

# PERMANENT PEOPLES' TRIBUNAL



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## **57<sup>th</sup> SESSION ON MISSING AND DISAPPEARED INDIGENOUS CHILDREN AND UNMARKED GRAVES IN CANADA**

Montreal, daphne Art Centre, 25-29 May 2026

### **JUDGEMENT**

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## **List of acronyms**

AFN: Assembly of First Nations

BC: British Columbia

CANDRIP: Canadian United Nations Declaration on the Rights of Indigenous Peoples Act

CAT: Committee Against Torture/Convention Against Torture

CCWRP: Canadian Child Welfare Research Portal

CEDAW: Convention on the Elimination of All Forms of Discrimination Against Women/Committee on the Elimination of Discrimination Against Women

CERD: Committee on the Elimination of Racial Discrimination

CHRT: Canadian Human Rights Tribunal

CIRNAC: Crown-Indigenous Relations and Northern Affairs Canada

CRC: Convention on the Rights of the Child/Committee on the Rights of the Child

CRPD: Convention on the Rights of Persons with Disabilities

CSIS: Canadian Security Intelligence Service

EMRIP: Expert Mechanism on the Rights of Indigenous Peoples

FNCFCS: First Nations Child and Family Caring Society

IAP: Independent Assessment Process

ICC: International Criminal Court

ICERD: International Convention on the Elimination of All Forms of Racial Discrimination

ICCPR: International Covenant on Civil and Political Rights

IRSS: Indian Residential School System

ISI: Independent Special Interlocutor

MMIWG: Missing and Murdered Indigenous Women and Girls

NCTR: National Centre for Truth and Reconciliation

OAS: Organization of American States

OCAP: Ownership, Control, Access, and Possession

PTSD: Post-traumatic stress disorder

RCAP: Royal Commission on Aboriginal Peoples

RCMP: Royal Canadian Mounted Police

SCfRJ: Survivors' Circle for Reproductive Justice

SRIP: Special Rapporteur on the Rights of Indigenous Peoples

TB: Tuberculosis

TRC: Truth and Reconciliation Commission of Canada

UNDRIP: United Nations Declaration on the Rights of Indigenous Peoples

UNGC: United Nations Genocide Convention

## ***PREAMBLE***

### **Indigenous Cosmovision: An Indigenous worldview – land, governance and culture**

The Tribunal acknowledges and pays respect to the Indigenous Peoples of Turtle Island<sup>1</sup> who have governed themselves and lived in harmony with the natural world since time immemorial and are the primary ‘Peoples’ addressed by this Tribunal. Whereas the Indictment sets out various statutes and international conventions, the Tribunal also recognizes Indigenous Peoples’ legal orders, conscious that at the point of ‘Contact’ with Europeans, thousands of Indigenous nations, comprised of millions of their citizens, existed under complex social and political structures, with their own forms of governance, languages, cultures, spirituality and land base.

Indigenous histories begin with Creation stories passed down orally through generations, including legends that form the foundation of Indigenous identity, shaping language, culture, governance, and traditional knowledge. These embed an Indigenous Cosmovision that imbues a sense of belonging and kinship relationship with the universe which defines both purpose and responsibility to an individual’s clan, nation and to future generations.

Indigenous Peoples refer to the planet as Mother Earth, and all forms of life – water, plants, trees, birds, and the four-legged as ‘all our relations.’ Indigenous philosophies honour all forms of life through kinship relationships which foster care, respect and love for all life, whereby connections are rooted in these Creation stories.

In Indigenous traditions, children are raised collectively by their parents and the community, with their strengths or gifts nurtured by elders or mentors whose observations of a child's character determine whether they will be good leaders, teachers, or will take other roles to guide their place amongst their nations. The ceremony of naming a child in Indigenous languages assigns the roles and responsibilities of the child on their life journey. Under Indigenous laws, decisions must also consider the health and well-being of ‘the faces not yet born’, recognizing that choices made now will impact future generations.

Indigenous Peoples actively shaped the biodiversity of Turtle Island through ceremony, stewardship and study of the land, and practiced controlled ‘burnings’ which both improved soil quality and enhanced biodiversity, thus creating lands that could nourish and care for multiple generations, in perpetuity.

Indigenous Peoples knew every part of their territories by name: they knew where they were free to hunt, where to pick and gather medicines; which parts of rivers and lakes to find good fishing, which trees to use to make their canoes, houses, and cultural objects such as baskets for ceremony and daily use. They designated sacred areas for ceremony and settlement according to the season. Hunting, fishing, gathering and various forms of agriculture were the main sources of nutrition.

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<sup>1</sup> The Indigenous name for the continent of North America.

Sustainable land management practices informed by nature supported Indigenous Peoples' ability to survive over multiple generations. For Indigenous nations like the Haudenosaunee, who were horticulturalists and agriculturalists, huge fields of corn, beans and squash were planted together and called the Three Sisters or Tionhnhé:khwa (sustainers of life); combined, they create a complete protein.

Each Indigenous nation set aside lands for these specific activities. These were not considered empty lands, but lands cultivated to protect the habitat of 'all our relations'. Although land use varied among Indigenous Peoples throughout the Americas, a common practice was to let the land rest when it became 'tired' so it could regenerate. Communities would then move to another part of their territory where resources were more abundant.

From birth to death, the land is the pillar of Indigenous Peoples' languages, cultures, governance, and spirituality. Through ceremony and song, they maintained relationships with the spirit and natural world. Without all the land's rich resources, Indigenous Peoples could not have survived. They studied it reverently, as a form of science in their quest for survival.

Within nations like the Haudenosaunee, women are vested with title to the lands through a matrilineal clan system that traces ancestry to animals, who are considered the origin of the kinship system. Women are responsible for passing on to children their languages, cultures, and morals, which were the basis for a democratic form of governance. Men's roles include protection, hunting or fishing, and leadership. Within democratic and, in some nations, matrilineal systems, men and women play equal roles; neither is elevated above the other.

Medicine people included both men and women, mentored through oral transmission by knowledge keepers and instilling a collective spirituality in which relations with the spirit world are revered respected, and integral to daily cultural life. There are no gods to be worshipped, only respect and love for a Creator, the natural life cycles and Mother Earth. Ceremonies and cultural protocols are not considered a religion, but a way of life for which survival is intertwined between the physical and spiritual worlds.

One Dish, One Spoon is a First Nations teaching that reminds people to take only what they need and not to accumulate more than is necessary for survival. It teaches that everyone shares equally in the resources of Mother Earth. The teaching uses the image of one dish that holds all the resources for people to survive, and one spoon that holds enough for a person to live. The dish is then passed to others so they too can meet their needs. It is a lesson in humility, respect, kindness and compassion, and a reminder not to be greedy but to contribute to the prosperity of others. Indigenous Peoples' cultures are not static, but like the 'Living Tree' in international law, allow customary laws to change to accommodate the times people live in. This is sometimes called 'adding to the rafters': an analogy used by the Haudenosaunee – people of the Longhouse whose structural integrity depends on the strength of its rafters and the people's exercise of those laws.

Mindful of the enduring richness of Indigenous Peoples' customary laws, that have survived through multiple generations and challenges, the Tribunal delivers this Judgement in the spirit of honour and respect for the Indigenous Peoples of Turtle Island.

## INTRODUCTION

Established in 1979, the Permanent Peoples' Tribunal (PPT) is an international opinion tribunal competent to examine and rule on serious crimes and severe violations of human and peoples' rights. Founded in Bologna, Italy in the context of the Universal Declaration of Peoples' Rights (1976), the PPT creates a space and visibility for peoples subjected to severe forms of repression and denial of their fundamental rights, including that of self-determination.

Over the course of its 56 sessions, the PPT has accompanied the historical struggles of peoples seeking recognition, dignity, and autonomy, in a context marked by the progressive expansion of international law as a language of rights and justice, but also by the persistence of significant gaps in the recognition and protection of peoples as subjects of rights. At the centre of this experience lies the principle that the life and dignity of peoples require a substantive recognition of the right to self-determination in its political, economic, environmental, and cultural dimensions, understood as interconnected elements of their existence and identity. This perspective has guided the Tribunal's attention towards situations in which individual violations are inseparable from broader historical and structural processes, including dispossession, forced assimilation, cultural destruction, and the denial of collective rights.

Within this framework, the jurisprudence of the Permanent Peoples' Tribunal has addressed the crimes of genocide and crimes against humanity, set out in Articles 2 and 3 of its Statute. In the Tribunal's experience, these crimes have been examined not only as isolated acts, but also in relation to historical processes affecting peoples and communities, including struggles for identity, land, memory, cultural continuity, and political autonomy.

From this perspective, the 57<sup>th</sup> PPT session on Missing and Disappeared Indigenous Children and Unmarked Graves in Canada is situated within a historical and juridical continuum, as part of the Tribunal's long-standing engagement with peoples whose experiences reveal persistent struggles for recognition, existence, and dignity. The session was convened at the request of the Native Women's Shelter of Montreal, with the support of several organisations and individuals driven by the urgent need for truth, visibility, and accountability regarding the abuses committed against Indigenous children, their families and communities, and by the determination to ensure that Survivors and affected peoples are finally heard and recognized.

The Panel of Judges appointed by the PPT comprised Valmaine Toki (New Zealand) and Frances Webber (United Kingdom), who served as co-chairs, together with Carlos Beristain (Spain), Carlos Castresana (Spain), Katsi'tsakwas Ellen Gabriel (Canada), Seánna Howard (Canada-United States), and Andrew Woolford (Canada). Prior to the session, the evidence and testimony of Survivors and expert witnesses, together with supporting documents and background information were provided to the Judges.

The Prosecution team was led by Christa Big Canoe, Sarah Glickman, Brianna Rowe (Aboriginal Legal Services) and Alisa Lombard (Lombard Law), who presented the [Indictment](#) and evidence of Survivors and expert witnesses. The Indictment required a response on Canada's responsibility under international law for alleged crimes of genocide and crimes against humanity. The programme of public hearings was held over four days at the daphne Art Centre

in Montreal. At the conclusion of the hearings, on the fifth day, the Judges delivered a [Preliminary Statement](#).

Although the government of Canada was invited to attend and present its defence to the charges, Canada did not directly respond or appear. Information regarding the session was relayed to relevant and interested international institutions.

After hearing all the evidence, this final Judgement seeks to decide on the Indictment set out by the Prosecution team. After the preamble, the Judgement contains three parts. The first briefly sets out the historical context. The second part reviews the evidence for missing and disappeared children and unmarked graves; murdered and missing Indigenous women and forced sterilization; and their long-term effects in the context of continuing violations and trauma. The third part provides a legal analysis and turns to the international legal frameworks to examine whether the allegations of genocide and crimes against humanity are proved. Other international legal obligations are also examined as well as addressing whether the Canadian government has failed to remedy the violations, before a conclusion followed by recommendations.

## 1. HISTORICAL CONTEXT

The historical context of the case before the Tribunal has been covered in extensive detail in the Final Report of the Truth and Reconciliation Commission of Canada (TRC).<sup>2</sup> The TRC's executive director (and Independent Special Interlocutor for Missing Children and Unmarked Graves and Burial Sites) Kimberly Murray provided further evidence of the historical context to the Tribunal, as did Survivors' Secretariat lead, Laura Arndt. Given the long stretch of time and regional diversity of experiences of Canadian settler colonialism, briefly summarizing this history is a daunting task. What follows is a short synopsis of historical land theft, discriminatory legislation, and assimilation policies.

At the initial point of contact with Indigenous Peoples, Europeans relied on the 'Doctrine of Discovery,' a 15<sup>th</sup> century framework that legitimized the dispossession of non-Christian lands and resources by Christian empires.<sup>3</sup> This was followed by missionary and fur trade incursions to convert and exploit Indigenous Peoples. The early history of European colonialism thus had a devastating impact on Indigenous nations. Land was taken through various means, such as the grant to the Hudson's Bay Company, founded in 1670, of complete control over a vast 3.9 million square kilometer area surrounding Hudson's Bay by decree of King Charles II.

The Royal Proclamation of 1763<sup>4</sup> was intended to protect against settler encroachment by prohibiting private interests from acquiring Indigenous lands without the Crown's permission. In this way, the Royal Proclamation acknowledged Indigenous nations as independent political entities,<sup>5</sup> although, as the Indictment notes, it only recognized Indigenous rights to use and occupy the lands. The Royal Proclamation was interpreted by subsequent colonial governments as an assertion of the Crown's underlying dominion over all Indigenous lands, which resulted in ongoing dispossession of Indigenous territory.

Canada's Royal Commission on Aboriginal Peoples (RCAP), reporting in 1996, concluded that there had been massive land loss through theft, fraud, and expropriation in the decades after Canadian Confederation in 1867. This included the loss of two-thirds of Indigenous lands formally recognized in Canadian law.<sup>6</sup>

Early treaty-making (1725 to 1779) reflected the importance of Indigenous Peoples as traders and allies for colonial newcomers, making coexistence seem possible.<sup>7</sup> But virgin-soil epidemics

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<sup>2</sup> Truth and Reconciliation Commission of Canada, *The Final Report of the Truth and Reconciliation Commission of Canada, Volume 1: Canada's Residential Schools, Part I, Origins to 1939 and Part II, 1939 to 2000* (McGill-Queens University Press, 2025).

<sup>3</sup> Ibid, Part I.

<sup>4</sup> Royal Proclamation, 1763. [https://Indigenousfoundations.arts.ubc.ca/royal\\_proclamation\\_1763/](https://Indigenousfoundations.arts.ubc.ca/royal_proclamation_1763/).

<sup>5</sup> See also Brian Slattery, 'Making Sense of Aboriginal and Treaty Rights,' *Canadian Bar Review*, 79 (2000): 200.

<sup>6</sup> Canada. Royal Commission on Aboriginal Peoples. *Report of the Royal Commission on Aboriginal Peoples. Volume 1: Looking Forward, Looking Back*. Ottawa: Minister of Supply and Services Canada, 1996.

<sup>7</sup> John Borrows, 'Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government,' in *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality and Respect for Difference*, ed. Miachael Asch (University of British Columbia Press, 1997).

that travelled along missionary and trade routes decimated Indigenous populations,<sup>8</sup> weakening their military and negotiating power relative to the colonial government.<sup>9</sup> In 1635, a devastating smallpox epidemic killed nearly 65 percent of the Kanien'kehá:ka in the region.<sup>10</sup> Destruction of key animal species integral to Indigenous survival, such as the Bison, by settler groups, partly to clear land for settlement, resulted in widespread hunger.<sup>11</sup> In this context, treaty-making shifted toward efforts to secure Indigenous consent to Crown domination.<sup>12</sup> When Indigenous Peoples resisted the 'extinguishment' of their title to their territories, they were viewed by the British and later Canadian governments as a 'problem' obstructing colonial settlement, railroads and resource extraction.<sup>13</sup> Several strategies were devised to address this alleged problem, including using police to clear the land, but forced assimilation would quickly take prominence as a means to remove Indigenous Peoples from their territories.

In the mid-to-late 19<sup>th</sup> century, the government also began the 'legislated elimination' of Indigenous Peoples.<sup>14</sup> In 1857, the Province of Canada implemented an Act to Encourage the Gradual Civilization of the Indian Tribes in the Province,<sup>15</sup> which sought to erase Indigenous affiliation by encouraging Indigenous Peoples to renounce their identity and accept individual land parcels carved from their reserves. In 1869, the new Dominion government updated this law as the Gradual Enfranchisement Act,<sup>16</sup> which maintained the goals of the previous Act, but also sought to terminate 'Indian' status, to assimilate Indigenous Peoples. Indigenous women lost their 'Indian' status under this Act if they married a non-Indigenous or non-treaty Indigenous person, as did children of such marriages.<sup>17</sup>

The Indian Act of 1876 consolidated this legislation. It further codified the power of the Canadian government to define who is, and who is not, 'Indian'.<sup>18</sup> This power still exists.

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<sup>8</sup> Bruce G. Trigger, *Natives and Newcomers: Canada's 'Historic Age' Reconsidered* (McGill-Queen's University Press, 1985).

<sup>9</sup> David Stannard, *American Holocaust: Columbus and the Conquest of the New World* (Oxford University Press, 1993).

<sup>10</sup> Know History, *Institutional History of the Mohawk Institute*, Survivors' Secretariat, p. 7.

<sup>11</sup> James Daschuk, *Clearing the Plains: Disease, Politics of Starvation, and the Loss of Aboriginal Land* (University of Regina Press, 2013).

<sup>12</sup> Indian Association of Alberta, 'Citizen Plus: A Presentation by the Indian Chiefs of Alberta to the Right Honourable P.E. Trudeau, Prime Minister and the Government of Canada,' June 1970.

<sup>13</sup> Noel Dyck, *Differing Visions: Administering Indian Residential Schooling in Prince Albert 1867–1995* (Fernwood Publishing, 1997).

<sup>14</sup> Pamela Palmater, 'Genocide, Indian Policy, and Legislated Elimination of Indians in Canada,' *Aboriginal Policy Studies*, 3, no. 3 (2014): 27-54.

<sup>15</sup> *An Act to encourage the gradual Civilization of the Indian Tribes in this Province, and to amend the Laws respecting Indians*, 1857, online: <https://caid.ca/GraCivAct1857.pdf>.

<sup>16</sup> *An Act for the gradual enfranchisement of Indians, the better management of Indian affairs, and to extend the provisions of the Act 31st Victoria*, SC 1869, c 42, <https://www.sacisc.gc.ca/eng/1100100010204/1618939577385>.

<sup>17</sup> *An Act for the gradual enfranchisement of Indians*, s. 6. See also Dr. Brenda Reynolds, Systematic Review on Trauma Interventions for Cultural Genocide Survivors, unpublished PhD Dissertation, California Southern University, 2025, p. 53. This was partially remedied by the Indian Act 1985 and subsequent amendments.

<sup>18</sup> See for instance, section 6 that refers to eligibility based on descent: '[I]n making the determination, the Registrar shall rely on any credible evidence that is presented by the applicant in support of the application or that the

Recognition as a member of a First Nation community, which brings the ‘right’ to reside on reserve land and access to federal programmes and services such as health care, education, social services and housing, is accorded to those with ‘Indian status’<sup>19</sup> under this paternalistic and assimilative legislation which marks Indigenous Peoples as ‘wards of the State’ and reinforces the government’s power to extirpate Indigenous identities.<sup>20</sup>

Other discriminatory revisions to the Indian Act permitted the government to ban Indigenous spiritual practices such as the Potlatch (1884)<sup>21</sup> and to prohibit Indigenous organisation for purposes of asserting title to traditional territories (1927).<sup>22</sup> The latter amendment followed upon a 1924 Royal Canadian Mounted Police (RCMP) raid to depose traditional Haudenosaunee leadership and impose Indian Act band governance. The Indian Act was also the primary vehicle for mandating (1895) and then compelling (1920) Indigenous children to attend assimilative day and residential schools.

The Indian Residential School System (IRSS) was preceded by missionary boarding schools,<sup>23</sup> with religion used as a tool of assimilation. Early efforts to board Indigenous children in assimilative schools failed since the children seldom chose to remain; instead, they ran away and returned to their homes and families. The IRSS began to take shape following Nicholas Flood Davin’s mission to investigate Indigenous education in the United States.<sup>24</sup> In his report, Davin lauded US efforts to prepare Indigenous children for citizenship through industrial education. Davin argued that day schools, where children returned to their homes after a day’s education, would not force Indigenous children to overcome the ‘influence of the wigwam.’<sup>25</sup> In 1883, Canada’s first prime minister, Sir John A. Macdonald, introduced several federal residential schools and articulated the government’s intention:

When the school is on the reserve the child lives with their parents, who are savages; he is surrounded by savages, and though he may learn to read and write his habits, training and mode of thought are Indian. He is simply a savage who can read and write. ... Indian children should be withdrawn as much as possible from parental influence, and the only way to do that would be to put them in central training industrial schools where they will acquire the habits and modes of thought of white men.<sup>26</sup>

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Registrar otherwise has knowledge of and shall draw from it every reasonable inference in favour of the person in respect of whom the application is made’.

<sup>19</sup> Although using the term ‘Indian’ is justified due to the requirements of legal meaning, the term ‘Indian’ is outdated and insensitive and should be revisited.

<sup>20</sup> Palmater, ‘Genocide, Indian Policy, and Legislated Elimination’; George Manuel and Michael Posluns, *The Fourth World: An Indian Reality* (Collier-Macmillan Canada, 1974).

<sup>21</sup> Douglas Cole and Ira Chaikin, *An Iron Hand Upon the People: The Law Against the Potlatch on the Northwest Coast* (Douglas & McIntyre, 1990).

<sup>22</sup> Joe Mathias and Gary Yabsley, ‘Conspiracy of Legislation: The Suppression of Indian Rights in Canada,’ *BC Studies* 89, Spring (1991): 34-45.

<sup>23</sup> J.R. Miller, *Shingwauk’s Vision: A History of Native Residential Schools* (University of Toronto Press, 1996).

<sup>24</sup> Nicholas Flood Davin, Report on Industrial Schools for Indians and Half Breeds. Ottawa, 14 March 1879.

<sup>25</sup> Davin, Report on Industrial Schools, p. 1.

<sup>26</sup> Quoted in Reynolds, Systematic Review on Trauma Interventions for Cultural Genocide Survivors.

Based on this policy, approximately 150,000 Indigenous children were taken from their families and territories, and experienced the degradation of their languages, cultures, moral values, disconnection from Indigenous legal orders and systems of governance, and acts of violence that violated their bodily autonomy, which had long-lasting and intergenerational traumatic impacts.

In brief, the history of relations between settlers in Canada and Indigenous Peoples moved through periods of mutual recognition and partnership, towards settler government efforts to dominate, control, and eliminate Indigenous Peoples, their history and their culture. This legacy remains embedded in, and informs, contemporary government Indigenous policy.

## 2. EVIDENCE

### 2.1. MISSING AND DISAPPEARED INDIGENOUS CHILDREN IN THE IRSS AND UNMARKED GRAVES

Canada's forcible removal of Indigenous children to Indian Residential Schools, away from their homes and families, followed by a refusal to acknowledge or reveal their fate and denial of the protection of the law, constituted enforced disappearance.<sup>27</sup> In 1894, jail or withholding of benefits was introduced for Indigenous parents who refused to send their children to school, along with truancy officers and police powers to search for and return runaways.<sup>28</sup> These powers were vigorously enforced, right up to the 1970s. By 1900 annual enrolments exceeded 2,000 and in the mid-1950s were over 11,000. The last school closed in 1997.

We heard from witnesses that the 'Fall roundup' sometimes saw reserves encircled, doors broken down, children seized and marched to the railroad station, where they were given a number and put in cattle cars.<sup>29</sup> These 'trains of tears' were one of the methods used to take children as far as 1200 km from home.<sup>30</sup> Survivor George Diamond told us that a plane took all the Indigenous children in his area – 50 or 60 children, emptying the community of children. They had been playing on the beach, and after they'd gone their mothers would come back to look at their footprints until they were washed away. 'It broke the family, so fast', he said, 'in under an hour.'

We heard that bribes, threats and force were used to get the children to the schools. Survivor Lynda McDonald was 4 or 5 when a plane landed on the trap line; a priest told the kids there was candy on the plane, they went in, and it took off. 'My mom was flailing her arms, crying'.<sup>31</sup>

Survivor Howard Stacey Jones was kidnapped aged 6 from the schoolyard of Port Renfrew's elementary school, 'fighting, trying to get away from two RCMP officers that threw me in the ... car and drove off with me ... my mom didn't know where I was for 3 days, frantically stressed out.'<sup>32</sup> Survivor Isaac Daniels 'heard my dad talking to my mom, and he was kind of crying, "It's either residential school for my boys, or I go to jail" ... So next morning, I said, "Well, I'm going to residential school", 'cause I didn't want my dad to go to jail.'<sup>33</sup>

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<sup>27</sup> Considered in 3.1.2 below.

