eurac
research

Diversity Governance Papers
ISSN 2975-2175
DiGoP 03/2023

Cultural Genocide of Indigenous Peoples in Canada

A legal and socio-political analysis of the limits of reconciliation

Chiara Serioli

Diversity Governance Papers
ISSN 2975-2175
DiGoP 03/2023

Recommended Citation
Chiara Serioli, Cultural Genocide of Indigenous Peoples in Canada. A Legal and Socio-Political Analysis of the Limits of Reconciliation, Diversity Governance Papers DiGoP 03/2023, Eurac Research, Bolzano/Bozen, Italy, 2023, https://doi.org/10.57749/vsfj-1g82.

Eurac Research
Institute for Comparative Federalism and Institute for Minority Rights
Viale Druso/Drususallee 1
39100 Bolzano/Bozen
Italy
digop@eurac.edu
www.eurac.edu/digop

Editorial Team: Elisabeth Alber, Sergiu Constantin, Georg Grote, Karl Kössler, Petra Malfertheiner, Francisco Javier Romero Caro
Author: Chiara Serioli

© The Author, 2023

This publication is under the terms of the Creative Commons Attribution 4.0 International License (http://creativecommons.org/licenses/by/4.0/), which permits use, sharing, adaptation, distribution, and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

DiGoP Advisory Board

The advisory board of the Diversity Governance Paper series is composed of the members of the Research Group on Constitutionalism and Societal Pluralism: Diversity Governance Compared within the International Association of Constitutional Law IACL.

Elisabeth Alber, *Institute for Comparative Federalism, Eurac Research, Bolzano/Bozen*
Nicholas Aroney, *The University of Queensland*
Tracy Beck Fenwick, Australian National University, Canberra
Eva Maria Belser, *Institute of Federalism, University of Fribourg*
Paul Blokker, *University of Bologna*
Ilze Brands Kehris, *Assistant Secretary-General for Human Rights, UN, New York*
Michael Breen, *School of Social and Political Sciences, The University of Melbourne*
Joshua Castellino, *Minority Rights Group International and Middlesex University*
Sergiu Constantin, *Institute for Minority Rights, Eurac Research, Bolzano/Bozen*
Yonatan Fessha, *University of the Western Cape, Dullah Omar Institute for Constitutional Law, Governance and Human Rights, Cape Town*
Anna Gamper, *University of Innsbruck*
James Gardner, *University at Buffalo School of Law*
Georg Grote, *Institute for Minority Rights, Eurac Research, Bolzano/Bozen*
Andrew Harding, *National University of Singapore*
Rainer Hofmann, *Goethe University Frankfurt*
Soeren Keil, *Institute of Federalism, University of Fribourg*
Karl Kössler, *Institute for Comparative Federalism, Eurac Research, Bolzano/Bozen*
Joseph Marko, *University of Graz and Institute for Minority Rights, Eurac Research, Bolzano/Bozen*
Roberta Medda-Windischer, *Institute for Minority Rights, Eurac Research, Bolzano/Bozen*
Sean Müller, *Institute of Political Science, University of Lausanne*
Jaclyn Neo, *Faculty of Law, National University of Singapore*
Francesco Palermo, *Faculty of Law, University of Verona and Institute for Comparative Federalism, Eurac Research, Bolzano/Bozen*
Johanne Poirier, *Faculty of Law, McGill University, Montreal*
Patricia Popelier, *Law Faculty, University of Antwerp*
Günther Rautz, *Institute for Minority Rights, Eurac Research, Bolzano/Bozen*
Petra Roter, *Faculty of Social Sciences, University of Ljubljana*
Asha Sarangi, *Centre for Political Studies, Jawaharlal Nehru University, New Delhi*
José María Serna de la Garza, *Instituto de Investigaciones Jurídicas, National University of Mexico*
Ayelet Shachar, *Max Planck Institute for the Study of Religious and Ethnic Diversity*
Sia Spiliopoulou Åkermark, *Åland Islands Peace Institute*
Nico Steytler, *University of the Western Cape, Dullah Omar Institute for Constitutional Law, Governance and Human Rights, Cape Town*
Nenad Stojanović, *University of Geneva*
Markku Suksi, *Department of Law, Åbo Akademi University*
Alexandra Tomaselli, *Institute for Minority Rights, Eurac Research, Bolzano/Bozen*
Alice Valdesalici, *Institute for Comparative Federalism, Eurac Research, Bolzano/Bozen*
Asanga Welikala, *Edinburgh Centre for Constitutional Law, Edinburgh Law School, University of Edinburgh*
Jens Woelk, *University of Trento and Institute for Comparative Federalism, Eurac Research, Bolzano/Bozen*
Stefan Wolff, *Department of Political Science and International Studies, University of Birmingham*

Abstract

Residential Schools constituted one of the most emblematic examples of the discrimination suffered by Indigenous Peoples in Canada. From the 1880s until the late 20th century, Residential Schools aimed to assimilate Indigenous children into the dominant Western culture, dismantling diverse indigenous cultures and traditional livelihoods. As a response to the increasing number of testimonies about the horrific nature of the Residential School System in Canada, in 2004, the Assembly of First Nations confronted the Federal government and issued a report in which it called for the payment of reparations and a truth and reconciliation process. In 2007, the Indian Residential Schools Settlement Agreement provided for the establishment of the Truth and Reconciliation Commission (TRC), which published its Final Report in 2015, after the election of Justin Trudeau's government. Since then, reconciliation in Canada has entered a new phase, which mainly revolves around an official admission of indigenous cultural genocide and the so-called *94 Calls to Action*.

This paper adopts legal and socio-political perspectives to explain why the recent Canadian admission of cultural genocide cannot be considered a model in the acknowledgment and reconciliation with Indigenous Peoples. This is because the Canadian admission of genocide is unable to produce significant legal effects. However, although the resonance of this admission can be better described as political, even from the socio-political perspective, the Canadian process toward reconciliation presents many flaws. Indeed, the 94 Calls do not currently meet indigenous structural needs, fueling dissatisfaction, and non-indigenous acknowledgment of indigenous discrimination remains underdeveloped.

Author

Chiara Serioli holds a Master's Degree in European and International Studies, at the University of Trento, Italy. During her Master's, she researched at the University of Calgary, Canada, first as an Exchange Student and then as a Graduate Visiting Researcher. Here, she developed her interests in minority rights, Indigenous Peoples, pluralism, and constitutional law. Currently, she is a Ph.D. student at the School of International Studies of the University of Trento, Italy.

At Eurac Research, she worked as a Trainee Researcher at the Institute for Comparative Federalism. She also participated in the Summer School on State and Nations: Diversity, Domination and Legitimacy 2023, organized by Eurac Research (Italy) and *Université du Québec à Montréal* (Canada). She can be reached at chiara.serioli@unitn.it.

Keywords

Indigenous Peoples, Canada, Truth and Reconciliation Commission, Genocide Admission, 94 Calls to Action, Genocide Acknowledgment.

Cultural Genocide of Indigenous Peoples in Canada

A Legal and Socio-Political Analysis of the Limits of Reconciliation

Introduction

After Europeans colonized North America in the 17th century, Western control and lifestyle permeated every sphere of Indigenous Peoples' lives, undermining their living environment and conditions.[1] In the Canadian case, the most emblematic example of the discrimination suffered by Indigenous Peoples was embodied by the Residential Schools System. This network was funded by the Canadian government's Department of Indian Affairs and became operational in the 1880s, under the administration of Christian churches. Residential Schools constituted an assimilation educative system, where physical, mental, and sexual abuse took place. However, despite the horrific reality of this system, the frontier myth of European colonization of North America persisted for a long time. Only in the 1990s, testimonies about the perpetrated crimes became sufficiently known to the general public and exponentially increased in 2021 after the discovery of 215 unmarked graves at the Kamloops Indian Residential School.[2]

This discovery in Kamloops, together with the 2016-2019 inquiry into Missing and Murdered Indigenous Women (MMIW), was responsible for increasing internal and external recognition of the indigenous cultural genocide in Canada. However, although they surely gathered more attention on indigenous issues, both the revelation in Kamloops and the MMIW inquiry were part of a longer path of attempts toward reconciliation. Indeed, already in 2008, then-Prime Minister Stephen Harper released an official apology for the abuses suffered by Indigenous Peoples. This apology was later followed by the allocation of financial compensation and the establishment of the Truth and Reconciliation Commission (TRC), which issued its Final Report in 2015, after the election of Justin Trudeau's government. Since then, reconciliation in Canada has entered a new phase, which mainly revolves around an official admission of indigenous cultural genocide and the so-called *94 Calls to Action*. These Calls constitute the TRC action plan, and they address the Indian Residential School System and challenge those practices that still marginalize Indigenous Peoples in Canadian society. Through this dual objective, the 94 Calls intend to facilitate reconciliation among survivors, their families, their communities, and Canadians – as hoped by Trudeau's government during its electoral campaign.

This paper analyzes whether the recent Canadian admission of cultural genocide and its main repercussions can be considered a model in the acknowledgment and reconciliation with Indigenous Peoples. The relevance of this question stands on the concept of institutional continuity, as it is still the same State of Canada, in the past and today. This institutional continuity distinguishes Canada from other cases. For instance, Canada's admission of cultural genocide against Indigenous Peoples can be compared with the one offered by Germany to Namibia, in May 2021. On this occasion, Germany underwent a similar admission process as Canada, recognizing that, in 1904, the German Empire had become guilty of mass killings of the Herero people. Although the admissions of Indigenous Peoples' genocide by Canada and the Herero mass killings by Germany surely share several aspects, institutional continuity makes Canada's admission more problematic. Indeed, contrary to Canada, German

[1] I would like to thank Professor Jens Woelk (University of Trento) and Professor Maureen S. Hiebert (University of Calgary) for their support and earlier comments on the paper, Petra Malfertheiner and Francisco Javier Romero Caro for the help in the publication process, and Amanda Gutzke for the linguistic revision.

[2] Ian Austen, 'Horrible History: Mass Grave of Indigenous Children Reported in Canada' *The New York Times* (New York, 5 September 2022) <http://www.nytimes.com/2021/05/28/world/canada/kamloops-mass-grave-residential-schools.html> accessed 27 July 2023. See also Dirk Meissner, 'Work to Exhume Remains at Former Kamloops Residential School Could Begin Soon, Chief Says' *CBC News* (Toronto, 20 May 2022) <http://www.cbc.ca/news/canada/british-columbia/tk-eml%C3%BAps-kamloops-indian-residential-school-215-exhumations-1.6460796> accessed 27 July 2023.

institutions have been replaced: the Empire does not exist anymore, and, in its place, today's democratic Germany has embarked on a reconciliation process.[3] This is why Canadian admission is of immense symbolic value, whose repercussions merit being examined to assess whether Canada can serve other models elsewhere.

