup> During the peak of French control, Saint-Domingue was among the world's most prosperous colonies.<sup>16</sup> Not all benefited from this prosperity. Slaves were viewed as "laboring machines," whose sole purpose was to produce commodity goods without any regard for the individuals' well-being.<sup>17</sup>

In 1804, the Haitian people mounted the first and only permanently successful slave revolt of the colonial era. The revolution profoundly impacted the surrounding slave societies, including those in

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11. *The World Bank in Haiti*, WORLD BANK (May 1, 2020), <https://www.worldbank.org/en/country/haiti/overview> [<https://perma.cc/U3VE-CZ82>].

12. DeGraff, *supra* note 2.

13. *Haiti: Early Period*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/place/Haiti/Early-period> [<https://perma.cc/93BM-N8CU>] (last visited Feb. 10, 2019).

14. *Id.*

15. *Id.*

16. Georges E. Fouron, *The History of Haiti in Brief*, in *THE HAITIAN CREOLE LANGUAGE: HISTORY, STRUCTURE, USE, AND EDUCATION*, *supra* note 1, at 23, 24.

17. *Id.* at 25 (quoting LAURENT DUBOIS, *AVENGERS OF THE NEW WORLD: THE STORY OF THE HAITIAN REVOLUTION* 45 (2004)).

Latin America and the United States.<sup>18</sup> Some have suggested that the West held this against Haiti, directly leading to many of the nation's current problems.<sup>19</sup> The Haitian Revolution was viewed as an affront to white dominance.<sup>20</sup> It demonstrated the instability of slave culture and amplified the fear of revolt felt by slavers around the world. White imperial powers in the 19th century ostracized Haiti, fearing that acknowledging Haiti's independence might encourage similar uprisings in their own countries.<sup>21</sup> As a result, Haiti remained isolated during its first hundred years of independent existence.<sup>22</sup> However, the isolation did not prevent the "onerous interference" of imperialist powers.<sup>23</sup> Haiti's independence was consistently threatened by foreign naval forces, even as those powers neglected Haiti for its successful revolt.<sup>24</sup> The constant tension with the outside world set Haiti back both economically and politically.<sup>25</sup> Following the Haitian Revolution, France imposed a debt of 150 million francs on Haiti for the loss of slaves and property during the revolution, a debt Haiti was unable to fully pay until 1947.<sup>26</sup>

## 2. Modern Setbacks

U.S. occupation in 1915 stripped Haiti of its gold reserves, infused additional racist elements to its culture, and implemented policies that damaged Haiti's long-term agricultural outlook.<sup>27</sup> During the occupation, the United States drafted a constitution for Haiti which established French as the sole official language and required use of

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18. Arthur K. Spears, *Introduction: The Haitian Creole Language*, in *THE HAITIAN CREOLE LANGUAGE: HISTORY, STRUCTURE, USE, AND EDUCATION*, *supra* note 1, at 1, 10.

19. Fouron, *supra* note 16, at 30.

20. *Id.*

21. *Id.* at 31.

22. *Id.* at 32.

23. *Id.* at 33.

24. *Id.* ("The navies of these hegemonic powers often intervened to force various Haitian governments into settling—routinely and successfully—dubious and fraudulent demands that their nationals established in Haiti brought against the Haitian government.").

25. *Id.*

26. Kim Ives, *Haiti: Independence, Debt, Reparations for Slavery, and International "Aid"*, *GLOBAL RES.* (May 10, 2013), <http://www.globalresearch.ca/haiti-independence-debt-reparations-for-slavery-and-colonialism-and-international-aid/5334619> [https://perma.cc/ZP7L-LBFD]. Haiti's debt was reduced to 90 million francs, but included tens of millions in interest on loans Haiti took to meet its deadlines. In 2003, Haiti demanded restitution from France, a demand France rejected. *Id.*

27. Spears, *supra* note 18, at 11.

French in all administrative and judicial matters.<sup>28</sup> Over the last two decades of the 20th century, Haiti experienced more than thirteen governments, which were mostly installed through hostile takeovers.<sup>29</sup> The 2010 earthquake crushed the population, destroyed the existing infrastructure, and caused the national debt to skyrocket in the effort to rebuild.<sup>30</sup> Despite its long history of facing oppression and disaster, racist and discriminatory attitudes toward Haiti persist from the outside.<sup>31</sup>

The result of Haiti's tumultuous past is a country confronted with poverty, overpopulation, food shortage, and infrastructure catastrophe. In 2013, estimates placed roughly fifty-nine percent of the population under the national poverty line, while twenty-five percent fell below the extreme national poverty line.<sup>32</sup> Overpopulation in Haiti has been noted as contributing to its economic struggles.<sup>33</sup> "Life expectancy, nutritional intake, literacy, school enrollment, and GDP per capita are lower than any other country in the hemisphere."<sup>34</sup> Contributing to these struggles is the fact that Haiti suffers from some of the most disparate income inequality in the world.<sup>35</sup>

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28. Danielle N. Boaz, *Examining Creole Languages in the Context of International Language Rights*, 2 HUM. RTS. & GLOBALIZATION L. REV. 45, 49 (2008).

29. Hebblethwaite, *supra* note 4, at 256.

30. Rocio Cara Labrador, *Haiti's Troubled Path to Development*, COUNCIL FOREIGN REL. (Mar. 12, 2018), <https://www.cfr.org/backgrounder/haitis-troubled-path-development> [<https://perma.cc/3BDX-GPBE>].

31. Brandon R. Byrd, *Racism Has Always Driven U.S. Policy Toward Haiti*, WASH. POST (Jan. 14, 2018), [https://www.washingtonpost.com/news/made-by-history/wp/2018/01/14/racism-has-always-driven-u-s-policy-toward-haiti/?noredirect=on&utm\\_term=.7ecb14ed618d](https://www.washingtonpost.com/news/made-by-history/wp/2018/01/14/racism-has-always-driven-u-s-policy-toward-haiti/?noredirect=on&utm_term=.7ecb14ed618d) [<https://perma.cc/KBB4-86DX>].

32. *Haiti Boosts Health and Education in the Past Decade, Says New UNDP Report*, U.N. DEV. PROGRAMME (June 25, 2014), <https://www.undp.org/content/undp/en/home/news-centre/news/2014/06/25/haiti-boosts-health-and-education-in-the-past-decade-says-new-undp-report/> [<https://perma.cc/LXW6-LLHL>].

33. Laurie Mazur, *Is Haiti Overpopulated?*, REWIRE (Jan. 21, 2010), <https://rewire.news/article/2010/01/21/is-haiti-overpopulated/> [<https://perma.cc/FZE5-RSKX>]; *Overpopulation in Haiti Holds Country Back from Recovery*, HAITI OBSERVER (Dec. 27, 2013), <http://www.haitiobserver.com/blog/overpopulation-in-haiti-holds-country-back-from-recovery.html> [<https://perma.cc/PN2M-BNLB>].

34. Hebblethwaite, *supra* note 4, at 257.

35. *The World Factbook*, CIA, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2172rank.html> [<https://perma.cc/AMC8-HQS8>] (last visited Apr. 9, 2020).

### B. *The Development of Creole*

As a language, Haitian Creole developed to reflect the strife of the surrounding nation. As was common in Caribbean slave-islands, the enslaved population had little choice but to develop a method of communication which blended their home languages with the colonial language spoken by their captors. Various contact points between enslaved peoples and colonists forced a “mixing and merging” between the languages of the two parties.<sup>36</sup> Creole thus developed as native Africans sought to communicate both with colonists and their fellow enslaved persons, who likely did not share linguistic backgrounds.<sup>37</sup> As the population learned to interact and communicate with each other, Creole developed into its own language and became mutually unintelligible with French.<sup>38</sup> It borrowed heavily from French vocabulary and syntax, but also incorporated significant influence from West African and other languages.

Creole evolved over the years through oral tradition, particularly through the religious Vodou group.<sup>39</sup> This contrasted heavily with French’s written tradition which reflected French Catholicism.<sup>40</sup> White slave-owners viewed the new language as an inferior version of French, and the divide between French and Creole came to mirror the racial, social, and economic divide between the two parties. After achieving independence in the 19th century, Haiti clung to the French language. French provided a connection to the outside world that Creole did not. In its effort to gain international recognition and further its economic trade goals, the Haitian government maintained its allegiance to French well into the 20<sup>th</sup> century, as Creole did not become an official language in Haiti until 1987.<sup>41</sup>

Creole languages as a group have been historically stigmatized and viewed as lesser languages. A creole language is one which develops from a forced mixing of two or more languages. Creoles typically develop quickly; the majority of the world’s creoles stem from English and French colonization efforts during the Age of Discovery when the slave trade forced languages together. The concept of

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36. Spears, *supra* note 18, at 9.

37. Zéphir, *supra* note 1, at 56–60 (elaborating on the origins of Haitian Creole).

38. Hebblethwaite, *supra* note 4, at 276. Certainly, French and Creole share significant overlap. A speaker of one language may be able to understand portions a speaker of the other language is saying. However, differences in grammar, morphology, and, to a lesser extent, vocabulary contribute to the lack of intelligibility between the two languages.