<sup>28</sup> Amendments to the Indian Act in 1894 introduced compulsory attendance at day schools, or if these were not available or if children were deemed not to be receiving proper care or education, at residential schools. In 1920, attendance at residential schools was made compulsory for all Indigenous children between 7 and 15. See National Centre for Truth and Reconciliation, *The history of residential schools*, <https://nctr.ca/education/residential-school-history/>.

<sup>29</sup> Tanya Talaga: *The Knowing*, pp. 200-203.

<sup>30</sup> Survivors' testimony to TRC; *The Knowing*, p. 227.

<sup>31</sup> Lynda McDonald, statement to TRC.

<sup>32</sup> Howard Stacey Jones, Kuper Island IRS, statement to TRC.

<sup>33</sup> Isaac Daniels, Prince Albert IRS, statement to TRC.

Survivor Sam Achneepineskum felt lucky that he was not taken until he was 12: he had time to learn love from his family, to learn his culture, to respect women, he learned the ceremonies marking birth and puberty, and how to survive by hunting and trapping – a foundation for life which children taken at four or five never had. ‘They never got the chance to know their place in their families and communities.’ Survivor Alma Scott remembered her parents looking at her and her siblings as they were taken away in a big truck. ‘My dad’s shoulders were just hunched, and he, to me, it looked like his spirit was broken. I didn’t have the words at five for that, but I do now.’<sup>34</sup>

### **Life at the schools**

Arriving at the schools, children were separated by gender, so Survivor Audrey Hill could not look after her brother, as her mother had asked her to when they were taken to Mohawk Institute. She was told not to comfort her little sister, who cried after nuns spoke to her sharply. Sam Achneepineskum said that when his first school burned down, the children were dispersed to different schools, and his little sister (4 or 5) was put on a train alone wearing a sign that read ‘Get off at Lookout’ and told to wait there for her parents.

### **Language and culture**

Children were forbidden to speak their own language or follow their own cultural or spiritual practices. Audrey Hill was one of many severely punished for not speaking English. ‘They beat us if we tried to talk our language. So, I lost my language.’<sup>35</sup> Survivor Betty Ross uttered a Cree word softly; a nun heard her and ‘immediately slammed my head on the cement floor, kicking my left ear,’ permanently shattering the hearing in that ear’.<sup>36</sup>

There was a lot of straightforward racism, too. Survivor Peter Emerk remembers a teacher who, when he got angry, would say ‘You bloody doe-doe, your no good for nothing, you S.O.B. Your dirty, Your stinky. (sic)’<sup>37</sup> And Betty Ross remembers the nuns using ‘either hot scalding water or ice-cold water ... hard bristled brushes to try to wash off my brown skin, to make it clean and white’.<sup>38</sup>

### **Conditions and treatment**

The conditions Indigenous children lived in, their treatment, and the lack of federal regulation or enforcement of decent standards (in stark contrast to its regulation of settlers’ schools) reflected the low value placed on Indigenous lives. Buildings were ‘poorly sited, hurriedly built, with poor materials; little provision for lighting, heating or ventilation’, had poor drainage, and lacked adequate water and fuel supplies.<sup>39</sup> Although a 1910 contract graded funding according to the

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<sup>34</sup> Alma Scott, Fort Alexander IRS, statement to TRC.

<sup>35</sup> Anonymous, Holy Angels IRS 1940-54, *Métis memories of residential schools: a testament to the strength of the Métis*, Métis Nation of Alberta, p. 117.

<sup>36</sup> Betty Ross, Cross Lake (St Joseph’s) IRS 1950s-’60s, Survivors of the Assiniboia IRS, *Did you see us?* Reunion, remembrance and reclamation at an urban IRS.

<sup>37</sup> Peter Emerk, Chesterfield Inlet (Turquetil Hall) IRS, Nunavut, in David Paul King, The history of the federal residential schools for the Inuit located in Chesterfield Inlet, Yellowknife, Inuvik and Churchill, 1955-1970, master’s thesis.

<sup>38</sup> Survivors of the Assiniboia IRS, op. cit.

<sup>39</sup> 1897 report by Indian Affairs official, cited in TRC Vol. 4, Missing Children and Unmarked Burials, p. 53.

standards of repair and facilities, the lack of a proper inspection regime or powers to order improvements meant that schools remained dilapidated and ‘acute fire hazards’ even in 1980. At least 40 children died in fires; 53 schools were destroyed by fire, and a further 170 fires were recorded. Indian Affairs refused all but emergency repairs for schools earmarked for closure. The buildings’ poor construction and inadequate heating contributed to chest infections, while the lack of clean water, and antiquated pipes and sewerage systems, led to intestinal flu and typhoid.

### **Health care**

Health care was nonexistent or inadequate. The Indian Commissioner in 1885 saw ‘no necessity for a doctor’ in the schools, and many early schools lacked an infirmary, hospital equipment, or an isolation ward. During the 1918 flu epidemic, the dead, dying, sick, and convalescent were all jumbled together.

The children came from communities where tuberculosis (TB) was rife. The forced settlement of Indigenous Peoples in cramped housing on reserves with no sanitation created a health crisis in the 1880s.<sup>40</sup> In 1906, as the federal government cut spending on First Nations health and relief payments, Dr. Peter Bryce reported the Indigenous death rate as ‘more than twice, sometimes more than three times that of the whole population’, with TB as the main cause. He showed how the cycle of infection, from home to school to home, amplified the TB crisis.

In 1908, 80 percent of children at five Alberta schools had pulmonary TB. By 1930, Indigenous death rates in Manitoba, Saskatchewan, Alberta and British Columbia were between ten and fifteen times their proportion of the population. The churches, greedy for funding, resisted proposals to ban the admission of infected children, and opposed sending TB sufferers to sanatoria. The adoption of health screening was a long, slow process; in the northwest, there was none, and TB was the cause of 47 percent of known deaths in the schools. One of Tanya Talaga’s grandmother’s siblings was left alone in a freezing tent to die of TB at age 17, with staff commenting, ‘He’ll die soon anyway’. Children who survived were weak and vulnerable to influenza, measles, diphtheria and smallpox.

Gary Williams was in Coqualeetza Indian Hospital from age 5 to 7, alone, sick with TB, taking 29 pills daily and unable to go home.<sup>41</sup> There were 22 segregated Indian Hospitals in the 1960s; they received half the funding of settler hospitals, and staff were paid half the salaries of those treating settlers. Dr. Brenda Reynolds spoke of medical experiments there and in the IRS, including testing TB vaccines and medical equipment. She saw unexplained scarring from procedures performed without anaesthetic, purportedly to treat TB. Children were forcibly restrained in beds and cribs. Over 20,000 Indigenous people were held in Indian Hospitals for up to nine years. Refusing treatment or leaving the hospital before discharge were criminal offences, and police returned those who left. During the TB crisis of 1940-60, around 4,500 Inuit from the Arctic were forcibly transferred to hospitals in southern Canada, thousands of kilometres away, where over 1,000 died.

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<sup>40</sup> See James Daschuk, *Clearing the Plains*, University of Regina Press, 2014.

<sup>41</sup> Interview by Tanya Talaga in *The Knowing*.

## Food

There were no enforced standards of nutrition in Indian Residential Schools, and until the 1970s, chronic underfunding and poor nutrition left students ‘always hungry’, undernourished and vulnerable to infection. Whole milk, known to be essential for children’s health and key to preventing TB, was withheld even though many schools had farms where children milked cows. The cream was regularly separated off and sold with the butter for school funds, and the children got skimmed milk. Meat, when served, was often rotten. Hunger led to widespread theft of food from kitchens, orchards, and garbage. The Mohawk Institute’s nickname was Mush Hole, for the wormy oatmeal served up as a staple. (In 1917 a new principal, Turnell, increased food spending and provided the children with whole milk and butter, but he was dismissed a year later.)<sup>42</sup> A 1944 inspection of Elkhorn IRS found 28 percent of girls and 70 percent of boys underweight and malnourished;<sup>43</sup> this led not to enforcement of nutritious diets but to experiments involving supplements given to some children with vitamin and mineral deficiencies and not others. Some They were given extra milk but had to wait two years to ‘establish a baseline’.<sup>44</sup>

## Forced labour

Hunger was exacerbated by forced labour. Boys worked in school or mission farms, greenhouses and gardens, while girls cleaned and stripped beds, turned mattresses, worked in laundries and kitchens. From the late 19<sup>th</sup> century, both boys and girls were sent out to perform manual labour on neighbouring farms, homes and businesses.<sup>45</sup> This was called ‘vocational training’; as Tanya Talaga testified, they were learning to be labourers, manual workers, servants.<sup>46</sup>

‘We had 4-8 cows each to milk. [The milk weighed] from 40-45lbs. We were just small boys. One boy had a cow gave so much milk that he had to milk it three times a day. We farmed 450 acres and we did it all – harvesting and threshing wheat, silos. We picked all the potatoes – maybe 50 acres.’<sup>47</sup>

Fred Onondayoh Loft recalled times when ‘working in the fields I was actually too hungry to be able to walk, let alone work’.<sup>48</sup> Alvin Stonechild wrote that children suffered frostbite in the winter and ‘we were driven like slaves’. The hard labour, hunger and cold took its toll on health later.<sup>49</sup>

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<sup>42</sup> *Children’s health care and nutrition at the Mohawk Institute*, Know History, May 2026, p. 2.

<sup>43</sup> *The Knowing*, p. 226.

<sup>44</sup> *Children’s health care and nutrition*; see also Ian Mosby, ‘Administering colonial science: Nutrition research and human biomedical experimentation in Aboriginal communities and residential schools, 1942-1952’, in *Social History* 46:91, May 2013.

<sup>45</sup> The ‘outing’ program, following Richard Pratt’s US assimilation model, also served to keep Indigenous children from returning to their families during the summer.

<sup>46</sup> *The Knowing*, p. 205.

<sup>47</sup> Kenneth Albert, Mount Elgin IRS, 1930s, in Elizabeth Graham, *The Mush Hole: Life at two Indian Residential Schools*, pp. 451-2.

<sup>48</sup> Fred Onondayoh Loft, Mohawk Institute, 1870s, *The Indian in education*, Toronto, 1912.

<sup>49</sup> Alvin Stonechild, File Hills IRS 1942-50, in Ann B. Callaghan, *On our way to healing: Stories from the oldest living generation of the File Hills IRS*, master’s thesis, 2002.

Catherine Sack worked from 5:30 am till 6:30 pm. ‘In the eleven weeks I was employed in the kitchen I spent a total of two weeks in school,’ she said. She was also forced to clean fourth-floor windows on the outside, with a rope around her waist held by a little girl.<sup>50</sup> Pauline Creeley helped bake 100 loaves of bread a day, then scrubbed the cement floor on her hands and knees.<sup>51</sup>

### **Discipline and punishment**

For the churches as for the State, ‘civilization’ for Indigenous Peoples lay in obedience, discipline and punishment. We heard of children being punished for helping or comforting others, for not eating bad food, for wetting the bed, for speaking their own language, for running away, for complaining, and for speaking out about abuse. The lack of clear guidelines on permissible punishments left violent principals free to use whips, handcuffs, leg-irons, stocks and in one school, a homemade electric chair.<sup>52</sup> In 1953, strapping on the palm became the only permitted physical punishment – but without limits on frequency or duration, and without serious enforcement. Many Indigenous children had never experienced physical punishment before.

Former students recalled having their ears twisted, being grabbed by the hair, having their head banged against the wall or shaved, being locked in cupboards, and being publicly humiliated. Elaine Barbara Durocher said when she was punished she was forbidden to use the toilet ‘so I would just kneel in front of the class in my faeces and in my urine all day.’<sup>53</sup> A former student from Holy Angels IRS said every morning ‘they put kids that wet the bed in tubs, and poured ice water over their heads. We all had to stand there and watch.’<sup>54</sup>

Survivor Robbie Hill recalled that William John Zimmerman, principal of the Mohawk Institute, was nicknamed ‘skin’ because he liked to pull kids’ pants down and beat them on their bare buttocks. Sam Achneepineskum was beaten like this with a 2” x 4” wooden paddle. George Diamond, who received regular strappings at the ‘punishment-oriented, militaristic’ Mohawk Institute, found the hardest part was seeing schoolmates strapped. Audrey Hill, who was at IRS for just one year, 1963-1964, was locked in a shoe closet for two days, with no food or water, just a pail to pee in, as punishment for letting out a girl who was crying and knocking. Audrey learned not to hear others, not to help them: the staff’s cruelty taught children to be cruel. She recalled a lot of bullying among kids, which the staff didn’t prevent - they didn’t ask about children’s cut lips, bruises, black eyes. Some older girls made young Cree girls strip naked and climb across the pipes. Audrey’s brother told her that one boy was kicked to death, his spleen ruptured. Leo Nicholas testified that a boy was beaten so badly he died of kidney injuries; there was no investigation. Doris Young witnessed a killing at Elkhorn IRS, in the furnace room, where a boy was beaten ‘and then they brought the dogs, and, and those dogs, they killed that young boy.’ She remembered the screams, the blood over the walls.<sup>55</sup>

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<sup>50</sup> Catherine Sack, Shubenacadie IRS, 1936, statement to Indian Affairs.

<sup>51</sup> Pauline Creeley, File Hills IRS 1930s-40s, in *On our way to healing*.

<sup>52</sup> Connie Walker, ‘Stolen’.

<sup>53</sup> Métis, St Philip’s IRS, 1960s, testimony to the MMIWG.

<sup>54</sup> Anonymous Survivor of Holy Angels (Fort Chipewyan) IRS, 1940-54, in *Métis memories of Residential Schools: a testament to the Strength of the Métis*.

<sup>55</sup> Doris Young, statement to the TRC.

## **Sexual abuse**

Nearly 38,000 Survivors claimed compensation for sexual abuse, serious physical abuse or other wrongdoing at IRSs through the Independent Assessment Process (IAP) set up as part of the IRSS Settlement Agreement of 2006, and 23,000 received compensation for such acts.<sup>56</sup> Investigating the sexual abuse her father suffered at St Michael's IRS, journalist and podcaster Connie Walker uncovered 219 allegations of serious physical or sexual abuse by 45 named perpetrators there, generally continuous over periods of weeks, months or years between 1931 and 1988. The Tribunal heard of a staggering level of sadistic, depraved sexual abuse by priests, nuns and other staff, against children in some cases as young as 4. The public records are replete with accounts of sexual abuse and rape in priests' and nuns' bedrooms, which the children had to clean; in bathrooms, infirmaries, chapels, schoolrooms, and refectories.

Robbie Hill was first abused at age 7 by principal Zimmerman in his office at the Mohawk Institute, where he took her, crying, after her mother said goodbye. He did it again often, there or in church. Sam Achneepineskum was abused regularly by a priest from the age of 14. Leo Nicholas was sexually abused by the janitor a fortnight after starting school, at about age 12. When he complained to Reverend Boyce, he 'told me to show him what [the janitor] had done' and did the same. Both men repeated the abuse once or twice a week for six months, then not so frequently for another year.

There was no escape or recourse for physically or sexually abused children. Leo ran away, was picked up by police, and told them about it. They took him back to the school and told the principal, who retorted, 'we call him Leo the Liar.' As soon as the officer left, 'Zimmerman made me take my pants and shorts down and lie on the table, and he strapped me 8 or 10 times'. Audrey also referred to sexual violence among children. Her brother ran away after he was bullied and raped by older boys and was brought back.

The astonishingly low number of convictions, around 50 over 130 years, reveals the priority of protecting perpetrators and institutions over children. There was no screening before hiring staff; no mandatory reporting of incidents until the 1960s; victims' and parents' testimonies were often disbelieved; allegations were not reported to police or Indian Affairs; when they were, police rarely investigated, and officers who took allegations seriously tended to be moved.

Perpetrators were sometimes fired, but more often the church, which denied any knowledge of abuse, left them in post or moved them elsewhere in what was called the 'silent shuffle.' Dr. Reynolds told us she had been instrumental in exposing and testifying against a perpetrator in one of the last IRS, where she had initiated a play therapy programme for children she described as 'deeply institutionalised,' malnourished, and in many cases damaged by sexual abuse on top of the forced separation from their families, language, culture and identity.

## **Deaths**

Between 2 and 3 percent of Indigenous children died annually in the schools, a rate two to five times higher than for settler children. The Old Sun school's average death rate was 4.66 percent, ten times the national school-age death rate of 0.4-0.5 percent. Almost half the known deaths of

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<sup>56</sup> This is an undercount of Survivors, many of whom avoided the actuarial IAP process. Others were poorly advised; many did not realise they could list multiple instances of abuse.

Indigenous children were from TB, compounded by medical neglect, cold and hunger. The TRC also registered deaths by suicide among distressed, fearful, and abused children; from accidents including drowning or freezing while running away;<sup>57</sup> from fires sweeping through poorly constructed and maintained buildings with no or locked fire escapes. And as we know, there is evidence of deliberate killing – by staff and students.

In 2015, the TRC identified and recorded 3,200 deaths at the schools, a total that has since risen to 4,117. The true number is believed to be over 6,000 and may never be known. School records could be destroyed after five to ten years and are fragmentary and difficult to access. Principals were not required to report deaths at the schools until 1935, and even then, enforcement was not rigorous. Some principals remained unaware of reporting requirements, and some children were sent home to die, avoiding the need for reporting. The tally does not include children who died after being transferred to other institutions – Indian Hospitals, sanatoria and reformatories, all excluded from the TRC's remit. The names of 32 percent of children known to have died were not recorded by schools or the government; the gender of 23 percent was unrecorded; and the cause of death was not recorded in 49 percent of cases. The location of 1,400 known deaths remains unknown. Tanya Talaga explained another problem, that children were assigned numbers on arrival at schools, and sometimes only their number was recorded, such as '1937: 4-year-old, No. 157.'

The procedure on death prescribed in 1935 required the principal, the Indian agent and the attending physician to conduct an inquiry within 72 hours, and to complete a form for the Department of Indian Affairs. Parents, if notified, had 72 hours to attend the school, which was often hundreds of miles away, with no transport costs paid. The form was often completed on the principal's information. Parents were frequently not told of their child's death promptly, and sometimes not at all. When Sam Achneepineskum's cousin died, his father (Sam's uncle) was not told until he came to collect the boy for the summer, months later.

Cost-cutting meant children's bodies were rarely sent home for traditional burial. Schoolchildren generally dug the graves.

'That was a nightmare ... not even having a minister there or anything, just burying them. They're all around this area, unmarked. When I think about that, it hurts. We had to dig these holes so far down. I remember yelling and screaming in my sleep because I thought I was going to be buried in one of those holes.'<sup>58</sup>

Some bodies were not buried. A Survivor recalled seeing a baby, born of sexual abuse by a priest,

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<sup>57</sup> Schools were required to pay towards the cost of searches, so children died while reluctant principals delayed in notifying police, family and Indian Affairs of their disappearance. The first clear national instructions requiring immediate notification to police, family, and survival training by schools, were circulated in 1971.

<sup>58</sup> Survivor George Bretton, Edmonton IRS, 1947-58, *Extracts*.

‘wrapped ... up in a nice pink outfit, and they took ... the baby in the ... furnace room, they threw that little baby in there and burned it alive. All you could hear was [this little cry, like] 'Uuh!' and that was it.’<sup>59</sup>

Without birth certificates or records, the existence – and death – of some children was never officially recognized.

### **Missing**

Some families never learned what happened to their family members. Children were regularly transferred from schools to segregated Indian Hospitals, sanatoria, psychiatric institutions and reformatories, often without parents’ consent or even knowledge. Annie Carpenter (or Gauthier – name changes made tracing more difficult), Tanya Talaga’s great-great-grandmother, was transferred without her family’s knowledge; she simply never returned home, and it took years of investigation to fulfil the promise Tanya made to her mother to find out what had happened to her. In 2024, after years of investigation, Tanya found out that she had died in 1937 at aged 67 in ‘Mimico Asylum’, an Ontario Indian hospital where she was for nearly eight years, and was buried with 31 others in an old cemetery, now an unmarked field by a Toronto motorway. Mimico hospital records showed a graveyard with 1511 burials, the last in 1974. Tanya didn't even know her grandmother had 5 siblings.

Dr. Scott Hamilton described the ‘information void’ caused by incomplete or inaccessible death and burial records, the frequent failure to communicate deaths to parents or officials, the informality of many IRS cemeteries, and the failure to record grave sites - leaving no one knowing how many more children died or where their bodies are buried. With students digging and maintaining graves, burial sites were often abandoned and left unmaintained when schools closed. The wooden crosses did not last. Graves dug in winter were shallow, Dr. Hamilton explained, and remains were sometimes eaten by bears during the spring melt. During the flu epidemic, victims were often buried two to a grave. A slide showed that while the NCTR recorded 27 deaths at Sacred Heart and Blue Quills IRS from 1901-1941,<sup>60</sup> an analysis of Catholic church records by the Survivors organisation Acimowin Opaspiw revealed more than ten times as many deaths - 325 - at Sacred Heart between 1898 and 1930.

Dr. Hamilton echoed the evidence of ISI Kimberly Murray that children were also buried in municipal, hospital, sanatorium, juvenile detention, mission and other cemeteries. ‘Decades later, the families of the disappeared may still have no idea of the fates of the children, and where they might be buried.’ ‘We don’t know what we don’t know,’ he said. Burial sites have been redeveloped or turned over to agriculture: the remains of at least 300 Indigenous people, including 161 children who died at Sacred Heart IRS, were plowed over for potato fields by the Catholic mission.

The Survivors’ Secretariat learned of 50 additional deaths at the Mohawk Institute. Laura Arndt described the mammoth, complex, and difficult task of searching the grounds of just that one IRS out of over 130 to locate possible burial sites using archival records and oral testimony from Survivors to supplement inadequate technology and scarce experts. Although, as Dr. Hamilton

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<sup>59</sup> Survivor Irene Favel, CBC interview, 2008.

<sup>60</sup> Blue Quills replaced Sacred Heart in 1931.

explained, advanced technologies are available for ground searches, none could definitively identify grave sites, and the process of locating and identifying them was extraordinarily challenging and lengthy.

Arndt explained the Indigenous-led process in which young people and Survivors, trained in ground search, worked with experts to build ‘in-house’ capacity to enable local control over the process and the data generated, for truth-telling and intergenerational memory. Identifying individual children’s remains poses significant challenges, and while some communities and families want bodies exhumed and repatriated, many others do not. But all need to know where relatives are buried, to pray over them and call their spirits home, and to ensure the sites are protected.

These are huge technical and logistical challenges, for which the federal government is failing to take responsibility, with funding that appears capricious, late, short-term, inadequate and precarious, and with no other forms of assistance that we were told about. But the work of discovering and recovering the missing children, searching records, and locating and identifying burial sites, is, as Kimberly Murray described it, a sacred responsibility. It is not one that can be ducked.

The term ‘ungrievable lives’, coined by Judith Butler, was used by Kimberly Murray to describe the ‘invisible, disposable’ Indigenous children and their fate. There was death: by preventable disease, neglect, disregard, indifference or worse. There was denial of grief: staff did not tell families of their child’s death, nor were children at the schools told of deaths in their families or their communities - signalling that Indigenous life is lesser, and not to be mourned. And there continues to be disrespect for the dead, through the disappearance or improper treatment of their remains and burial sites.