However, the results of this research demonstrate that the recent Canadian process toward reconciliation cannot be considered a model for others. This argumentation is supported by both sections of this paper, which are organized as follows. The first section adopts a legal perspective. It focuses on whether Canadian admission challenges the main legal constrictions in the field of genocide, in both the Canadian and international legal frameworks. Specifically, this section considers how Canadian admission relates to three main legal concepts: responsibility, retroactivity, and cultural genocide. This aims to understand the real chances of the TRC Final Report to enhance appreciable legal consequences in genocide prevention and punishment, especially concerning new inquiries, such as the one in Kamloops. The second section adopts a socio-political perspective. It focuses on the TRC 94 Calls and whether these Calls have addressed indigenous needs. Indeed, the more indigenous needs are met, the more this action plan has a better chance to enhance socio-political modifications in support of reconciliation. Last, this section assesses to what extent the non-indigenous population acknowledges indigenous discrimination.

1 The legal framework

This section aims to assess if the recent Canadian process toward reconciliation can enhance appreciable legal effects. More precisely, can Canadian admission of genocide be considered a model in the processes of reconciliation with Indigenous Peoples? This section will illustrate why the short answer to this question is unfortunately no. Indeed, the framing of Canadian admission of genocide is unable to overcome the structural constraints of genocide law. These structural constrictions specifically tackle all the elements of Canadian admission: a State's responsibility for past acts regarding the cultural genocide of Indigenous Peoples. Accordingly, this section will explain why Canada's admission has limited legal value by considering responsibility, non-retroactivity, and the concept of cultural genocide. However, for clarity purposes, it is important to specify that some of these issues are not unique to Canada, such as the non-inclusion of cultural genocide in the Genocide Convention (UNGC; effective since January 12, 1951) and the prohibition on the retroactive application of the law.

Responsibility

Canadian admission of genocide refers to a State's responsibility for genocide. However, when studying the legal prevention and punishment of genocide, whether a State can be held responsible is a controversial issue. This interrogative has always been present in the history of the Genocide Convention, as the Convention imposes some obligations upon States, but does not explicitly assert that a State can be held responsible for genocide.[4] In addition, the Genocide Convention focused on the prosecution of individuals rather than on governments, which are often the ultimate sponsors of individual perpetrators.[5] In 2007, the interpretation of the Genocide Convention on State responsibility seemed to have reached a higher level of flexibility, after the International Court of Justice (ICJ) declared that States can commit genocide, and all the acts enumerated in Article 3 of the Genocide Convention,

[3] Maan Alhmidi, 'Trudeau's Acknowledgment of Indigenous Genocide Could Have Legal Impacts: Experts' *CTV News* (Toronto, 5 June 2021) <https://www.ctvnews.ca/canada/trudeau-s-acknowledgment-of-indigenous-genocide-could-have-legal-impacts-experts-1.5457668> accessed 21 November 2023.

[4] Kevin Aquilina and KIejda Mulaj, 'Limitations in Attributing State Responsibility under the Genocide Convention' (2017) 17 Journal of Human Rights 124-126.

[5] Ibid.

and they can consequently incur responsibility for this crime.[6] This statement was welcomed as a landmark pronouncement and raised hopes for the attribution of State responsibility for genocide. However, these hopes were never entirely translated into reality, nor did they fully materialize in the judgments over State responsibility. As a result, although State involvement, or at least its complicity, is strictly connected to the occurrence of genocide, no State has been held responsible to date, except for Serbia in the case *Bosnia v Serbia* (2007). Interestingly, even in this case, the ICJ found Serbia in breach of its obligation to prevent genocide in Bosnia, more than to perpetrate it.[7]

A similar understanding of State responsibility can be traced in the Canadian legal system, namely in the Criminal Code and the Crimes Against Humanity and War Crimes Act (CAHWCA). This happens because, at both the international and domestic criminal levels, in the modern era of democratic States with the rule of law, crimes cannot be ascribed to groups, but only to individuals for which there is proof of the physical and mental element of the crime. To do otherwise would entail punishing those who are demonstrably innocent by imposing collective punishment. Although the individual criminal responsibility issue can be seen as getting in the way of using the UNGC, criminal law can only be used to assess individual criminal responsibility, as the contrary would consist of a violation of the foundational principles of criminal law. The outcome hinders the legal value of Canadian admission. Although genocide ultimately consists of a collective crime against groups, which would be impossible without a certain degree of complicity by the State, responsibility is still generally considered to lie on individuals. This happens although the assimilationist practices of the Residential Schools' architects, such as Duncan Campbell Scott, would have been impossible without institutional support.[8] However, this is the nature of criminal law itself: the need to protect innocent people from collective punishment makes it preferable to punish a few State officials, without holding the government responsible.[9]

Retroactivity

As with the issue of individual criminal responsibility, the non-retroactivity principle is not unique to Canada. The principle of non-retroactivity prohibits the application of law to events that took place before the law was introduced.[10] Not surprisingly, only authoritarian regimes without the rule of law apply laws retroactively, especially criminal ones. In the Canadian case, the principle of non-retroactivity led to the rejection of the request by a coalition of fifteen Canadian lawyers to the International Criminal Court (ICC) to investigate the former Kamloops Indian Residential School, where the 215 unmarked graves had been discovered in June 2021. Precisely, the coalition asked for a preliminary examination into the role of "employees, agents and actors" of the Government of Canada and the Catholic Church.[11]

---

[6] In its 2007 judgment in the *Bosnia v. Serbia*, the ICJ established the following:
209. The Court has long recognized that claims against a State involving charges of exceptional gravity must be proved by evidence that is fully conclusive. The Court requires that it be fully convinced that allegations made in the proceedings, that the crime of genocide or the other acts enumerated in Article III have been committed, have been clearly established. The same standard applies to the proof of attribution for such acts. 210. In respect of the Applicant's claim that the Respondent has breached its undertakings to prevent genocide and to punish and extradite persons charged with genocide, the Court requires proof at a high level of certainty appropriate to the seriousness of the allegation. (ICJ 1949: 16–17).
This passage was quoted with approval in the ICJ *Croatia v. Serbia* 2015 judgment:
The Court, after recalling that "claims against a State involving charges of exceptional gravity must be proved by evidence that is fully conclusive (cf. Corfu Channel (United Kingdom v. Albania), Judgment, I.C.J. Reports 1949, p. 17)", added that it "requires that it be fully convinced that allegations made in the proceedings, that the crime of genocide or the other acts enumerated in Article III have been committed, have been clearly established. The same standard applies to the proof of attribution for such acts". (I.C.J. Reports2007(I), p. 129, para. 209). (ICJ2015: 178).

[7] Aquilina and Mulaj (n 4) 127-128.

[8] This is why there was a total of 161 indictments at the ICTY and 93 indictments at the ICTR, followed by more indictments at the domestic level in both cases. The principle of International Criminal Law is that those most responsible are tried.

[9] Aquilina and Mulaj (n 4) 130.

[10] Yarik Kryvoi and Shaun Matos, 'Non-Retroactivity as a General Principle of Law' (2021) 17 Utrecht Law Review 46.

[11] Meghan Grant, 'International Criminal Court Called on to Investigate Kamloops Residential School Findings' *CBC News* (Toronto, 4 June 2021) <https://www.cbc.ca/news/canada/calgary/calgary-canadian-lawyers-icc-residential-school-investigation-1.6052054> accessed 27 July 2023.

As the Kamloops graves case reached the ICC, many started questioning if this inquiry had the power to affect the international legal system by upholding Ottawa's responsibility for crimes against humanity.[12] However, the ICC refused to open a preliminary examination as the principle of non-retroactivity prohibits the application of law to events that took place before the law was introduced.[13] In fact, the Rome Statute rules that the ICC's jurisdiction covers events that occurred after July 1, 2002, the date on which the treaty took effect.[14] This decision is based on the principle of legality[15] or *nullum crimen, nulla poena sine lege*: a principle now recognized as the foundation of fundamental human rights and an essential component of international criminal justice.[16] Ultimately, the Kamloops Residential School was closed in 1978, well before the Rome Statute came into effect. The attorneys involved in the claim tried to legitimize their request by stating that, despite the principle of legality, acts designed to cover up past crimes can be seen as an extension of the same crimes.[17] Nonetheless, in November 2021, Andrew Phypers, one of the lawyers in the coalition, announced that the ICC prosecutor had refused to initiate the investigation since the Kamloops Residential School had closed before Canada ratified the obligations of the Rome Statute.[18]

Inside Canada, the obligations of the Rome Statute were incorporated in the CAHWA. The importance of the CAHWA lies in the implementation of Article 2(e) of the Genocide Convention, which considers "the forcible transfer of children of the group to another group" as a form of genocide. The implementation of Article 2(e) was welcomed by Indigenous Peoples, as the forced transfer of children from one community to another appeared as the most relevant provision to the history of Residential Schools. However, although the enactment of the CAHWCA might appear to fully embrace the Genocide Convention's notion of genocide within the Canadian statutory law, this is not completely true. This has specifically to do with retroactivity. The CAHWCA only contemplates retroactivity for crimes allegedly committed outside of Canada.[19] On the other hand, crimes allegedly committed inside Canada are prosecutable only if they took place after the adoption of the Rome Statute.[20] Consequently, this limits the legal actions that can be taken within the Canadian framework against the Residential Schools System, as the majority of Residential Schools closed in the 1990s, before the adoption of the Rome Statute.

Experts have long been questioning if retroactivity works similarly through international tools. In this regard, in 2003, an independent legal counsel inside the International Center for Transitional Justice questioned the Genocide Convention's retroactivity. The analysis of the counsel finally resulted in an opinion. The opinion started by acknowledging that international law does not usually allow for retroactivity in treaties.[21] This is specifically based on Article 28 of the Vienna Convention on the Law of

[12] It is interesting to notice that the lawyers opted to frame their complaint in terms of crimes against humanity rather than genocide, although allegations on the genocidal nature of the Residential Schools System had spread for years at that point. The lawyer coalition's choice to opt for crimes against humanity mainly depended on the possibility to argue that Canada's own Crimes Against Humanity and War Crimes Act provided a loophole by which the non-retroactivity provision in the Rome Statute could be circumvented. See: Michael Melanson and Nina Green, 'Canada's "Genocide" — Case Closed?' *The Dorchester Review* (Dorchester, 27 October 2022) <https://www.dorchesterreview.ca/blogs/news/canada-s-genocide-case-closed> accessed 27 July 2023.