39. Hebblethwaite, *supra* note 4, at 258–59.

40. *Id.* at 259.

41. Zéphir, *supra* note 1, at 259, 263.



“creole exceptionalism” holds that creole languages are lesser languages compared to European languages because of their accelerated development and perceived simpler form.<sup>42</sup> As a result, creoles are often looked down upon; for example, some exceptionalists have argued that Haitian Creole is “not appropriate for science, academic textbooks, new knowledge intellectual activities, and law and order.”<sup>43</sup>

While creole languages have been misrepresented as having incorrect grammar and being corrupt forms of “real” languages, all modern scholarship recognizes that creoles, such as Haitian Creole, are distinct and complete languages.<sup>44</sup> Creole’s developed orthography, lack of mutual intelligibility with French, and unique vocabulary, syntax, and morphology solidify it as a distinct language.<sup>45</sup> Modern linguistic theory recognizes that all languages, regardless of history, formation, or international influence, are equal in their ability to communicate any complex human idea.<sup>46</sup> Creole is equal to any other world language, yet its status of perceived inferiority persists.

### *C. Modern Attitudes and Socio-linguistic Considerations*

#### 1. Strong Stigmas Against Haitian Creole

For three centuries, the stigma against Creole has compounded with French elitism to suppress the advancement of Haitian Creole. The idea that Creole is “lesser” while French is “greater” still exists in much of Haiti’s population.<sup>47</sup> Many Creole speakers have been “ideologically prepared to aspire to competence in French since the time

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42. See generally Michel DeGraff, *Linguists’ Most Dangerous Myth: The Fallacy of Creole Exceptionalism*, 34 LANGUAGE SOC’Y 533 (2005). The belief that creole languages have simpler structure is widespread, but it too is deserving of criticism. *Id.* at 560–61.

43. Hebblethwaite, *supra* note 4, at 262; DeGraff, *supra* note 42, at 573.

44. See generally David B. Frank, *We Don’t Speak a Real Language: Creoles as Misunderstood and Endangered Languages* (Nat’l Museum of Language, Mar. 25, 2007), [http://saintluciancreole.dbfrank.net/workpapers/creoles\\_as\\_misunderstood.pdf](http://saintluciancreole.dbfrank.net/workpapers/creoles_as_misunderstood.pdf) [https://perma.cc/RQL3-X9RR]; see also DeGraff, *supra* note 42; Boaz, *supra* note 28, at 46. Despite the acceptance of creoles as independent languages, there is still debate surrounding how they should be defined and what makes them unique. See, e.g., Pieter Muysken, *Creole Languages*, OXFORD RES. ENCYCLOPEDIAS (June 2016), <https://oxfordre.com/linguistics/view/10.1093/acrefore/9780199384655.001.0001/acrefore-9780199384655-e-68#acrefore-9780199384655-e-68-div1-10> [https://perma.cc/V3WX-WY8T] (offering criteria for how creoles can be distinguished).

45. Spears, *supra* note 18, at 4.

46. DeGraff, *supra* note 42, at 552; Hebblethwaite, *supra* note 4, at 262.

47. Hebblethwaite, *supra* note 4, at 261–62.

of slavery.”<sup>48</sup> Haitian Creole is neglected in the name of progress because it is not globally used, while French is a recognized international language.<sup>49</sup> Urban elites resist Creole advancement, even when the entire population uses the language. Despite the academic and political dominance of French, Creole remains the preferred method of communication for Haitians, and Haiti’s Constitution describes Creole as “the sole language that unites all Haiti.”<sup>50</sup> Even many proficient French speakers prefer to use Creole in their daily personal lives.<sup>51</sup>

Today, Haitian Creole occupies unique space to the rest of the world. It is a majority language that faces the stigmas and challenges of a minority language due to centuries of oppression and discrimination. There remains a significant preference in Haiti for French as the language of the elites, a preference that dominates the Haitian education system and political sphere. Most political documents and court proceedings in Haiti are conducted in French even though Creole is also an official language and is much more widely spoken. In the minds of some, Haiti functions as “diglossia,” a society in which bilingual communities interact in a “high” language and a “low” language.<sup>52</sup> The high language is used in formal settings, such as government, academia and news, while the low language is used more informally in social communication and everyday life.<sup>53</sup> As a result of the linguistic split, “[t]he great majority of Haitians are disenfranchised by their lack of knowledge of French . . . .”<sup>54</sup> Haiti consists of a small bilingual population that can function in any context and a majority monolingual population that is excluded from much of public life.

Yet the preference for French remains strong in much of Haiti, especially for the wealthy urban population.<sup>55</sup> Support for Creole has grown in the rural and middle classes, but much work remains to be

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48. Zéphir, *supra* note 1, at 61.

49. Boaz, *supra* note 28, at 62.

50. Hebblethwaite, *supra* note 4, at 263; *see also* KONSTITISYON AYITI [CONSTITUTION] June 20, 2012, art. 5 (Haiti), *translated in 1987 Constitution of Haiti*, POL. DATABASE AM. (July 9, 2011), <http://pdba.georgetown.edu/Constitutions/Haiti/haiti1987.html> [<https://perma.cc/2UFQ-CM5C>].

51. Hebblethwaite, *supra* note 4, at 260.

52. Spears, *supra* note 18, at 8. *But see* Yves Dejean, *Diglossia Revisited: French and Creole in Haiti*, 34 *WORD* 189 (1983) (arguing that “diglossia” does not apply to Haiti since Creole and French are distinct languages and so much of Haiti’s population is monolingual).

53. *See* Spears, *supra* note 18, at 8.

54. *Id.*

55. *See* Hebblethwaite, *supra* note 4, at 261 (noting that while acceptance of Creole instruction is growing in the middle class, opposition remains strong in urban wealthy areas).

done if Creole is to be established as equal to French. Despite small examples of progress beginning decades ago, actual attitudes toward the majority language have only recently begun to evolve.

## 2. The Linguistic Divide in Haiti's Education System

When Haiti gained independence in 1804 and began to expand its education system, the prestige and international appeal of French forced Creole to the side. The first major shift recognizing the importance of Creole in Haiti occurred during the U.S. occupation between 1915-1934. Haitian intellectuals resisted "[U.S.] imperialism and racism and embraced Haitian Creole language and its culture . . . ."<sup>56</sup> This new, positive outlook toward Creole gave rise to early attempts to standardize the language. Eventually, an orthography was developed, but it was not made official until 1979.<sup>57</sup>

Integration of Creole into Haiti's school system in recent decades has been slow and noncommittal, even as many have recognized the inherent contradiction in seeking to educate students in a language they do not understand.<sup>58</sup> To fight the prevailing attitudes toward Creole and the high academic failure rate, Haiti's Minister of Education attempted to officially introduce Creole as a medium of instruction in 1978 by requiring Creole for instruction through the first four grades of primary school.<sup>59</sup> While the initiative raised some awareness for the impact Creole education could have on the population, the reform was never implemented on a nationwide scale.<sup>60</sup> After a full decade of "implementing" the policy, new curriculum was present in only 16.2% of classrooms.<sup>61</sup> Some might characterize the reform as a

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56. *Id.* at 259.

57. Nicholas Faraclas et al., *Orthography*, in THE HAITIAN CREOLE LANGUAGE: HISTORY, STRUCTURE, USE, AND EDUCATION, *supra* note 1, at 83, 83. Although, Creole's official orthography still "does not provide for the accurate representation of all Creole varieties" and standardization of the orthography may be in the distant future. *Id.* at 103 ("Insisting on standardization at this time, given Haiti's political, social, and economic resources, would add an unnecessary burden to the learning process, and slow the process of raising literacy rates.").

58. See, e.g., George Clark & Donald Purcell, *The Dynamic Conservatism of Haitian Education*, 36 *PHYLON* 46, 49 (1975) (noting that educating Haitian children in French was unsuitable because students were sitting in French-only classrooms without understanding what the teacher was saying).

59. Zéphir, *supra* note 1, at 61-62.

60. *Id.* at 62.

61. Uli Locher, *Education in Haiti*, in THE HAITIAN CREOLE LANGUAGE: HISTORY, STRUCTURE, USE, AND EDUCATION, *supra* note 1, at 177, 179.

failure, but it did succeed in promoting the cause of Creole-based instruction and funneled significant funds into the education system.<sup>62</sup>

### 3. Recent Advancement of Creole

Over the last decade, several organizations from both inside and outside of Haiti have brought more significant attention toward addressing Haiti's linguistic divide. The MIT-Haiti Initiative, founded in 2010, is devoted to promoting active learning in Haiti through the use of Creole in the disciplines of science, technology, engineering, and math.<sup>63</sup> The initiative is grounded in the idea that promoting Creole can improve the quality and access of education to all Haitians.<sup>64</sup> The Haitian Creole Academy, an organization designed to oversee and promote the standardization of Creole, was approved by Haiti's legislative body in 2014.<sup>65</sup> It focuses on the standardization of the Creole language and promotes the use of Creole in all Haitian sectors, not just education.<sup>66</sup> These organizations work to bring Haitian Creole to the forefront of Haiti's political and educational sphere while promoting positive attitudes toward Creole.