The term ‘missing’, as Ms. Murray said, renders invisible the State’s role in the deaths, letting the government off the hook. The appropriate term is ‘disappeared’. The children were disappeared; their parents’ grief was disappeared; their remains were disappeared.

### **Residential school denialism**

A number of witnesses referred to residential school denialism, which demands exhumations and public presentation of remains as proof that children died at residential schools, despite extensive church and government records documenting thousands of deaths. Ground searches aim not to reconstruct the historical record, but to locate, protect, and commemorate burial sites in accordance with Indigenous laws, traditions, and community decisions.<sup>61</sup> Decisions to leave the children’s remains undisturbed reflect cultural, spiritual, and legal considerations, as well as the practical complexities of forensic investigations.<sup>62</sup>

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<sup>61</sup> Evidence of Dr. Hamilton, explaining that ground searches are ‘not intended to prove the records are true’ but to identify sensitive locations and establish protective buffers around them, The UN SRIP has warned of a growing rise in residential school denialism and emphasized the need to preserve evidence, support education, and counter misinformation: A/HRC/54/31/Add.2, para. 27.

<sup>62</sup> Witnesses including Dr. Hamilton discussed Indigenous community decision-making concerning exhumation and repatriation and the forensic, familial, DNA, privacy, and custodial issues associated with identification of deceased

IRSS denialism, which dismisses established evidence, targets Survivors and Indigenous communities, or exploits uncertainties about burial investigations to erase the wider documented history, contributes to racism, hostility, re-traumatization, and marginalization of Indigenous Peoples.<sup>63</sup> In June 2026, a proposed amendment to the Combating Hate Act (Bill C-9), that would have criminalized IRS denialism in terms similar to the Holocaust denialism bill passed in 2022, was defeated by the Senate of Canada. A Member of Parliament is currently seeking to table another Bill (Private Member's Bill C-254) criminalizing residential school denialism.

## **2.2. MURDERED AND MISSING INDIGENOUS WOMEN AND GIRLS AND FORCED STERILIZATION**

### **2.2.1. Murdered and missing Indigenous women and girls**

Canada admits that assimilation policies such as the IRSS are part of the root causes of the crisis of missing and murdered Indigenous women and girls (MMIWG),<sup>64</sup> who are much more likely than non-Indigenous women and girls to be targets of violence. More than 4,000 Indigenous women and girls have been murdered or reported missing since the 1970s.<sup>65</sup>

Loss of language, cultural shaming, land dispossession, colonial rooted poverty, lack of safe housing, inadequate support for addictive behaviours, systemic racism and the overall shortcomings of government-funded programs and services all contribute to the high rates of violence against Indigenous women and girls.<sup>66</sup> Official statistics show that between 2016 and 2025, Indigenous women were over six times more likely to be victims of homicide than non-Indigenous women.<sup>67</sup> While Indigenous Peoples comprise five percent of Canada's population,

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children, and pointed out that Indigenous communities have the right to decide how their relatives are honored and cared for.

<sup>63</sup> The UN Human Rights Committee urged Canada to strengthen its response to hate by broadening its legal framework, publicly condemning hate speech, investigating and prosecuting perpetrators, and ensuring remedies and support for victims. CCPR/C/CAN/CO/7, paras. 17–18.

<sup>64</sup> '[T]he State party indicated that the issue of violence against aboriginal women must also be viewed within the larger context of the legacy of the residential school system, which [...] played a central role in the intentional efforts of historical governments to assimilate aboriginal peoples'. Report of the inquiry concerning Canada, CEDAW, Root Causes, p11, March 2015.

<sup>65</sup> A/HRC/41/42/Add.1, UN Special Rapporteur on Violence Against Women (2019) at para 74.

<sup>66</sup> See eg, Amnesty International and Native Women's Association of Canada, *Stolen Sisters*, October 2004, <https://www.amnesty.org/es/wp-content/uploads/2021/09/amr200032004en.pdf>, p. 2.

<sup>67</sup> Statistics Canada: *Table 35-10-0156-01: Number, percentage and rate of homicide victims, by gender and Indigenous identity*. Custom table generated 23 July 2026. Amnesty International has noted that these statistics may significantly underestimate the true scope of violence against women and girls due to inconsistent reporting methods: *Out of Sight, Out of Mind: Gender, Indigenous Rights and Energy Development in Northeast British Columbia, Canada*. 2016. AMR 20/4872/2016, pp. 53-54. See also CEDAW Concluding observations on the tenth periodic report on Canada, 30 October 2024, E. 10(c) on the need to enhance data collection and analysis, in collaboration with Indigenous women, to measure progress and inform policymaking.

Indigenous women make up half of the women's federal prison population,<sup>68</sup> and half of all women and girls trafficked for sex.<sup>69</sup>

Indigenous women's loss of traditional authority and power has been deepened by ongoing land dispossession driven by Canada's resource development, which has also led to the creation of 'man camps'<sup>70</sup> to house transient workers for extraction projects near reserves, increasing violence and trafficking of Indigenous women. The lack of decent housing on reserves has exacerbated homelessness in the cities where Indigenous Peoples seek employment,<sup>71</sup> where Indigenous women face blatant racism and discrimination and are at their most vulnerable, with some forced into situations that heighten their risk of violence.<sup>72</sup>

The indifference of law enforcement enables predators to target Indigenous women with impunity.<sup>73</sup> In some instances, police are the perpetrators of violence against Indigenous women and girls. Human Rights Watch documented cases where the RCMP in northern British Columbia not only failed to protect Indigenous women but raped and abused them.<sup>74</sup>

Like the children who died in the IRSS, missing and murdered Indigenous women are seen as 'ungrievable'. Award-winning journalist, author and filmmaker Tanya Talaga told the Tribunal how Indigenous women are demeaned and demonized in the mass media, their deaths treated as unimportant, with press coverage scanty and frequently offensive, such as calling victims 'party girls'. Journalist Connie Walker recalled the 1995 case of Pamela George, a 28-year-old Saulteaux First Nation single mother of two children who was raped and beaten to death in Regina, Saskatchewan, and saw the media coverage demonizing her and labelling her a

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<sup>68</sup> Office of the Correctional investigator Annual Report 2021-2022, OCI, 2022, <https://oci-bec.gc.ca/en/content/office-correctional-investigator-annual-report-2021-2022>. The percentage of Indigenous women in federal custody has increased over the years; in April 2022, for the first time, exactly half (298) of the 596 federally incarcerated women were Indigenous. See also Canadian Association of Elizabeth Fry Societies, Criminalization of Indigenous Women and Gender-Diverse Peoples - Factsheet, <https://caefs.ca/fact-sheets-statistics/>.

<sup>69</sup> National Task Force on Sex Trafficking of Women and Girls in Canada, 2014, cited in Heather Panton, 'Invisible No More: Confronting the missing and murdered Indigenous women crisis in Canada', *Thomson Reuters*, 16 October 2025, <https://www.thomsonreuters.com/en/institute/articles/Indigenous-women-crisis-canada>.

<sup>70</sup> Michaela McGuire - Jaad Gudghiljiwah, 'Is Violence against Indigenous Women in 'Canada's Interest? Liquified Natural Gas in B.C., Sexual Violence & Narratives of Terra Nullius', *Yellowhead Institute Brief #175*, 23 October 2025.

<sup>71</sup> Homelessness HUB: <https://homelesshub.ca/collection/population-groups/Indigenous-peoples/#:~:text=Indigenous%20Peoples%20experience%20homelessness%20at,Point%2Din%2DTime%20count>.

See also José Francisco Calí Tzay, 'Indigenous Peoples in Urban Areas', Report of the UN Special Rapporteur on the rights of Indigenous Peoples, A/76/202, 2021.

<sup>72</sup> 'The social and economic marginalization of Indigenous women, along with a history of government policies that have torn apart Indigenous families and communities, have pushed a disproportionate number of Indigenous women into dangerous situations that include extreme poverty, homelessness and prostitution.' *Stolen Sisters* above; see also Panton, 'Invisible no more', above.

<sup>73</sup> Systemic police racism and indifference to killings of Indigenous women were highlighted by the Report of the Aboriginal Justice Inquiry of Manitoba, who investigated the police response to the rape and murder of trainee teacher Helen Betty Osborne by four white men in 1971. It took 15 years to bring them to justice.

<sup>74</sup> Human Rights Watch, *Those Who Take Us Away: Abusive policing and failures in protection of Indigenous women and girls in northern British Columbia*, February 2013.

prostitute. Two white university students were convicted of manslaughter instead of murder. One of the accused had been heard to say ‘she deserved it. She was an Indian.’<sup>75</sup>

The RCMP has documented 832 cases of MMIWG, more than 200 unsolved. Connie Walker told the Tribunal that families of missing and murdered women and girls started their own tracking database. Through interviews with families, patterns emerged among the women – the legacy of the IRS system, poverty, and intergenerational harms. A team of seven spent 18 months building the database, which was more comprehensive than anything the government had done. In 2015 the database, ‘Unresolved’ (formerly ‘Missing and Murdered’), was launched with 307 profiles, enabling users to both search for and submit information.<sup>76</sup>

The work of Indigenous journalists and activists like Tanya Talaga and Connie Walker led to the 2016 National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG), in which over 2,380 people participated. The National Inquiry final report, issued in 2019, included 231 calls for justice.<sup>77</sup> The principal author of the Inquiry’s supplementary report,<sup>78</sup> Dr Fannie Lafontaine, told the Tribunal that the crisis of violence constituted an ongoing race, identity and gender-based genocide, rooted in colonialism. Of the over 230 calls for justice made by the Inquiry, only two have been completed.<sup>79</sup>

A 2015 investigation by the United Nations (UN) Committee on the Elimination of Discrimination Against Women (CEDAW) concluded that Canada’s failures amounted to ‘grave violations’ of the human rights of Indigenous women and girls. Despite the National Inquiry and the Federal government’s adoption in 2021 of a National Plan of Action,<sup>80</sup> recent submissions to UN bodies by Indigenous women’s organizations report that the fundamental conditions facing Indigenous women and girls remain unchanged.<sup>81</sup>

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<sup>75</sup> ‘Connie Walker on the power of Indigenous women to ignite change’, *Speakers Spotlight*, June 2024, <https://www.speakers.ca/2024/06/connie-walker-on-the-power-of-Indigenous-led-storytelling-to-ignite-change/>.

<sup>76</sup> Evidence to the Tribunal; see also ‘Missing and Murdered’ podcast series, 2016, 2018, <https://www.cbc.ca/missingandmurdered/podcast>.

<sup>77</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming power and place: final report*, May 2019, <https://www.mmiwg-ffada.ca/final-report>. Master List of Report Recommendations 2019 <https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/National-Inquiry-Master-List-of-Report-Recommendations-Organized-By-Theme-and-Jurisdiction-2018-EN-FINAL.pdf>.

<sup>78</sup> *A legal analysis of genocide: supplementary report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, 2019.

<sup>79</sup> Government of Canada, Calls for Justice reporting tool, <https://www.rcaanc-cirnac.gc.ca/eng/1756900357689/1757441253777>.

<sup>80</sup> Disappointed with the government’s lack of urgency, the Native Women’s Association of Canada (NWAC) made its own National Plan of Action, setting out, through a trauma-informed, culturally based lens, 65 concrete actions with long-term measurable goals accountable to Indigenous families and communities: NWAC, *Our calls, our actions, NWAC’s Action Plan to End the Attack Against Indigenous Women, Girls, and Gender Diverse People*, 2021, <https://scoinc.mb.ca/wp-content/uploads/2021/07/NWAC-action-plan-FULL-ALL-EDITS-wcag.pdf>.

<sup>81</sup> See, for example, National Family and Survivors Circle, *Submission to the UN Human Rights Committee*, 145th Session (2-19 March 2026).

## Forced and Coerced Sterilization

Forced sterilization occurs when there is no consent. Coerced sterilization occurs where consent is not informed or voluntary or is given with limited or altered capacity. Consent must be free, prior, and informed, and based on an understanding of the finality and irreversibility of the procedure. When evaluating whether valid consent has been obtained, medical providers need to consider language barriers and cultural sensitivities.<sup>82</sup>

In the early 1900s, the Sexual Sterilization Act of Alberta and British Columbia permitted the forced sterilization of those deemed unfit to have children. Although eugenics legislation was repealed in 1972, Indigenous Peoples continue to be sterilized today. It is estimated that between 12,000 and 15,000 First Nations, Inuit, and Métis women, men, and gender-diverse individuals have experienced forced, coerced or imposed sterilization in Canada.<sup>83</sup> Sterilizations occurred in the IRSS, Indian Hospitals, and sanatoria, which the federal government funded and operated as a State system designed to control Indigenous reproduction and futures.<sup>84</sup>

The National Inquiry into MMIWG states that

In the eyes of the colonizer, the long-standing, misguided, and racist view of First Nations and Métis women as promiscuous, un-Christian, and uncivilized justified the policy of eugenics. Indeed, sterilization was viewed as a way to eventually eliminate the Indigenous population entirely.<sup>85</sup>

The Survivors Circle for Reproductive Justice further notes how ‘[m]easures like boarding schools, child removal campaigns, forced moves, or pressured health procedures targeted family bonds and traditions’ and how ‘[s]terilization without consent follows this history... to manage populations under the guise of medicine.’<sup>86</sup>

Indigenous women testified before Canada’s Standing Senate Committee on Human Rights that they were warned they would lose healthcare support, trigger child protection services, or be labelled unfit parents if they declined sterilization.<sup>87</sup> They signed consent forms during childbirth, sometimes while medicated or right after delivery, or after receiving misleading information that the sterilization was not permanent.<sup>88</sup>

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<sup>82</sup> Ibid.

<sup>83</sup> Liana Vanek, ‘Whose bodies matter? Canada’s quiet genocide of Indigenous women’, December 15, 2025, <https://icmagazine.org/whose-bodies-matter-canadas-quiet-genocide-of-Indigenous-women/>.

<sup>84</sup> See Independent investigation released September 2025 and for comparison, Denmark’s apology to the thousands of Inuit women and girls as young as 12 who were fitted with contraceptive devices, as part of a birth-control programme administered by Danish doctors during the 1960s and 70s, leaving some women sterile, <https://www.bbc.com/news/articles/c5yelp5466no>

<sup>85</sup> *Reclaiming Power and Place*, Volume 1a, untitled at p. 266.

<sup>86</sup> Survivors Circle for Reproductive Justice, *Forced and Coerced Sterilization of Indigenous Women, Men, 2SLGBTQ+ in Canada: A Manual on Informed Consent*, p. 4.

<sup>87</sup> Standing Senate Committee on Human Rights, *Forced and Coerced Sterilization of Persons in Canada*, June 2021, [https://sencanada.ca/content/sen/committee/432/RIDR/Reports/RIDR\\_ForcSterilization\\_e.pdf](https://sencanada.ca/content/sen/committee/432/RIDR/Reports/RIDR_ForcSterilization_e.pdf).

<sup>88</sup> Ibid.

Kahsenniyo Kick told the Tribunal that in 2005, she was coerced into undergoing a tubal ligation during a C-section at age 17. The doctor expressed concern about her having two children so close together and told her she was not responsible enough to take birth control. She was the procedure was like having an intrauterine device (IUD) inserted. She does not recall being given any explanation of the permanence of the procedure and its consequences, its risks or any alternative options. There was no informed consent. The experience caused lasting harm to her bodily autonomy, her identity as a mother and as an Indigenous woman, her family life and her overall well-being. She carries anger, deep grief and pain to this day.

Jackie Kistabish told the Tribunal how she experienced coerced sterilization in 1977, immediately following the birth of her fourth child. While she was still in the birthing position, the nurse told her she had enough kids, that she wasn't a good mother, and that the procedure was reversible.

The witnesses, who both joined the Survivors Circle for Reproductive Justice (SCfRJ) and became involved in Survivor advisory and advocacy work with others, described how sterilization denies the sacred responsibility of motherhood in raising the nation and teaching autonomy and self-determination; how it threatens community continuity and the transmission of cultural knowledge to future generations. It disrupts the sharing of traditions and the speaking of Indigenous languages, and severs family lineage, kinship, and nationhood. Their evidence highlighted the lifelong impacts of sterilization, not only on Survivors but also on their families and nations. Indigenous communities suffer the collective impact of missing children whose births are forcibly prevented.

Canada has taken several measures to address the ongoing sterilization of Indigenous Peoples, which, in 2021, a Senate committee found is not confined to the past but continues today.<sup>89</sup> On June 15, 2026, Senate Bill 228 became law, amending the Criminal Code to explicitly criminalize forced sterilization. Enforcing this federal law is critical. According to evidence presented to the Tribunal, no doctor in Canada has ever been criminally convicted for forced sterilization,<sup>90</sup> and it was not until 2023 that a Canadian physician was formally sanctioned.<sup>91</sup>

## **2.3. COLONIAL CONTINUITIES**

### **2.3.1. Child Welfare**

Since the end of the IRSS, more Indigenous children (165,000) have been removed from their families than during the whole IRSS period (150,000). In the last 40 years of the IRSS, an increasing proportion of the children had been placed there for 'child welfare' reasons such as

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<sup>89</sup> *Forced and Coerced Sterilization of Persons in Canada*, note 87 above.

<sup>90</sup> Survivors Manual, note 86 above, p. 14.

<sup>91</sup> *Ibid*, p. 1.

overcrowding, poverty, ‘detrimental’ home conditions and parental relationship breakdown.<sup>92</sup> In 1960, this included 60 percent of the children in the Mohawk Institute.

From 1951, a new section (88) in the Indian Act enabled provincial and territorial laws to be applied to First Nations people on reserve, leading to provincial and territorial child welfare authorities apprehending many Indigenous children from the 1950s, a process which intensified in the 1960s and ‘70s (‘Sixties Scoop’).<sup>93</sup> Some were put in IRS, some were placed with non-Indigenous families for fostering or adoption, sometimes in the US or overseas, without the consent or even knowledge of their families or communities.<sup>94</sup>

In Saskatchewan, between 1977 and 1981, 80 to 91 percent of removed First Nations children were placed with non-Indigenous families, in a continuation of assimilation policies.<sup>95</sup> Disputes over funding between the federal and provincial resulted in scant or no children’s services on reserve being provided, except removal from families.

Concerned over the minimal and culturally inappropriate provision for children and the overwhelming reliance on removal, in the late 1970s First Nations began setting up their own child welfare agencies for families on- and off-reserve, aligned as far as possible with their own values and child-rearing practices. Restrictive federal legislation and primarily, lack of funds stymied progress. Although Indigenous children’s needs were infinitely greater than those of settler children, Indigenous children’s services received significantly less than communities serving settler children, reflecting both the legacy of colonialism, the IRS system, and chronic federal underfunding of Indigenous housing, basic infrastructure and health care.

In 1990, the federal government set up the First Nations Child and Family Services Program (FNCFS), to ‘support culturally appropriate child and family services for Indian children and families on reserve ... in the best interest of the child ...’ First Nations organisations mandated by the provinces were to manage and operate the program. Objectives included protection of children from neglect and abuse, and the provision of services to enable First Nations families to remain together. But again, inequitable and inadequate funding made it impossible for the child welfare agencies to fulfil the children’s and families’ needs on-reserve, and vastly disproportionate removals continued,<sup>96</sup> with First Nations children more than twice as likely to be investigated; more likely to require ongoing child welfare services, and more than twice as

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<sup>92</sup> Know History, *The role of the Children’s Aid Society at the Mohawk Institute* (2026).

<sup>93</sup> Indigenous affairs fall within federal jurisdiction under the 1867 Constitution Act s 91(24) and the Crown has a fiduciary duty to Aboriginal peoples. The federal government provides funding for services on-reserve, but delegates child welfare legislation to the provinces.

<sup>94</sup> Cleo Semaganis Nicotine, a Plains Cree and one of 5 siblings taken from their family, separated and adopted into white families across Canada and the US in the early 70s, killed herself at age 13 in the New Jersey town of her adoptive parents: see *Missing and Murdered: Finding Cleo, how a CBC podcast solved the mystery of a missing Indigenous girl*, <https://www.cbc.ca/player/play/video/1.4602576>.

<sup>95</sup> Canadian Child Welfare Research Portal, *Denouncing the continued overrepresentation of First Nations children in Canadian child welfare: First Nations/ Canadian Incidence Study of Reported Neglect and Abuse (FN/CIS)*, 2021.

<sup>96</sup> Joint AFN-Canada National Policy Review, cited in *First Nations Child and Family Caring Society of Canada and Assembly of First Nations v Attorney-General of Canada (representing the Minister of Indian Affairs and Northern Development Canada)* 2016 CHRT 2 at §154.

likely to be put in out-of-home care – leading to three times the number of First Nations children in State care than at the height of the IRSS in the 1940s. Internal federal documents dated 2005 revealed that Indigenous agencies received 22 percent less funding than their provincial counterparts, preventing them from meeting their statutory obligations. In 2006, the federal Aboriginal Affairs department admitted that the funding model was broken and that ‘early prevention’ funding was needed.<sup>97</sup>

In 2007, the First Nations Child and Family Caring Society of Canada and the Assembly of First Nations brought a case against Canada in the Canadian Human Rights Tribunal (CHRT) alleging racial discrimination in the federal government’s funding and control of child and family services on reserve. Nine years later, in a landmark judgement, the CHRT upheld the complaint, finding that funding was utterly inadequate, and that federal government control was structured to produce negative outcomes, incentivising the removal of children rather than preventive work, which was the legislative objective.<sup>98</sup>

The CHRT pointed out the unique needs of Indigenous communities – 37.2 percent of First Nations adults whose parents attended Residential School had contemplated suicide<sup>99</sup> – and asked,

If funding does not correspond to the actual child welfare needs of a specific First Nation community, then how is it expected to provide services that are culturally appropriate? With unrealistic funding, how are some First Nations communities expected to address the effects of Residential Schools? [Without it] more kids end up in care ... perpetuating the cycle of control that outside forces have exerted over Aboriginal culture and identity.<sup>100</sup>

It concluded that the adverse impacts on Indigenous communities ‘perpetuate the historical disadvantage and trauma suffered by Aboriginal people, in particular as a result of the Residential Schools system.’<sup>101</sup> The government had been aware of the program’s adverse impacts but had not significantly modified it since its inception in 1990. The inequitable funding of Indigenous child welfare services was exacerbated by the federal government’s failure to follow Jordan’s principle (which requires that Indigenous children’s urgent health and wellbeing needs be met by the government of first contact, leaving funding disputes to be resolved later),<sup>102</sup> leading to gaps, delays and denial of services for Indigenous children.<sup>103</sup>

The CHRT made a finding of racial discrimination in the provision of child and family services, and ordered Canada to end the discrimination and to reform the funding and focus of the child

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<sup>97</sup> Cited in *ibid* at §§262-3, 270-1.

<sup>98</sup> *Ibid* at §§349, 422.

<sup>99</sup> *Ibid* at §420.

<sup>100</sup> *Ibid* at §425.

<sup>101</sup> *Ibid* at §459.

<sup>102</sup> Jordan’s principle is named for Jordan River Anderson, a First Nations child from Norway House Cree Nation in Manitoba who was born with complex medical needs and spent over two years in hospital, unable to go home while Manitoba’s provincial government and the federal government argued over who should pay for his home care. He died in the hospital aged five.

