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**Submission to the 93rd Session of the**

**UN Committee on the Elimination of Racial**

**Discrimination with Regard to Canada’s Failure to Comply**

**with UN Human Rights**

**Conventions, Declarations and General Recommendations No. 21 and 23 of the Committee on the Elimination of Racial Discrimination**

**July 31 – August 30, 2017**

**Geneva, Switzerland**

“*He who has robbed another of his property, will next endeavour to disarm him of his rights to secure that property; for when the robber becomes the legislator he believes himself secure*”.[[1]](#footnote-1)

**Synopsis**

1. The Onion Lake Cree Nation, the Tsuu T’ina Nation and the Lubicon Lake Nation (the Nations) are Indigenous Peoples and Nations as understood within the international jurisprudence[[2]](#footnote-2), and as such we declare that we are also a “Peoples” as articulated by the same jurisprudence. Being understood as a “Peoples” within the international jurisprudence, the Nations have an inherent right to self-determination, including, but not limited to, title to our Territories. Such title to our Territories includes all the natural resources found therein, natural resources that have always provided us with an economy to sustain and develop our Nations. In addition, our Territories had aided in defining our respective cultures, identities and existences as “Indigenous Peoples”.
2. Accordingly, we assert our Nations’ inherent right to self-determination, including to have our rights and titles to our Territories recognized and respected, as well as to freely pursue our economic, social and cultural development in our Territories. Such inherent right is based on our respective Nations’ time immemorial presence and connection on and to our Territories, and the laws given to us by the *Manitou* (Creator) in relation to our Territories. Our presence, connection and received laws created an unbreakable responsibility and ownership to our Territories that predates British common law conceptions of real property, including the common law of Canada, and we have never relinquished, ceded, surrendered or otherwise such responsibility or ownership, as such actions is not within our understanding.
3. The Nations further assert that the Canadian state has consistently imposed its laws, policies and procedures on our Nations and Territories based on the false and racist premise that our inherent rights to our Territories and our natural resources are subservient to the Canadian Crown’s “***presumed underlying title”*** to our Territories and natural resources.The Nations submit that at its core, the belief in the Crown’s presumed underlying title is based on ***racially offensive*** colonial ideologies and attitudes that were enshrined in two doctrines used by European colonial powers to deny Indigenous Peoples’ rights to our Territories; the *Doctrine of Discovery* and the doctrine of *terra nullius*. Although the Supreme Court of Canada has recently stated that the doctrine of *terra nullius* never applied in Canada[[3]](#footnote-3), the *Doctrine of Discovery,* and its racially offensive principles and beliefs, continue in Canadian jurisprudence and political policy to deny our Nations’ ownership and title to our Territories and our natural resources. (emphasis added)
4. Adherence to the *Doctrine of Discovery* as the baseline by which the Canadian state attempts to reconcile our Nations’ inherent rights is intrinsically not only unable to provide a fair and just reconciliation as professed by the Canadian state, but is also a failure by the Canadian state to meet its obligations under the *International Convention on the Elimination of All Forms of Racial Discrimination* (hereinafter the “Convention”), the *United Nation Committee on the Elimination of Racial Discrimination’s* (hereinafter CERD) general recommendations and concluding observations, and the *United Nation Declaration on the Rights of Indigenous Peoples* (hereinafter the “Declaration”).
5. The Canadian state’s continued adherence to the *Doctrine of Discovery*, its failure to meet its obligations under the Convention, CERD’s general recommendations and concluding observations and the Declaration all deprive the Nations’ rights to ownership and title to our Territories, and thus begs the question put before the Canadian state by Vice-Chair Noureddine Amir at the CERD’s eightieth session in Geneva in February 2012 when he asked, “***On what legal basis does Canada claim underlying title to Indigenous lands***”? To the present, the Canadian state has not provided an answer to the Nations or CERD.
6. Further, despite the Canadian state’s alleged desire of reconciliation with our Nations, and other Nations of Indigenous Peoples within Canada, the lasting impact of the false claim to our territories creates poverty amongst our Nations as the wealth of our Nations is taken by the state of Canada for their own use. Any attempts to get our territories back are met with policies and procedures made unilaterally by the state – all designed to deny us our territories.

**The Doctrine of Discovery and Its Application Within Canada**

1. The details of the *Doctrine of Discovery* were aptly put forth by the Apache-Ndé-Nneé Working Group Shadow Report at the eighty-eighth session of CERD in its review of the Holy See, and the present report relies on that Shadow Report for the details historical details of the doctrine. The Nations wish to bring CERD’s attention to the main principles underpinning the *Doctrine of Discovery* and how it shaped early laws, policies and procedures of the European colonizing powers in what is now the Canadian state, and how its principles and beliefs continue to inform present jurisprudence, policies and procedures of the Canadian state.
2. The application of the *Doctrine of Discovery* to what is now Canada may be considered a process of the Cross, the Coin and the Crown, whereby European title to Indigenous lands was sanctioned by God/Jesus (the Cross), was expanded by the English with the requirement of occupancy and ritual possession, allowing for English desires to exploit the natural resources of Indigenous lands (the Coin), so that presently in Canada the Crown’s underlying title to Indigenous lands is assumed (the Crown). Each of these stages is briefly set out below.