Haiti's policymakers have also made steps in the right direction. The country's official policy is now that Creole should be used exclusively for reading and writing up to the first grade,<sup>67</sup> but French remains the primary language of instruction for the remainder of a student's education. Haitian Creole examinations at the end of the sixth and ninth school years suggest that schools should implement some Creole instruction in order to prepare for the exams.<sup>68</sup> In 2015, Haiti's Ministry of National Education and Professional Training announced

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62. *Id.*

63. *MIT-Haiti Initiative*, MASS. INST. TECH., <https://haiti.mit.edu/about/> [<https://perma.cc/5VFS-FKTK>] (last visited Mar. 5, 2020).

64. *Haitian Educators and MIT Faculty Develop Kreyòl-based Teaching Tools*, MASS. INST. TECH. (Oct. 7, 2015), <http://news.mit.edu/2015/haitian-educators-and-mit-faculty-develop-kreyol-based-teaching-tools-1007> [<https://perma.cc/WM7P-9NMJ>].

65. Peter Dizikes, *3 Questions: Michel DeGraff on Haiti's New Policy for Teaching in Kreyòl*, MASS. INST. TECH. (July 20, 2015), <https://news.mit.edu/2015/3-questions-michel-degraff-haiti-teaching-kreyol-0720> [<https://perma.cc/2KHY-WVX7>].

66. *Id.*

67. Juan Baron, *Why School Enrollment is Not Enough: A Look Inside Haiti's Classrooms*, WORLD BANK (June 9, 2016), <http://blogs.worldbank.org/education/why-school-enrollment-not-enough-look-inside-haiti-s-classrooms> [<https://perma.cc/4G3N-B8ZH>].

68. See Hebblethwaite, *supra* note 4, at 266 (noting that "most schools at the very least offer courses to help students prepare for the exam").

an agreement with the Haitian Creole Academy to promote both the use of Creole generally and the linguistic rights of Creole speakers.<sup>69</sup> This agreement expanded the framework to implement Creole in the education system, with goals of standardizing the writing system and training teachers in Creole instruction.<sup>70</sup>

The recent developments are a step in the right direction, but the government has undertaken the reforms “half-heartedly at best” and the reality in schools contradicts the external policy Haiti is promulgating.<sup>71</sup> The reforms have brought positive change to Haiti’s education system, but the overall result is a system that is still unable to meaningfully educate its students.<sup>72</sup> After over twenty years of education reform attempts, Haiti still exists in a state of “curricular chaos.”<sup>73</sup> Graduation rates continue to decline, and Haitian educational reform in international aid circles has “become taboo.”<sup>74</sup>

The 2010-2015 Operational Plan of the Ministry of National Education and Professional Training announced a goal of balanced bilingualism for Haiti’s education system.<sup>75</sup> Under the plan, which was adopted in large part due to pressures coming from outside Haiti, the entire country is to eventually achieve bilingualism in both French and Creole. While the goal may be admirable, it is equally unrealistic. The task of achieving national bilingualism seems impossible given Haiti’s infrastructure difficulties, the Haitian government’s lack of institutional strength, and the reality that almost all of Haiti’s population is presently monolingual.<sup>76</sup> According to Creole expert Michel DeGraff, the goal of balanced bilingualism is an “insurmountable task” and nothing more than a “socially and economically costly pipe dream.”<sup>77</sup>

While Haiti’s history exhibits intense hardship that is largely outside of its control, this does not absolve the Haitian government of

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69. Dizikes, *supra* note 65.

70. *Id.*

71. Yves Dejean, *Creole and Education in Haiti*, in *THE HAITIAN CREOLE LANGUAGE: HISTORY, STRUCTURE, USE, AND EDUCATION*, *supra* note 1, at 199, 199.

72. See Locher, *supra* note 61, at 193 (noting that “significant progress has been made” but that the system is still “deficient in all common indicators of capacity and performance”).

73. *Id.* at 179–80.

74. *Id.*

75. DeGraff, *supra* note 2.

76. For a discussion of the impact of external forces on Haiti’s education system, see Ketty Luzincourt & Jennifer Gulbrandson, *Education and Conflict in Haiti*, U.S. INST. PEACE (July 30, 2010), <https://www.usip.org/publications/2010/07/education-and-conflict-haiti> [<https://perma.cc/MP4D-NWMK>].

77. DeGraff, *supra* note 2.

its moral and legal obligations to protect the rights of its citizens.<sup>78</sup> Regardless of its recent trend of promoting the use of Creole in schools, the Haitian government's continued discrimination against Creole and Creole speakers—and its stated goal of balanced bilingualism—effectively violates international education rights under the ICESCR by failing to provide an appropriate education. Haiti's linguistic policies also violate its citizens' linguistic rights in violation of the ICCPR and the Haitian Constitution. In the following two sections, this Note outlines Haiti's educational and linguistic obligations in the sphere of international human rights. It then, in turn, describes how Haiti's education policy of balanced bilingualism and the continued French dominance in the Haitian education system violate these obligations.

## II. THE RIGHT TO EDUCATION IN HAITI'S LINGUISTIC DIVIDE

### A. Haiti's Obligations Under International Treaty

Numerous international treaties recognize the fundamental right to education. Although sometimes dwarfed by other human rights, the right to education is crucial because it enhances awareness and enforcement of fundamental rights.<sup>79</sup> Where the right to education is denied, it leads to “compounded denials of other human rights and perpetuation of poverty.”<sup>80</sup> The Declaration of Human Rights,<sup>81</sup> Convention on the Rights of the Child,<sup>82</sup> and the ICESCR<sup>83</sup> all guarantee the fundamental right to education by requiring that states parties provide free and adequate schooling. This section will consider Haiti's obligations to provide education under the ICESCR and how such

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78. Haiti's legal obligations stem from international treaties it has ratified, including the ICESCR and ICCPR. See International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR]; International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 172 [hereinafter ICCPR].

79. Sital Kalantry et al., *Enhancing Enforcement of Economic, Social, and Cultural Rights Using Indicators: A Focus on the Right to Education in the ICESCR*, 32 HUM. RTS. Q. 253, 260 (2010).

80. U.N. Economic and Social Council Official Records, Comm'n on Hum. Rts., 60th Sess., *The Right to Education: Report Submitted by the Special Rapporteur, Katarina Tomaševski*, ¶ 11, U.N. Doc. E/CN.4/2004/45 (2004).

81. Universal Declaration of Human Rights art. 26, G.A. Res. 217A (III), U.N. Doc. A/810, at 71 (Dec. 18, 1948).

82. Convention on the Rights of the Child art. 28, Nov. 20, 1989, 1577 U.N.T.S. 3.

83. ICESCR, *supra* note 78, art. 13.

obligations can be evaluated.<sup>84</sup> It will then discuss why Haiti's education policies violate those obligations.

### 1. Challenges Facing the Right to Education

Despite its importance, the right to education—along with other economic, social, and cultural rights (“ESCRs”)—is often overlooked.<sup>85</sup> Compared to civil and political rights, ESCRs “remain less well articulated conceptually . . . , less accurately measured, and less consistently implemented in public policy.”<sup>86</sup> This neglect stems from obstacles which impede securing ESCRs.<sup>87</sup> For example, ESCRs often require significant financial and political investment that is less present in civil and political rights. Civil and political rights tend to require that a state refrain from interfering with an individual freedom, while ESCRs call for positive political action.<sup>88</sup> States and international bodies are less willing to enforce compliance because of the stronger competing interests faced by ESCRs.

Another obstacle confronting ESCRs is that it is difficult to determine when a state has failed to satisfy the obligation or treaty which guarantees the ESCR.<sup>89</sup> One reason for this is that some treaties, including the ICESCR, allow for progressive realization. Progressive realization, codified in ICESCR Article 2(1), indicates that the state party is given the opportunity to progress over time toward achieving a given right, rather than being required to immediately and fully implement the right at the time of ratification.<sup>90</sup> According to the Committee on Economic, Social, and Cultural Rights (“CESCR”), which monitors implementation of the ICESCR, progressive realization “imposes an obligation to move as expeditiously and effectively as

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84. This Note focuses on the right to education found in the ICESCR because that treaty has broad applicability and has received the most significant legal and academic attention.

85. Examples of other ESCRs include the right to housing, the right to physical and mental health, and the right to language and culture.

86. Shareen Hertel & Lance Minkler, *Economic Rights: The Terrain*, in *ECONOMIC RIGHTS: CONCEPTUAL, MEASUREMENT, AND POLICY ISSUES* 1, 3 (Shareen Hertel & Lance Minkler eds., 2007). Examples of civil and political rights include the right to a fair trial, the right to vote, and freedoms of religion, assembly, and speech.

87. Kalantry et al., *supra* note 79, at 256.

88. *Key Concepts on ESCRs – Are Economic, Social, and Cultural Rights Fundamentally Different Than Civil and Political Rights?*, U.N. HUM. RTS., <https://www.ohchr.org/en/issues/escr/pages/areescrfundamentallydifferentfromcivilandpoliticalrights.aspx> [https://perma.cc/ZWP6-YX2T] (last visited May 31, 2020).