[13] Kryvoi and Matos (n 10) 46-58.

[14] Art. 24, Non-retroactivity *ratione personae*: "1. No person shall be criminally responsible under this Statute for conduct prior to the entry into force of the Statute. 2. In the event of a change in the law applicable to a given case prior to a final judgement, the law more favourable to the person being investigated, prosecuted or convicted shall apply."

[15] The principle of legality, in criminal law, means that only the law can define a crime and prescribe a penalty.

[16] Talita de Souza Dias, 'The Retroactive Application of the Rome Statute in Cases of Security Council Referrals and Ad Hoc Declarations: An Appraisal of the Existing Solutions to an under-Discussed Problem' [2018] SSRN Electronic Journal 65-66.

[17] Kirsten J. Fisher, 'Can Justice in Kamloops Come through the International Criminal Court?' *Policy Options* (Montréal, 12 July 2021) <https://policyoptions.irpp.org/magazines/june-2021/can-justice-in-kamloops-come-through-the-international-criminal-court/#:~:text=While%20there%20may%20be%20a,Residential%20School%20closed%20in%201978> accessed 31 July 2023.

[18] News AN, 'International Criminal Court Won't Investigate Residential Schools: Lawyer' *APTN News* (Winnipeg, 15 November 2021) <https://www.aptnnews.ca/national-news/lawyer-says-international-criminal-court-declines-request-to-open-residential-school-investigation/> accessed 27 July 2023.

[19] Art. 6(1): "Every person who, either before or after the coming into force of this section, commits outside Canada (a) genocide, (b) a crime against humanity, or (c) a war crime, is guilty of an indictable offence and may be prosecuted for that offence in accordance with section 8."

[20] David B. MacDonald and Graham Hudson, 'The Genocide Question and Indian Residential Schools in Canada' (2012) 45 Canadian Journal of Political Science 436.

[21] William A. Schabas 'Retroactive application of the Genocide Convention' (2009) 4 U. St. Thomas JL & Pub. Pol'y.

Treaties.[22] Accordingly, when analyzing the Genocide Convention, no clause expressively suggests the intent to apply retroactivity. This remains unchanged even when looking at the preparatory work of the Convention.[23] Moreover, the International Center for Transitional Justice opinion stated that Article 28 of the Vienna Convention aligns with well-established norms in customary international law and with decisions of international treaties.[24] In conclusion, according to this opinion, the negotiators understood the Convention as a prospective tool, and not as a retrospective one, to punish and guarantee the "prevention of future crimes".[25]

Cultural Genocide

The most controversial factor for the purpose of this paper is the limited understanding of what accounts for genocide. Specifically, this relates to how both the Genocide Convention and the Canadian Criminal Code purely contemplate a physical form of genocide. Indeed, both legal instruments do not recognize other forms of genocide and do not refer to the concept of "cultural genocide". Specifically, in the Canadian Criminal Code, a particularly narrow conception of what accounts for genocide ((a) killing members of the group; or (b) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction)[26] contrasts with a broad list of protected subjects.[27] This is particularly true when considering the Canadian exclusion of the last method of destruction enlisted in the Genocide Convention (the forcible removal of children from one group to another), which works as a remnant of cultural genocide.

Generally, formulating an unambiguous definition of cultural genocide has always encountered difficulties. The main ones are inherent in the subjectiveness of "culture", which results in the absence of a shared legal definition.[28] Of course, not all genocide scholars share this perspective and support a comprehensive definition of genocide, which encompasses different forms of destruction.[29] These scholars usually focus on genocide as a process of its own, which results in the annihilation of a group's culture, either through destruction or assimilation.[30] This is exactly what Raphael Lemkin meant when referring to genocide as a process. According to Lemkin, genocide does not necessarily coincide with the immediate destruction of a group, but rather with a coordinated plan to destroy the essential foundations of a group's survival,[31] namely the political and social institutions, culture, language, national sentiments, religion, and economy of the group. Thus, this coordinated plan can entail both mass-killing a group and preventing the group from raising its offspring.[32] Here stands Lemkin's great contribution: understanding genocide from a less obvious perspective. This perspective highlights the political, social, cultural, economic, and biological features of genocide, considers underestimated forms of destruction, such as religious and moral, and combines these features with physical genocide. Another innovation stands in how Lemkin's lists were never considered exhaustive, unlikely to the five acts enumerated in Article 2 of the Genocide Convention.[33]

---

[22] Art. 28, Non-retroactivity of treaties: "Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party."

[23] Schabas (n 21).

[24] Ibid.

[25] "The Genocide Convention does not give rise to individual criminal or state responsibility for events which occurred during the early twentieth century or at any time prior to January 12, 1951." See: Schabas (n 21).

[26] Art. 318(2), Criminal Code: Part VIII: Offences against the Person and Reputation Hate Propaganda.

[27] Art. 318(4): "In this section, identifiable group means any section of the public distinguished by colour, race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression, or mental or physical disability."

[28] Elisa Novic, *The Concept of Cultural Genocide: An International Law Perspective* (Oxford University Press 2016) 2.

[29] Timothy D. Snyder, *Black Earth: The Holocaust as History and Warning* (Vintage Books 2016).

[30] Novic (n 28).

[31] Rafael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (Lawbook Exchange 2014) 79.

[32] Ruth Amir, 'Cultural Genocide in Canada? It Did Happen Here' (2018) 7 Aboriginal Policy Studies 105.

[33] Art.2: "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

Compared to Lemkin's definition, the narrower legal definition of the Genocide Convention – and consequently the one present in the Canadian Criminal Code and the CAHWA - risks representing cultural genocide as a "subtle" genocide.[34] In fact, today's UNGC definition fails in describing how a cultural genocide has the power to generate similar effects as a physical genocide by engaging in assimilationist and dispersion policies.[35] This UNGC approach is inherent in the concept of *dolus specialis*, which focuses on the criminalization of the perpetrators' intent to destroy.[36]

This focus was triggered, in 1948, by the Universal Declaration of Human Rights (UDHR) which initiated a protective turn in International Law, distancing from the criminal turn of the Genocide Convention.[37] As an effect of the UDHR, the International Human Rights Law dedicated more attention to human cultural rights, and the International Cultural Heritage Law developed. The development of these two branches urged the international community to focus on groups' full enjoyment of their rights and highlighted how cultural protection can prevent mass atrocities.[38] Eventually, this turn was unable to make significant changes but rather consisted of a long and gradual contribution, punctuated by sporadic initiatives, which were also divided in their taxonomical approach.[39] Thus, the law of genocide has survived without incurring changes. The great consensus that the UNGC definition still has is also demonstrated by the Draft Code of Crimes against the Peace and Security of Mankind. In this document, the International Law Commission reproduced Art. 2 of the Genocide Convention, as it considered it "widely accepted and generally recognized as the authoritative definition of this crime".[40] The definition was also accepted in the International Criminal Court (ICC) Statute.[41] Likewise, a wider protective notion of genocide has not been translated into the Canadian legal framework, neglecting Lemkin's connection between cultural assimilation, power relations, and genocide.

However, Canada's understanding of cultural genocide entails a paradox. On one hand, Canada has excluded the notion of cultural genocide from its legal system, suggesting a devaluation of the concept. On the other, Canada precisely defined Indigenous Peoples' genocide as a cultural one, as described in the TRC Final Report.[42] This has the effect of making Canada's admission of genocide ineffectual, as it admits to having perpetrated a form of genocide that is not even present in its legislation. Specifically, Indigenous Peoples' genocide is described as follows:

---

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."

[34] Barbara Perry, 'From Ethnocide to Ethnoviolence: Layers of Native American Victimization' (2002) 5 Contemporary Justice Review 231; Robert van Krieken, 'Rethinking Cultural Genocide: Aboriginal Child Removal and Settler-Colonial State Formation' (2004) 75 Oceania 138.

[35] Novic (n 28) 5.

[36] Ibid 51.

[37] Ibid 96.

[38] Ibid.

[39] Ibid.

[40] 'International Law Commission: Draft Code of Crimes against the Peace and Security of Mankind with Commentaries' (1996) Yearbook of the International Law Commission, 48th Session, vol. II, Part Two (ILC 1996 Draft Code of Crimes) Commentary on art. 17, para. 3. In contrast with Claudia Card's definition of genocide as 'social death', in Claudia Card, 'Genocide and Social Death' in John K Roth (ed.), *Genocide and Human Rights: A Philosophical Guide* (Palgrave Macmillan 2005) 238–54.

[41] Herman Von Hebel and Darryl Robinson, 'Crimes within the Jurisdiction of the Court' in Roy S Lee, *The International Criminal Court: The Making of the Rome Statute* (The Hague; London; Boston: Kluwer Law International) 89: "A few proposals to expand the definition were made during the 1996 sessions of the Preparatory committee. (…) At the Rome Conference, the definition of the crime of genocide was not discussed in substance but was referred directly to the Drafting Committee."

[42] For clarity purposes: I decided to concentrate on the TRC Report's definition for four reasons. First, The TRC came about as a direct result of the Indian Residential Schools Settlement Agreement, the largest class-action settlement in Canadian history, and includes the 94 Calls to Action that are at the basis of today's Reconciliation. Second, it constitutes an immense analytical effort, as the TRC collected 6,500 testimonies by working for 6 years across Canada and holding 7 national events to engage the public. Third, the TRC aimed to be an inclusive body as it was created through a legal settlement between several counterparts: Residential Schools Survivors, the Assembly of First Nations, Inuit representatives, the Federal Government, and the church bodies. Fourth, the TRC Final Report was accepted by Trudeau within a month of taking office. See: Government of Canada Crown-Indigenous Relations and Northern Affairs Canada, 'Truth and Reconciliation Commission of Canada' (*Government of Canada Crown-Indigenous Relations and Northern Affairs Canada*, 29 September 2022) <https://www.rcaanc-cirnac.gc.ca/eng/1450124405592/1529106060525> accessed 27 July 2023; National Centre for Truth and Reconciliation 'Truth and Reconciliation Commission of Canada' (*NCTR*, 28 July 2021) <https://nctr.ca/about/history-of-the-trc/truth-and-Reconciliation-commission-of-canada/> accessed 27 July 2023.