<sup>103</sup> *FNCFC v Canada* at §381-2.

welfare program ‘to respect human rights principles and sound social work practice.’<sup>104</sup> By this time (2016), an estimated 165,000 Indigenous children and their families had been involved in the child welfare system.<sup>105</sup> Ten years later, a reform package has still not been agreed.

In 2019, Indigenous children were still 17 times more likely than white children to be placed in out-of-home care. Dr. Reynolds told the Tribunal that in 2019, while Indigenous children accounted for 7.7 percent of all children under age 15, 53.8 percent of children in foster care were Indigenous.<sup>106</sup> That year, the federal government passed the First Nations, Métis and Inuit Children, Youth and Families Act (Bill C-92), the first federal law acknowledging Indigenous self-government over child and family services. The Act is permissive, providing that laws enacted by Indigenous groups and communities exercising their self-government powers take priority over provincial child welfare laws, subject only to the ‘best interests of the child’ test. It sets out expectations for cultural continuity, prioritising kinship care and communication with families and communities. The Supreme Court affirmed the Act’s constitutionality in 2024. But like so many federal measures on Indigenous matters, the Act suffers from lack of adequate consultation and of core funding, which will ‘be determined through individual agreements’ between First Nations and the federal government, increasing the risk of disputes and undermining First Nations’ ability to build vital capacity and infrastructure.<sup>107</sup>

In May 2026, Manitoba’s chief justice ruled that federal and provincial regulation, funding and provision of Indigenous child and family services still unjustifiably infringed First Nations’ inherent self-government rights recognized by the Constitution. Quoting Dr Leanne Betasamosake Simpson, he said, ‘Removing a child from their cultural land-based context is akin to cutting their umbilical cord and disconnecting them from their community, their knowledge systems, and the land from which all meaning flows.’<sup>108</sup>

Yet such removals continue – many at birth. In 2019, a video that went viral showed Manitoba social workers and police taking an Indigenous woman’s newborn from her as she cradled the child in her hospital bed, and refusing relatives’ requests for the baby to stay with one of them.<sup>109</sup> That year, the province of Manitoba – where 90 percent of children in care were Indigenous – removed a newborn infant from its mother every day, through ‘birth alerts’ on the files of expectant mothers believed to pose a risk to their children. Once someone was flagged, their personal and medical information was shared without consent and newborn babies taken into care. A class action lawsuit challenging the practice was filed in 2022 by the mother in the video

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<sup>104</sup> Ibid at §§466-7. 481, 482.

<sup>105</sup> At a compensation hearing in 2019, the panel found Canada’s conduct to be ‘wilful and reckless’, and ordered the maximum compensation of \$40,000 per child to be paid for what it described as ‘one of the worst possible cases’ of racial discrimination. *FNCFCs v A-G of Canada*, 2019 CHRT 39, at §§13, 234.

<sup>106</sup> By the time the last Indian Residential School closed in 1996 or 1997, institutional care had largely been replaced by foster care. See also CCWRP, *Denouncing the continued overrepresentation of First Nations children in Canadian child welfare*, FN/CIS-2019.

<sup>107</sup> See Cindy Blackstock, ‘Will Canada continue to fail Indigenous women and girls?’ *Globe and Mail*, 7 June 2019.

<sup>108</sup> Scott Franks, ‘The right to self-government and child and family well-being: a case comment on Cook et al v Manitoba’, *Yellowhead Institute*, 30 June 2026.

<sup>109</sup> ‘Blindsided: Manitoba officials seize newborn from mother in hospital’, *APT News*, 12 January 2019.

– but Manitoba contests the claim, relying on legal limitation periods, despite the TRC call for no time limit on cases of ‘historical abuse brought by Aboriginal people’.<sup>110</sup> According to the MMIWG 2019 report, birth alerts are ‘racist and discriminatory and are a gross violation of the rights of the child, the mother and the community’. They are often based on discriminatory assumptions, not on evidence of harm. Manitoba and British Columbia claim they have ceased the practice following criticism and legal advice.<sup>111</sup>

The last IRS closed in 1997. However, the evidence makes it clear that the adverse impacts suffered by Indigenous communities resulting from the IRSS continue.

### 2.3.2. Land Grabs

Efforts by missionaries and religious orders to convert Indigenous Peoples to Christianity, and by governments to ‘assimilate’ and ‘enfranchise’ them – carried out in the name of salvation, civilization and progress – are inseparable from land dispossession. The relationship to land is integral to the identity of Indigenous Peoples, whose forcible disconnection from the land created a fundamental spiritual rupture that is felt to this day.

The Doctrine of Discovery and the Doctrine of *Terra Nullius* provided the framework and justification for land dispossession and other acts of genocide against Indigenous Peoples in the Americas for over five centuries, normalizing the expansion of European empires at the expense of Indigenous Peoples’ rights to lands and resources,<sup>112</sup> and with the rationalization provided by Papal law, ignoring the pre-existence of Indigenous Peoples’ legal orders.

The landmark 1973 *Calder* case recognized and affirmed the legal right of Indigenous Peoples to ancestral lands where title had been neither surrendered nor validly extinguished.<sup>113</sup> This prompted the federal government to create the Office of Native Claims and to formulate a Comprehensive Claims Policy to resolve, through negotiation, land ‘disputes’ and treaty entitlements. Section 35 of Canada’s Constitution Act 1982 recognizes and affirms ‘the existing aboriginal and treaty rights of the aboriginal peoples of Canada’, and prompted the federal government to amend the comprehensive land claims policy. But the rights of Indigenous Peoples to own, control, protect and benefit from their lands, territories and resources are still contingent on the power of the Crown.<sup>114</sup>

In 2004, the Supreme Court, in the *Haida Nation* decision, ruled that Canada must reconcile the gulf between the ‘pre-existing sovereignty’ of Indigenous Peoples and the Crown’s mere

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<sup>110</sup> ‘Province of Manitoba challenges birth alert lawsuit over statute of limitations’, *APTN News*, 7 November 2025.

<sup>111</sup> Ibid.

<sup>112</sup> The UN Declaration on the Rights of Indigenous Peoples states (Preamble 4) that all such doctrines are ‘racist, scientifically false, legally invalid, morally condemnable and socially unjust’.

<sup>113</sup> *Calder et al v A-G British Columbia*, 31 January 1973, [1973] SCR 313, <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/5113/index.do>.

<sup>114</sup> John Borrows, *Recovering Canada: the Resurgence of Indigenous Law*, p. 64.

assumed assertion of sovereignty.<sup>115</sup> In interpreting and defining Aboriginal rights, the Court described section 35 of the Constitution Act as a ‘promise of rights recognition’,<sup>116</sup> and assumed the legality and legitimacy of Crown sovereignty and the Crown’s underlying title.

Despite the legal recognition of Indigenous Peoples’ inherent rights, those rights are constantly challenged. Indigenous Peoples have to defend and assert their rights through costly court proceedings or lengthy negotiations controlled by the Crown. The act of (re)‘claiming’ (Indigenous) lands, within colonial structures and assumptions, is inequitable and fails to meaningfully take into account Indigenous rights – particularly as the Supreme Court has referred to framing Indigenous rights ‘in terms cognisable to the Canadian legal and constitutional structure’.<sup>117</sup>

### **Treatment of land defenders**

For centuries, Indigenous land defence has been necessary to protect lands, peoples and rights to self-determination. In 1990, Canada’s reputation as a human rights defender was tarnished by the occupation and 78-day siege of two Kanien’kehá:ka communities by the Canadian army and the Sureté du Québec, which saw live ammunition used against land defenders, numerous human rights abuses including torture, and denial of food, medicine and free passage for community members.<sup>118</sup>

In the fall of 1990, a Senate Standing Committee heeded the demand by the Rotinonhses of Kanehsatà:ke (people of the Longhouse) for a Royal Commission on Aboriginal Peoples, which reported in 1996 and formed the impetus for all subsequent commissions on Indigenous Peoples’ realities. While the Commission was ongoing, in 1995, Ontario Provincial police killed Indigenous land defender Dudley George at Ipperwash provincial park. It emerged that Canadian security services (CSIS) colluded with the Canadian military, using a network in which ‘Canada’s spies may have been circulating false information by claiming the activists were armed when they actually had no guns, as multiple investigations later found’.<sup>119</sup>

Canada has granted itself, and corporate colonists, the ability to violate Indigenous Peoples’ land rights by designating ‘projects of national interest’ for fast-tracking through an illegitimate

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<sup>115</sup> *Haida Nation v British Columbia*, 18 November 2004, [2004] SCR 511, <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/2189/index.do>. BC awarded a licence to a forestry firm to harvest trees on land claimed by the Haida Nation but not legally recognized. The Court held that the government had a duty to consult with Indigenous Peoples and accommodate their interests and could not run roughshod over them while claims were being seriously pursued by treaty negotiation and proof.

<sup>116</sup> *Ibid*, §20.

<sup>117</sup> *R v Van der Peet*, Supreme Court of Canada, 21 August 1996, [1996] 2 SCR 507, <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1407/index.do>, §49.

<sup>118</sup> Fédération Internationale des Droits de l’Homme (FIDH), *Rapport de mission: Crise D’Oka Mission d’enquête et d’observation sur les événements survenus à Kanesatake, Oka et Kahnawake (Quebec, Canada) été 1990*, <https://www.fidh.org/en/>. See also Katsi’tsakwas Ellen Gabriel, *When the pine needles fall: Indigenous acts of resistance*, Between the Lines, 2024.

<sup>119</sup> ‘CSIS ‘actively’ investigated Ipperwash land dispute before fatal shooting of Dudley George, documents show; Internal papers suggest spy agency may have falsely claimed First Nations activists were armed,’ Brett Forester, CBC News, Sep 11, 2025, <https://www.cbc.ca/news/Indigenous/ipperwash-csis-extremism-investigation-1.7630244>.

approval process without the free prior and informed consent of Indigenous rights holders.<sup>120</sup> The RCMP,<sup>121</sup> which, early in Canada's colonial history, enforced land-clearing for settler development and land displacement under the Indian Act, conducted surveillance on Indigenous communities and kidnapped Indigenous children for the IRSS, continues to suppress Indigenous resistance with violence<sup>122</sup> and to surveil land defenders on behalf of corporations conducting extractive activities on unceded Indigenous homelands.

Kahsenniyo Kick told the Tribunal that she and others in her community of Six Nations, Ontario were criminalized and demonized by Canada for defending their lands against the Caledonia housing development. The '1492 Land Back Lane' was labelled by CSIS as 'native extremism', a term from the 1970s when the American Indian Movement was founded.

Indigenous Peoples' right to self-determination is articulated in various international conventions and declarations.<sup>123</sup> However, in defending their right to self-determination, Indigenous Peoples are persistently forced into Canadian courts, and sometimes onto the barricades, to prove and defend their rights to their traditional homelands.

## **2.4. INTERGENERATIONAL TRAUMA AND THE IMPACT ON SURVIVORS AND COMMUNITIES**

Some family members and friends of mine who suffered sexual abuse or rape committed suicide; others fell into alcoholism or used marijuana, and some developed intense anger. *Lucy Tulugarjuk*

Intergenerational trauma<sup>124</sup> refers to the negative effects that traumatic events experienced by one generation have on subsequent ones, not only at the individual level but also at the family, community, and cultural levels. For Indigenous Peoples in Canada, trauma is a result of the impact of colonization, land loss, forced family separation, residential schools, systemic discrimination, and the destruction of social and cultural structures through assimilationist policies. Some traumas have a social and historical dimension; they affect a specific group and leave a lasting mark on its history, creating a clear 'before and after'. Trauma also has an

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<sup>120</sup> Bill C-5 - An Act to enact the Free Trade and Labour Mobility in Canada Act and the Building Canada Act, 26 June 2025, <https://www.parl.ca/documentviewer/en/45-1/bill/C-5/royal-assent>, which enables fast-track approval of permits for major infrastructure and resource development deemed to be in the national interest, without obtaining the free prior and informed consent of First Nations. See 'Beyond C-5: New Bill to fast-track federal approval for all major projects', JFK Law, 19 May 2026, <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/2189/index.do>.

<sup>121</sup> Formerly known as the North West Mounted Police, created in the late 1800s.

<sup>122</sup> Notes from a strategy session for a raid on Wet'suwet'en nation's ancestral lands show commanders argued for lethal violence: see 'Canada police prepared to shoot Indigenous activists, documents show', *Guardian*, 2 December 2019, <https://www.theguardian.com/world/2019/dec/20/canada-Indigenous-land-defenders-police-documents>. The 2015 Anti-Terrorism Act, [Bill C-51](#), sanctions the criminalization of Indigenous environmentalists by enhancing surveillance and legal powers against any potential interference with Canada's 'critical infrastructure' or 'territorial integrity'.

<sup>123</sup> United Nations Declaration on the Rights of Indigenous Peoples, Articles 3, 4, 5.

<sup>124</sup> Amy Bombay, Kim Matheson, Hymie Anisman, *Intergenerational Trauma: Convergence of Multiple Processes among First Nations peoples in Canada*, Institute of Neuroscience, Carleton University, 2009.

individual dimension, requiring people to acknowledge and confront its effects. The psychosocial dimension refers to the fact that the trauma is socially produced and persists through a dialectical relationship between the individual and the collective.<sup>125</sup>

The Tribunal heard from one witness:

I had suppressed the memories, but when I was a community justice coordinator, I was in court hearing another case, and started shaking, went to the washroom and was crying, the victim service worker knocked on the door and asked if I was okay, I said I don't know, but it affects me so much. When I went home, the flashbacks were coming, blood on the floor, images of clips, I fell on the floor, shaking uncontrollably, couldn't control my breathing, I called my biological parents, said 'I remember now', and started telling. *Lucy Tulugarjuk*

Historical trauma is a cumulative emotional and psychological wound transmitted across generations, resulting from collective experiences of massive trauma—genocide, colonization, discrimination, and oppression.<sup>126</sup> It affects not only those who lived through it directly but also their descendants, influencing their emotional and mental well-being over time.

The testimonies presented to the Tribunal demonstrate that, for residential school Survivors, medium- and long-term effects included feelings of shame, loss of identity and isolation, and the adoption by some Survivors of abusive behaviours learned within the institutional environment. These effects impacted individuals and altered family and community relationships.

Families of children whose fate and whereabouts remain unknown have suffered the consequences of their uncertain loss as confirmation of historical discrimination as well as a permanently open psychosocial wound whose impact on family and community is prolonged by the continuing lack of information – on whether the disappeared one is alive or dead; on the cause of death, on where the body is buried – making visits to the burial site impossible.

As the TRC and ISI investigations found, the lack of an adequate response from investigative and judicial authorities compounds the history of disappearances and abuses that constitute the elements of this intergenerational trauma. Tribunal witnesses concurred that the Federal, provincial and territorial governments and churches, which promoted the policies, controlled or ran schools, health services, funeral homes and burial sites and control the legal framework, have failed to take responsibility for investigating the estimated 6,000 deaths and disappearances or search for burial sites, viewing it as a problem for the families and communities themselves, a privatization of responsibility which exacerbates the situation.

Related but separate is the trauma inflicted on women, families, and communities by forced and coerced sterilization and contraception.

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<sup>125</sup> Martin Baro I. (comp.) *Psicología social de la guerra*. UCA ed. El Salvador, 1990.

<sup>126</sup> Maria Yellow Horse Brave Heart, Josephine Chase, Jennifer Elkins & Deborah B. Altschul, 'Historical Trauma among Indigenous Peoples of the Americas: Concepts, Research, and Clinical Considerations', *Journal of Psychoactive Drugs*, 43 (4), 2011, pp. 282–290.

## Indicators of intergenerational trauma

Research on trauma indicates that mental health and psychosocial indicators among Indigenous Peoples are significantly worse than among the rest of Canada's population.<sup>127</sup> Around 30 percent of First Nations people living on reserves reported feeling sad or depressed for two weeks or more; 64 percent of residential school Survivors were diagnosed with post-traumatic stress disorder (PTSD); Indigenous adults whose parents or grandparents attended residential schools report more depressive symptoms and suicidal thoughts than those without such a family history.<sup>128</sup>

I left Mush Hole when I was 13 and went to a white school for a year in London, Ontario; I was constantly getting into fights, trying to prove I was a man. I was trying to come to terms with the sexual abuse; that changed my entire perspective on who I was, what I was supposed to be, and where I should have been ... I was diagnosed with depression. I never had a relationship that lasted more than seven years; I became someone I didn't want to be. I drank, but I decided to quit in 1988; I separated from my partner, who didn't want to stop drinking, and I was left as a single father raising my son. *Leo Nicholas*

## The transgenerational dimension<sup>129</sup>

The trauma endured from the schools was passed on to subsequent generations, affecting people's ability to regulate their emotions, raise their children and maintain their identity. From the testimonies of Survivors and key witnesses, the mechanisms through which this impact has been transmitted transgenerationally<sup>130</sup> have been:

*Collective Memory and Silencing:* Trauma can be transmitted through stories, which can be so powerful that for the children of Survivors growing up, the narratives and images become their own memories, shaping their identity, worldview, and collective consciousness as a family, community, or people. Without a social framework for recognition, these experiences remain in the collective memory as wounds that cannot be healed - as grievances in a relationship with the State and society - and the denial or belittling of their impact keeps the wounds open.

As well as stories, silence or the suppression of emotion can affect children's mental health. The 'conspiracy of silence' (not talking about the trauma) can lead to feelings of shame and isolation in the next generation.

When I was a teenager, my sister would often get angry with me; she'd say, 'You know what I mean,' but I didn't understand what she was referring to. Finally, I was able to apologize to her: 'I didn't know; I didn't remember; I blocked it out for many years.' We learned to hug and love each other; now we get along well. *Lucy Tulugarjuk*

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<sup>127</sup> Cultural loss, racism, marginalization, and the disruption of the intergenerational transmission of cultural values and practices increase the risk of suicide, particularly among young people. L. Kirmayer, 'Suicide in cultural context: An ecosocial approach', *Transcultural Psychiatry*, Vol. 59 (1), 2022, pp. 3–12.

<sup>128</sup> Kimberly Matheson et al, 'Canada's Colonial Genocide of Indigenous Peoples: A review of the psychosocial and neurobiological processes linking trauma and intergenerational outcomes', *International Journal of Environmental Research and Public Health*, 19(11), May 2022, pp. 6455 ff.

<sup>129</sup> In this context, 'intergenerational impact' refers to the impact of traumatic experiences suffered by parents that also manifest in their children. 'Transgenerational' refers to the impact spanning multiple generations. However, the two terms are commonly used interchangeably.

<sup>130</sup> Matheson et al, op. cit.

As the witnesses conveyed to the Tribunal, most Survivors are reluctant to speak about the subject, an individual reaction which also stems from a lack of social recognition; they believe it happened only to them and always feel alone. Healing comes through helping others and through ceremonies.

That turned me into a violent, angry person; I hit another student at a mainstream school for calling my mother a whore, and I was suspended. My older children, aged 47 and 51, are estranged from me; I struggle with a mental illness. I used to drink alcohol. My younger children were taken on a field trip to Mush Hole; they didn't know I'd been there, and I suffered \*flashbacks\* when they told me about the trip. I told them a little about my time there, about things that happened and shouldn't have happened; I wish they'd found out about the school from me, but I would never have brought it up. *Audrey Hill*

*Breakdown of family and community ties:* Collective trauma has eroded basic trust, social values and norms, led to family breakdowns and the loss of traditional roles, and undermined leadership and community cohesion.<sup>131</sup>

My father overcame drugs, alcohol, and abuse to reconnect with his community and become a leader. The schools closed, but the impact lingered, as victims became sexual predators. Suicide rates are very high, especially among the Inuit and in northern Ontario. *Connie Walker*

Survivors of the schools described the 'profound rupture' caused by being torn from their childhoods - rooted in the land, family, language, and culture - and placed into institutional systems focused on control, punishment, and assimilation. Collected testimonies describe the impact of this rupture.

They will never, ever know how much harm they have caused ... to family relationships ... to the students themselves; they will never, ever know the magnitude of the impact they have had ... We've done a tremendous amount of work over the last... ah, [sighs] ten years, trying to see if we could become human beings again. *Peter Emerk, Chesterfield Inlet [Turquetil Hall residential school], Nunavut*

*Transmission of negative patterns:* Many Survivors reported difficulties regulating their emotions, establishing healthy relationships, and parenting. Trauma spanning several generations affects parents' ability to raise their children, often resulting in patterns of emotional detachment—or even neglect or abuse—and which increase mental health problems in subsequent generations.<sup>132</sup> Several Survivors highlighted the impact on parenting patterns in their testimonies.

Hiding my emotions made it hard for me to show affection to my children, until I spoke with my wife and we decided to do things differently: not to punish them, but to do the opposite of what I

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<sup>131</sup> Bombay et al, above.

<sup>132</sup> The Office of the Correctional Investigator (OCI) recognizes in its 2024-25 annual report the criminogenic importance of trauma, including historical, intergenerational and collective trauma, in women in federal prisons: see also Tam, K., & Derksen, D. (2014). *Exposure to trauma among women offenders: A review of the literature* (Research Report, R333). Ottawa, ON: Correctional Service of Canada.

experienced. We had to relearn how to express emotions and affection. My father told me to talk to my children so they could learn the language. *George Diamond*

Traumatic experiences altered parenting styles and coping strategies, which can lead to cycles of abuse, neglect, and parenting difficulties that are repeated from generation to generation.

I dropped out of school in 1968. I felt ashamed and spoke out about the abuse at a Survivors' gathering in 1992. I was afraid to hold my children and grandchildren in my arms, because I had heard that those who suffer abuse end up becoming abusers themselves. This affected my intimacy with my wife. *Sam Achneepineskum*

### **Transgenerational impact with collective effects**

The collective impacts of these practices can be seen in their consequences for culture, the impact of impunity, and conditions of marginalization, with economic, social, and cultural rights indicators worse than those of the rest of the population.<sup>133</sup>

#### *Loss and Erasure of Cultural Identity*

Assimilation policies that sought to eradicate Indigenous identity, languages, customs and spirituality sometimes led to a sense of shame regarding their own culture.

My grandmother wouldn't speak our language; she worshipped the Queen and thought 'Indian' meant 'dirty'. There was a culture of silence in our family. *Tanya Talaga*

Such policies, combined with the lack of information regarding the fate and whereabouts of children; the anonymous burials rendering victims administratively invisible to the State; the fluctuating figures on the number of affected children and the lack of response to requests for access to records and burial sites, contributed to the erasure of identities and family ties, with transgenerational effects that have had an enormous psychosocial impact to this day.

### **Collective trauma and learned helplessness**

Survivors of physical, sexual and emotional abuse within the schools learned to remain silent as a survival mechanism, and many developed a sense of learned helplessness.

Violence was normalized through the Indian Residential Schools (IRS); children were taught to be tough, and concepts of love and compassion were not understood. The propensity for violence persists if a trigger is activated. Eugene, a Survivor confronted Gauthier [his abuser] at a conference for Survivors of these schools; he held him over the balcony and was about to throw him off. Other Survivors still fear Gauthier. There isn't a single Indigenous person in Canada who hasn't been affected by the residential school system. *Connie Walker*

The witness testimonies and studies reviewed indicate that fruitless efforts to seek justice against those responsible for abuses, to obtain information about missing children or access existing records, and to investigate these cases, have a significant psychosocial impact on affected families and communities, leading to mistrust of the State and society, feelings of social exclusion, symptoms of depression, and damage to self-esteem.

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<sup>133</sup> Laurence J Kirmayer, Gregory M Brass, Caroline L Tait, 'The Mental Health of Aboriginal Peoples: Transformations of Identity and Community', *Can J Psychiatry* 45, 2000, pp. 607-616.