89. Kalantry et al., *supra* note 79, at 256.

90. ICESCR, *see supra* note 78, art. 2(1).

possible towards the goal” of realizing the right in question.<sup>91</sup> Progressive realization makes it difficult to identify when a state party is in violation of an ESCR, because a state can argue that it is “working toward” compliance with the treaty. Because of this difficulty, some scholars have gone so far as to claim that such rights are non-justiciable in the international sphere.<sup>92</sup>

In contrast to rights subject to progressive realization, some human-rights guarantees function as immediately-realized obligations which must be enacted immediately upon ratification of the treaty.<sup>93</sup> For example, even when working toward progressive realization of a right, providing the right in a discriminatory way would immediately violate the ICESCR.<sup>94</sup> If a state party acts in a way which deliberately halts progress or causes regression, it may also be considered an immediate violation.<sup>95</sup>

The United Nations and the Organization of American States have recently heightened efforts to increase enforcement of ESCR violations, leading to the development of “human rights indicators.” The United Nations describes human rights indicators as “essential in the implementation of human rights standards” because they provide concrete criteria to evaluate a state’s progress toward realization of the right and whether the right has been violated.<sup>96</sup> If an individual, non-governmental organization, or other organization brings a complaint to the CESCR, these indicators help measure whether a violation has occurred. Indicators can be qualitative or quantitative, and vary depending on the specific right being considered.<sup>97</sup>

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91. Comm. on Econ., Soc. & Cult. Rts., *The Nature of States Parties’ Obligations: General Comment No. 3*, ¶ 9, U.N. Doc. E/1991/23 (Dec. 14, 1990) [hereinafter General Comment No. 3].

92. Kalantry et al., *supra* note 79, at 256.

93. *Id.* at 268.

94. U.N. Economic and Social Council Official Records, Comm’n on Hum. Rts., 55th Sess., *Preliminary Report of the Special Rapporteur on the Right to Education, Ms. Katarina Tomaševski*, ¶ 57, U.N. Doc. E/CN.4/1999/49 (Jan. 13, 1999) [hereinafter Preliminary Report].

95. Kalantry et al., *supra* note 79, at 257. This Note ultimately argues that Haiti is in violation of its international obligations because its education policies do not improve its education system, but regress it for the purpose of maintaining the French language’s elevated status. *See infra* Section II.B.

96. *Human Rights Indicators: Tools for Measuring Progress*, OFF. HIGH COMMISSIONER FOR HUM. RTS., <https://www.ohchr.org/EN/Issues/Indicators/Pages/HRIndicatorsIndex.aspx> [<https://perma.cc/6FGX-3TY8>] (last visited May 31, 2020).

97. OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS, HUMAN RIGHTS INDICATORS: A GUIDE TO MEASUREMENT AND IMPLEMENTATION 16 (2012), <https://www.ohchr.org/>



## 2. Evaluating the Right to Education Under the ICESCR

Haiti is party to a number of international treaties which guarantee a fundamental right to education. The ICESCR, ratified by Haiti in 2013,<sup>98</sup> provides the most comprehensive protection of the right to education.<sup>99</sup> Article 13(1) lays the groundwork for the ICESCR's education guarantee, stating:

States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups . . . .<sup>100</sup>

When evaluating the right to education, the CESCR, which would review an ICESCR complaint under the Optional Protocol Article 11,<sup>101</sup> has established five minimum core obligations a state must meet when providing education:

[T]o ensure the right of access to public educational institutions and programmes on a non-discriminatory basis; to ensure that education conforms to the objectives set out in article 13(1); to provide primary education for all in accordance with article 13(2)(a); to adopt and implement a national educational strategy which includes provision for secondary, higher and fundamental education; and to ensure free choice of education without interference from the State or third parties, subject to conformity with 'minimum educational standards.'<sup>102</sup>

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Documents/Publications/Human\_rights\_indicators\_en.pdf [https://perma.cc/4Z28-ABMD].

98. *International Covenant on Economic, Social and Cultural Rights*, U.N. TREATY COLLECTION, [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-3&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=_en) [https://perma.cc/TND9-CP6J] (last visited May 31, 2020).

99. Kalantry et al., *supra* note 79, at 261.

100. ICESCR, *supra* note 78, art. 13.

101. U.N. General Assembly, *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, art. 11, U.N. Doc. A/RES/63/117 (Mar. 5, 2009).

102. Comm. on Econ., Soc. & Cult. Rts., *General Comment No. 13: The Right to Education*, ¶ 57, U.N. Doc. E/C. 12/1999/10 (Dec. 8, 1999) [hereinafter *General Comment No. 13*]. While these obligations are necessary to fulfill a state party's duty under the treaty,

These obligations constitute the minimum threshold a state party must reach to comply with the ICESCR. The CESCR also states that “the use of curricula inconsistent with the educational objectives set out in article 13(1)” would amount to a violation of the ICESCR.<sup>103</sup>

In order to determine whether these objectives are being met, the CESCR has adopted the 4-A Right to Education Framework (“4-A Framework”) for assessing the scope of the right to education under the ICESCR.<sup>104</sup> The 4-A Framework, originally proposed by former Special Rapporteur on Education Katarina Tomaševski,<sup>105</sup> refers to acceptability, availability, accessibility, and adaptability. These are considered “essential features” to education which states “have obligations to respect, protect and fulfill . . . .”<sup>106</sup>

Acceptability refers to “the form and substance of the education with regard to both the quality and appropriateness.”<sup>107</sup> This requires that instruction “incorporate content appropriate to the students’ cultural, linguistic, and social backgrounds.”<sup>108</sup> Availability describes the government’s obligation to ensure that educational institutions can be properly and safely accessed.<sup>109</sup> Availability also requires the provision of the elements required for an educational institution to function, such as adequately trained teachers and quality teaching materials.<sup>110</sup> Accessibility refers to the ability of students to access education that is free from discrimination and physically and economically accessible to all.<sup>111</sup> Adaptability requires that education be able to adapt over time to suit the needs of students from varying social and cultural backgrounds.<sup>112</sup>

Human rights indicators supply a set of specific, rights-related metrics that can be used to assess whether a country is meeting its obligations under a given treaty.<sup>113</sup> In the case of education, they provide

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they are still subject to progressive realization.

103. *Id.* ¶ 59.

104. *Id.* ¶ 6.

105. Kalantry et al., *supra* note 79, at 274.

106. General Comment No. 13, *supra* note 102, ¶¶ 6, 50.

107. Kalantry et al., *supra* note 79, at 278 (citing Preliminary Report, *supra* note 94, ¶¶ 62–69).

108. *Id.*

109. General Comment No. 13, *supra* note 102, ¶ 6(a).

110. *Id.*

111. *Id.* ¶ 6(b).

112. *Id.* ¶ 6(d).

113. OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS, *supra* note 97, at 2.

standards and metrics that can be used to assess whether the 4-A Framework is being met. Academics, human rights organizations, and the United Nations have provided examples of human rights indicators for education in the absence of an official list.<sup>114</sup> Indicators are further divided into structural indicators (whether the state party has laws on the books that reflect its international treaty obligations), process indicators (whether the state party has taken appropriate measures to ensure it will implement the right), and outcome indicators (whether the state party's efforts are achieving measurable results).<sup>115</sup>

When considering human rights indicators, the most appropriate indicators should be chosen to evaluate the circumstances facing the state party.<sup>116</sup> Whether an indicator shows that a violation has occurred depends on the type of indicator. For example, a structural indicator may demonstrate violation of the ICESCR if a state party adopts a law that is inconsistent with its obligations to provide an education following the 4-A framework.<sup>117</sup> Process indicators will be in presumed violation if the state takes regressive measures against the right<sup>118</sup> or fails to meet agreed upon benchmarks toward a progressively realized right.<sup>119</sup> Outcome indicators are the most difficult to use in ascertaining violations, but may show a violation when metrics suggest halting or regressive outcomes.<sup>120</sup>

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114. See, e.g., Kalantry et al., *supra* note 79; GAUTHIER DE BECO, THE RIGHT TO EDUCATION: INDICATORS (2013), [https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/RTE\\_List\\_Right\\_to\\_Education\\_Indicators\\_May\\_2013.pdf](https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/RTE_List_Right_to_Education_Indicators_May_2013.pdf) [<https://perma.cc/SZH6-69EH>]; OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS, *supra* note 97, at 93. While some international treaties list indicators that can be used to monitor the protection of their guaranteed rights, the ICESCR and other treaties guaranteeing the right to education provide no such official indicators. Kalantry et al., *supra* note 79, at 256.

115. For further discussion of these divisions, see OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS, *supra* note 97, at 33–41.

116. Kalantry et al., *supra* note 79, at 285.

117. Maastricht Guidelines on Violations of Economic, Social, and Cultural Rights, ¶ 14(d) (Jan. 26, 1997), *reprinted in* U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cult. Rts., *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights*, U.N. Doc. E/C.12/2000/13 (Oct. 2, 2000).

118. General Comment No. 13, *supra* note 102, ¶ 45 (“There is a strong presumption of impermissibility of any retrogressive measures taken in relation to the right to education . . .”).

119. Kalantry et al., *supra* note 79, at 297.

120. *Id.* at 299.