For over a century, the central goals of Canada's aboriginal policy were to eliminate Aboriginal Governments; ignore Aboriginal rights; terminate the Treaties; and, through a process of assimilation, cause Aboriginal peoples to cease to exist as distinct legal, social, cultural, religious, and racial entities in Canada. The establishment and operation of Residential Schools were a central element of this policy, which can best be described as "cultural genocide".[43]

According to the TRC Final Report description, cultural genocide entails the destruction of "structures and practices that allow the group to continue as a group", such as indigenous political and social structures.[44] Although the Report refers to cultural genocide as a "process",[45] as auspicated by Lemkin, physical/biological and cultural genocide are described as unrelated concepts, disregarding how cultural assimilation can affect the foundations of a group's survival.[46] On the contrary, Lemkin recognizes the link between the two concepts and states that "[i]f the culture of a group is violently undermined, the group itself disintegrates and its members must either become absorbed in other cultures, which is a wasteful and painful process, or succumb to personal disorganization and, perhaps, physical destruction".[47]

Moreover, there is at least another important reason why the TRC Report does not grasp the complexity of the Residential Schools system. By describing it as a cultural genocide, the Report does not recognize how already existing provisions of the Genocide Convention are relevant to the case. Although the deliberate mass killing of children was not included in its mandate, the Residential School system still perpetrated crimes that are ruled under the Genocide Convention, such as causing serious bodily or mental harm to members of the group (Art. 2b), deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part (Art. 2c); and forcibly transferring children of the group to another group (Art. 2e).[48] This is exactly what Fannie Lafontaine, holder of the Canada Research Chair on International Criminal Justice and Human Rights at Université Laval, supported in her contribution to the MMIW inquiry, stating that "the definition of genocide in international law, as it stands, encompasses the past and current actions and omissions of Canada towards Indigenous Peoples".[49] Therefore, the TRC definition seemingly shields Canada from any physical responsibility and contributes to framing cultural genocide as a subtle version of genocide.

However, although settlers' laws and their technicalities (responsibility, non-retroactivity, and the concept of cultural genocide) seem an inappropriate toolbox for Indigenous genocide, it is plausible that the Genocide Convention will not be overturned in a short time, remaining the most authoritative frame for this issue. Nonetheless, what can and must change is how the existing international framework (such as the Genocide Convention) is understood. Reinterpretation may help us overcome a purely modernist and Eurocentric mindset and better describe the harms suffered by different collectives.[50] A renewed understanding of the present legal framework is useful for both past and contemporary atrocities. The latter is also the case of Rohingya Muslims in Myanmar. In 2019, Myanmar was brought before the ICJ by The Gambia, claiming Myanmar's treatment against the Rohingya violates the Genocide Convention. According to The Gambia, Myanmar's actions included "killing, causing serious bodily and mental harm, inflicting conditions that are calculated to bring about physical destruction, imposing measures to

[43] Public Services and Procurement Canada Government of Canada, 'Honouring the Truth, Reconciling for the Future: Summary of The Final Report of the Truth and Reconciliation Commission of Canada' (*Government of Canada Publications*, 3 April 2013) <https://publications.gc.ca/site/eng/9.800288/publication.html> accessed 27 July 2023. Throughout the document, references to the concept of "cultural genocide" are made. Specifically: "The Canadian Government pursued this policy of cultural genocide" (3), "a conscious policy of cultural genocide" (57), "the destruction of a Nation of People by legislation and cultural genocide" (72), "policies of cultural genocide and assimilation" (237), and "aspects of our national history that reveal cultural genocide". (337).

[44] Ibid.

[45] Ibid.

[46] Ibid: "Physical genocide is the mass killing of the members of a targeted group, and biological genocide is the destruction of the group's reproductive capacity. Cultural genocide is the destruction of those structures and practices that allow the group to continue as a group."

[47] Novic (n 28) 22.

[48] Jesse Staniforth, '"Cultural Genocide"? No, Canada Committed Regular Genocide' *Toronto Star* (Toronto, 10 June 2015) <https://www.thestar.com/opinion/commentary/2015/06/10/cultural-genocide-no-canada-committed-regular-genocide.html> accessed 23 November 2023.

[49] National Inquiry into Missing and Murdered Indigenous Women and Girls. 'Final Report' (*MMIWG*, 29 May 2019) <https://mmiwg-ffada.ca/> accessed 23 November 2023.

[50] Andrew Woolford, 'Ontological destruction: genocide and Canadian aboriginal peoples' (2009) 4.1 Genocide Studies and Prevention 82-90.

prevent births, and forcible transfers".[51] On the other side, Myanmar argued that actions against the Rohingya may account for war crimes or crimes against humanity, but not for genocide.[52] On January 23, 2020, the ICJ's provisional measures required Myanmar to prevent genocidal acts and preserve evidence on the case. Responding to The Gambia's application, Myanmar presented four preliminary objections regarding the ICJ jurisdiction and the admissibility of the application. However, on July 22, 2022, the ICJ rejected all of Myanmar's objections.[53] The case requires great attention as, consequent to Myanmar's genocidal actions, many Rohingya have escaped to other countries, including Malaysia and Bangladesh, where they keep suffering from discrimination because of their identity. This shows how genocidal actions in Myanmar created a compound effect on Rohingya refugees and how the loss of cultural identity can be part of wider genocide processes.[54]

2 The socio-political framework

The responsibility, retroactivity, and cultural genocide sections explain why Canadian admission of genocide cannot stand as a model capable of producing significant legal effects. Indeed, the constraints in the genocide law system limit the legal value of this admission. This means that, at least today, Canadian admission of genocide has a more political dimension. However, even from the socio-political perspective, the Canadian process toward reconciliation presents many flaws. For instance, the 94 Calls - the action plan aimed to develop policies to reconcile with Indigenous Peoples – fuel dissatisfaction by not meeting indigenous structural needs. Moreover, non-indigenous acknowledgment of indigenous discrimination remains underdeveloped.

First, this section will analyze the 94 Calls through three indicators (quantity, quality, and time). Second, the level of acknowledgment among non-Indigenous people is assessed through the results of different sources, selected for their focus on past vs present discrimination and/or rhetorical vs substantial reconciliation.

Indigenous Needs: an analysis of quantity, quality, and time

The 94 Calls to Action were drafted in 2015 by the TRC and, among these Calls, the Federal government is accountable – entirely or in part - for 76 of them.[55] The 94 Calls were thought both to address the Indian Residential School System and challenge those practices that still marginalize Indigenous Peoples in Canadian society.[56] To do so, the 94 Calls tackle all the fields of Indigenous Peoples' lives and are divided into two sections: Legacy and Reconciliation.[57] The Legacy Section focuses on past colonial

[51] Ewelina U. Ochab, 'International Court Of Justice Proceeds With The Case Against Myanmar' *Forbes* (New York, 23 July 2022) <https://www.forbes.com/sites/ewelinaochab/2022/07/23/international-court-of-justice-proceeds-with-the-case-against-myanmar/?sh=33d6044565d3> accessed 9 December 2023.

[52] Melanie O'Brien and Gerhard Hoffstaedter, 'There We Are Nothing, Here We Are Nothing!—The Enduring Effects of the Rohingya Genocide' (2020) 9.11 Social Sciences 2.

[53] Ochab (n 51).

[54] O'Brien and Hoffstaedter (n 52) 8.

[55] Samanta Krishnapillai, 'On Canada Project Media, Content & Blog' (*The On Canada Project*, 14 November 2022) <https://oncanadaproject.ca/blog/an-update-on-the-94-calls-to-action?rq=trc> accessed 30 July 2023.

[56] Eva Jewell and Ian Mosby, 'Calls to Action Accountability: A 2021 Status' (*Yellowhead Institute*, 2021) <https://yellowheadinstitute.org/wp-content/uploads/2022/03/trc-2021-accountability-update-yellowhead-institute-special-report.pdf> accessed 30 July 2023.

[57] Specifically, the 94 Calls are divided according to the following categories: 1. Legacy comprising Child Welfare, Education, Languages and Culture, Health, and Justice. 2. Reconciliation comprising Canadian Governments and the United Nations Declaration on the Rights of Indigenous People, Royal Proclamation and Covenant of Reconciliation, Settlement Agreement Parties and the United Nations Declaration on the Rights of Indigenous Peoples, Equity for Aboriginal People in the Legal System, National Council for Reconciliation, Professional Development and Training for Public Servants, Church Apologies and Reconciliation, Education for Reconciliation, Youth Programs, Museums and Archives, Missing Children and Burial Information, National Centre for Truth and Reconciliation, Commemoration, Media and Reconciliation, Sports and Reconciliation, Business and Reconciliation, and Newcomers to Canada. See: Government of Canada, 'Delivering on Truth and Reconciliation Commission Calls to Action' (*Government of Canada Crown-Indigenous Relations and Northern Affairs Canada*, 10 July 2023) <https://www.rcaanc-cirnac.gc.ca/eng/1524494530110/1557511412801> accessed 30 July 2023.

violence and on the effects of Residential Schools which still discriminate against Indigenous Peoples.[58] This Section aims to overcome these effects, by revising current shortcomings and implementing fairer policies. The Reconciliation Section, instead, aims to forge and develop new relationships with Indigenous Peoples.[59]

Considering both Sections, 13 Calls were completed before August 2022, five[60] belonging to Legacy and eight[61] to Reconciliation. Although the implementation of Reconciliation Calls is slightly more advanced, a complementary implementation of Legacy and Reconciliation Calls is needed for overall success, as future relationships are based on the structural goals of the Legacy Section.[62] From a superficial level of analysis, one might feel positive about the improvements made by these Calls in several fields of reconciliation. However, their effects depend on their capability to address indigenous structural needs. To understand whether this is the case, the Calls will be analyzed through three main indicators: quantity, quality, and time.

Quantity

Considering the "Quantity" indicator, how reconciliation has been conducted does not look promising. In this regard, 13 Calls have been answered since 2015. This number is generally accepted by major independent studies, such as the ones conducted by the CBC ("Beyond94"), the Yellowhead Institute ("Calls to Action Accountability: A 2021 Status Update on Reconciliation"), and Indigenous Watchdog ("TRC Status Updates").[63] However, when only considering the Calls for which the Federal government is responsible, CBC and the Yellowhead Institute claim that only eight Calls have been completed (seven, according to Indigenous Watchdog.)[64]

As this number would entail an unsatisfactory governmental engagement, it is interesting to analyze the position of the Federal government in the face of these results. Not surprisingly, the Federal government has a very different understanding of what is considered a completed Call. This depends on the different parameters the Federal government has applied, which support that 17 Calls, all belonging to the 76 Calls for which it is held responsible, can be considered complete.