### **Distrust and social marginalization**

Institutional protection of perpetrators, stigmatization of victims and the concealment of evidence have generated deep distrust of the authorities, hindering the pursuit of justice and reparations. For decades, the search for justice and truth has been a central demand of Indigenous Peoples and Survivors, taking shape through institutional initiatives such as the TRC. But the failure to comply with the fundamental recommendations has hindered recovery, ensuring that the transgenerational impact persists.

The social marginalization and stigmatization of Indigenous Peoples continue today, exacerbated by environmental and structural conditions including dispossession and loss of land, inadequate housing, poverty, overrepresentation in prisons and child protection systems, which perpetuate family separation and the loss of cultural identity, with long-term negative consequences. The media and educational systems have historically failed Indigenous Peoples, deepening marginalization and stigma.

### **Addressing transgenerational impact**

The situation will not improve unless these issues are addressed in depth. From the testimonies and research, the importance of culture and personal and collective healing emerges as strategies that have helped the recovery of both victims and Survivors, strengthened solidarity within communities and reinforced their sense of identity.

The process of healing and justice involves Indigenous Peoples regaining narrative control over their experiences. Spirituality, rituals and ceremonies, active listening grounded in empathy and understanding, connection with their ancestors, and a sense of purpose for new generations point the way toward addressing the consequences of this transgenerational trauma.

I lit a sacred fire and began to heal. I worked in child welfare services for Native Americans. I practice archery; I made silhouettes of [abusers] Carter and Boyce and shot 120 arrows at them in the genital area, hands, and head; then I participated in a healing ceremony and a four-day fast, and the visions and pain ceased. I regained my power. I have been helping my people since 1972, even when I was still sick ... I like who I am now. Now I speak with 14- or 15-year-old students about my experiences. *Leo Nicholas*

Being told the truth, preserving archives and testimonies as tools for collective healing, and the participation of affected communities and families are fundamental to addressing trauma and strengthening collective bonds. The most effective interventions for breaking the cycle of trauma and promoting long-term healing combine clinical approaches with cultural and community revitalization.

### **Reparations and inclusion**

Reparation requires a shift in the relationship between Indigenous Peoples and the State – from the human rights violations committed in the name of a civilization that denied their very existence as Indigenous Peoples, to recognition of their identity and rights, and a policy of reparations for transgenerational harm.

### 3. LEGAL ANALYSIS

#### 3.1. GENOCIDE AND CRIMES AGAINST HUMANITY

##### 3.1.1. Genocide

In 2019, Prime Minister Justin Trudeau accepted the finding of historical genocide by the National Inquiry for Missing and Murdered Indigenous Women and Girls, and in 2022, the House of Commons unanimously consented to a motion<sup>134</sup> recognizing the IRSS as an act of genocide under the United Nations Convention on the Prevention and Punishment of the Crime of Genocide of 1948 (UNGC or Genocide Convention). This recognition, however, relegates genocide to a ‘dark chapter’ in Canadian history rather than an ongoing process, and has not resulted in sufficient efforts to ensure the cessation of genocide, to remedy the harms done to Indigenous Peoples, or to repair contemporary negative consequences of genocide for Indigenous nations, families and individuals.

The definition of genocide in the UNGC, as reiterated in the Rome Statute of the International Criminal Court (ICC) (1998) and the New Statute of the Permanent Peoples’ Tribunal (1979), is the basis for analysis. Article II of the UNGC reads:

‘In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such:

- a. Killing members of the group;
- b. Causing serious bodily or mental harm to members of the group;
- c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d. Imposing measures intended to prevent births within the group;
- e. Forcibly transferring children of the group to another group.’<sup>135</sup>

Indigenous Peoples are protected groups under the UNGC, meeting the criteria for national, ethnic, racial, or religious groups, or, more simply, they are ‘stable and permanent’ groups.<sup>136</sup> What makes the groups protected by the UNGC stable and permanent is their culture. Despite the efforts of Canada and other colonial powers to eliminate culture from the UNGC,<sup>137</sup> its full excision is impossible. The protected groups the UNGC identifies persist and are ‘stable’ because they share identities, languages, rituals, traditions, a sense of belonging, forms of life, and many other cultural characteristics.<sup>138</sup> These characteristics are the ‘foundations of ...life’,

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<sup>134</sup> Canada, Parliament, House of Commons. *House of Commons Debates*, 44th Parliament, 1st Session, no. 119, 27 Oct. 2022. House of Commons Debates/Hansard.

<sup>135</sup> United Nations Convention on the Prevention and Punishment of Genocide, adopted by Resolution 260 (III)A of the UN General Assembly on 9 December 1948. Entry into force: 12 January 1951.

<sup>136</sup> See the 2 September 1998 Trial Judgement in Akayesu (ICTR-96-4) Section 6.3.1, para. 516.

<sup>137</sup> See 3.3.2, ‘Shielding Canada from accountability’, below.

<sup>138</sup> See Catherine Savard, ‘Emerging Voices: Destruction of Social Units - Towards the Resurgence of Cultural Genocide?’ *Opinio Juris*, <https://opiniojuris.org/2019/08/15/emerging-voices-destruction-of-social-units-towards-the-resurgence-of-cultural-genocide/>.

since they make it possible for groups to reproduce themselves as social units.<sup>139</sup> For this reason, we do not restrict our assessment solely to physical and biological genocide.

Our inclusion of cultural genocide is consistent with an emerging understanding in international law. The *Blagojević and Jokić* Judgement notes,

A group is comprised of its individuals, but also of its history, traditions, the relationship between its members, the relationship with other groups, the relationship with the land. The Trial Chamber finds that the physical or biological destruction of the group is the likely outcome of a forcible transfer of the population when this transfer is conducted in such a way that the group can no longer reconstitute itself – particularly when it involves the separation of its members.<sup>140</sup>

Taking the analysis further, the MMIWG Supplementary Report on Genocide, drawing on trends in legal decisions in German domestic courts and the European Court of Human Rights, argues:

interpreting genocidal intent as encompassing only physical and biological destruction does not accord with the ordinary meaning of the word ‘destruction’ in its context (ie, the prohibited acts) and in light of the object and purpose of the Convention. Moreover, a restrictive interpretation of the term ‘destroy’ leads to absurd results, particularly the forcible transfer of children, but also many non-lethal genocidal conduct encompassed in the definition, which can hardly be reconciled with any of those aims.<sup>141</sup>

The anomaly of excluding cultural destruction was reinforced when witnesses repeatedly provided evidence of how physical acts of genocide, such as child disappearances, and biological harms, including coerced or forced sterilization, were made even more impactful by the cultural destruction they caused.<sup>142</sup> Physical, biological, and cultural destruction are analytical rather than real categories, which in daily life are very much entangled.

The Tribunal finds that Canada has failed to cease and remedy the prohibited acts of genocide as follows:

- Canada’s unwillingness to adequately fund and support the location of disappeared Indigenous children and their graves,<sup>143</sup> as well as continued violence and discrimination experienced by Indigenous women and girls, including their high rates of victimisation through murder and sexual violence;<sup>144</sup>

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<sup>139</sup> Raphaël Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (Carnegie Endowment for International Peace, 1944), 79.

<sup>140</sup> *Prosecutor v. Blagojević and Jokić*, Trial Chamber, International Criminal Tribunal for the former Yugoslavia, IT-02-60-T (17 January 2005), para. 666. See also *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia)*, Judgement, I.C.J. Reports 2015, para. 136.

<sup>141</sup> National Inquiry into Missing and Murdered Women and Girls, *A Legal Analysis of Genocide*, p. 21.

<sup>142</sup> For example, witness Kahsenniyo Kick spoke to the Tribunal of how her coerced sterilization robbed her of her identity and place within her community.

<sup>143</sup> See also testimony of Dr. Kimberly Murray; Office of the Special Interlocutor, *Executive Summary*.

<sup>144</sup> UNGC Article II (a).

- Canada's pattern of ignoring and exacerbating the collective and transgenerational trauma that has affected Indigenous people and their families;<sup>145</sup>
- Canada's role in ongoing land theft and the criminalization of Indigenous land defenders by police and other government agencies, threatening the physical foundation of Indigenous ways of life;<sup>146</sup>
- Canada's initial support for and then sluggish response to forced and coerced sterilizations of Indigenous women;<sup>147</sup>
- Continuing child welfare removals under the auspices of the Canadian government that are fuelled by a lack of support for Indigenous children both on and off reserve.

These acts threaten Indigenous Peoples as social units, jeopardising the foundations of Indigenous identity and group connection, diminishing Indigenous governments, dispossessing Indigenous Peoples of their lands, and erasing Indigenous languages, legal orders, and culture. Together, these acts compromise the physical, biological, *and* cultural existence of Indigenous Peoples.

These acts persist not because Canada continuously reiterates a murderous intent toward Indigenous Peoples. Instead, they reflect 'relations of genocide' driven by government efforts to maintain the settler *status quo*.<sup>148</sup> It is now commonplace in genocide scholarship to recognize that genocide is a process rather than a singular event.<sup>149</sup>

In colonial contexts, what is sometimes called 'colonial genocide' is a form of group destruction that unfolds over a longer period than other, apparently faster-moving genocidal processes, such as the Holocaust or Rwanda.<sup>150</sup> In particular, in settler colonial societies, the structure of the society, including its institutionalised practices, is invested in undermining Indigenous sovereignty and territorial stewardship, because acknowledging these facts would challenge settler claims to rightful domination and jurisdiction. The logic of genocide, which drives elimination, thus cannot be sequestered within a 'dark chapter' of history; instead, this logic adapts and persists in institutional reforms, continuously weakening the identity and cohesion of Indigenous groups.<sup>151</sup>

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<sup>145</sup> UNGC Article II (b).

<sup>146</sup> UNGC Article II (c).

<sup>147</sup> UNGC Article II (d).

<sup>148</sup> Tony Barta, 'Relations of Genocide: Land and Lives in the Colonization of Australia,' in *Genocide and the Modern Age: Etiology and Case Studies of Mass Death*, eds. I. Wallimann and M.N. Dobkowski (Syracuse University Press, 1987).

<sup>149</sup> Sheri P. Rosenberg, 'Genocide Is a Process, Not an Event,' *Genocide Studies and Prevention: An International Journal* 7: 1 (2012).

<sup>150</sup> Andrew Woolford and Jeff Benvenuto, 'Canada and Colonial Genocide,' *Journal of Genocide Research* 17:4 (2015).

<sup>151</sup> Patrick Wolfe, 'Settler Colonialism and the Elimination of the Native,' *Journal of Genocide Research* 8:4 (2006).

As witness Dr. Brenda Reynolds told the Tribunal, Eurocentric notions of the family, and of what makes families productive, are built into the work of organizations charged with overseeing family well-being. Within this structure, Indigenous families that do not fit the European model are more likely to be disrupted by government ministries, child welfare offices, social workers, and others operating within that institutional matrix. This disruption began with residential schools and continued through the Sixties Scoop, birth alerts, and other child removals. Likewise, Indigenous relationships with territory and other species perceived as disrupting European notions of property ownership, development, and profit become subject to ongoing assault from industries, government offices, and individuals that encroach on Indigenous lands and place key species in jeopardy. Indigenous land defenders are portrayed as threats to be policed rather than as citizens of their nations working to protect the foundation of their group identity. Land grabs that began with the creation of reserves have thus continued, with further encroachment on already vastly diminished Indigenous territories.<sup>152</sup>

The Prosecution argued before the Tribunal that ‘The existing institutional and legislative limitations, gaps and weaknesses, must be understood as contemporary expressions of the State’s continuing discriminatory logic.’<sup>153</sup> Such discriminatory government policy continues to govern Indigenous lives today, through the Indian Act and through social institutions that continue to have a destructive impact on Indigenous Peoples long after genocidal rationales were publicly abandoned.<sup>154</sup>

As Dr. Fannie Lafontaine explained to the Tribunal, if the pattern of actions initiated under earlier government plans and policies persists and the government fails to make sufficient efforts to redress and acknowledge the harms caused by these policies, genocidal intent has not been extinguished. Genocidal intent does not require the perpetrator to succeed in eliminating the protected group or even select the most efficient method to do so. For example, it matters not whether the government could have employed more intense and violent methods to eliminate Indigenous Peoples. What matters is that they participate in a series of purposive actions directed toward group destruction.

Numerous Canadian government policies, including those establishing residential schools and those affecting Indigenous governance, territory, language, child-rearing, spirituality, and other foundations of collective life, have had systematic destructive physical, biological, and cultural consequences for Indigenous Peoples. While Canada has initiated some efforts to address historical wrongs committed against Indigenous Peoples, such as the Indian Residential School Settlement Agreement, overall, it has failed to stem the flow of harms from the institutionalization of its destructive policies. Until it does so, the process of genocide continues.

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<sup>152</sup> For example, the government’s 1990 militarized response to Kanien’kehá:ka land defenders mobilized to prevent expansion of a 9-hole golf course on disputed lands in Kanehsatà:ke, discussed in ‘Colonial continuities: Land Grabs’ at 2.3.2 above.

<sup>153</sup> An Indictment of Canada for Genocide and Crimes Against Humanity Against Indigenous Children, Families and Communities brought by the Native Women’s Shelter of Montreal, Permanent Peoples’ Tribunal Session on Missing Indigenous Children and Unmarked Graves in Canada, 25 March 2026, pp. 5-6.

<sup>154</sup> Margaret D. Jacobs, ‘The Habit of Elimination: Indigenous Child Removal in Settler Colonial Nations in the Twentieth Century,’ in *Colonial Genocide in Indigenous North America*, eds. Andrew Woolford, et al (Durham: Duke University Press, 2014).

The continuance of genocidal processes is primarily the responsibility of the State. However, just as in the era of residential schools, when churches played an integral role in the attempted destruction of Indigenous Peoples, other organizations such as corporations now play a role in the ongoing threat to Indigenous identities and territories. For this reason, the church, corporations, and other related entities must also commit to the cessation and remedy of genocide in Canada.

In summary, much of the evidence we heard reflects a continuation of genocidal processes. Practices include relentless policing, excessive criminalization, and mass incarceration of Indigenous Peoples,<sup>155</sup> under-policing and failure to protect MMIWG,<sup>156</sup> and the legislated extinction of First Nations through the status provisions of the Indian Act.<sup>157</sup> We were further told of high rates of Indigenous suicide on reserves,<sup>158</sup> and killings of Indigenous people under the auspices of the criminal justice system, such as deaths in custody and police shootings of Indigenous suspects.<sup>159</sup> Concerns were expressed to the Tribunal over the pending destruction of IAP statements that document the extensive pattern of violence within residential schools, as well as frustrations with Canada's reluctance to counter denialist misinformation about deaths in residential schools and unmarked graves.<sup>160</sup> Indigenous lands and waters remain under threat of theft and toxification by government and industry, even as Indigenous communities themselves go without clean drinking water.<sup>161</sup> Indigenous identity, self-determination, and language are intimately tied to their relationship to territory, while Canada continues to open Indigenous lands to development and profit. This is exemplified by Bill C-45 (2012), which weakened protection for waterways, and more recently by the government's efforts to fast-track projects of 'national interest' and sidestep meaningful consultation with Indigenous nations, showing that land as a physical, biological, and cultural source of Indigenous continuity remains under threat.

These examples add further weight to the evidence of repeated, systematic discriminatory and destructive acts carried out on a vast scale. They are part of a long-running genocidal process in

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<sup>155</sup> Tanya Talaga, 'The Indigenous Over-Incarceration Crisis Can Only be Addressed if Canadians Act,' *The Globe & Mail* October 17, 2025; Office of the Special Interlocutor, *Executive Summary*. See also Deni Hanington, 'From the Inside Out: Effects of Parental Incarceration on Children,' *Canadian Journal of Family and Youth* 12:2 (2020), pp. 36-47.

<sup>156</sup> National Inquiry into Missing and Murdered Women and Girls, *A Legal Analysis of Genocide*.

<sup>157</sup> Section 6. See Dr. Brenda Reynolds, *Systematic Review on Trauma Interventions for Cultural Genocide Survivors*, unpublished PhD Dissertation, California Southern University, 2025.

<sup>158</sup> Mohan B. Kumar and Michael Tjepkema, 'Suicide among First Nations people, Métis and Inuit (2011-2016): Findings from the 2011 Canadian Census Health and Environment Cohort (CanCHEC),' National Household Survey: Aboriginal Peoples, Statistics Canada (June 28, 2019).

<sup>159</sup> <https://ucn.ca/2022/04/article-10-aboriginal-deaths-in-custody/>; Michaela McGuire and Jaad Gudgihlijiwah, 'Two Weeks, Six Dead: Police Violence, Indigenous Dehumanization & Canadian Indifference,' Yellowhead Institute (24 September 2024): <https://yellowheadinstitute.org/2024/two-weeks-six-dead-police-violence-Indigenous-dehumanization-canadian-indifference/>;

<sup>160</sup> Testimony of Kimberly Murray.

<sup>161</sup> Maura Hanrahan, Water (In)Security in Canada: National Identity and the Exclusion of Indigenous Peoples, *British Journal of Canadian Studies* 30, no. 1 (2017): 69-89; Jennifer Huseman and Damien Short, 'A Slow Industrial Genocide': Tar Sands and the Indigenous Peoples of Northern Alberta,' *International Journal of Human Rights* 16:1 (2012), pp. 216-237.

which Indigenous Peoples continue to be viewed as a problem for the government to resolve rather than as self-determining and autonomous nations.

### 3.1.2. Crimes against humanity

Article 7 of the Rome Statute provides:

Article 7. Crimes against humanity: 1. For the purpose of this Statute, ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Despite the incomplete information available due to the insufficient investigation conducted by State authorities, the Tribunal has found evidence of Canada’s responsibility for various forms of crimes against humanity:

- a) Enslavement;<sup>162</sup>
- b) Forcible transfer of population;<sup>163</sup>
- c) Severe deprivation of physical liberty in violation of fundamental rules of international law;<sup>164</sup>
- d) Torture;<sup>165</sup>
- e) Rape and other forms of sexual violence of comparable gravity;<sup>166</sup>
- f) Enforced sterilization;<sup>167</sup>
- g) Persecution on racial grounds universally recognized as impermissible;<sup>168</sup>

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<sup>162</sup> Rome Statute, Article 7(1)(c).

<sup>163</sup> Ibid, Art. 7(1)(d).

<sup>164</sup> Ibid, Art. 7(1)(e).

<sup>165</sup> Ibid, Art. 7(1)(f).

<sup>166</sup> Ibid, Art. 7(1)(g).

<sup>167</sup> Ibid.

<sup>168</sup> Ibid, Art. 7(1)(h).

- h) Enforced disappearance of persons;<sup>169</sup>
- i) The crime of apartheid;<sup>170</sup>
- j) Other inhuman acts intentionally causing great suffering or serious injury to body or to mental and physical health.<sup>171</sup>

The Tribunal has set out, in Part 2, the evidence it received of the inhumane conditions under which 150,000 Indigenous children were held in residential schools, their forcible removal, their deprivation of liberty, and the torture and sexual violence by clergy and staff, and in Part 3, the forced sterilization of Indigenous women. The Tribunal finds that the pattern of conduct described, persisting for more than a century, carried out by state agents and by individuals or groups acting on the state's behalf, under its auspices and with its consent and funding, in pursuit of a systematic policy directed broadly against Canada's Indigenous communities with the purpose of eradicating them as such - constitutes international crimes against humanity. We deal with two such crimes below.

### **Enforced disappearance**

The criminal practice of 'disappearance' by authoritarian regimes had long existed before the international community adopted the Declaration on the Protection of All Persons from Enforced Disappearance in 1992, by consensus, without a vote by UN member states.<sup>172</sup> In 2006, the UN International Convention for the Protection of All Persons from Enforced Disappearance<sup>173</sup> was adopted; Canada has neither signed nor ratified it.

The 1998 Rome Statute of the International Criminal Court, ratified by Canada, defines enforced disappearance as:

The arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.<sup>174</sup>

It is considered a permanent crime, committed the moment the victim is deprived of liberty and continuing until the person is released or the perpetrator provides precise information on the fate or whereabouts of the abducted person.<sup>175</sup>

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<sup>169</sup> Ibid, Art. 7(1)(i).

<sup>170</sup> Ibid, Art. 7(1)(j).

<sup>171</sup> Ibid, Art. 7(1)(k).

<sup>172</sup> UNGA Resolution 47/133, 18 December 1992.

<sup>173</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced>

<sup>174</sup> Article 7(2)(i). Under Article 7(1)(e), it constitutes a crime against humanity, a non-derogable *ius cogens*, 'when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack'.

<sup>175</sup> Only for the purposes of the Rome Statute, footnote 24 included in the 'Elements of the Crime' approved by the Assembly of States Parties establishes that the International Criminal Court will only have jurisdiction over crimes of enforced disappearances when the attack in which the victim was abducted happened after the Statute's entry into force.

The Tribunal finds that the removal of Indigenous children from their communities and families, their forced transfer to and confinement in residential schools, and the state's subsequent reluctance to investigate or to provide information on the final fate of the children who never returned to their communities, constitute a crime of enforced disappearance.<sup>176</sup>

### **The crime of apartheid**

Apartheid is an international crime that has not received sufficient attention because States have refrained from providing the support and political will to enforce its absolute prohibition. The term 'apartheid' (separateness, separation) refers to the institutionalization of segregation and discrimination against a subjugated racial group by a dominant racial group. It received its name from the authoritarian regime that imposed it in South Africa in 1948. The UN Convention on the Suppression and Punishment of the Crime of Apartheid (the Apartheid Convention) was adopted in November 1973, declaring apartheid a crime against humanity. Canada did not ratify it, and it has never been enforced.

The Rome Statute classified apartheid as a crime against humanity,<sup>177</sup> and defined it as follows:

'The crime of apartheid' means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.<sup>178</sup>

For the Tribunal, it is clear that Canada had - and still has - reasons to be concerned about the creation of an international crime defined since 1973 as 'establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them'; the crime was undoubtedly applicable - and, to a large extent, still is - to the situation of Indigenous Peoples in its own country, in particular:

by the infliction of serious bodily or mental harm upon the members of a racial group or groups, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman, or degrading treatment or punishment;<sup>179</sup>

as well as

measures calculated to prevent a racial group or groups from participating in the political, social, economic, and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups;<sup>180</sup>

and

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<sup>176</sup> See 2.1, 'Missing and disappeared Indigenous children in the IRSS and unmarked graves'.

<sup>177</sup> Article 7(1)(j).

<sup>178</sup> Article 7(2)(h).

<sup>179</sup> Apartheid Convention, Article II(a)(ii).

<sup>180</sup> Ibid, Article II(c).

any measures, including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups [...] the expropriation of land belonging to a racial group or groups or to members thereof.

At the time of colonization in the 16th century, settlers' primary objective in occupying land was exploitation. The Royal Proclamation of 1763 set aside 'lands reserved for Indians' held in trust by the Crown. The 'elected band council' system was imposed as the 'legal authority' to undermine and replace the traditional Indigenous governments that existed prior to contact.<sup>181</sup> 'The ultimate objective of early Indian policy was to access Indigenous lands and resources.'<sup>182</sup>

The system imposed on Indigenous communities has been reformed over time but remains deeply discriminatory and maintains the racial divide and territorial reserve system. This system played a role in dividing Indigenous Peoples, destroying their forms of governance, dispossessing them of larger territories, regulating their movement, and separating them permanently from settler communities. Later government efforts encouraged the movement of Indigenous populations away from reserves through policies of 'integration', which operated to disconnect Indigenous Peoples from the lands reserved to them under treaty and other arrangements.