*B. Haiti's Present Education Policy Violates Its Citizens' Right to Education*

The Haitian government's articulated goal of balanced bilingualism, along with the state's history of discrimination toward Creole speakers, violates its citizens' education rights under the ICESCR. Considering Haiti's economic situation, history of social and political struggle, and the recency of Haiti's ICESCR ratification, one might argue that—in light of the progressive realization allowance granted in ICESCR Article 2(1)—sufficient time has not yet passed to allow Haiti to meet its obligation to provide a fundamental education. However, this Note argues that because Haiti's goal of balanced bilingualism actively works against the goal of educating its citizens, the policy itself is in violation of the ICESCR. Haiti's education policy must be formulated in a way which “move[s] as expeditiously and effectively as possible towards the goal” of meeting the minimum core obligations of ICESCR Article 13(1).<sup>121</sup> But promoting balanced bilingualism does the exact opposite. It allocates already limited resources to a goal that is practically unachievable. The Haitian government's continued promotion of French in education favors its upper class at the expense of the general population. The result is a population that lacks proficiency in French and has limited education in Creole.

Using the human rights indicators model discussed above, it is clear that the 4-A Framework is not met at any level of Haiti's education system. Haiti's commitment to French violates the acceptability, availability, accessibility, and adaptability requirements for meeting its minimum core obligations under ICESCR.

1. Acceptability

Perhaps the most important factor in the 4-A Framework for purposes of Haiti's educational policy and practice is the acceptability requirement. Acceptability, as it relates to the right to education, requires that “the education be of a quality that has meaning to the individual students, to the community, and to society at large.”<sup>122</sup> Instruction should “incorporate content appropriate to the students' cultural, linguistic, and social backgrounds.”<sup>123</sup>

A primary structural indicator for acceptability is whether education legislation meets specific objectives that the “form and

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121. General Comment No. 3, *supra* note 91, ¶ 47.

122. Kalantry et al., *supra* note 79, at 278.

123. *Id.*

substance of education, including curricula and teaching methods, have to be acceptable (e.g., relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents.”<sup>124</sup> Haiti’s widespread promotion of French in schools fails to meet this fundamental objective. Culturally and linguistically, Creole is the language of the Haitian people. It is the language spoken in almost every home in Haiti. By denying Haitians the right to learn and conceptualize the world in their own language, Haiti’s language practice fails to provide an acceptable means of education which contributes to “the full development of the human personality and the sense of its dignity.”<sup>125</sup>

Process indicators affirm the reality that Haiti’s current system is not acceptable to its population. Despite the requirement that that Creole exams be given at the end of the sixth and ninth grades, many schools only provide their students with the French version of the test.<sup>126</sup> In areas where Creole is offered, students often choose to take the exam in French because they have memorized the answers regardless of if they assign meaning to the words.<sup>127</sup>

Outcome indicators of the acceptability of an education policy consider its statistical effectiveness. Literacy rates in Haiti hover around fifty-five percent.<sup>128</sup> The result is disengaged students and higher dropout rates. Over two-thirds of total class time is spent with students who are disengaged from classroom instruction.<sup>129</sup> Roughly ten percent of students who enter the 1st grade ever finish school.<sup>130</sup> Less than two percent of students pass the national exam following fifth grade,<sup>131</sup> and only thirty percent of students who make it to high school ever pass the national high school exam.<sup>132</sup> Even students who

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124. General Comment No. 13, *supra* note 102, ¶ 6(c).

125. ICESCR, *supra* note 78, art. 13.

126. Jocelyn Trouillot-Lévy, *Creole in Education in Haiti: A Case Study*, in THE HAITIAN CREOLE LANGUAGE: HISTORY, STRUCTURE, USE, AND EDUCATION, *supra* note 1, at 217, 226; *see also* note 68 and accompanying text.

127. DeGraff, *supra* note 2.

128. *Education System in Haiti*, SCHOLARO, <https://www.scholaro.com/pro/Countries/Haiti/Education-System> [<https://perma.cc/7AMP-GLVM>] (last visited Feb. 10, 2019).

129. Baron, *supra* note 67.

130. Michel DeGraff, *MIT-Haiti Initiative Uses Haitian Creole to Make Learning Truly Active, Constructive, and Interactive*, EDUC. TECH. DEBATE (July 26, 2013), <http://edutechdebate.org/cultural-heritage-and-role-of-education/mit-haiti-initiative-uses-haitian-creole-to-make-learning-truly-active-constructive-and-interactive/> [<https://perma.cc/EC8J-RDXP>].

131. *Education System in Haiti*, *supra* note 128.

132. Arika Okrent, *Haiti Is Teaching Kids in the Wrong Language*, WEEK (Feb. 8, 2013),

make it to the university level often have an insufficient grasp of French to understand course content.<sup>133</sup> Many factors influence Haiti's staggering results. However, considering the primacy of language in education, utilizing a language that is barely understood by students is certainly one of the most significant factors contributing to the struggles in the education system.

## 2. Availability

Next, Haiti's goal of balanced bilingualism violates the ICESCR because it prevents the availability of qualified teachers and precludes the availability of adequate teaching materials. According to the CESCR, a state's education policy must provide a sufficient number of trained teachers.<sup>134</sup> Haiti's decision to stress French in its school system directly conflicts with this goal because Haiti lacks the resources to train its teachers in a language that the teachers already struggle to understand. Teachers themselves are often unable to speak French fluently.<sup>135</sup> Teachers' limited grasp of French impacts not only their ability to teach the French language to students, but also their ability to communicate complex ideas of math, science, and language arts. Making matters worse, many teachers who achieve reasonable proficiency in French emigrate from the country.<sup>136</sup>

Regarding the availability of adequate teaching materials, it is true that French has a greater volume of teaching material than Haitian Creole due to its international prevalence and historical significance. However, the mere existence of teaching material does not mean that it is available to students. Even if students in Haiti had access to all of these materials—and they almost certainly do not—the presence of such materials does not support the availability of education when there is no sufficient system in place allowing the students to acquire French language skills.<sup>137</sup>

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<https://theweek.com/articles/467846/haiti-teaching-kids-wrong-language> [https://perma.cc/HE3Y-G9HP].

133. Spears, *supra* note 18, at 16. An estimated one percent of students in Haiti reach university. Harry Dumay, *Can Haitian Higher Education Rise from the Rubble?*, 59 INT'L HIGHER EDUC. 2, 2 (2015).

134. General Comment No. 13, *supra* note 102, ¶ (6)(a).

135. DeGraff, *supra* note 2.

136. Luzincourt & Gulbrandson, *supra* note 76, at 7.

137. Meanwhile, organizations such as the MIT-Haiti Initiative have devoted significant resources to developing Creole teaching resources where such resources were previously limited. *About*, MIT-HAITI INITIATIVE, <https://haiti.mit.edu/about/> [https://perma.cc/LH26-

While Haiti's general education goals are likely sufficient to satisfy structural indicators that Haiti is striving toward its educational obligations, the fact that Haiti does not have a plan for achieving its goal of balanced bilingualism<sup>138</sup> is a primary process indicator showing that there is not sufficient availability.<sup>139</sup> Rather, Haiti has set a goal with no realistic means of attaining it, and the implementation of which works to the detriment of the majority of its citizens. This reality plays itself out in a number of outcome indicators which show the ineffectiveness of Haiti's historical preference for French. In the public-school system, roughly fifty percent of teachers lack basic teacher qualifications, and eighty percent have no pre-service training.<sup>140</sup> Even when a student responds with an incorrect answer, teachers seldom correct and instruct based on the response.<sup>141</sup> When students are able to attend school, only thirty percent of Haitian schools have achieved proper accreditation.<sup>142</sup> While other factors certainly contribute to the lack of teacher training, allowing teachers to educate in their home language would improve their capabilities.

### 3. Accessibility

Third, Haiti's educational policy violates its obligations under the ICESCR because it prevents the accessibility of education to majority of its citizens. Accessibility requires that students have access to an education that is both physically and economically accessible to all and free from discrimination.<sup>143</sup> Thankfully, primary school attendance has improved in recent years to roughly eighty-five percent,<sup>144</sup> even though roughly half drop out before completing their early

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LPRK] (last visited Mar. 7, 2020).

138. DeGraff, *supra* note 2.

139. To be fair, the fact that Haiti has educational goals—combined with other legislative and constitutional requirements promoting education—likely satisfies structural indicators that Haiti is trying to reach its education obligations.

140. U.S. AGENCY FOR INT'L DEV., EDUCATION FACT SHEET (2020), [https://www.usaid.gov/sites/default/files/documents/1862/USAID\\_Haiti\\_Education\\_Fact\\_Sheet\\_-\\_January\\_2020.pdf](https://www.usaid.gov/sites/default/files/documents/1862/USAID_Haiti_Education_Fact_Sheet_-_January_2020.pdf) [<https://perma.cc/BJA3-CAQV>]. Although this Note focuses on the public-school system, the lack of teacher training is equally prevalent in Haiti's non-public education system. Luzincourt & Gulbrandson, *supra* note 76.