To highlight how the Federal government's understanding differs from the ones of the other three organizations, it is interesting to notice that only five Calls of the 17 above-mentioned (Calls 13, 15, 80, 83, and 94) are considered complete by all four organizations.[65] An even more troubling picture emerges when considering that among the remaining 12 Calls, seven are considered incomplete by all three independent organizations.[66] Thus, based on the above considerations and majority rule, a reasonable percentage of how many Calls have been completed by the Federal government ranges between a minimum of 6.6% (when all four organizations agree) to a maximum of 10.5% (when three

[58] Krishnapillai (n 55).

[59] Ibid.

[60] The five implemented Calls are namely: 13. Acknowledge that Aboriginal rights include Aboriginal language rights; 15. Appoint an Aboriginal Languages Commissioner; 16. Create university and college degree and diploma programs in Aboriginal languages; 39. Collect and publish data on the criminal victimization of Aboriginal people; and 41. Appoint a public inquiry into the causes of, and remedies for, the disproportionate victimization of Aboriginal women and girls.

[61] The eight implemented Calls are namely: 59. Church parties to residential school settlement to educate congregations on why apologies necessary; 70. A national review of archival policies; 80. Establish a National Day for Truth and Reconciliation as a statutory holiday; 83. Canada Council for the Arts to establish a strategy for Indigenous and non-Indigenous artists to undertake collaborative projects; 84. Restore and increase funding to the CBC/Radio-Canada to enable it to support Reconciliation; 85. Aboriginal Peoples Television Network to support Reconciliation; 88. Continued support for the North American Indigenous Games; and 94. Replace the Oath of Citizenship.

[62] Krishnapillai (n 55).

[63] Douglas Sinclair, 'How Many of the TRC Calls to Action Are Complete? Don't Ask the Federal Government' (*Indigenous Watchdog*, 26 April 2022) <http://www.indigenouswatchdog.org/2022/04/26/how-many-of-the-trc-calls-to-action-are-complete-dont-ask-the-federal-government/> accessed 30 July 2023.

[64] Ibid.

[65] Ibid.

[66] The remaining are classified as follows: "2 are ranked as complete by CBC and Yellowhead Institute and incomplete by Indigenous Watchdog (41, 88); 1 is ranked as complete by CBC and Indigenous Watchdog and incomplete by Yellowhead (84); 1 is ranked as complete by Yellowhead Institute and incomplete by CBC and Indigenous Watchdog (72); 1 is ranked as complete by Indigenous Watchdog and incomplete by CBC and Yellowhead." See: Sinclair (n 63).

out of the four organizations agree).[67] Notably, even the maximum percentage still represents half of the one claimed by the Federal government (22.4%).[68] Similar percentages cannot be considered encouraging, especially after seven years since the Calls were drafted. This also applies to the percentage claimed by the Federal government, as even 17 Calls would not surely suggest a remarkable engagement. On the contrary, such a small engagement unveils structural, legislative, and institutional barriers both at the federal level and provincial one, where action seems even more limited.[69] Unsurprisingly, the dissatisfaction of Indigenous Peoples has fueled, pointing out the disproportion between the government's promises and actions.[70]

Quality

Although the number of completed Calls is certainly not encouraging, it is important to analyze their quality. Indeed, the great quality of a few policies can sometimes make up for their scarcity. Unfortunately, this does not look like the case with the 94 Calls, as it will now be described.

Starting from the Legacy Section, Calls on Child Welfare (Calls 1-5) and Education (Calls 6-12) require special attention as these areas are the most connected to the assimilationist mechanisms supported by Residential Schools.[71] Indeed, the legacy of Residential Schools is the main cause of today's educative inequalities between Indigenous and non-Indigenous students, especially when it comes to the available structures and resources.[72] Tackling Calls on Child Welfare, C-92 "An Act Respecting First Nations, Inuit and Métis Children, Youth and Families" received Royal Assent and became law on June 21, 2019. Through the Bill, the Federal government first legislated in the field of Indigenous child welfare and recognized Indigenous jurisdiction over child and family services.[73] Moreover, the Bill aimed to answer Call to Action 4, which asks for "national standards for Aboriginal child apprehension and custody cases".[74] However, despite Bill C-92 marking the first step in this field, public services for child welfare in reserves remain underfunded.[75] This is why the 2022 Calls to Action Accountability Special Report, edited by Eva Jewell and Ian Mosby, considered uncompleted all the Calls regarding Child Welfare (Calls 1-5) and Education (Calls 6-12). Similarly, the Health Sector (Calls 18-24) has not received any implementation. Of course, this raises doubts about the effectiveness of the 94 Calls, considering how Health is one of the sectors that most expose discrimination against Indigenous Peoples. However, despite the clear need to counter this phenomenon, Canada's (in-)action has only worsened the healthcare gap between Indigenous and non-Indigenous Peoples, even more evidently during the COVID-19 pandemic.[76]

However, what is surprising within the Legacy Section is that dissatisfaction derives both from unimplemented and completed Calls. For instance, despite being completed, Calls 13 and 15 (concerning Indigenous Languages) have also generated controversy. Dissatisfaction with these Calls developed when the Indigenous Languages Act was tabled in Parliament, as many Indigenous Peoples considered the bill as another legislative initiative developed by a colonial system and imposed on Indigenous Peoples (importantly, Inuktitut was omitted in the proposed Federal languages legislation.)[77]

---

[67] Ibid.

[68] Ibid.

[69] Eva Jewell and Ian Mosby, 'Calls to Action Accountability: A 2022 Status Update on Reconciliation' (*Yellowhead Institute*, 2022) 42 <https://yellowheadinstitute.org/wp-content/uploads/2022/12/TRC-Report-12.15.2022-Yellowhead-Institute-min.pdf> accessed 24 November 2023.

[70] Jewell and Mosby (n 56).

[71] Ibid 13.

[72] Ibid 15.

[73] Naiomi Walqwan Metallic, Hadley Friedland and Sarah Morales, 'The Promise and Pitfalls of C-92: An Act respecting First Nations, Inuit, and Métis Children, Youth and Families' (*Yellowhead Institute*, 2019) 4 <https://yellowheadinstitute.org/wp-content/uploads/2019/07/the-promise-and-pitfalls-of-c-92-report.pdf> accessed 27 November 2023.

[74] Call 4: "We call upon the federal government to enact Aboriginal child-welfare legislation that establishes national standards for Aboriginal child apprehension and custody cases […]." See: Truth and Reconciliation Commission of Canada, 'Truth and Reconciliation Commission of Canada: Calls to Action'

[75] Jewell and Mosby (n 69) 17.

[76] Jewell and Mosby (n 56) 19.

[77] Michele LeTourneau, 'Inuktut Absent from Proposed Federal Languages Legislation' *Nunavut News* (Iqaluit, 8 February 2019) <http://www.nunavutnews.com/nunavut-news/inuktut-absent-from-proposed-Federal-languages-legislation/> accessed 30 July 2023.

Similarly, controversy was raised against the Office of the Commissioner of Indigenous Languages, whose establishment answered Call 15.[78] Indeed, the Office presented very little advancement to the already existing Aboriginal Languages Initiative program and is widely considered a failure in preserving indigenous languages.[79] Last, a recurrent complaint to the Indigenous Languages Act and the work of the Office is how these actions can only generate appreciable effects if Call 14 is also implemented: "providing sufficient funds for Aboriginal-language revitalization and preservation".[80] However, today's monetary support for indigenous languages is still underdeveloped. For instance, French (and English) instruction is currently funded 40 times more than the Inuktut language in Nunavut.[81]

Regarding the Justice sector (Calls 25-42), Canadian progress to eradicate structural racism appears modest when looking at the jail population.[82] Although accounting for only 5% of the population, Indigenous Peoples represent 30% of inmates.[83] Given this figure, it should not sound shocking why some experts have compared the incarceration system to Residential Schools and have claimed that institutional discrimination has simply changed its form.[84] Thus, institutional discrimination and the generally weaker socio-economic conditions of Indigenous Peoples concur in increasing their chances of incarceration. Moreover, not only are Indigenous Peoples incarcerated more frequently, but they are also destined for higher security institutions.[85] This makes indigenous justice a very complex issue, which cannot be addressed by sporadic actions and is destined to become one of the focuses of future class action lawsuits.[86]

Moving to the Reconciliation Section, implementation has seemingly been more successful. However, although more Calls have been completed, 10 of the 17 subcategories of the Reconciliation Section have still not witnessed any progress.[87] In the example of the Yellowhead Institute, this paper will pay close attention to two of the Reconciliation subcategories: "Missing Children and Burial Information" (Calls 71-76), and "Canadian Governments and the United Nations Declaration on the Rights of Indigenous People" (Calls 43-44).

The non-implementation of Calls 71-76 (Missing Children and Burial Information) constitutes one of the biggest failures. This is particularly true considering that dissatisfaction with burial information was already widespread before the 215 unmarked graves were found at the Kamloops Residential School in 2021.[88] Of course, as information from Kamloops reached a wider audience, more people expected stronger efforts by the government in the field of Missing Children and Burial Information. As a response, the government increased existing funds and created new ones.[89] However, funding has

[78] Call 15: "We call upon the federal government to appoint, in consultation with Aboriginal groups, an Aboriginal Languages Commissioner. The commissioner should help promote Aboriginal languages and report on the adequacy of federal funding of Aboriginal-languages initiatives." See: Truth and Reconciliation Commission of Canada, 'Truth and Reconciliation Commission of Canada: Calls to Action'.

[79] John Paul Tasker, 'Ottawa Tables Legislation to Protect and Promote Indigenous Languages, Inuit Call It Colonial' *CBC News* (Toronto, 6 February 2019) <http://www.cbc.ca/news/politics/ottawa-indigenous-languages-legislation-1.5006504> accessed 30 July 2023.

[80] Call 14 (iii): "The federal government has a responsibility to provide sufficient funds for Aboriginal-language revitalization and preservation." See: 'Truth and Reconciliation Commission of Canada, Truth and Reconciliation Commission of Canada: Calls to Action'.

[81] Jewell and Mosby (n 56) 30.

[82] Ibid.