Canada's 1982 Constitution recognizes<sup>183</sup> the subsistence and validity of 'aboriginal and treaty rights', revalidating the very same relationship between Indigenous communities and the Canadian government imposed in 1763 by the Royal Proclamation and implemented afterwards by the 1876 Indian Act, which remains in force after numerous amendments.<sup>184</sup> Under the provisions of the Proclamation, most of Canada's territory became available to the descendants of European settlers, and in exchange for its annexation to the Crown, a portion of that territory<sup>185</sup> was set aside for the 'use and benefit' of the 'bands' formed by Indigenous communities. Ownership of the reserved lands continues to vest in the Crown,<sup>186</sup> and these territories are administered by the federal government through the Department of Indigenous Services which acts as 'superintendent general of Indian affairs'.<sup>187</sup>

The Indian Act establishes a 'protective' model of relationship between the federal government and the bands, whose representatives, Chiefs and Councils, are granted administration of the territories and management of services and facilities on reserves under federal supervision.<sup>188</sup>

The recognition of status to individuals as members of the Band Lists, determined on race-based criteria, with the rights attached to that membership, is for the Registrar,<sup>189</sup> although since 1985 it

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<sup>181</sup> In 1924, Canada legislated to make all traditional Indigenous governments illegal.

<sup>182</sup> Palmater, Pamela, 'Genocide, Indian Policy and Legislated Elimination of Indians in Canada,' *Aboriginal Policy Studies*, 3:3, 2014, pp. 27-54, University of Alberta. Between 1800 and 1914, land held by European settlers increased from 35 to 84 per cent.

<sup>183</sup> The Constitution Acts 1867 to 1982, s 35(1), as of 1 January 2024.

<sup>184</sup> RSC 1985, c. I-5, last amended 15 August 2019, latest published version 21 June 2026.

<sup>185</sup> 'A tract of land or any interest therein the legal title to which remains vested in Her Majesty'.

<sup>186</sup> Indian Act, s. 2(1).

<sup>187</sup> Ibid, s. 3.

<sup>188</sup> Ibid, ss. 73, 74, 81.

<sup>189</sup> Department of Indigenous Services.

can be assumed by the Bands themselves under federal supervision, with the final decision in cases of discrepancy made by a court of justice.<sup>190</sup> Those who, despite their ancestors having enjoyed Indian status, are denied by the band or the federal authorities the band's membership, usually on the ground that they cannot prove their 'Indian' descent or have insufficient 'Indian' ancestry, become 'non-status Indians' and lose their aboriginal and treaty rights.<sup>191</sup>

The Act regulates most aspects of Indigenous Peoples' life on reserves, including land 'possession',<sup>192</sup> inheritance,<sup>193</sup> loans and mortgages, trade restrictions, the sale of minerals and timber, guardianship and compulsory schooling of children, schools, burial grounds, health, the powers of the federal government over 'mentally incompetent Indians', the management of 'Indian, infant children and treaty money' and the like.<sup>194</sup> Residents of the reservations are granted a tax exemption on the land they hold and the personal property they own.<sup>195</sup> Land holders can be forcibly removed from the land granted to them, with compensation to the band or to the affected individuals by the federal government, if an Act of Parliament or a provincial legislature expropriates the land for themselves or for a corporation.

This system of virtual 'guardianship' perpetuates a regime of legal and institutionalized segregation based on racial criteria. The Constitution and the Indian Act deny Indigenous communities not only any rights on their ancestral lands, but ownership and power of disposition over the land reserved to them by Treaty, imposing on communities living conditions in which their capacity for self-determination and full exercise of individual rights is absent.

The Tribunal finds that the system of band membership as established by the Indian Act, maintained as a prerogative to be adjudicated on ethnic biological grounds, constitutes an institutionalized system of racial discrimination, and therefore a crime of apartheid.<sup>196</sup>

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<sup>190</sup> Ss. 10 and 14. Until 1985, when the Indian Act was amended, women who married a non-Indigenous man lost their status, and their descendants were denied Indian status as well. It is estimated that between 1869 and 1985, 16,000 women and their descendants were deprived of their Indian status.

<sup>191</sup> These are known as 'ghost people', and have the highest rates of addictions, preventable diseases, suicides, injuries and incarceration, and the lowest rates of education and employment. Their life expectancy is from 7 to 30 years less than the average Canadian. Palmater, op. cit.

<sup>192</sup> Indian Act 1985 s. 20. The grant of possession of land to any individual must be by the Council of the Band with the approval of the Minister, who subsequently extends certificates of occupation or possession.

<sup>193</sup> Indian Act ss. 42, 48.

<sup>194</sup> Ibid, ss. 70, 89, 91, 93, 114.

<sup>195</sup> S. 87.

<sup>196</sup> This accords with the opinion of the late Murray Sinclair Anishinaabe jurist, senator, and TRC chair, responding in December 2019 to a press critique of then-justice minister Jody Wilson-Raybould's comparison of Canada with South Africa: 'apartheid is exactly what happened here... Through chicanery, lies, and duplicity (read broken treaties), the government lulled [Indigenous leaders] into a false sense of security, and after asserting the extension of Canada's legal jurisdiction, enacted apartheid laws over them... That apartheid system still exists, and it is what we, who are working for reconciliation, are all working to dismantle'. <https://www.theglobeandmail.com/canada/article-murray-sinclair-has-tried-for-years-to-shock-canada-into-confronting/>; <https://www.ruralvoice.ca/gary-kenny-september-2023-canada-s-apartheid>.

### 3.2. FURTHER INTERNATIONAL LEGAL CONSIDERATIONS

In addition to genocide and crimes against humanity, addressed above, the Indictment also alleges violations of the Convention on the Rights of the Child (CRC) (1989), the International Covenant on Civil and Political Rights (ICCPR) (1966), and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (2007).

Although not alleged in the Indictment,<sup>197</sup> Canada has also violated the collective right to self-determination, a foundational right affirmed in the United Nations Charter, the ICCPR and the UNDRIP, and recognized as a prerequisite to the exercise and enjoyment of all other human rights,<sup>198</sup> as well as its international human rights obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (1965), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979), and the Convention against Torture (CAT) (1984).

#### **Convention on the Rights of the Child (CRC)**

The Indictment alleges a violation of Article 2 of the Convention, protection from discrimination.<sup>199</sup> The forced assimilation and abuses perpetrated through the IRSS also violated other articles of the Convention. Canada violated the principle of non-discrimination (Art. 2) and the right to culture (Art. 30) by stripping children of their language, culture, and family connections. The best interests of the child (Art. 3) provision was violated by removing children from their homes and subjecting them to institutional neglect and trauma. Many of these children remain disappeared, representing a continuing violation. Despite the formal closure of residential schools, the legacy continues through the child welfare system with a disproportionately high number of Indigenous children in foster care, perpetuating the generational separation of families and constituting continuing violations that the State has not remedied.

In its last review of Canada, the Committee expressed concern about reports of unmarked graves of Indigenous children; the absence of information on measures taken to implement the TRC calls for action, including those concerning the ‘physical and sexual violence, abuse and neglect of Indigenous children in residential boarding schools that lasted for decades’, and the thousands of Indigenous girls whose deaths or disappearances have likely gone unrecorded over the decades, and called on Canada to implement the TRC Calls to Action and the MMIWG Calls to Justice, and investigate and provide justice to families of victims and Survivors, with the meaningful participation of Indigenous girls.<sup>200</sup>

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<sup>197</sup> Under the principle *iura novit curia* (‘the court knows the law’), the Tribunal may identify, interpret and apply relevant legal principles without the parties having to plead or prove the law applicable to their case. ‘International customary law does not need to be proved; it is of a general nature and is based on a general conviction of its validity (*opinio juris*). The Court must apply it *ex officio*; it is its duty to know it as *quaestio juris: iura novit curia*’. *Fisheries Jurisdiction (UK v. Iceland)*, Merits, 1974 ICJ Rep. 3, 80 (Judge de Castro).

<sup>198</sup> As the Expert Mechanism has underscored in its 2021 report, without it (Article 3, UNDRIP), none of the other rights can be wholly fulfilled, including the right to belong to a nation and determine their own membership: A/HRC/48/75, para 8.

<sup>199</sup> General Comment No. 11 (2009), *Indigenous children and their rights under the Convention*, provides guidance to states on securing the rights of Indigenous children without discrimination: CRC/C/GC/11 (2009).

<sup>200</sup> CRC/C/CAN/CO/5-6 (2022), paras. 20, 21 and 26.

### **International Covenant on Civil and Political Rights (ICCPR)**

The Indictment alleges violations of the right to life (ICCPR Art. 6), prohibition of torture (Art. 7), and liberty and security of the person (Art. 9). The Tribunal finds violations of these rights, as well as non-discrimination (Art. 2) and the right to culture (Art. 27). The confirmed and suspected deaths of thousands of Indigenous children in the IRSS system and other State institutions violated the right to life. The physical, sexual, and psychological abuse, forced labour, and family separation about which the Tribunal heard and read, qualify as State-sponsored torture and cruel treatment under Article 7 of the Covenant. Finally, the IRSS' attempted assimilation violated the right to culture under Article 27: the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion or to use their own language.

The Human Rights Committee, reviewing Canada's progress in implementing the ICCPR in March 2026, expressed concern about the imminent destruction of residential school records, the lack of reparation to victims excluded from the initial settlements, and the lack of information on ongoing criminal investigations into allegations of abuse, ill-treatment and deaths of children in residential schools.<sup>201</sup> It called on Canada to increase efforts to implement the TRC Calls to Action, the MMIWG Calls to Justice, and CANDRIP and its Action Plan; ensure the meaningful participation of Indigenous Peoples; dedicate sufficient human and financial resources; and establish an independent monitoring and enforcement mechanism.<sup>202</sup>

Article 2 of the ICCPR<sup>203</sup> requires the State to provide remedies such as proactive investigations to give effect to relevant rights, which may include opening all official and private archives and registries. Canada has a positive duty to preserve all documents and evidence, disclose all available information on every case of clandestine adoption, prosecute and punish perpetrators of enforced disappearances, preserve burial sites, and make available to families, Indigenous communities, and society at large all the information necessary to determine the final fate of missing and disappeared children. This means truth, justice, reparations, and guarantees of non-recurrence. Canada has hardly begun to comply with these international law obligations.

### **UN Declaration on the Rights of Indigenous Peoples (UNDRIP)**

The UNDRIP is an international instrument that affirms the human rights of Indigenous Peoples and the formal commitments of States, including Canada, to meet the minimum standards affirmed in the Declaration.<sup>204</sup> The Indictment alleges a violation of the right to health (Art. 24). Other relevant rights set out in the Declaration include self-determination (Art. 3),<sup>205</sup> freedom from genocide or forcible removal (Art. 7)<sup>206</sup> and from forced assimilation (Art. 8),<sup>207</sup> protection

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<sup>201</sup> CCPR/C/CAN/CO/7 (2026), paras. 11-12.

<sup>202</sup> Ibid.

<sup>203</sup> Article 2 establishes States' duties to respect and ensure fundamental human rights without discrimination, to prevent violations and ensure effective remedies.

<sup>204</sup> A/HRC/57/62, para 3.

<sup>205</sup> 'Article 3. Indigenous Peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.'

<sup>206</sup> 'Article 7. 1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person. 2. Indigenous Peoples have the collective right to live in freedom, peace and security as distinct peoples and

of Indigenous women against violence and discrimination (Art. 22)<sup>208</sup> and the right to an effective remedy (Art. 40).<sup>209</sup>

The orthodox view holds that the rights in a Declaration are not binding unless incorporated into national legislation and are not necessarily applicable retroactively. Nonetheless, the Declaration is legally significant as an authoritative statement of human rights by the General Assembly, and as an expression of Member States' obligations to promote and respect human rights under the Charter of the United Nations, where compliance is expected. Similarly, the Declaration is a source for interpreting States' obligations under the human rights treaties they have ratified. This assists Member States in interpreting and understanding their existing human rights obligations as a matter of international and domestic law in the context of Indigenous Peoples. Second, the Declaration places a moral obligation on States to act in accordance with fundamental human rights. Third, the Declaration is a mandatory and relevant consideration in judicial review and, under the presumption of consistency, an aid to statutory interpretation. Fourth, by developing a normative character, these provisions may be considered customary international law.<sup>210</sup> As an international instrument that elaborates on fundamental Indigenous human rights and/or pre-existing customary international human rights, courts and tribunals refer to, or use, the Declaration (a) through a customary international law lens, (b) as an interpretive tool; or (c) as an aspirational standard when assessing ongoing or historical human rights situations.

Canada domesticated the UNDRIP in 2019, when the province of British Columbia passed its Declaration on the Rights of Indigenous Peoples Act.<sup>211</sup> At the federal level, Canada adopted the United Nations Declaration on the Rights of Indigenous Peoples Act (CANDRIP) in 2019, and a corresponding action plan in 2023.<sup>212</sup> CANDRIP requires Canada to harmonize its legislation, including the Indian Act, with the rights set out in the UN Declaration.<sup>213</sup> The Act's preamble

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shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.'

<sup>207</sup> 'Article 8. 1. Indigenous Peoples and individuals have the right not to be subjected to Forced assimilation or destruction of their culture. 2. States shall provide effective mechanisms for prevention of, and redress for: (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities; (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources; (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights; (d) Any form of forced assimilation or integration; (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.'

<sup>208</sup> 'Article 22. 1. Particular attention shall be paid to the rights and special needs of Indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration. 2. States shall take measures, in conjunction with Indigenous Peoples, to ensure that Indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.'

<sup>209</sup> 'Article 40. Indigenous Peoples have the right to have access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the Indigenous Peoples concerned and international human rights.'

<sup>210</sup> A/HRC/57/62 at para [3].

<sup>211</sup> British Columbia, Declaration on the Rights of Indigenous Peoples Act [SBC 2019] chap. 44.

<sup>212</sup> Canada, United Nations Declaration on the Rights of Indigenous Peoples Act [S.C. 2021] chap. 14.

<sup>213</sup> A/HRC/57/62, para 26.

rejects colonialism and commits to advancing relations with Indigenous Peoples based on recognizing the inherent right of self-determination.

The testimony of Survivors and experts indicates that the Canadian government's actions, including the forced removal of Indigenous children from their communities and families through the IRSS and other institutions, are inconsistent with the rights articulated in the Declaration.<sup>214</sup> Canada's assimilationist and discriminatory policies sought to destroy Indigenous Peoples' culture and language, and to permanently deny the indigeneity of children who should have been accorded full protection and guarantees against all forms of violence and discrimination.<sup>215</sup> This requires, among other measures, rights to remedy with due consideration to the customs, traditions, rules, and legal systems of the Indigenous Peoples concerned in accordance with international human rights law.<sup>216</sup>

International Indigenous-specific mechanisms and bodies which interpret, monitor and advance implementation of the UNDRIP include the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), the Permanent Forum on Indigenous Issues, and the Special Rapporteur on the rights of Indigenous Peoples (SRIP). EMRIP has stated that 'the removal of Indigenous children from their communities and subsequent institutionalization impact many of their rights, including their collective rights to their traditional lands, to belong to an Indigenous community, to practise their spiritual and religious traditions, and to their languages and culture.'<sup>217</sup> Following his 2023 visit to Canada, the SRIP described the need to address comprehensively 'the structural racism and intergenerational trauma caused by the residential school experience' to tackle effectively the interconnected challenges of overrepresentation in the child welfare and correctional systems, addiction, homelessness and violence faced by Indigenous Peoples in Canada.<sup>218</sup>

### **International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)**

Canada has violated Part I of the Convention by failing to protect the equal enjoyment of rights (Art. 1, 2), to pursue policies to eliminate racial discrimination (Art. 2), to prohibit hate propaganda based on racial discrimination, to combat prejudice which leads to racial discrimination (Arts. 4, 7), or to ensure the equal protection of the law and security of the person (Art. 5) and access to remedies (Art. 6).

In its last review of Canada, the Committee on the Elimination of Racial Discrimination (CERD) expressed alarm over the continued high rates of violence against Indigenous women and girls in Canada and the lack of care or accountability in investigations.<sup>219</sup>

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<sup>214</sup> Article 7.

<sup>215</sup> Articles 7, 8 and 22(1).

<sup>216</sup> Article 8 (2) and 40.

<sup>217</sup> A/HRC/48/74 (August 9/21), Rights of the Indigenous child under the United Nations Declaration on the Rights of Indigenous Peoples, Study of the Expert Mechanism on the Rights of Indigenous Peoples, at para. 36.

<sup>218</sup> A/HRC/54/31/Add.2 (2023), para. 22. He also noted concerns about restricted and limited government funding for identification of missing children and burial sites (para. 28), the importance of Indigenous-led repatriation or commemoration (para 29) and the necessity for 'full resolution of all residential school claims', disapplying statutes of limitation for the grave crimes committed at the schools (para. 30).

<sup>219</sup> CERD/C/CAN/CO/21-23 (2017) paras. 18, 23, 24.

### **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**

Canada's inadequate response to the MMIWG epidemic, the Indian Act's 'second-generation cut-off' that still strips some Indigenous descendants of Indian status,<sup>220</sup> and the ongoing coerced and forced sterilization of Indigenous women that limits their reproductive freedom, puts it in violation of the rights to non-discrimination and equality (Arts. 2 and 3), rights to health (Art. 12) and to decide freely and responsibly on the number and spacing of their children (Art. 16(e)) of CEDAW.<sup>221</sup>

In its 2024 periodic review of Canada, CEDAW referred to the intergenerational harm of the IRSS and its legacy in the disproportionate violence against Indigenous women.<sup>222</sup> It deeply regretted Canada's 'slow progress' in implementing the MMIWG National Inquiry's calls for justice, its failure to protect IWG against further violence or to address the root systemic causes of the violence identified by MMIWG.<sup>223</sup> The Committee also expressed concern about the persistence of forced sterilizations of Indigenous women, and the lack of adequate laws and policies to ensure the granting of informed consent, 'understood as more than simply signing a consent form.'<sup>224</sup>

### **Convention Against Torture (CAT)**

In addition to its historic responsibility for the torture and inhuman and degrading treatment of children in the IRS system, Canada has violated several articles of the Convention including Articles 2 and 16 (prevention of torture), Articles 12 and 13 (access to justice), and Article 14 (compensation) by allowing and failing to provide remedies for Indigenous Survivors of gender-based violence and forced sterilization.

The Indictment noted the concern of the UN Committee Against Torture (CAT) over 'reports of extensive forced or coerced sterilization of Indigenous women and girls dating back to the 1970s'.<sup>225</sup> CAT has also commented on the disproportionate levels of violence against Indigenous women and girls.<sup>226</sup>

In sum, although there are positive steps (domesticating the UNDRIP) Canada's actions are largely inconsistent with their international legal obligations and international customary law, exemplified by the concerns expressed by UN Committees expressing concern about the forced sterilizations of Indigenous women, the slow implementation of the TRC Calls to Action and the

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<sup>220</sup> Ss 6(1) and (2) of the Indian Act) still decide who gets Indian status: after two generations of parenting with non-status partners, the third generation loses the right to registration.

<sup>221</sup> See CEDAW's General Comment 39 on the rights to health of Indigenous women and girls, noting that Indigenous women 'are often victims of gender-based violence in the health system, including obstetric violence; coercive practices, such as involuntary sterilizations or forced contraception; and barriers to their ability to decide on the number and spacing of their children', and urged States to prevent all forms of gender-based violence, coercive practices, discrimination, gender stereotypes and racial prejudice in the provision of health services: CEDAW/C/GC/39 (2022) paras. 51, 52(f).

<sup>222</sup> CEDAW/C/CAN/CO/10 (2024), paras. 33(b), 34(b).

<sup>223</sup> Ibid, paras. 25, 26.

<sup>224</sup> Ibid, para. 37(c).

<sup>225</sup> CAT/C/CAN/CO/7 (2018). paras. 50-51.

<sup>226</sup> Ibid. paras. 48-49.

MMIWG Calls to Justice, and the lack of care or accountability in investigations to end the high rates of violence against MMIWG.

### **3.3. FAILURE TO REMEDY**

#### **3.3.1. Canada's failures to act**

The 1991 Royal Commission on Aboriginal Peoples (RCAP) was established in response to international condemnation of Canada's 78-day military siege of Kanehsatà:ke in 1990.<sup>227</sup> Reporting in 1996, the RCAP made 440 recommendations for radical change to reset the relationship between Canada and Indigenous Peoples, including proposals to redistribute lands and resources, and to recognize Indigenous governments as a 'third order of government' alongside federal and provincial or territorial governments, with jurisdiction over matters ranging from lands and water, citizenship and residence to family matters and the administration of justice.

Implementation of these reforms was envisaged through a treaty-making process with Indigenous Nations, beginning with a second Royal Proclamation and companion legislation to establish the required structures, followed by the fulfilment and renewal of existing treaties and the creation of new ones. RCAP noted that Canada must acknowledge that the country's wealth comes from lands and resources to which Indigenous peoples have a legitimate claim, and that self-government must be accompanied by fair redistribution of lands and resources to enable eventual self-financing from 'own-source' revenue.<sup>228</sup> Detailed recommendations covered long-term economic development; reorganisation of health, education and social services under Indigenous control; rehabilitation of the rights of women, youth, and families, individual and community healing; allocation of funding for self-chosen Indigenous development projects; agreements for the protection of sacred sites; a public education campaign to increase settlers' awareness of Indigenous culture and much more.

The TRC was established in 2006 in response to an RCAP recommendation, as part of the Indian Residential Schools Settlement Agreement (IRSSA) to address thousands of claims by Indigenous Survivors of brutality, violence and sexual abuse in the schools. When its mandate was extended in 2007 to include missing children and unmarked graves, the federal government refused to allocate additional funding. The TRC had no powers to compel witnesses or for the production of evidence, and there was effective impunity for perpetrators. The TRC's final report in 2015 made 94 'calls to action', covering areas including child welfare; education; language and culture; justice; health; and missing children and unmarked graves, of which 76 required action from the federal government.

The federal government's online progress tracker reports that work is 'underway' on 85 percent of TRC demands – a figure that has not changed for the past three years. Yet, for Indigenous Peoples, the promises of the TRC and RCAP remain largely unfulfilled. The federal government

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<sup>227</sup> See 2.3.2, 'Colonial Continuities: Land Grabs' above.

<sup>228</sup> <https://www.rcaanc-cirnac.gc.ca/eng/1100100014597/1572547985018>

set up a Residential Schools Missing Children Support Fund in 2021, which ‘supports Survivor-centric, community-led and culturally appropriate efforts to locate, document and memorialise burial sites ...’, and an advisory committee of experts in Indigenous laws and protocols, forensics, archaeology, and archival research to help Indigenous communities find missing children – but the committee was wound up in March 2025. As Kimberly Murray and Laura Arndt told the Tribunal, funding for Indigenous communities’ work on finding missing children and unmarked graves was non-existent until the discovery in 2021 of 215 potential grave sites at Kamloops residential school in British Columbia. Now, there is government funding, but it is precarious, uncertain, uneven, inadequate, and late – the antithesis of the stable long-term funding needed. Meanwhile, there has been no government response to the urgent demand to prevent the destruction in September 2027, ordered by the Supreme Court on confidentiality grounds, of tens of thousands of testimonies to the IAP – although the federal government has the resources to publicly broadcast the need for Survivors to authorise their retention and transfer to the National Centre for Truth and Reconciliation. Nor has the federal government released the estimated 27 million records relating to the IRSS which could help communities locate the missing children.