141. Baron, *supra* note 67.

142. Luzincourt & Gulbrandson, *supra* note 76, at 3.

143. General Comment No. 13, *supra* note 102, ¶ 6(b).

144. U.S. AGENCY FOR INT'L DEV., *supra* note 140.

education.<sup>145</sup> But there is still not enough space for all students to enroll in free public schools, and tuition in even the lowest-cost private schools is prohibitive for many families.<sup>146</sup>

Haiti's education policies further violate the accessibility requirement by discriminating against lower socioeconomic classes, which make up the vast majority of the population.<sup>147</sup> The preference for the urban, elite population is clear: rural Haiti, which accounts for seventy percent of the population, receives only twenty percent of educational expenditures.<sup>148</sup> This preference indicates that vast numbers of the population are effectively neglected and discriminated against in terms of opportunities to access a meaningful education.

#### 4. Adaptability

Finally, Haiti's education system violates the adaptability requirement of the 4-A framework. Adaptability maintains that education should "be flexible so it can adapt to the needs of changing societies and communicates and respond to the needs of students within their diverse social and cultural settings."<sup>149</sup> The lack of adaptability in Haiti's education system is embodied by the fact that most students in Haiti lack the necessary environments to learn French as required by the present system. As previously mentioned, teachers' fluency in French is limited.<sup>150</sup> Students in rural areas lack significant contact with French, which is not spoken at home or in daily life. As such, opportunities to interact with French outside the classroom are limited; even if students received adequate instruction in the classroom, they still do not have relevant situations to apply it.

As shown above, Haiti's education system and policy fail to satisfy the 4-A requirements of the ICESCR's right to education. Human rights indicators show that Haiti's education policy is not Acceptable, Available, Accessible, or Adaptable to its citizens. The next section will address linguistic rights in Haiti and how the government's policies act in violation of those rights.

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145. Baron, *supra* note 67.

146. *Improving Access to Education for the Poor in Haiti*, WORLD BANK (Apr. 11, 2017), <https://www.worldbank.org/en/results/2017/04/11/improving-access-to-education-for-the-poor-in-haiti> [<https://perma.cc/9ERK-5Z79>].

147. Luzincourt & Gulbrandson, *supra* note 76, at 3.

148. *Id.* at 4.

149. General Comment No. 13, *supra* note 102, ¶ 6(d).

150. DeGraff, *supra* note 2.



### III. THE RIGHT TO LANGUAGE AND HAITI'S INTERNATIONAL OBLIGATIONS

The right to language is even more complicated to assess than the right to education. Scholars have debated whether a positive linguistic right should ever actually be granted,<sup>151</sup> and if it should, whether international bodies would ever be willing to enforce it.<sup>152</sup> Some have claimed that language rights should be granted as a fundamental human right or that linguistic rights are categorically similar to religious rights and therefore should be granted complete protection.<sup>153</sup> Even where the right is granted, others argue that the historical lack of international judicial enforcement actually shows a preference for practical linguistic assimilation over promoting linguistic diversity.<sup>154</sup> When possible, language activists may be better off invoking universal values such as justice, dignity, security, or equality to fight discriminatory language policies.<sup>155</sup> Though it is unlikely an international judicial body would adjudicate against Haiti in the sphere of linguistic rights, it is still useful to consider how the rights of Haitians are being infringed upon. This section will propose three linguistic rights models under which can be used to assess Haiti's education policies. It will then discuss how Haiti's policies violate its international and domestic legal obligations under each theory.

#### A. Potential Linguistic Rights Models

A major difficulty in enforcing language rights is the cultural and financial burden it can impose on majority members of society.<sup>156</sup> Guaranteeing an education in one's home language for every individual is an unrealistic task for most of the world, where there are many small communities with their own native languages. Granting a universal right to speak one's language would also have consequences in the public sphere. Such a right in its broadest sense might imply that

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151. Meital Pinto, *Taking Language Rights Seriously*, 25 KING'S L.J. 231, 234–36 (2014).

152. See generally Moria Paz, *The Failed Promise of Language Rights: A Critique of the International Language Rights Regime*, 15 HARV. INT'L L.J. 157 (2013) (arguing that international bodies do not enforce the positive form of language rights posited by many scholars).

153. Pinto, *supra* note 151, at 231–32.

154. Paz, *supra* note 152, at 164.

155. Xabier Arzo, *The Nature of Language Rights*, 6 J. ON ETHNOPOLITICS & MINORITY ISSUES EUR. 1, 32 (2007).

156. Pinto, *supra* note 151, at 232, 234; Paz, *supra* note 152, at 206.

each minority language must actively be used in education, government, or media.<sup>157</sup> The cost of providing public services in every minority language represented by a state's citizens would make the requirement infeasible in most countries. Fulfillment of positive linguistic rights can be very costly, and therefore the admonition that the right should be interpreted with caution and restraint are well-founded.<sup>158</sup> Still, international treaties recognize language rights and instances of genuine linguistic rights violations do exist—even if they have not been judicially recognized. Linguistic scholar Xabier Arzoz has proposed five normative models for evaluating linguistic rights.<sup>159</sup> Three of these models, the Human Rights Model, the “Old” Minority Rights Model, and the Official-Language Rights Model, are applicable to the situation in Haiti.

### 1. The Human Rights Model

Under the Human Rights Model, linguistic rights are not specifically granted but are protected “through general human rights that have an implied linguistic dimension.”<sup>160</sup> The human right applied might be freedom of speech, the right to privacy, or protection against discrimination, and the application takes a fundamentally linguistic bent because the infringed upon right impacts an individual's ability to interact with the world in their home language. The foundation for these other human rights is found in human dignity and in various treaties which protect these other forms of human rights.<sup>161</sup> For example, the right to an interpreter at a legal proceeding could be viewed as a linguistic right, but is more accurately described as an extension of the

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157. Pinto, *supra* note 151, at 233. The U.N. Human Rights Committee has made clear that other persons within a state party, not only the government, may be required to take positive measures for language protection. U.N. Hum. Rts. Comm., CCPR General Comment No. 23: Article 27 (Rights of Minorities), ¶ 6.1, CCPR/C/21/Rev.1/Add.5 (Apr. 8, 1994) [hereinafter General Comment No. 23].

158. Pinto, *supra* note 151, at 234.

159. Arzoz's five normative models are derived from “legal norms and governmental practices.” Xabier Arzoz, *Accommodating Linguistic Difference: Five Normative Models of Language Rights*, 6 EUR. CONST. L. REV. 102, 120 (2010). While it is unlikely that international bodies would technically enforce these models against a country like Haiti, they provide a valuable framework for analyzing the Haitian government's attitudes and practices toward Creole in the context of linguistic rights theories.

160. *Id.* at 105 (emphasis removed).

161. For example, ICCPR article 26 protects against “discrimination on any ground such as . . . language.” ICCPR, *supra* note 78, art. 26. ICESCR article 1 guarantees the right of self-determination and the right to pursue one's cultural development. ICESCR, *supra* note 78, art. 1.

right of due process.<sup>162</sup> The right to use whatever language one pleases in one's home or with friends could also be analyzed as a linguistic right, but is also an extension of the right to privacy or freedom of expression. Few would deny this form of linguistic rights, and the right is universally recognized.<sup>163</sup> However, this model of linguistic rights is limited in the impact it can have on marginalized speakers.<sup>164</sup>

Thus, while the Human Rights Model successfully protects what might be called negative language rights, or those rights which only impact the private sphere, it does little to impact positive human rights, which would impose an active duty on a state to promote a specific language right. Generally, negative language rights are not expected to protect a language beyond the prevention of active interference and discrimination.<sup>165</sup> Positive language rights models, like the two that follow, are more adequate for addressing a right to be educated in or to experience life in one's home language because they require more specific action from the state in question.<sup>166</sup>

## 2. The "Old" Minority Rights Model

The "Old" Minority Rights Model argues that international or domestic legislation creates an obligation for states parties to provide positive language rights for its citizens.<sup>167</sup> As discussed in Section III.A, imposition of a comprehensive positive language right through treaty is unlikely, if not infeasible.<sup>168</sup> The "Old" Minority Rights

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162. Arzoz, *supra* note 159, at 106.

163. See generally Fernand de Varennes, *Language Rights as an Integral Part of Human Rights*, 3 INT'L J. MULTICULTURAL STUDENTS 15 (2001).

164. Arzoz, *supra* note 159, at 107.

165. *Id.* The distinction between positive and negative language rights is not always clear-cut. The right to an interpreter—to use an example already mentioned—is not a strictly positive language right because it is wrapped up in other rights, such as the right of due process. Its purpose is not to promote the language specifically. See Paz, *supra* note 152, at 188–93. However, it is also difficult to characterize it as a negative language right because it does actively promote the use of the language in the public sphere.

166. Arzoz, *supra* note 159, at 107.

167. *Id.* at 107–08.