[83] Joe Sawchuk, 'Social Conditions of Indigenous Peoples in Canada' (*The Canadian Encyclopedia*, 2011) <https://www.thecanadianencyclopedia.ca/en/article/native-people-social-conditions> accessed 30 July 2023.

[84] CBC News, '41. Appoint a Public Inquiry into the Causes of, and Remedies for, the Disproportionate Victimization of Aboriginal Women and Girls' *CBC News* (Toronto, 2022) <https://www.cbc.ca/newsinteractives/beyond-94/appoint-a-public-inquiry-into-the-causes-of-and-remedies-for-the-disproportionate-victimization-of-aboriginal-women-and-girls> accessed 30 July 2023.

[85] Ibid.

[86] Ibid.

[87] These subcategories comprise Canadian Governments and the United Nations Declaration on the Rights of Indigenous People, Royal Proclamation and Covenant of Reconciliation, Settlement Agreement Parties and the United Nations Declaration on the Rights of Indigenous Peoples, National Council for Reconciliation, Professional Development and Training for Public Servants, Education for Reconciliation, Youth Programs, Missing Children and Burial Information, National Centre for Truth and Reconciliation, Business and Reconciliation.

[88] Jewell and Mosby (n 56) 23.

[89] Ibid.

generally fallen short, especially for longstanding and large sites such as the Mohawk Institute, Canada's first and longest-running Residential School.[90]

Moreover, an effective response to similar events cannot stop at money.[91] The triggering nature of grave recovery must be addressed with constant sensitivity and respect among the non-Indigenous population. Indeed, although few Indigenous institutes (such as the Institute of Prairie and Indigenous Archeology) engage in burial activities, many non-Indigenous companies are also joining the process through ground-penetrating radar activities. In this sense, private companies must be restrained from engaging in burial activities only to profit from indigenous pain.[92] While the involvement of private companies in ground-penetrating radar services has been welcomed by some indigenous communities, others have defined this process as a kind of exploitation more interested in developing companies' reputations, rather than in fostering reconciliation.[93]

Experts like Dr. Kisha Supernant, Director of the Institute of Prairie and Indigenous Archeology, have long claimed the shortfalls of burial activities, such as the lack of coordinated national involvement, limited capacity, an inevitable sense of renewed grief across Indigenous communities, and missing information in official archives. Lacking information also hinders Federal communications, as the Indigenous Watchdog has long pointed out. Indeed, the Federal government has often updated its web page on Missing Children and Burial Information only superficially, by only changing the publication dates, but without including any significant changes. As Douglas Sinclair of Peguis First Nation has explained, this was done purely to sedate media attention, perpetrating a model of "reconciliation as performance".[94]

Calls on "Canadian Governments and the United Nations Declaration on the Rights of Indigenous People" (Calls 43-44) deserve great attention for two reasons. First, these Calls are strictly connected to global standards of indigenous protection. Second, this subgroup perfectly highlights how the Federal government and independent studies can conflict over what constitutes a completed Call. Specifically, Call 43 aimed at the full adoption and implementation of the Declaration, which passed into law in June 2021, through Bill C-15, "An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)".[95] This was the first step toward the implementation of an action plan. Already after passing Bill C-15, the Department of Justice declared that the Bill responded to Call to Action 43, by creating "a framework for reconciliation, healing, and peace, as well as harmonious and cooperative relations based on the principles of justice, democracy, respect for human rights, non-discrimination and good faith".[96] Unfortunately, although Bill C-15 constitutes an important step forward, both the Yellowhead Institute and CBC did not share the Federal government's view and, consequently, did not consider Call 43 as completed.[97] The main reason for this disagreement is that "land and redress are still largely absent from the conversations on UNDRIP implementation" as explained by Yellowhead board member, Kris Statnyk.[98] As Gchi'mnissing Anishinaabe Hayden King has explained, "as long as Canada

[90] Katherine Hill, 'Funding to Search Ontario's Residential Schools "falls Short", Six Nations Chief Says in Letter to Premier' *CTV News* (Toronto, 3 November 2021) <https://kitchener.ctvnews.ca/funding-to-search-ontario-s-residential-schools-falls-short-six-nations-chief-says-in-letter-to-premier-1.5650747> accessed 30 July 2023.

[91] As Métis archeologist Dr. Kisha Supernant, Director of the Institute of Prairie and Indigenous Archeology and a Professor in the Department of Anthropology at the University of Alberta said to Yellowhead Institute. See: Jewell and Mosby (n 56) 23.

[92] Lana Michelin and Local News, 'Some Indigenous Leaders Say SNC-Lavalin Can't Make up to First Nations People with Offer of Help' *Red Deer Advocate* (Red Deer, 14 June 2021) <http://www.reddeeradvocate.com/news/some-indigenous-leaders-say-snc-lavalin-cant-make-up-to-to-first-nations-people-with-offer-of-help/> accessed 30 July 2023.

[93] Jewell and Mosby (n 56) 24.

[94] Ibid 23-24.

[95] Legislative Services Branch, 'United Nations Declaration on the Rights of Indigenous Peoples Act' (*Justice Law Website*, 27 July 2023) <https://laws-lois.justice.gc.ca/eng/acts/U-2.2/page-1.html> accessed 30 July 2023.

[96] Department of Justice Government of Canada, 'Backgrounder: United Nations Declaration on the Rights of Indigenous Peoples Act' (*Government of Canada, Department of Justice, Electronic Communications,* 10 December 2021) <http://www.justice.gc.ca/eng/declaration/about-apropos.html> accessed 30 July 2023.

[97] Jewell and Mosby (n 56) 25.

[98] Ibid.

can interpret progress on the Declaration in these narrow ways where consultation equals consent […] and there is no independent monitoring of UNDRIP implementation, we'll have ongoing conflict".[99]

Time

Last, the "Time" indicator considers how much time was required to complete the 13 Calls. Specifically, among these 13 completed Calls, 10 were implemented between 2015 and 2019. The process then stalled in 2020.[100] As no Calls were completed that year, a more rapid implementation process was publicly requested. However, this only took place after the public outrage caused by the discovery of Kamloops unmarked graves.[101] The discovery seemingly shocked many non-Indigenous Peoples, although the TRC's Final Report had already dedicated a chapter to Missing Children and Burial Information and developed six Calls to Action on the issue in 2015.[102] While the news of children's unmarked graves resonated through the media and reached a wider audience, the news did not come as a shock to indigenous communities.[103] After the discovery, Rick Harp, founder and president of the INDIGENA Creative Group, publicly criticized this discrepancy by saying: "This is what happened. Here are our stories. Here's our presentation of reality. And yet, it was not legible to the broader society - to the settler society - until the intervention of ground-penetrating radar technology and a non-indigenous outlet decided that this is a story."[104]

In this way, Harp perfectly explains how non-indigenous (and international) involvement was the key to a faster implementation of Calls. The need to sedate complaints made it possible to complete the other three Calls within "record time".[105] However, if it was possible to find the necessary resources and means for the implementation of three Calls within a year, why has the process to complete all 94 Calls been so slow?[106] Despite the implementation of any Call constitutes a step forward, why was reconciliation accelerated only after the disturbing findings in Kamloops? And last, if after such disturbing revelation, external pressure advanced a more rhetorical engagement, do more substantial Calls to Action have any chance to be implemented?[107]

3 Non-indigenous acknowledgment: how institutional engagement affects civil society's understanding

The embarrassment caused by the Kamloops revelations was crucial to completing three Calls within record time. However, what is shocking is that shame and embarrassment greatly depended on external factors. More precisely, shame was exacerbated by the international attention on Canada and evidence of genocide.[108] Supernant explained this paradox when claiming that only when Canada's reputation

[99] Ibid.
[100] Krishnapillai (n 55).
[101] Jewell and Mosby (n 56) 7.
[102] The six Calls are namely: 71. Records on the deaths of Aboriginal children in residential schools to go to the National Centre for Truth and Reconciliation; 72. Develop and maintain the National Residential School Student Death Register created by the TRC; 73. Establish and maintain an online registry of residential school cemeteries; 74. Inform the families of children who died at residential schools of the child's burial location; 75. Develop and implement procedures for the identification and maintenance of residential school cemeteries; 76. Aboriginal communities should lead development of residential school cemetery identification and maintenance strategies.
[103] Jewell and Mosby (n 56) 7.
[104] Rick Harp, 'Grave Concerns (EP 269)' (*Media Indigena: Indigenous current affairs*, 13 September 2021) <https://mediaindigena.libsyn.com/grave-concerns-ep-269> accessed 30 July 2023.
[105] The three Calls are namely: 15. Appoint an Aboriginal Languages Commissioner; 80. Establish a National Day for Truth and Reconciliation as a statutory holiday; and 94. Replace the Oath of Citizenship.
[106] Krishnapillai (n 55).
[107] Jewell and Mosby (n 56) 30.
[108] Ibid.

was at risk on the international stage did the Federal government take some action.[109] It comes naturally to wonder whether Indigenous Peoples could hope for the same degree of engagement, without international pressure, and why internal pressure was unable to have the same effect. For this reason, this section is interested in analyzing the relationship between the engagement of the Federal government and non-indigenous civil society in Canada.

This analysis first needs to look at responses that emerged immediately after the establishment of the TRC. Indeed, this was the first moment the concept of reconciliation reached a wider audience. Moreover, some of the main objectives of the TRC comprised fostering cooperation and spreading knowledge about Residential Schools.[110] In support of this, in 2008, then-Prime Minister Stephen Harper started to describe the establishment of the TRC as a way "to educate Canadians on the Indian Residential Schools" and to develop relationships between Indigenous and non-Indigenous Peoples.[111] However, Harper knew he had to develop a rhetoric on Residential Schools that could overcome general Conservatives' hostility against Indigenous Peoples. Consequently, as explained by Hiebert, his rhetoric aimed to reassure them they were not going to lose anything from a reconciliation process.[112] Harper claimed that the TRC was going to support "strong families, strong communities, and vibrant cultures and traditions" as a means towards a stronger Canada.[113] By doing so, Harper connected reconciliation with family, a widely accepted value among Conservatives, and described all the actions towards reconciliation as a win-win strategy to protect everybody's interest.[114] It is important to highlight how the reconciliation process started by Harper's apology did not at all depend on a benevolent attitude. On the contrary, the Canadian government issued a formal apology, established the TRC, and provided compensation just because it had no other or better options.[115] In fact, all actions were part of an out-of-court settlement to head off a series of certified lawsuits by survivors of the IRS. The weight of evidence available by then clearly indicated that the Federal Government was going to lose these cases, which would have cost billions of dollars.[116] As a result, convenience - and not goodness - was responsible for the signing of the out-of-court agreement with indigenous groups, and the lawyers representing the Residential Schools survivors.