These failures undermine government claims of progress towards reconciliation. As TRC Chief Commissioner Murray Sinclair noted, reading from the TRC final report:<sup>229</sup>

A site of conscience holds truths about the past and memories of injustice that must be exposed, acknowledged, remembered, shared, and learned from so it can never happen again.

Following the TRC report, the government established the office of the ISI, appointing Kimberly Murray to once again identify required measures and recommend a federal framework to ensure appropriate treatment of unmarked graves and burial sites of children associated with the IRSS. The ISI’s final report contained 42 Obligations, including establishing an Indigenous-led Commission of Investigation into missing children and unmarked graves; protecting Indigenous burial sites; respecting Indigenous laws and Indigenous data sovereignty; enacting federal legislation for a right to truth; providing access to and protection of records and a moratorium or prohibition on their destruction; countering settler amnesty; and combating denialism and rewriting Canada’s history. The ISI designed a placemat outlining an Indigenous-led reparations framework for missing and disappeared Indigenous children in Canada.

Tragically little has been done in response to the ISI report. There is no Commission of Investigation; no Indigenous data sovereignty; no right to truth; no protection for Indigenous burial sites; no protection of records, and denialism and settler amnesty flourish.

This is a pattern repeated in many of the government’s responses to Indigenous demands and the calls of Commissions and Inquiries. It performs reconciliation and acknowledgement of Indigenous rights but rarely integrates these rights into structures of governance or service delivery, so they remain symbolic, rhetorical.

As the Yellowhead Institute reports in its analysis of Canada’s responses in the field of health care, no jurisdiction has legislated for Indigenous data sovereignty, dismantled jurisdictional

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<sup>229</sup> <https://law.queensu.ca/news/Murray-presents-historical-report-on-missing-and-disappeared-Indigenous-children>

barriers or transferred authority over health systems to Indigenous nations.<sup>230</sup> It is hard to disagree with the Institute's conclusion that what has been delivered is 'symbolic progress without structural change'. Where Canada has legislated to acknowledge Indigenous Peoples' jurisdiction, for example in An Act Respecting First Nations, Inuit and Métis Children, Youth and Family (Bill C-92) which enables transfer of child welfare services to Indigenous authorities, funding for and regulation of these services remain contentious, and with little progress on structural causes of child welfare issues – living conditions, intergenerational trauma, structural racism affecting life chances – change on the ground is painfully slow.

The MMIWG National Inquiry, established in response to a TRC recommendation, found that violence against Indigenous Peoples constituted acts of race-based genocide, empowered by colonial structures including the Indian Act, residential schools, the Sixties Scoop, and other violations of Indigenous Peoples' human rights, that directly led to the increased rates of violence, death and suicide in Indigenous communities. The National Inquiry issued 231 calls for justice - to governments, institutions, media, service providers, educators and to all Canadians. As of June 2025, the federal government had completed just two – both relating to federal prisons – and said it was working on a further 138, with 82 not even started.

The work of the Commissions – particularly RCAP, the first and most far-reaching – offers a blueprint for a relationship of true equality and respect for First Nations, Métis and Inuit Peoples, their lands, laws and cultures. RCAP set out a 20-year implementation agenda, which, had it been implemented, could have transformed Indigenous life chances, and settler Canadians' attitudes and relationship with land, resources and each other. It could even have halted the self-destructive rush to gobble the Earth's resources which is wreaking havoc on natural balance and the climate. A commissioner interviewed in 2016 for the 20<sup>th</sup> anniversary of RCAP's final report, Métis Paul Chartrand, thought little had changed.<sup>231</sup>

The Crown-Indigenous Relations and Northern Affairs Canada's (CIRNAC) website<sup>232</sup> and other government sites suggest Canada is doing a lot – even though its funding has been cut by over \$69 million each year from 2026-2029, its departmental plans no longer include many of the key areas needing change, and others have been renamed, preventing clear progress-tracking. The 'results' page is indicative of a huge bureaucracy working across many areas, but hampered by a collective tick-box mentality, where targets and indicators stand in for relationships of true equality.<sup>233</sup> A full thirty years after RCAP's landmark report, Canada remains 'loth to hand over the full range of powers needed for genuine self-government or the resources needed for success.'<sup>234</sup>

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<sup>230</sup> 'Applying the braiding framework to the TRC Health Calls to Action 2: Symbolic Progress without Structural Change', *Yellowhead Institute*, (2025).

<sup>231</sup> Martha Trojan, '20 years since Royal Commission on Aboriginal Peoples, still waiting for change', *CBC News*, 3 March 2016.

<sup>232</sup> In particular the Departmental Plans, see e.g., CIRNAC [2024-25](#) Departmental Plan, CIRNAC [2026-27](#) Departmental Plan.

<sup>233</sup> CIRNAC [2024 to 2025](#) Departmental Results Report.

<sup>234</sup> RCAP, summary report, 1996.

### 3.3.2 Shielding Canada from accountability for international crimes

Canadian governments have been aware since 1945 that the development of international criminal law and international human rights law posed a serious challenge for Canada because it called into question its treatment of Indigenous Peoples. Canada therefore consistently sought to evade State responsibility while simultaneously preventing victims from accessing the mechanisms established by international law and organizations for their protection.

Along with the United States, France, the United Kingdom and others, Canada rejected the inclusion of cultural genocide in the UNGC and the term was removed from the final version of the Convention adopted in December 1948, leaving two categories described by Raphaël Lemkin – physical genocide (extermination) and biological genocide (preventing the reproduction of members of the group).

Canada signed the UNGC in November 1949 and ratified it in September 1952, but avoided recognizing the crime in its domestic law for as long as possible. Various draft bills were introduced in Parliament during the 1960s and rejected. When genocide was finally incorporated into the Criminal Code in June 1970, the definition was extremely narrow, including only two of the five provisions of Article II of the UNGC, namely (a) killing members of a group, and (b) causing serious bodily and mental harm to members of the group. No other conduct was recognized as an act of genocide. The form of genocide consisting of the forcible transfer of children was excluded.

When the Rome Statute was promulgated in 1998, Canada ratified it and immediately began domesticating its provisions, but Parliament chose to define the crime of genocide in vague terms by reference to ‘acts or omissions’ committed with intent to destroy ‘an identifiable group of persons’,<sup>235</sup> avoiding the mention of any specific punishable conduct.<sup>236</sup>

Regarding the crime of enforced disappearance, the UN General Assembly Resolution adopted in December 1992<sup>237</sup> the Declaration on the Protection of All Persons from Enforced Disappearance by consensus, without a vote. In December 2006, the General Assembly adopted the UN Convention against Enforced Disappearance of Persons. Canada has neither signed nor ratified the Convention and has not established the crime of enforced disappearance in its domestic legislation. And in criminalizing crimes against humanity in its domestic law in 2000, after ratifying the 1998 Rome Statute creating the International Criminal Court, Canada reproduced almost the entire list of conducts constituting such crimes as set forth in the Rome Statute, but omitted any reference to the crime of enforced disappearance of persons.<sup>238</sup>

A similar situation obtains regarding the crime of apartheid. Canada abstained when the UN Convention against Apartheid was adopted in November 1973, and has since, neither signed nor ratified it. As with genocide and enforced disappearance, when criminalizing crimes against

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<sup>235</sup> The expression is taken from the jurisprudence of the ICTR, the Rwanda Tribunal.

<sup>236</sup> *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24. In force October 23, 2000 (SI/2000-95), last amended on July 20, 2024. (Offences within Canada, 4; Definitions, 3; Offences outside Canada, 6; Definitions, 3).

<sup>237</sup> UNGA Res. 47/133.

<sup>238</sup> Ibid.

humanity in domestic law in 2000, Canada reproduced the list of conducts constituting such crimes almost entirely, but omitted the crime of apartheid.<sup>239</sup>

The omission from the 2000 Act of explicit references to the crimes of apartheid, enforced disappearance and all forms of genocide not already criminalized, does not, in a strict legal sense, exclude them from criminalization, because of the incorporation by reference of the Rome Statute, which sets them all out in its Articles 6 and 7, and the references to customary and conventional international law. But to date, Canadian courts have rejected claims relying on the 2000 Act, on grounds including non-retroactivity and the narrow definition of genocide in the Criminal Code.<sup>240</sup> Thus, prosecutions are unlikely to be initiated or to succeed, beset by legal arguments that would have been unnecessary had the crimes been explicitly set out in the legislation. This seems like another case of Canada ratifying international instruments and then seeking to empty them of practical utility.

The International Criminal Court, however, operates under the principle of complementarity, as set forth in Article 17 of the Rome Statute,<sup>241</sup> meaning that its jurisdiction is activated precisely when the competent national authorities are unable or unwilling to investigate the crimes under their jurisdiction. The absence of domestic enforcement also opens the door to the exercise of universal jurisdiction by domestic courts in other countries.

### **The United Nations and Inter-American human rights systems**

Canada signed and ratified the UNGC in 1952 and has ratified most UN human rights treaties, including ICERD in 1970; the ICCPR and the International Covenant on Economic Social and Cultural Rights in 1976; CEDAW in 1981; CAT in 1987; the CRC in 1991; and the Convention on the Rights of Persons with Disabilities (CRPD) in 2010, and accepted most Optional Protocols.<sup>242</sup> However, Canada has not made the necessary declaration to accept the Optional Protocol to the CAT which permits UN visits to penitentiaries. More importantly, Canada has not recognized the jurisdiction of the CERD Committee to receive and examine communications or complaints from individuals or groups, making it impossible for the Committee to adjudicate on individual cases.

Canada has participated in the Inter-American Human Rights System since 1990 as a member of the Organization of American States (OAS), but its integration remains partial. It is bound by the American Declaration of the Rights and Duties of Man and recognizes the oversight of the Inter-American Commission on Human Rights, but it has ratified neither the 1969 American

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<sup>239</sup> Ibid.

<sup>240</sup> See Kathleen Mahoney, 'The untold story: how Indigenous legal principles informed the largest settlement in Canadian history', *University of New Brunswick Law Journal*, Vol 69, 2018, at pp. 206-207.

<sup>241</sup> '[T]he Court shall determine that a case is inadmissible where: (a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution...' The omission in Canada's domestic law of explicit references to the 'forcible transfer of children from one group to another' from the list of acts or omissions constituting genocide, and its removal of 'enforced disappearance of persons' and 'apartheid' from the list of conducts prosecutable as crimes against humanity under the Canadian Crimes Against Humanity and War Crimes Act, does not deprive such acts of their status as crimes prohibited by *ius cogens* international law rules with *erga omnes* effect, and therefore subject to the principle of universal jurisdiction.

<sup>242</sup> The first (1976) and second (2005) protocols of the ICCPR; the protocol of CEDAW (2002); the protocols of CRC (2000 and 2005); and that of the CRPD (2018).

Convention on Human Rights nor the 1994 Inter-American Convention on Forced Disappearance of Persons, nor has it accepted the jurisdiction of the Inter-American Court of Human Rights. Canada has not endorsed the American Declaration on the Rights of Indigenous Peoples, filing a statement instead.<sup>243</sup>

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<sup>243</sup> ‘Canada reiterates its commitment to a renewed relationship with its indigenous peoples, based on recognition of rights, respect, cooperation and partnership. Canada is now fully engaged, in full partnership with indigenous peoples in Canada, to move forward with the implementation of the United Nations Declaration on the Rights of Indigenous Peoples in accordance with Canada’s Constitution. As Canada has not participated substantively in recent years in negotiations on the American Declaration on the Rights of Indigenous Peoples, it is not able at this time to take a position on the proposed text of the Declaration. Canada is committed to continue working with its partners in the OAS on advancing indigenous issues across the Americas’. AG/RES. 2888, XLVI-O/16 approved on 14 June 2016.

## CONCLUSION

The Tribunal finds that Canada is failing to comply with its international legal obligations to investigate and punish the crimes revealed by Survivors and by families who have lost their relatives. The consistent pattern of conduct by Canadian authorities, including failing to sign and ratify some of the most relevant international law instruments, omitting explicit criminalization of the most serious criminal conduct under Canadian domestic law, specially genocide, enforced disappearances and apartheid, and failing to recognise the jurisdiction of international bodies such as the CERD and the Inter-American Court of Human Rights, which could provide protection to victims, places Canada in a deliberate state of contempt before the international community.

The TRC's finding that residential schools were a central element of a policy amounting to cultural genocide<sup>244</sup> is mostly deprived of practical effect by the extremely limited criminalization of genocide in Canadian domestic legislation. Prime Minister Trudeau's declaration accepting the finding of genocide by the MMIWG National Inquiry in 2019, and the House of Commons' 2022 motion recognizing the functioning of IRSS as an act of genocide have not had tangible consequences or been accompanied by any substantial change in the public policies of the successive governments regarding the treatment of Indigenous Peoples.

Canada has not recognized the sovereignty or the right of self-determination of Indigenous Peoples. To the contrary, the 1982 Constitution currently in force maintains the discriminatory *status quo*, recognizing the rights of Indigenous Peoples by reference to the 1763 Royal Proclamation.<sup>245</sup>

After widespread, systematic and most serious violations of human rights, States have the duty to restore and guarantee the fundamental rights of the victims. This includes the obligation to investigate, prosecute and punish the perpetrators, and to provide truth, reparations, and guarantees of non-recurrence.<sup>246</sup>

Having recognised a genocide in the past, Canada is doing very little to prevent the continuation of the discriminatory status afforded to Indigenous Peoples. This is not a question of the past. What is at stake is the present and the future of the country, its welfare, and the peaceful coexistence and reconciliation between settlers and Indigenous Peoples. The perpetuation of the current segregationist *status quo* is untenable. Canada is not providing enough remedies for past abuses, such as truth, justice and reparations, but most importantly, by failing to guarantee the non-recurrence of the abuses, Canada is compromising the future.

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<sup>244</sup> Truth and Reconciliation Commission Final Report, 2015, Vol. 1, vii.

<sup>245</sup> Section 25. S. 35(1) requires only that Indigenous representatives be invited to 'participate in discussions' at prime ministerial conferences with first ministers of provinces before amendments to the Constitution.

<sup>246</sup> Resolutions of the UN Commission of Human Rights, 1999/34, 2000/68, 2001/70, 2002/79. Resolution 40/34, adopted on 29 November 1985 by the UN General Assembly, '*Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*'; Resolution 60/147 adopted on 16 December 2005 by the UN General Assembly, '*Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*'.

## RECOMMENDATIONS

### **To Federal, provincial, territorial and municipal governments and authorities (as appropriate):**

#### **Indian Residential Schools and Unmarked Graves**

##### *Investigations*

In accordance with the Declaration on the Protection of All Persons from Enforced Disappearance (1992), fully investigate and document the deaths and disappearances of Indigenous children sent to IRS, juvenile detention centres, sanatoria, Indian hospitals and homes for unwed mothers, and communicate their whereabouts to their relatives; and

Provide full, good faith, and sustained financial, technical and logistical support for survivor-centred, Indigenous-led investigations into residential school burial sites and disappeared children, including those located on private lands, to mitigate against further harm in accordance with TRC Call to Action 76,<sup>247</sup> and respect Indigenous Peoples' laws and protocols related to grieving, death and burial practices.<sup>248</sup>

##### *Documentation and Records*

Following OCAP principles,<sup>249</sup>

- Create a database of integrated archival and Indigenous peoples' knowledge of unmarked grave sites prior to conducting invasive technical investigations,
- Protect Indigenous peoples' history and knowledge embodied in archival data from churches, museums, federal, provincial and territorial governments and other entities housing documentation of Indian Residential schools and the Indigenous students who attended them;
- Ensure that documentation and information on the deaths of children who attended IRSS remains protected and accessible to their families and communities, with proper Indigenous-led long-term data management and security measures in place;
- Release to Indigenous Peoples all documentation and evidence relating to Indigenous deaths in IRS, Indian hospitals and other closed institutions, and on burial sites;
- Implement the recommendations of the UN Human Rights Committee<sup>250</sup> to prevent the destruction of records of the Independent Assessment Process and the Alternative Dispute Resolution process, scheduled for 2027, by communicating to all Survivors about

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<sup>247</sup> Calling for Indigenous communities to lead development of strategies for the documentation, maintenance, commemoration and protection of burial sites, seeking information from Survivors and Knowledge Keepers and respect for Indigenous protocols before any potentially invasive technical inspection and investigation of burial sites.

<sup>248</sup> See UN Special Rapporteur on the Rights of Indigenous Peoples, *Visit to Canada*, A/HRC/54/31/Add.2 (2023), para. 90.

<sup>249</sup> Ownership – Control – Access – Possession assertion of First Nations data sovereignty over research and information over their historical and contemporary of their history, culture, languages and governance systems.

<sup>250</sup> CCPR/C/CAN/CO/7 (2026), para.12. See also the recommendations of the Special Interlocutor's report and the UN Special Rapporteur, A/HRC/54/31/Add.2 (2023), para. 90 to prevent the destruction of records.

their rights and exploring avenues to preserve records of national historical significance while safeguarding Survivors' right to confidentiality;

- Implement the recommendations of the UN Special Rapporteur on the Rights of Indigenous Peoples<sup>251</sup> to ensure full access to information and support Indigenous data sovereignty for survivors and families of missing children who attended residential schools; health-care facilities and other institutions holding relevant records; and
- Collect and publish statistical data in collaboration with Indigenous Peoples on ongoing investigations, prosecutions and convictions, and reparations for the abuse and deaths of Indigenous children in Indian residential schools.<sup>252</sup>

#### *Protection of Burial Sites and Unmarked Graves*

Support Indigenous-led strategies to commemorate, preserve and protect IRS, Indian Hospitals and sanatoriums' cemeteries and burial sites;

Identify, comprehensively document, and protect all burial sites associated with the IRSS, sanatoria and hospitals. Consult with survivor groups and affected Indigenous families and nations to determine whether to create memorial sites or exhume bodies;

Implement the recommendations of the UN Human Rights Committee and the Special Interlocutor related to repatriation of human remains;<sup>253</sup> and

Legislate to protect Indigenous Peoples' human remains, funerary objects, sacred objects and objects of cultural patrimony found on federal, provincial, territorial, municipal, museums, church or private lands.<sup>254</sup>

#### *Reparations*

Ensure full reparation and compensation for all Survivors; reopen the IRSS claims process for those excluded from initial settlements and fully resolve all claims, including those related to church-run institutions and provincial residential schools, as well as claims of Métis Survivors and their families;<sup>255</sup>

In collaboration with Indigenous Peoples, provide full, effective, and sustained support for Survivor-centred, Indigenous cultural safety initiatives to address intergenerational harm and trauma;

Return sacred objects from federal, provincial and territorial entities including national parks, museums, post-secondary institutions to Indigenous communities and provide all necessary support for the protection and preservation of sacred objects;

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<sup>251</sup> A/HRC/54/31/Add.2 (2023), para. 90.

<sup>252</sup> CCPR/C/CAN/CO/7 (2026), para.12.

<sup>253</sup> CCPR/C/CAN/CO/7 (2026), para.12(c).

<sup>254</sup> A/HRC/54/31/Add.2 (2023), para. 90.

<sup>255</sup> A/HRC/54/31/Add.2 (2023), para. 90; CCPR/C/CAN/CO/7 (2026), para.12.

Return the sites of former Indian Residential Schools to the Indigenous Peoples on whose land they were built;

Respect and recognize traditional Indigenous homelands to ensure their protection from unsustainable development;

Provide sustainable, multiyear, and increased funding for Indigenous language revitalization to communities to create the next generation of teachers, support the creation of language nests; and restore the jurisdiction of Indigenous languages for signage of lakes, rivers, including national parks;

Provide sustainable, multiyear and increased funding for on-reserve education, governance, health including mental health and well-being;

Restore traditional Indigenous governments' jurisdiction over lands, identity, health and education;

Restore the authority and jurisdiction of Indigenous women over lands, to enable the re-establishment of a gender-based decision-making process affecting Indigenous peoples and their homelands;

Abolish the 'extinguishment' of Indigenous lands through Canada's land claims process;

Provide reparations for land dispossession; and

Conduct land negotiations using free, prior informed consent of Indigenous rights holders as affirmed by various international human rights instruments, in particular, UNDRIP.

### **Forced and Coerced Sterilization**

Implement the recommendations of the Standing Senate Committee on Human Rights that a parliamentary committee further study the issue of forced and coerced sterilization of persons in Canada, with the goal of identifying solutions to stop the practice, in consultation with Survivor groups;

Implement measures to prevent and deter forced sterilization by enforcing Senate Bill S-228 (amending s 268 of the Criminal Code to clarify that forced and coerced sterilization is an aggravated assault);

Ensure that all allegations of forced/coerced sterilization are impartially investigated, that those responsible are held accountable, and that adequate redress is provided to victims;<sup>256</sup>

Recognize the colonial nature of forced and coerced sterilization of Indigenous Peoples and issue formal apologies and reparations to Survivors;

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<sup>256</sup> CAT/C/CAN/CO/7 (2018).

In coordination with Indigenous Peoples, provide cultural training in gynecology and obstetrics care to address systemic discrimination in the healthcare system;

Implement the Committee Against Torture's recommendation to investigate, hold accountable those responsible, provide redress to victims, raise awareness among Indigenous women and medical personnel of the definition of the requirement for free, prior, and informed consent for sterilization;<sup>257</sup> and

Retain the medical records of the affected Indigenous Peoples, gather disaggregated data, and respect Indigenous Peoples' data sovereignty in relation to their health records.

### **Murdered and Missing Indigenous Women and Girls**

Implement the TRC Calls to Action and the MMIWG Calls to Justice and investigate and provide justice to families of victims and Survivors, with the meaningful participation of Indigenous girls;

Create an Indigenous-led cultural safety program based on a decolonial and trauma-informed approach to MMIWG that incorporates Indigenous customary laws and includes Indigenous women in decision-making processes;

Publicly report data on investigations, prosecutions and convictions; and build transparent and accountable relationships with Survivors;<sup>258</sup>

Implement CERD's recommendation to end the high rates of violence and ensure equal support and services for survivors in a human rights-based approach; establish an independent review mechanism for unsolved cases of missing and murdered Indigenous women and girls where there is evidence of bias or error in the investigation;<sup>259</sup>

Implement CAT's recommendations to provide redress to families; independently review cases of MMIWG; train justice officials and law enforcement personnel; and provide shelters, medical care, psychological support and legal assistance for Survivors;<sup>260</sup>

Provide core sustained funding for Indigenous women's centres, shelters, transitional housing, treatment facilities and other safe spaces;<sup>261</sup>

Develop culturally appropriate programmes and services for men and boys to address the intergenerational trauma and abuse suffered by Indigenous men that contributes to the many types of violence experienced by Indigenous women and girls;<sup>262</sup>

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<sup>257</sup> CAT/C/CAN/CO/7 (2018), paras. 50-51.

<sup>258</sup> CERD/C/CAN/CO/21-23 (2017).

<sup>259</sup> CERD/C/CAN/CO/21-23, para. 24.

<sup>260</sup> CAT/C/CAN/CO/7 (2018), paras. 48-49.

<sup>261</sup> A/HRC/54/31/Add.2 (2023), para. 92.

In consultation with Indigenous peoples, create policies to address systemic issues including restricted access to ancestral lands, high rates of violence and overincarceration of Indigenous women and men; and

Ensure the permanent removal of ‘man camps’ associated with resource development by, *inter alia*, halting the development of pipelines near Indigenous communities in accordance with the Paris Agreement,<sup>263</sup> and provide sustainable, Indigenous-led security for communities.