168. Imposition of comprehensive positive language rights is more realistic if achieved through domestic legislation, as some states have sought to do. *Id.* at 111. For example, a number of countries—predominantly located in eastern Europe—have guaranteed the right to be educated in one's home language. *Id.* However, it is unclear whether this right would withstand a sudden influx of minority language speakers in otherwise homogenous countries. Additionally, these decisions do not represent an international language right but a matter of

Model has been further criticized because few international treaties impose linguistic rights, and those treaties lack legal potency to forcefully promote policy revision.<sup>169</sup>

However, the unlikelihood of guaranteeing comprehensive positive language rights does not mean that international bodies fail completely at promoting linguistic rights. The most comprehensive guarantor of international linguistic rights, the ICCPR, was ratified by Haiti in 1991.<sup>170</sup> ICCPR Article 27 states that “[i]n those states in which ethnic, religious, or linguistic minorities exist, persons belonging to such minorities shall not be denied the right . . . to enjoy their own culture . . . or to use their own language.”<sup>171</sup> Although Article 27 appears on its face to support the imposition of positive language rights, such an interpretation is unlikely to be applied in practice. Article 27 has been noted for its ambiguity, and even scholars who claim it may support positive measures acknowledge that its scope is probably weak.<sup>172</sup> But Article 27 is not without consequence. The Human Rights Committee has commented that the right granted in Article 27 is distinct from those rights typically present when assessing negative language rights.<sup>173</sup> In fact, “positive measures by states may also be necessary to protect . . . the rights of [a minority’s] members to enjoy and develop their culture and language.”<sup>174</sup> It is unclear exactly what these positive measures might entail, but it is possible they reach the right to education in one’s own language in Haiti’s context.

### 3. The Official-Language Rights Model

Lastly, the Official-Language Rights Model claims that, once a state has adopted a language as an official state language, the state is obligated to equally employ that language with other official

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domestic policy. Outside of a state taking initiative to adopt progressive language rights legislation, language rights advocates must look to international treaties when hoping to bind states to a linguistic right.

169. *Id.* at 108.

170. *International Covenant on Civil and Political Rights*, U.N. TREATY COLLECTION, [https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=\\_en&mtmsg\\_no=IV-4&src=IND](https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=_en&mtmsg_no=IV-4&src=IND) [<https://perma.cc/8VX5-69JH>].

171. ICCPR, *supra* note 78, art. 27.

172. Arzoz, *supra* note 155, at 109.

173. General Comment No. 23, *supra* note 157, ¶ 5.3. While Human Rights Committee comments are not binding because they are not ratified with the treaty, they are considered highly authoritative.

174. *Id.* ¶ 6.2.

languages.<sup>175</sup> This model does not imply that all languages should be treated equally. Rather it claims that if a state determines a language is deserving of protection and retains enough cultural significance to be preserved by the state's legal system, that language deserves equal status among the state's political, educational, and administrative spheres.<sup>176</sup> The decision to adopt an official language is often made as an attempt to unify a state's citizens and to build trust where there was previously discord. This is exemplified in countries with complicated linguistic histories, such as Canada, Spain, South Africa, and Haiti.<sup>177</sup> The purpose of this model is to protect languages where historical pressures created an adverse political climate toward the language, and further protection is necessary in light of that history.

The benefit of the Official-Language framework is that it does not require equal treatment of all languages, only equal treatment of those languages which at one point held sufficient political capital to become an official language. Although there is not a specific treaty that espouses the Official-Language Rights Model, it could be read into the ICCPR's protection of linguistic minorities or its preservation of culture. More likely, the requirement to treat official languages equally is implied by the constitutional adoption of an official language itself.

### *B. Haiti's Present Educational Policy Violates Its Citizens' Linguistic Rights*

Haiti's goal of balanced bilingualism violates the linguistic rights of Haiti's Creole speakers. First, it actively discriminates against Creole speakers by neglecting the vast majority of the population which speaks only Creole in violation of basic human rights against linguistic discrimination. Second, it violates the ICCPR's mandate that minorities shall not be denied the right to enjoy their own culture or use their own language. Lastly, Haiti's practice contradicts its Constitution, which establishes French and Creole as co-official languages of Haiti and places both on equal footing.

#### 1. Human Rights Model

First, Haiti's linguistic policies and practice violate the Human Rights Model of language protection because they actively

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175. Arzoz, *supra* note 159, at 118.

176. *Id.* at 119.

177. *Id.* at 116–20.

discriminate against Creole speakers. As discussed, Haiti's history is fraught with discrimination, dismissal, and oppression. Haiti has faced "stratifi[cation] in terms of language, color, religion, place of residence, socioeconomic status, and level of education."<sup>178</sup> The opinion that creole languages are simple and inferior remains active in modern society, and is especially present in nations with a divisive history such as Haiti's.<sup>179</sup> The result is an education system that perpetuates the perceived inferiority of Creole and a national policy that promotes French despite its limited ties to the people of Haiti. Active discrimination against Creole results in a violation of Creole speakers' negative language rights through the right to privacy, freedom of expression, and the right to culture and language.<sup>180</sup>

The policy of promoting French at the expense of Creole benefits the elites while marginalizing the lower class. Upper-class Haitians are more likely to be bilingual, and therefore to benefit from a French education. This gap plays out in the attitudes of Haitians toward Creole. While rural indigent populations express support for Creole, urban elites show distaste for the language that has long been associated with inferiority.<sup>181</sup> Support among the middle class has grown in recent years as well, but the pressure to use French over Creole persists.<sup>182</sup> Parents often exhibit concern when their children are learning in Creole, fearing that their children are receiving an inferior education to those who are learning in French.<sup>183</sup>

The distaste for Creole manifests itself in real ways, even as Haiti puts on an external front of equal treatment. Students are chastised for using Creole in the classroom, and may even be punished for straying from French at recess.<sup>184</sup> At its most benign, use of Creole in an educational setting can elicit ridicule from classmates or teacher disapproval.<sup>185</sup> In some situations, students experience corporal punishment and humiliation if caught using Creole on school grounds.<sup>186</sup> Teachers embed negative attitudes toward Creole in students at a

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178. Zéphir, *supra* note 1, at 63 (internal parentheticals omitted).

179. Boaz, *supra* note 28, at 47.

180. The right to privacy and freedom of expression are guaranteed in the Declaration of Human Rights. Universal Declaration of Human Rights, *supra* note 81, arts. 12, 19. See *infra* Section III.B.2 for a discussion of the ICCPR's right to culture and language.

181. Hebblethwaite, *supra* note 4, at 261.

182. *Id.*

183. Trouillot-Lévy, *supra* note 126, at 222.

184. Boaz, *supra* note 28, at 51.

185. *Id.*

186. Hebblethwaite, *supra* note 4, at 263.

young age, speaking negatively of Creole and turning students into spies against one another.<sup>187</sup> The result is the perpetuation and expansion of socio-economic inequalities. By refusing to convert to a predominantly monolingual school system, Haiti's policies perpetuate negative attitudes toward Creole and discriminate against those who do not live in an area where French is routinely spoken.

## 2. The "Old" Minority Rights Model

Haiti's linguistic policy also violates the "Old" Minority Rights model because it denies the right "to enjoy [a minority's] own culture . . . or to use their own language" as required by the ICCPR.<sup>188</sup> One issue with applying this model is that Creole speakers do not constitute a linguistic minority in Haiti. They are the overwhelming majority. Still, Creole experiences discrimination and marginalization on par with many of the minority languages that ICCPR Article 27 is intended to protect.

This categorization problem is not restricted to Haitian Creole, but is characteristic of many creoles created in the wake of colonial imperialism.<sup>189</sup> Danielle Boaz argues that, because of the similarities between linguistic-majority creoles and linguistic minorities that face discrimination, ICCPR Article 27 and other treaties that address minority language rights should be equally applied to both groups.<sup>190</sup> She argues that provisions of the ICCPR should be interpreted to incorporate all historically marginalized languages that are rejected in their political spheres, not just those that also happen to be a linguistic minority.<sup>191</sup> According to Boaz, linguistic rights laws were developed to protect linguistic groups where states "may not have otherwise been inclined to safeguard the culture of marginalized populations in their societies."<sup>192</sup> Creole languages—such as Haitian Creole—undoubtedly fit this description, as most have been subjected to active

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187. Dejean notes a practice at one school in which teachers would give a student a certain token when caught using Creole. Throughout the week the student may pass the token to another student who reverts to speaking in Creole. At the end of the week, the student in possession of the token would receive physical punishment. Dejean, *supra* note 71, at 209.

188. ICCPR, *supra* note 78, art. 27.

189. Boaz, *supra* note 28, at 56.

190. *See generally id.*

191. In defense of this argument, Boaz notes that the "inclusion of Creole languages is merely a natural extension of the trend of human rights laws to speak for populations that have diminished power to fight for their own language rights." *Id.* at 62.

192. *Id.*

discrimination since their inception.