However, after years of community events and archival research, non-indigenous knowledge of the TRC Final Report still appeared nebulous. Precisely, after years spent spreading knowledge on the topic, nearly one in five non-Indigenous Canadians remained oblivious to the TRC.[117] The issue of disinformation was also captured by the 2015 Angus Reid poll. Although the poll showed that a large percentage of non-Indigenous Canadians (70%) acknowledged that Residential Schools perpetrated cultural genocide, many respondents remained unaware of persisting wrongdoing against Indigenous Peoples.[118] Indeed, even after the release of the TRC Final Report in 2015, past wrongdoing was mainly the focus of both the government and non-Indigenous Canadians, disregarding present inequalities, which entailed costly aspects of reconciliation.[119]

Even in the last years, under Trudeau's government, the overall situation has not looked particularly promising. Although Trudeau's electoral campaign particularly stressed the need for stronger

---

[109] Ibid.

[110] Jeffrey S. Denis and Kerry A. Bailey, 'You Can't Have Reconciliation without Justice: How Non-Indigenous Participants in Canada's Truth and Reconciliation Process Understand Their Roles and Goals' [2016] The Limits of Settler Colonial Reconciliation 138.

[111] Maureen S. Hiebert, 'Rhetorical versus Substantive Reconciliation after Cultural Genocide in Canada' [2021] Postgenocide 257.

[112] Ibid 261.

[113] Government of Canada Crown-Indigenous Relations and Northern Affairs Canada, 'Statement of Apology to Former Students of Indian Residential Schools' (*Government of Canada; Crown-Indigenous Relations and Northern Affairs Canada*, 15 September 2010) <http://www.rcaanc-cirnac.gc.ca/eng/1100100015644/1571589171655> accessed 30 July 2023.

[114] Hiebert (n 111) 258.

[115] Ibid 255.

[116] Ibid 255-256.

[117] Denis and Bailey (n 110) 158.

[118] Johanna Weidner, 'Laurier Study Finds Little Change in Reconciliation Support among Non-Indigenous Canadians' *Waterloo Region Record* (Kitchener, 31 August 2021) <https://www.therecord.com/news/waterloo-region/laurier-study-finds-little-change-in-reconciliation-support-among-non-indigenous-canadians/article_e0e84d89-77dd-5527-8016-26eed9e2d995.html> accessed 30 July 2023.

[119] Hiebert (n 111) 248.

reconciliation with Indigenous Peoples, changes can be better explained from a symbolic perspective. This was also demonstrated in August 2021 by Andrew Basso and Andrea Perrella. Basso is a researcher affiliated with the Laurier Institute for the Study of Public Opinion and Policy (LISPOP), and Perrella is an Associate Professor of Political Science at Wilfrid Laurier University. In their study, the researchers recorded that, by 2021, 72% of non-Indigenous Canadians acknowledged Residential Schools as a means of cultural genocide, meaning that the 2015 Angus Reid poll's percentage only raised by 2%.[120] Basso described this limited incrementation as troubling, especially after six years since the publication of the 94 Calls and the grim revelations from Kamloops.[121]

The same study also demonstrated how genocide recognition is linked to political party affiliation. Voters of the NDP are the ones that most recognize Residential Schools as genocidal institutions (83% of the voters), followed by Bloc Québécois (75%), Liberals (74%), and Green Party (73%).[122] On the contrary, the support sharply decreases among voters of the Conservative Party (59%) and the People's Party (50%).[123] The percentage of Conservative voters unveils Stephen Harper's failure in effectively spreading information on Residential Schools and demonstrates how the acknowledgment of indigenous cultural genocide remains problematic among Conservatives. Indeed, although Harper tried to spread a "less threatening" message, several members of Harper's Conservative government tacitly (and often, explicitly) claimed that after apologizing, establishing financial compensation, and initiating the TRC, there was no need for Canadians to keep feeling guilty or work for substantive decolonization.[124] Consequently, it is safe to suppose that these discrepancies inside the same party compromised voters' long-term engagement.

How political affiliation affects voters' perception of reconciliation can explain why some people have engaged more in this process. The reasons behind different levels of engagement are at the center of Jeffrey S. Denis and Kerry A. Bailey's research on reconciliation.[125] The two researchers from McMaster University were interested in determining what drives non-indigenous support for indigenous policies by asking the participants several questions. One of these questions included a personal definition of reconciliation. Respondents generally defined reconciliation by using words like "awareness", "education", "relationship-building", "healing" and "cultural revitalization". However, only a minority connected reconciliation with concepts like "closing the gap" and "social justice".[126] Similarly, only a few connected reconciliation with two of the main concepts raised by Indigenous scholars and activists: ongoing decolonization and self-determination.[127] In the second part of the study, when confronted with these differences between non-indigenous and indigenous understandings, many non-indigenous people claimed that their understanding depended on the lack of a holistic education on colonization.[128] As a result, while non-Indigenous people usually associated reconciliation with awareness of past events, they demonstrated limited knowledge of reconciliation as an ongoing process of decolonization.

After comparing responses in 2015 and 2021, many aspects remain unaltered, especially the greater awareness of past events than of present inequalities. This is in line with official apologies, which mainly focus on past atrocities, diverting attention from persisting discrimination.[129] Thus, if even the government diverts attention from current responsibilities, what kind of engagement can we expect from non-Indigenous Canadians? The answer is found in Basso and Perrella's study when they asked

[120] Weidner (n 118).

[121] Laurier News Hub, 'Laurier study measures support among non-Indigenous Canadians for Truth and Reconciliation efforts' (*Wilfrid Laurier University*, 30 August 2021) <http://www.wlu.ca/news/news-releases/2021/aug/laurier-study-measures-support-among-non-indigenous-canadians-for-truth-and-Reconciliation-efforts.html> accessed 30 July 2023.

[122] Ibid.

[123] Ibid.

[124] Hiebert (n 111) 262.

[125] Denis and Bailey (n 110) 144.

[126] Ibid.

[127] Ibid.

[128] Ibid 145.

[129] Hiebert (n 111) 261-262.

1,500 respondents whether they agreed with seven selected Calls to Action and policy proposals.[130] The selected Calls and proposals addressed different fields, ranging from allocating or creating new funding to increasing indigenous visibility in the media.[131] On average, respondents agreed with only 2 or 3 of the selected Calls and proposals. More disturbingly 12% of respondents agreed with none of them, showing how many non-Indigenous people still have little sympathy for new action.[132]

4 Conclusions

In conclusion, the legal perspective demonstrates that the Canadian admission of genocide is currently incapable of generating meaningful legal effects. The limitations imposed by both the international and Canadian legal systems – and especially by the concepts of *responsibility*, *retroactivity*, and *cultural genocide* – undermine the legal value of Canadian admission. However, although the resonance of this admission can be better described as political, even from the socio-political perspective, the Canadian process toward reconciliation presents many flaws. Indeed, the socio-political perspective shows that the TRC 94 Calls have impacted politics and society only symbolically, without effectively hindering structural colonialism. In this way, the Federal government has maintained a positive image on the international stage and, with the approval of a large percentage of the non-Indigenous population, has mainly implemented low-cost actions. However, an approach that substantially fails to overcome substantial discrimination and paternalistic behavior towards Indigenous Peoples cannot pave the way for sustainable long-term policies.

Despite the symbolic acknowledgment of past wrongs being essential, reconciliation must move forward. This is exactly what this research has highlighted: the need to move the attention from current apology standards to post-apology engagement. Indeed, reconciliation is not simply acknowledging past abuses but tackling the still-existing gap between the conditions of Indigenous (minority) and non-Indigenous (majority), including the formers' access to decision-making processes. In this regard, future indigenous inclusion must avoid replicating past assimilationist models of liberal pluralism, in which Indigenous Peoples were forced to fit within dominant Western narratives.[133] To put it simply, Indigenous Peoples and their environment cannot simply be accommodated within a wider Western culture (e.g. not even concerning individual or human rights). This is also what future action will have to focus on: how to preserve indigenous distinctive social and cultural systems (maybe by insisting on special rights) and foster new decolonized relationships, mutually negotiated and respected.[134]

References

Alhmidi M., 'Trudeau's Acknowledgment of Indigenous Genocide Could Have Legal Impacts: Experts.' *CTV News* (Toronto, 5 June 2021) <https://www.ctvnews.ca/canada/trudeau-s-acknowledgment-of-indigenous-genocide-could-have-legal-impacts-experts-1.5457668.> accessed 21 November 2023.

Amir R, 'Cultural Genocide in Canada? It Did Happen Here.' (2018) 7 Aboriginal Policy Studies 105.

Aquilina K and Mulaj K, 'Limitations in Attributing State Responsibility under the Genocide Convention' (2017) 17 Journal of Human Rights 124.

[130] Laurier News Hub (121) 1.

[131] Ibid.

[132] Ibid.

[133] Harsha Walia 'Decolonizing together' [2012] Organize! Building from the Local for Global Justice 2.

[134] Ibid 3-4.

Austen I, 'Horrible History: Mass Grave of Indigenous Children Reported in Canada' *The New York Times* (New York, 5 September 2022) <http://www.nytimes.com/2021/05/28/world/canada/kamloops-mass-grave-residential-schools.html> accessed 27 July 2023.

Card C, 'Genocide and Social Death' in John K Roth (ed.), *Genocide and Human Rights: A Philosophical Guide* (Palgrave Macmillan 2005).

De Souza Dias T, 'The Retroactive Application of the Rome Statute in Cases of Security Council Referrals and Ad Hoc Declarations: An Appraisal of the Existing Solutions to an under-Discussed Problem' [2018] SSRN Electronic Journal 65.

Denis JS and Bailey KA, 'You Can't Have Reconciliation without Justice: How Non-Indigenous Participants in Canada's Truth and Reconciliation Process Understand Their Roles and Goals' [2016] The Limits of Settler Colonial Reconciliation 138.

Department of Justice Government of Canada, 'Backgrounder: United Nations Declaration on the Rights of Indigenous Peoples Act' (*Government of Canada, Department of Justice, Electronic Communications,* 10 December 2021) <http://www.justice.gc.ca/eng/declaration/about-apropos.html> accessed 30 July 2023.