## **The Child Welfare System**

Ensure, in collaboration with Indigenous nations, the provision of child welfare services centred on the prevention of removal of children from their families and their communities;

Provide adequate, sustainable funding to enable Indigenous communities to build capacity and infrastructure for such children’s services under the First Nations, Métis and Inuit Children, Youth and Families Act;

Adopt holistic legal and administrative reforms to address the root causes of Indigenous children’s overrepresentation in the child welfare system, including the effects of intergenerational trauma, racial discrimination, poverty, inadequate housing and the lack of culturally appropriate interpretations of the best interests of the Indigenous child;<sup>264</sup>

Implement the recommendations of the Committee on the Rights of the Child to adopt legislative and administrative measures to protect the rights of Indigenous children in care to identity, name, culture, language, and culturally appropriate education;<sup>265</sup> and

Implement fully and effectively Jordan’s Principle<sup>266</sup> and Joyce’s Principle.<sup>267</sup>

## **Living Conditions**

Ensure, in collaboration and with the free prior and informed consent of Indigenous nations:

- Financial support and equitable access to housing, education, social services and other community facilities;
- Financial support and equitable access to health care without discrimination, including medical transportation to hospitals in southern cities for those from northern communities

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<sup>262</sup> A/HRC/54/31/Add.2 (2023), para. 92.

<sup>263</sup> UN Climate Change Conference (COP21), Paris, 12 December 2015.

<sup>264</sup> A/HRC/54/31/Add.2 (2023), para. 91.

<sup>265</sup> A CRC/C/CAN/CO/3-4, para. 43.

<sup>266</sup> See 2.3.1, ‘Colonial Continuities: Child Welfare, footnote 102 above.

<sup>267</sup> Joyce’s Principle (Quebec) aims to guarantee to all Indigenous people equitable access, without discrimination, to all social and health services, and the recognition and respect of their traditional and living knowledge in all aspects of health. See [https://principedejoyce.com/sn\\_uploads/principe/Joyce\\_s\\_Principle\\_brief\\_Eng.pdf](https://principedejoyce.com/sn_uploads/principe/Joyce_s_Principle_brief_Eng.pdf).

without hospitals, including the right of parents and family members to accompany their children, spouses and relatives in such transportation;

- Respect and recognition of traditional medicines in healing and protection of sacred sites for ceremony and traditional medicines;
- Recognition and respect for Indigenous Peoples' right to clean and safe drinking water;
- Respect for Indigenous Peoples' collective rights to lands, waters and resources;
- Respect for Indigenous customary laws including ownership and authority over land and other forms of property, inheritance, natural resources, and appropriate new technology and financial services, including microfinance;
- Promotion and support of sustainable economic development on Indigenous Peoples' lands consistent with Indigenous customary law, environmental law and human rights laws; and
- Respect Indigenous Peoples' right to self-determination under international law and access to legal remedies where it has been violated.

### **Public Education and Awareness Raising**

Develop and deliver at the primary and secondary school levels, Indigenous-led public education curricula on Canada's colonial history, genocide against Indigenous Peoples and Indigenous customary laws and cultures;

Condemn, combat and criminalize Indian residential school denialism when it crosses into hate speech, through amendments to the Criminal Code or other legislation, differentiating legitimate academic research, journalism, good-faith historical inquiry, and evidentiary debate from wilful denial, gross minimization or deliberate distortion, and ensuring the dignity, equality, and security of Indigenous Peoples;

Provide funding for groups countering IRS denialism;

Implement the TRC's calls to action 62 and 63 on strengthening learning of Indigenous perspectives, cultures, histories and contemporary realities and educating on truth and reconciliation;<sup>268</sup>

Recognize and address in any education program the specific impacts on women of colonial practices and legislation such as s. 6 of the Indian Act regarding Indian Status, the Indian Residential School system, the child welfare system and the ongoing forced and coerced sterilization of Indigenous women;

Train State officials on Indigenous human rights;<sup>269</sup>

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<sup>268</sup> CEDAW/C/CAN/CO/10 (2024), paras. 33(b), 34(b).

<sup>269</sup> CERD/C/CAN/CO/21-23 (2017).

Implement the recommendations of the ISI and the UN Special Rapporteur on the Rights of Indigenous Peoples to counter IRS denialism and misinformation with ongoing public education and awareness-raising campaigns;<sup>270</sup>

Support Indigenous-led quality education on-reserve comparable to that in the rest of Canada, centring Indigenous history, languages, cultures, and the impacts of colonization and genocide on Indigenous identity, health and well-being.

## **Land Defence**

Halt the criminalization of Indigenous human rights defenders peacefully resisting and defending their lands, resources and territories;

Provide access to legal remedies for those who do not recognize Indian Act band councils as the legal authority in the community;

Respect the authority of traditional Indigenous forms of governance which pre-date the time of Contact with Europeans, especially in regard to land negotiations; in particular over proposed land and resource developments by third parties, municipalities and Crown corporations, creation of national parks, and airports;

Rescind the Building Canada Act, which uses ‘projects of national interest’ to justify the persistent land dispossession of Indigenous Peoples;

Respect and restore Indigenous women’s authority in land negotiations and all forms of governance affecting Indigenous Peoples’ rights to self-determination; and

Ensure that Indian Act band councils implement the process of free prior and informed consent on issues affecting and impacting Indigenous Peoples’ human rights.

## **Domestic Legal Obligations**

Increase efforts to implement the 1996 Royal Commission on Aboriginal Peoples (1996), the Final Report of the Truth and Reconciliation Commission of Canada (2015) and the Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls (2019) and fully implement the Canadian United Nations Declaration on the Rights of Indigenous Peoples Act (2021) and its Action Plan, ensure the meaningful participation of Indigenous Peoples, dedicating sufficient human and financial resources and establish an independent monitoring and enforcement mechanism;<sup>271</sup>

Implement the recommendations of RCAP and the TRC to enact a ‘new royal proclamation’ acknowledging ‘the profoundly harmful elements of the past ... as a means of reconciliation’;

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<sup>270</sup> A/HRC/54/31/Add.2 (2023), para. 90.

<sup>271</sup> CCPR/C/CAN/CO/7 (2026), paras. 11-12.

Assess all government departments and policies related to Indigenous Peoples' rights to ensure that they comply with international standards;

Amend the Crimes against Humanity and War Crimes Act to explicitly criminalize, in the Criminal Code of Canada, the forms of genocide of 'deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part', 'Imposing measures intended to prevent births within the group', and 'Forcibly transferring children of the group to another group', the crime of enforced disappearance of persons, and the crime of apartheid;

Include cultural genocide in the Criminal Code; and

Adopt legal remedies based on a human rights perspective, respecting Indigenous customary laws founded on the rights and protection of Mother Earth.

### **International Legal Obligations**

Sponsor a UN ad hoc committee to explore fully returning cultural genocide to the Genocide Convention and other international legal mechanisms related to genocide. Likewise, Canada should:

- Establish a commission of inquiry to examine if Canadian government departments and policies continue or exacerbate genocide by threatening Indigenous Peoples as social units;
- Amend domestic legislation on genocide and crimes against humanity to be fully consistent with the Rome Statute, by clarifying that international crimes are subject to no limitation periods;
- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance, the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization and the American Convention on Human Rights;
- Implement the recommendations of the UN Special Rapporteur on the rights of Indigenous Peoples, the UN human rights treaty monitoring bodies, and the Universal Periodic Review; and
- Ensure that the ongoing and future support for this work is informed by UN mandates and standards on Indigenous Peoples and enforced disappearances.

### **To the Catholic Church and other religious organisations:**

Release to Indigenous Peoples and provide full access to all documentation relating to deaths in church-run IRSs and in burial sites;

Acknowledge and attempt to remedy, in collaboration with Indigenous Peoples, the impacts of the Doctrine of Discovery historically and in contemporary society;

Provide reparations and compensation for lands stolen for the economic benefit of the Church (all denominations), and return Indigenous lands on which former churches are situated;

Provide sustainable funding for Indigenous language revitalization and to address the intergenerational trauma caused by the IRSS; and

Provide funding to support groups that are countering denialism.

## **ANNEXES**

## ANNEX 1

### Program of the public hearings

May 25-29, 2026  
Centre d'art daphne, Montreal, Quebec, Canada

### Program Overview

| DAY                       | FOCUS                                                                              |
|---------------------------|------------------------------------------------------------------------------------|
| Day 1 – Monday, May 25    | Opening Ceremony & Context                                                         |
| Day 2 – Tuesday, May 26   | Investigative Journalism & Survivors' Experiences                                  |
| Day 3 - Wednesday, May 27 | Finding Unmarked Graves & Forced and Coerced Sterilization                         |
| Day 4 – Thursday, May 28  | Genocide and Crimes Against Humanity<br>Defence Presentation & Prosecution Closing |
| Day 5 – Friday, May 29    | PPT Judges' Deliberation and Preliminary Statement                                 |

### Detailed Program

| DAY ONE              | ITEM                                                                                      |
|----------------------|-------------------------------------------------------------------------------------------|
| 7:30am – 8:30am ET   | Sacred Fire opening ceremony (312 R. du Square-Saint-Louis, Montréal)                     |
| 9:00am – 9:30am ET   | Jeremy Dutcher performance and opening prayer                                             |
| 9:30am – 10:00am ET  | Introductory speech of the PPT Secretary General<br>Gianni Tognoni and Simona Fraudatario |
| 10:00am – 10:15am ET | Reading of the Indictment                                                                 |

|                      |                                                                                                |
|----------------------|------------------------------------------------------------------------------------------------|
| 10:15am – 10:30am ET | <i>Break</i>                                                                                   |
| 10:30am – 12:00pm ET | Presentation of the Prosecution’s Case                                                         |
| 12:00pm – 1:00pm ET  | <i>Lunch</i>                                                                                   |
| 1:00pm – 4:30pm ET   | Systemic failures of justice expert witness<br>Kimberly Murray                                 |
|                      |                                                                                                |
| <b>DAY TWO</b>       | <b>ITEM</b>                                                                                    |
| 9:00am – 9:15am ET   | Welcome address and opening prayer                                                             |
| 9:15am – 12:00pm ET  | Investigative journalism expert panel<br>Tanya Talaga and Connie Walker                        |
| 12:00pm – 1:00pm ET  | <i>Lunch</i>                                                                                   |
| 1:00pm – 4:30pm ET   | Indian Residential School Survivors panel<br>Sam, Robbie, George, Audrey, Leo, and Lucy        |
|                      |                                                                                                |
| <b>DAY THREE</b>     | <b>ITEM</b>                                                                                    |
| 9:00am – 9:15am ET   | Welcome address and opening prayer                                                             |
| 9:15am – 12:00pm ET  | Survivor-led initiatives and investigations expert panel<br>Laura Arndt and Dr. Scott Hamilton |
| 12:00pm – 1:00pm ET  | <i>Lunch</i>                                                                                   |
| 1:00pm – 4:30pm ET   | Forced and coerced sterilization Survivor panel<br>Jackie, Kahsenniyo, Dr. Brenda Reynolds     |

| <b>DAY FOUR</b>     | <b>ITEM</b>                                                                  |
|---------------------|------------------------------------------------------------------------------|
| 9:00am – 9:15am ET  | Welcome address and opening prayer                                           |
| 9:15am – 12:00pm ET | Genocide and crimes against humanity expert witness<br>Dr. Fannie Lafontaine |
| 12:00pm – 1:00pm ET | <i>Lunch</i>                                                                 |
| 1:00pm – 4:30pm ET  | Defence presentation and Prosecution closing submission                      |

| <b>DAY FIVE</b>    | <b>ITEM</b>                               |
|--------------------|-------------------------------------------|
| 3:00pm – 4:00pm ET | Preliminary Statement from the PPT Judges |

## ANNEX 2

### Panel of Judges



#### **Carlos Beristain (Spain)**

Doctor and PhD in Psychology and a veteran researcher of human rights violations in Latin America and other regions of the world, as well as a reference in psychosocial care for victims. In addition to being an expert witness for medical and psychosocial evaluation on ten occasions before the Inter-American Court of Human Rights, and the Interamerican Commission in cases of Colombia, Guatemala, Ecuador, Mexico and Brazil, and he has worked as an advisor on victims in various cases of the International Criminal Court. He was part of the Interdisciplinary Group of Independent Experts of the Interamerican Commission for the 43 students who disappeared in the Ayotzinapa case, Mexico. He worked with indigenous peoples in Guatemala and Colombia for many years. He was coordinator of the report ‘Guatemala: nunca más’ (Guatemala: never again) and advisor to the Truth Commissions of Peru, Paraguay and Ecuador, and he was commissioner of the Colombian Truth Commission. He has numerous publications in specialised journals. He has written more than 25 books, and has participated in collective publications about psychosocial work, coping mechanisms of indigenous people, reparations in human right violations, humanitarian aid and historical memory.



#### **Carlos Castresana (Spain)**

Spanish public prosecutor and jurist, with honorary doctorates from the Universidad Central de Chile, the Universidad de Guadalajara and the National Institute of Criminal Sciences from Mexico. He became a member of the Board of Trustees of the United Nations Interregional Crime and Justice Research Institute (UNICRI) in November 2014. He has served at the Court of Auditors of Spain since 2020, he served as Prosecutor of the Supreme Court in the Criminal Affairs Section since 2005, and was Special Prosecutor against Corruption (1995-2005). Moreover, he worked in the Special Prosecution Office against Drug Trafficking (1993-1995) and, from 2007 to 2010, he was Commissioner of the International Commission Against Impunity in Guatemala, with the category of UN Assistant-Secretary General.



#### **Katsi'tsakwas Ellen Gabriel (Canada)**

A graduate from the New York Film Academy in documentary film making in December 2021, provided her with new tools in her advocacy to reclaim the narrative of stories of Indigenous peoples. In May of 1990 Ms. Gabriel graduated from Concordia University with a Bachelor of Fine Arts degree, major visual arts. She was well-known to the public when she was chosen by the People of the Longhouse and her community of Kanehsatà:ke to be their spokesperson during the 1990 Siege of Kanehsatà:ke, known as the ‘Oka’ Crisis; to protect the Pines from the expansion of a 9-hole golf course in Kanehsatà:ke. She is a board of director with Indigenous Climate Action addressing the needs and solutions to the violations of Indigenous peoples’ human rights, the climate crisis and environmental rights. In 2004, she was elected president of the Quebec Native Women’s Association a

position which she held for 6 ½ years, until December 2010. In 2005 Ms. Gabriel received the Golden Eagle Award from the Native Women's Association of Canada; 2008 International Women's Day Award from the Barreau du Québec/Québec Bar Association: August 2008 she was the recipient of the Indigenous Women's Initiative 'Jigonsaseh Women of Peace Award' for her advocacy work. In June 2024, Ms. Gabriel received an honorary doctorate from the Université de Québec à Montreal for her work in human rights. Her most recent awards are for Best short documentary, *Présence Autochtones* and *La Grand Prix* award from the Conseil des arts de Montreal for *Kanàntenhs - When the Pine Needles Fall*.



### **Seánna Howard (Canada – United States)**

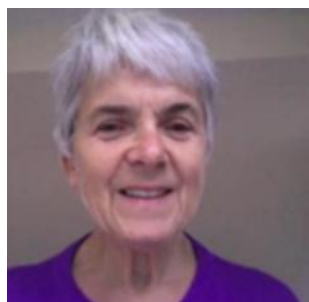
Professor Howard has been with the Indigenous Peoples Law and Policy Program since 2006, advancing Indigenous Peoples' rights through precedent-setting advocacy before the Inter-American and United Nations human rights systems in her role as Director of the International Human Rights Advocacy Workshop at the University of Arizona College of Law. She has represented the Western Shoshone, the Chiricahua Apache, the Maya in Belize, the Hul'qumi'num Treaty Group, the Water Protector Legal Collective, and the Navajo Nation in high-impact advocacy and provided training to the Government of Kenya on implementing national legislation on Indigenous Peoples' rights in line with international standards. She and her workshop hosted the former United Nations Special Rapporteur on the rights of Indigenous Peoples (2020-2024) and continue to provide academic support to the UN treaty monitoring bodies, the UN Expert Mechanism on the Rights of Indigenous Peoples, and expert members of the UN Permanent Forum on Indigenous Issues and the UN Committee on the Elimination of Racial Discrimination. Through this work, she bridges scholarship, practice, and global advocacy in advancing Indigenous Peoples' rights worldwide.



### **Valmaine Toki (New Zealand)**

She is a Barrister and Solicitor of Ngati Rehua, Ngatiwai, Ngapuhi descent. She is a BA LLB (Hons) MBA, LLM and a PhD in law and has a current practicing certificate as a Barrister and Solicitor of the High Court. As a He Ture Pumau scholar she worked at Te Ohu Kaimoana where she completed her MBA. She joined Te Piringa after five years lecturing at the Auckland Law School. She is the first New Zealander appointed to the United Nations Permanent Forum on Indigenous Issues where she served two 3 year terms and more recently the first New Zealander appointed by the President of the Human Rights Council to the United Nations Expert Mechanism on the Rights of Indigenous Peoples. Her area of research, writing and teaching lies within the area of Indigenous rights. She has given public lectures and seminars globally including at Harvard Law School.

\*Picture credits: FAO/Alessandra Benedetti



### **Frances Webber (United Kingdom)**

A former barrister who specialised in immigration, refugee and human rights law until her retirement in 2008, she is an honorary vice-president of the Haldane Society of Socialist Lawyers and author of *Borderline justice: the fight for refugee and migrant rights* (Pluto, October 2012). As a barrister, she was also part of the team seeking Pinochet's extradition. With over fifty years' experience working with migrants, refugee and diaspora communities in the UK, she has been a trustee of the Institute of Race Relations for over 40 years and writes regularly for its journal *Race & Class* on

issues of state racism and human rights. She has worked with the European Legal Support Centre (on the rights of Palestinian students in the UK), with Reprieve (on citizenship stripping and the case of Shamima Begum) and the Black Equity Organisation, contributing to its successful judicial review (with the Public Law Project) of the government's reneging on the pledge to implement all the recommendations of the Windrush Lessons Learned review. In 2025 she acted as presiding judge at the Permanent People's Tribunal on war crimes in Rojava, north-east Syria.



**Andrew Woolford (Canada)**

Professor of sociology and criminology at the University of Manitoba, an emeritus member of the Royal Society of Canada College, and former president of the International Association of Genocide Scholars. Among others, his most recent publications include *Genocide in Canada* (2026) and *Did You See Us? Reunion, Remembrance, and Reclamation at an Urban Indian Residential School* (2021). He has contributed reports to the Truth and Reconciliation of Canada and Gottfriedson et al v HMTQ on genocide through assimilative education and has worked on two community-based research projects with Residential School Survivors: 1) *Embodying Empathy*, which designed, built, and tested a virtual Indian Residential School that will serve as a site of knowledge mobilization and empathy formation; and 2) *Remembering Assiniboia*, which focused on commemoration of the Assiniboia Residential School. He is currently completing a book on human and more-than-human relations within genocidal processes under the title 'genocide with nature' and beginning research on the topic of the British Home Child program.

## ANNEX 3

### Prosecution team



#### **Christa Big Canoe (Lead Prosecutor)**

She is Anishinaabe and Mohawk mother and lawyer, member of Georgina Island First Nation, an Anishinabek community. She has been Aboriginal Legal Services' (ALS) Legal Director since 2011. She was senior and then Lead Commission Counsel for the National Inquiry into Missing and Murdered Indigenous Women and Girls. She is a passionate advocate for Indigenous women and children. She was named a change maker as The Top 25 Most Influential 2017 Canadian Lawyer. In 2021 she was a recipient of the first Alnoba Moment of Truth Award and Spirit of Barbara Schlifer Award; a recipient of the Faculty of Management at Dalhousie University's 2022 Scotiabank Ethical Leadership Award and most recently received the King Charles III Coronation Medal for her contributions in law to advocate for Indigenous People.



#### **Sarah Glickman (Prosecutor)**

She is a staff lawyer at Aboriginal Legal Services (ALS). She represents families at Inquest proceedings and assists clients with administrative legal matters. Prior to joining ALS, she practiced Aboriginal law at a private firm for 2.5 years. She has appeared at various levels of court and tribunals including the Federal Court, Federal Court of Appeal, Ontario Superior Court and New Brunswick Court of Appeal.



#### **Alisa Lombard (Prosecutor)**

She holds a B.S.Sc., JD (civil law), JD (common law) and LLM from the University of Ottawa. She has appeared before all levels of court, including for intervenors before the Supreme Court of Canada in Southwind, Anderson and Sharma. Alisa teaches at the University of Ottawa. Alisa was among those who buoyed the creation of the Survivor's Circle for Reproductive Justice established to bring survivors of forced sterilization together. She appeared before the United Nations Committee Against Torture and Other Forms of Cruel and Unusual Treatment and the Inter-American Commission for Human Rights which contributed to the issuance of directions and recommendations to the Canadian State with respect to the non consensual sterilization of Indigenous women. She is above all a devoted Mi'kmaq and Acadian woman, mother of two girls and wife who strives to humbly support her clients in leading transformative systemic reforms to make and maintain space for absolute self-determination and autonomy.



**Brianna Rowe (Prosecutor)**

She is a staff lawyer at Aboriginal Legal Services. She is an Anishinaabe woman from the Mississaugas of the Credit First Nation. She holds a Bachelor of Arts (honours) from the University of Waterloo in Legal Studies and a law degree from the University of Toronto, Faculty of Law.



**Brenda Gunn, B.A., J.D. L.L. M (Indigenous Legal Advisory Committee Member)**

She is a Red River Métis woman and Professor at the University of Manitoba's Robson Hall Faculty of Law. She has worked internationally on Indigenous rights issues, including at a community legal clinic in Rabinal, Guatemala, on a genocide case before the Inter-American Commission on Human Rights. She is an Expert Member of the United Nations Permanent Forum on Indigenous Issues, 2026-28.



**Jasmine Elisapi Redfern B.A, J.D (Indigenous Legal Advisory Committee Member)**

Jasmine Redfern is an Inuk lawyer based in Québec with a practice in policy, governance, and dispute resolution. As Chair of the Nunavut Human Rights Tribunal and President of Amautiit Nunavut Inuit Women's Association, her work is grounded in human rights, Indigenous governance, and gender-justice. She previously spent over a decade working in public policy, including as Assistant Director of Social and Cultural Development at Nunavut Tunngavik Inc.



**Janice Makokis B.A., M.A., J.D (Indigenous Legal Advisory Committee Member)**

She is a nehiyaw iskwew (Cree woman) from Treaty No. 6 Territory in what is now Alberta and an Assistant Professor at the University of Windsor's Faculty of Law. She was appointed the Ianni Legal Scholar in 2021 and teaches courses on First Nation Women and the Law, Reconciliation, and Indigenous Laws and Legal Orders. She has worked with Indigenous Nations on Treaty advocacy, Indigenous law development, land-based education and governance initiatives. She has also been active in international Indigenous advocacy through United Nations mechanisms, including serving as co chair/co-coordinator of the North American Indigenous Peoples Caucus from 2013–2016 and as a rapporteur at international meetings. She serves as a board advisor to the Yellowhead Institute.



**Meghan Sage-Wolfe B.A, J.D (Indigenous Legal Advisory Committee Student Member)**

She is from Brunswick House First Nation in Ontario. She is a recent graduate of Osgoode Hall Law School. She did a placement with Aboriginal legal Services as part of the Osgoode Intensive Program in Indigenous Lands, Resources & Governments.