There are instances of international committees extending the rights of indigenous and minority languages to creole languages.<sup>193</sup> In 2004, the U.N. Committee on the Elimination of Racial Discrimination expressed concern that the government in St. Lucia—which displayed a strong preference for English—did not provide any education opportunities in Kweyol, the creole language spoken by St. Lucia’s majority.<sup>194</sup> The committee encouraged St. Lucia to take measures to “ensure, as far as possible, that members of the indigenous peoples have the opportunity to learn Kweyol and to receive instruction in this language.”<sup>195</sup> The Committee on the Rights of the Child has raised similar concerns regarding Cape Verde’s neglect to provide education in Cape Verdean Creole.<sup>196</sup>

ICCPR’s guarantee of linguistic rights is relatively limited and has not had particular success as a defender of marginalized languages, and Article 27 has never been cited by an international body as the primary cause of an ICCPR violation.<sup>197</sup> Despite its perceived inefficacy, some hope that Article 27 will experience a revival and that states will take a more active approach to protecting language rights.<sup>198</sup>

Part of the fear of granting the ICCPR broader applicability to language rights is that the application would go too far and impose a duty on states that they are not ready to meet.<sup>199</sup> In Haiti, however, the fear that granting additional rights to Haitian Creole would pose an insurmountable burden on the government is groundless, precisely because Creole is the majority language. As has been made clear, Creole speakers are being denied the right to be educated in their own language, and the reversal of this trend would undoubtedly have a positive impact on the nation as a whole.<sup>200</sup> The administrative and cultural

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193. *Id.* at 60–61.

194. Comm. on the Elimination of Racial Discrimination, Rep. on the Work of Its Sixty-Fourth and Sixty-Fifth Sessions, ¶ 449, U.N. Doc. A/59/18 (Apr. 14, 2004). The committee also expressed concern with St. Lucia’s constitutional requirement that government representatives speak and read English and the lack of television programming available in Kweyol. *Id.* ¶¶ 446, 448.

195. *Id.* ¶ 449.

196. Boaz, *supra* note 28, at 61.

197. Paz, *supra* note 152, at 165.

198. Lauri Malksoo, *Language Rights in International Law: Why the Phoenix Is Still in the Ashes*, 12 FLA. J. INT’L L. 431, 433 (1998).

199. See *supra* Section III.A.

200. It is clear that education in one’s first language facilitates learning with significantly more effect than educating in a second language. Dejean, *supra* note 71, at 215.



burden necessary to implement an education system fully based in Creole instruction would be minimal in comparison to the difficulty of educating the population in what is essentially a foreign language.<sup>201</sup> Any perceived benefit that might stem from a French education is outweighed by the benefit of a Creole education.<sup>202</sup> In light of these realities, “the right . . . to use their own language” under ICCPR article 27 could be interpreted to include the right to use one’s language in education without the negative implications typically associated with granting such a right.<sup>203</sup>

Another reason international judicial bodies have not needed to apply Article 27 directly is because, in the instances that have arisen, an additional right was violated and the adjudicatory bodies chose to rule under that right.<sup>204</sup> For example, in *Waldman v. Canada* before the United Nations Human Rights Committee, the treaty body did not reach the plaintiff’s Article 27 claim because Ontario’s decision to fund certain religious schools and not others was discriminatory on its face.<sup>205</sup> As discussed above, a similar argument could be made with regard to Haiti;<sup>206</sup> however, if this argument were inapplicable, Article 27 protections would be necessary to preserve the rights of a marginalized linguistic group.

### 3. Official-Language Model

Finally, Haiti’s education policy violates Haiti’s Constitution under the Official-Language Model of linguistic rights because both are recognized as official languages, yet they are not treated equally in the public sphere. This plays itself out in both Haiti’s education model and its preference for French in correspondence with its citizens. Haiti adopted Creole as an official language in its 1987 Constitution. The Constitution declares in Article 5 that “[a]ll Haitians are united by a common language: Creole,”<sup>207</sup> and the document in general points

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201. *Id.*

202. See generally Hebblethwaite, *supra* note 4 (demonstrating the far-reaching benefits a Creole-instruction education policy would have on Haiti).

203. ICCPR, *supra* note 78, art. 27.

204. Paz, *supra* note 152, at 183–87.

205. *Waldman v. Canada*, Comm. No. 694/1996, Human Rts. Comm., U.N. Doc. CCPR/C67/D/694/1996 (Nov. 5, 1999).

206. See *supra* Section III.B.1.

207. KONSTITISYON AYITI [CONSTITUTION] June 20, 2012, art. 5 (Haiti), translated in *1987 Constitution of Haiti*, POL. DATABASE AM. (July 9, 2011), <http://pdba.georgetown.edu/Constitutions/Haiti/haiti1987.html> [<https://perma.cc/2UFQ-CM5C>].

toward the promotion of Haitian Creole in Haitian society.<sup>208</sup> As an official language, Creole is afforded protection and should be treated as equal to French.

The Official-Language Model has been adopted impliedly by the European Court of Human Rights. In the *Belgian Linguistic Case*, the court noted that a grant of a right to education “would be meaningless if it did not imply . . . the right to be educated in the national language.”<sup>209</sup> While the ruling did not address the ICCPR specifically, it shows a willingness of international bodies to recognize the unique status of an official language.

The Haitian government’s failure to adequately provide education in Creole violates the presumption of the Official-Language Rights Model, and despite a recent trend in the right direction, Haiti’s education system does not treat French and Creole equally. Despite the call for balanced bilingualism, some have noted that “[French] is required for any person wishing to engage as a full citizen of Haiti.”<sup>210</sup> Haiti has pledged to introduce reading and writing exclusively in Creole in the first grade, yet French is three times more likely to be the subject matter of first-grade classes.<sup>211</sup> Even when students are given the option to respond in Creole, they may choose to attempt French because they have been told that “graders will think that they are less intelligent if they write in Creole.”<sup>212</sup> Furthermore, the Haitian government continues to provide significant official documents and services solely in French. Educational, legal, and administrative documents are provided predominately in French alone, excluding a majority of the population and perpetuating Creole’s status as an inferior form of communication.<sup>213</sup>

These actions by the Haitian government and education system reduce Creole from its elevated status as an official language in violation of Haiti’s Constitution. In doing so, the state contradicts its Constitution’s implied requirement to place Creole and French on equal footing as co-official languages.<sup>214</sup>

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208. Hebblethwaite, *supra* note 4, at 263.

209. Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium, 8 Eur. Ct. H.R. 832, 858 (1969).

210. Luzincourt & Gulbrandson, *supra* note 76, at 3.

211. Baron, *supra* note 67.

212. Trouillot-Lévy, *supra* note 126, at 226.

213. DeGraff, *supra* note 2.

214. It could also be argued that, for reasons discussed in Section II, Haiti’s education policy directly violates its Constitution’s Article 32 requirements that “[t]he State guarantees

## CONCLUSION

While the situation in Haiti in many ways seems dire, the nation itself has recognized the importance of a successful education model for the nation's revival. Article 32.2 of the Haitian Constitution states that "[t]he first responsibility of the state . . . is the education of the masses, which is the only way the country can be developed." The next step is for Haiti to realize that a Creole-based education system is the only way to effectively achieve its goal. Even highly developed nations struggle to implement a dual-language society, and it would take Haiti an unreasonable amount of time to attain that goal. In light of Haiti's continued violations of its citizens' education and linguistic rights, the international community has a duty to support Haiti's transition toward an education system which adequately addresses the cultural, social, and linguistic needs of its people.

The most plausible and straightforward option for Haiti moving forward is to transition to a monolingual education system in which students are educated in Creole, the language they actually speak, while providing opportunities for students to learn French later on.<sup>215</sup> Perhaps more emphasis can be paid to French once students reach upper levels, but, at the very least, all primary education should be conducted exclusively in Creole. French should be taught as a second language, retaining Creole as the language of instruction in all other subjects. Educating in Creole would substantially improve the value of the education for the vast majority of Haitians. It would establish an educational foundation allowing students to grasp concepts in their own language before having to do so in another language. It would also help eliminate negative attitudes toward Creole in Haiti.<sup>216</sup> The result would be a more educated population which could address the other issues facing Haiti. Learning French is a worthy endeavor, but establishing a strong educational foundation in Creole is necessary first.

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the right to education" and "[t]he first responsibility of the State . . . is education of the masses, which is the only way the country can be developed." KONSTITISYON AYITI [CONSTITUTION] June 20, 2012, art. 32 (Haiti), *translated in 1987 Constitution of Haiti*, POL. DATABASE AM. (July 9, 2011), <http://pdba.georgetown.edu/Constitutions/Haiti/haiti1987.html> [<https://perma.cc/2UFQ-CM5C>].

215. Schools and teachers employing this approach have already seen positive impacts on the student attitudes toward education. See Marie Michelle Felicien, *Schools Teaching in Creole Instead of French on the Rise in Haiti*, GLOBAL PRESS J. (Nov. 13, 2019), <https://globalpressjournal.com/americas/haiti/schools-teaching-creole-instead-french-rise-haiti/> [<https://perma.cc/ZE2H-3YXA>].

216. Trouillot-Lévy, *supra* note 126, at 223.

Haiti is an island heavily afflicted by poverty, and the intent of bringing these violations to light is not to heap additional requirements and sanctions on a people that have already suffered more international contempt than any nation should have to endure. Adopting an education system that focuses on Haitian Creole and teaches French later on is necessary to improve Haiti's long-term prospects. This is not to say that changing to a Creole-based education system will be without difficulty. Many hurdles would accompany the transition, but the long-term effects would be a more educated and unified population. Education is a fundamental building block of society, and an education system that promotes the values of only the upper echelons of Haitian society to the neglect of the rest of the population is not one that has Haiti's best interests at heart. Creole is at the heart of the Haitian people, and likewise should be at the heart of Haitian education.

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