Fisher KJ, 'Can Justice in Kamloops Come through the International Criminal Court?' *Policy Options* (Montréal, 12 July 2021) <https://policyoptions.irpp.org/magazines/june-2021/can-justice-in-kamloops-come-through-the-international-criminal-court/#:~:text=While%20there%20may%20be%20a,Residential%20School%20closed%20in%201978> accessed 31 July 2023.

Government of Canada Crown-Indigenous Relations and Northern Affairs Canada, 'Truth and Reconciliation Commission of Canada' (*Government of Canada Crown-Indigenous Relations and Northern Affairs Canada*, 29 September 2022) <https://www.rcaanc-cirnac.gc.ca/eng/1450124405592/1529106060525> accessed 27 July 2023.

Government of Canada Crown-Indigenous Relations and Northern Affairs Canada, 'Statement of Apology to Former Students of Indian Residential Schools' (*Government of Canada; Crown-Indigenous Relations and Northern Affairs Canada*, 15 September 2010) <http://www.rcaanc-cirnac.gc.ca/eng/1100100015644/1571589171655> accessed 30 July 2023.

Government of Canada, 'Delivering on Truth and Reconciliation Commission Calls to Action' (*Government of Canada Crown-Indigenous Relations and Northern Affairs Canada*, 10 July 2023) <https://www.rcaanc-cirnac.gc.ca/eng/1524494530110/1557511412801> accessed 30 July 2023.

Grant M, 'International Criminal Court Called on to Investigate Kamloops Residential School Findings' *CBC News* (Toronto, 4 June 2021) <https://www.cbc.ca/news/canada/calgary/calgary-canadian-lawyers-icc-residential-school-investigation-1.6052054> accessed 27 July 2023.

Harp R, 'Grave Concerns (EP 269)' (*Media Indigena: Indigenous current affairs,* 13 September 2021) <https://mediaindigena.libsyn.com/grave-concerns-ep-269> accessed 30 July 2023.

Hiebert MS, 'Rhetorical versus Substantive Reconciliation after Cultural Genocide in Canada' [2021] Postgenocide 257.

Hill K, 'Funding to Search Ontario's Residential Schools "falls Short", Six Nations Chief Says in Letter to Premier' *CTV News* (Toronto, 3 November 2021) <https://kitchener.ctvnews.ca/funding-to-search-ontario-s-residential-schools-falls-short-six-nations-chief-says-in-letter-to-premier-1.5650747> accessed 30 July 2023.

Jewell E and Mosby I, 'Calls to Action Accountability: A 2021 Status' (*Yellowhead Institute*, 2021) <https://yellowheadinstitute.org/wp-content/uploads/2022/03/trc-2021-accountability-update-yellowhead-institute-special-report.pdf> accessed 30 July 2023.

Jewell E and Mosby I, 'Calls to Action Accountability: A 2022 Status Update on Reconciliation' (*Yellowhead Institute*, 2022) 42 <https://yellowheadinstitute.org/wp-content/uploads/2022/12/TRC-Report-12.15.2022-Yellowhead-Institute-min.pdf> accessed 24 November 2023.

Krishnapillai S, 'On Canada Project Media, Content & Blog' (*The On Canada Project*, 14 November 2022) <https://oncanadaproject.ca/blog/an-update-on-the-94-calls-to-action?rq=trc> accessed 30 July 2023.
Kryvoi Y and Matos S, 'Non-Retroactivity as a General Principle of Law' (2021) 17 Utrecht Law Review 46.

Laurier News Hub, 'Laurier study measures support among non-Indigenous Canadians for Truth and Reconciliation efforts' (*Wilfrid Laurier University*, 30 August 2021) <http://www.wlu.ca/news/news-releases/2021/aug/laurier-study-measures-support-among-non-indigenous-canadians-for-truth-and-Reconciliation-efforts.html> accessed 30 July 2023.

Legislative Services Branch, 'Consolidated Federal Laws of Canada, Criminal Code' (*Justice Law Website*, 27 October 2023) <https://laws-lois.justice.gc.ca/eng/acts/c-46/> accessed 6 November 2023.

Legislative Services Branch, 'Consolidated Federal Laws of Canada, Crimes against Humanity and War Crimes Act' (*Justice Law Website*, 30 November 2023) <https://laws-lois.justice.gc.ca/eng/acts/c-45.9/> accessed 6 November 2023.

Legislative Services Branch, 'United Nations Declaration on the Rights of Indigenous Peoples Act' (*Justice Law Website*, 27 July 2023) <https://laws-lois.justice.gc.ca/eng/acts/U-2.2/page-1.html> accessed 30 July 2023.

Lemkin R, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (Lawbook Exchange 2014) 79.

LeTourneau M, 'Inuktut Absent from Proposed Federal Languages Legislation' *Nunavut News* (Iqaluit, 8 February 2019) <https://www.nunavutnews.com/nunavut-news/inuktut-absent-from-proposed-Federal-languages-legislation/> accessed 30 July 2023.

MacDonald DB and Hudson G, 'The Genocide Question and Indian Residential Schools in Canada' (2012) 45 Canadian Journal of Political Science 436.

Meissner D, 'Work to Exhume Remains at Former Kamloops Residential School Could Begin Soon, Chief Says' *CBC News* (Toronto, 20 May 2022) <http://www.cbc.ca/news/canada/british-columbia/tk-eml%C3%BAps-kamloops-indian-residential-school-215-exhumations-1.6460796> accessed 27 July 2023.

Melanson M and Green N, 'Canada's "Genocide" — Case Closed?' *The Dorchester Review* (Dorchester, 27 October 2022) <https://www.dorchesterreview.ca/blogs/news/canada-s-genocide-case-closed> accessed 27 July 2023.

Metallic NW, Friedland H and Morales S, 'The Promise and Pitfalls of C-92: An Act respecting First Nations, Inuit, and Métis Children, Youth and Families' (*Yellowhead Institute*, 2019) 4 <https://yellowheadinstitute.org/wp-content/uploads/2019/07/the-promise-and-pitfalls-of-c-92-report.pdf> accessed 27 November 2023.

Michelin L and Local News, 'Some Indigenous Leaders Say SNC-Lavalin Can't Make up to First Nations People with Offer of Help' *Red Deer Advocate* (Red Deer, 14 June 2021) <http://www.reddeeradvocate.com/news/some-indigenous-leaders-say-snc-lavalin-cant-make-up-to-to-first-nations-people-with-offer-of-help/> accessed 30 July 2023.

National Centre for Truth and Reconciliation, National Centre for Truth and Reconciliation 'Truth and Reconciliation Commission of Canada' (*NCTR*, 28 July 2021) <https://nctr.ca/about/history-of-the-trc/truth-and-Reconciliation-commission-of-canada/> accessed 27 July 2023.

News AN, 'International Criminal Court Won't Investigate Residential Schools: Lawyer' *APTN News* (Winnipeg, 15 November 2021) <https://www.aptnnews.ca/national-news/lawyer-says-international-criminal-court-declines-request-to-open-residential-school-investigation/> accessed 27 July 2023.

Novic E, *The Concept of Cultural Genocide: An International Law Perspective* (Oxford University Press 2016).

O'Brien M and Hoffstaedter G, 'There We Are Nothing, Here We Are Nothing!—The Enduring Effects of the Rohingya Genocide' (2020) 9.11 Social Sciences.

Ochab EU, 'International Court Of Justice Proceeds With The Case Against Myanmar' *Forbes* (New York, 23 July 2022) <https://www.forbes.com/sites/ewelinaochab/2022/07/23/international-court-of-justice-proceeds-with-the-case-against-myanmar/?sh=33d6044565d3> accessed 9 December 2023.

Perry B, 'From Ethnocide to Ethnoviolence: Layers of Native American Victimization' (2002) 5 Contemporary Justice Review 231

Public Services and Procurement Canada Government of Canada, 'Honouring the Truth, Reconciling for the Future: Summary of The Final Report of the Truth and Reconciliation Commission of Canada' (*Government of Canada Publications*, 3 April 2013) <https://publications.gc.ca/site/eng/9.800288/publication.html> accessed 27 July 2023.

Sawchuk J, 'Social Conditions of Indigenous Peoples in Canada' (The Canadian Encyclopedia, 2011) <https://www.thecanadianencyclopedia.ca/en/article/native-people-social-conditions> accessed 30 July 2023.

Schabas WA 'Retroactive application of the Genocide Convention' (2009) 4 U. St. Thomas JL & Pub. Pol'y.

Sinclair D, 'How Many of the TRC Calls to Action Are Complete? Don't Ask the Federal Government' (*Indigenous Watchdog*, 26 April 2022) <http://www.indigenouswatchdog.org/2022/04/26/how-many-of-the-trc-calls-to-action-are-complete-dont-ask-the-federal-government/> accessed 30 July 2023.

Snyder T, *Black Earth: The Holocaust as History and Warning* (Vintage Books 2016).

Staniforth J, 'Cultural Genocide'? No, Canada Committed Regular Genocide' *Toronto Star* (Toronto, 10 June 2015) <https://www.thestar.com/opinion/commentary/2015/06/10/cultural-genocide-no-canada-committed-regular-genocide.html> accessed 23 November 2023.

Tasker JP, 'Ottawa Tables Legislation to Protect and Promote Indigenous Languages, Inuit Call It Colonial' *CBC News* (Toronto, 6 February 2019) <http://www.cbc.ca/news/politics/ottawa-indigenous-languages-legislation-1.5006504> accessed 30 July 2023.

Van Krieken R, 'Rethinking Cultural Genocide: Aboriginal Child Removal and Settler-Colonial State Formation' (2004) 75 Oceania 138.

Von Hebel H and Robinson D, 'Crimes within the Jurisdiction of the Court' in Roy S Lee, *The International Criminal Court: The Making of the Rome Statute* (The Hague; London; Boston: Kluwer Law International).

Walia H 'Decolonizing together' [2012] Organize! Building from the Local for Global Justice 2.

Weidner J, 'Laurier Study Finds Little Change in Reconciliation Support among Non-Indigenous Canadians' *Waterloo Region Record* (Kitchener, 31 August 2021) <https://www.therecord.com/news/waterloo-region/laurier-study-finds-little-change-in-reconciliation-support-among-non-indigenous-canadians/article_e0e84d89-77dd-5527-8016-26eed9e2d995.html> accessed 30 July 2023.

Woolford A, 'Ontological destruction: genocide and Canadian aboriginal peoples' (2009) 4.1 Genocide Studies and Prevention, 82-90.