***The Cross***

1. The *Doctrine of Discovery* was the proposed legal means by which European colonizing states claimed rights of sovereignty, title and trade to vast stretches of lands they allegedly discovered during the age of exploration. Beginning with the Spanish and Portuguese states, the *Doctrine of Discovery* relied on a series of papal bulls issued by Pope Alexander VI, the most important of which was the *Inter caetera*, after the voyages of Christopher Columbus to justify these European states’ presumptions of empire on Indigenous lands in North America. At its root, the *Inter caetera* provided that Spain, in order to pursue the “holy and laudable work” of expanding the Christian world, was given title to all lands discovered that were not Christian.[[4]](#footnote-4)
2. The justification for the imposition of European empire over Indigenous lands in North America began on the belief that Christianity and its adherents, to wit Europeans, were superior to that of non-Christians, to wit Indigenous Peoples, and as a result the non-Christian Indigenous Peoples rights to our lands were nullified thereby justifying and allowing Christian Europeans to legally claim such lands. Pope Alexander VI, believed to be Jesus Christ’s representative on earth, sanctioned such Indigenous nullification and subsequent European justification. Simply put, it was Christian God’s will that Europeans who followed his Son Jesus Christ, and therefore being superior to Indigenous Peoples, should have a greater claim to Indigenous lands.

***The Coin***

1. After initial “discovery” of Christopher Columbus and other early explorers, then Catholic English and French states began our explorations into “North America” in the desire to access and exploit the natural resources of such lands. Aware of the *Inter caetera*, the English and French expanded on the *Doctrine of Discovery* so as to not violate the papal bulls’ edicts granting Spain and Portugal exclusive rights to North America. Accordingly, legal scholars to English King Henry VII (circa 1493) and Queen Elizabeth I (circa 1580s) added the *Doctrine of Discovery* whereby legitimate claims of “discovery” could only be made on lands not yet claimed by any other Christian prince. Further, actually occupancy and possession of the lands “discovered” was now necessary, which could be accomplished by the performance of some form of ritual act, such as planting a flag, burying coins and so forth. In this manner, England and France could make claim to the northern parts of North America where neither Span nor Portugal had “discovered”, and thereby take advantage of the resources found within such lands. [[5]](#footnote-5)
2. Later English adaptations of the *Doctrine of Discovery* held that the principle of *terra nullius* applied to Indigenous lands. According to this principle, lands that were believed “empty” or not occupied by any nation, or which were in fact occupied but not being utilized in accordance with European standards were open to “discovery” claims.[[6]](#footnote-6) The English utilized this principle to great advantage in the seventeenth century when its colonial aspirations in North America changed from trade and nomadic resource exploitation to settled agricultural pursuits. In order to justify such pursuits, and the need for lands within Indigenous possession, the English re-conceptualized the idea of property and its ownership, so that the dispossession of Indigenous Peoples of our Territories was justified by the differences in usage of such Territories.
3. It was held that since the Indigenous Peoples allowed our Territories to sit unimproved and vacant according to English conceptions of property, that the English desire to improve such lands through agriculture, lumber extraction and so forth allowed for the justification of the taking of such lands. In this conception, coupled with the previous principles in the *Doctrine of Discovery*, we submit that the English could lay claim and dispossess Indigenous Peoples of our Territories if:
4. no other Christian European state had already “claimed” such lands;
5. possession or occupancy of the lands had occurred, whether through a ritual act of possession or otherwise; and
6. if the lands were occupied or possessed by Indigenous Peoples, English claims to such lands were superior as the use to which the lands were to be put were superior than those Indigenous uses. [[7]](#footnote-7)

***The Crown***

1. Within the context of the Canadian state, when England or France “discovered” new lands within North America that were not claimed by another European Christian state, and rituals of possession were then performed, the *Doctrine of Discovery* held that the Indigenous Peoples, being non-Christian, only had a right to use and occupation of our Territories, not of title or ownership. In comparison, the Christian European state gained ownership or title to Indigenous lands through the “Grace of God”. Although the European state had neither connection nor presence of occupancy on such new lands, they nevertheless claimed title to huge swaths of Indigenous lands. By this manner, the European state could claim title, while at the same time claiming pre-emptive rights against other European states, and restrict the Indigenous Peoples’ rights to our Territories to suit European needs.
2. Within the area that is now the Canadian state, both England and France utilized these principles to claim and compete for Indigenous lands and resources. During the 18th century, England and France battled for dominance over our North American empires, known as the Seven Years War, which resulted in the defeat of France and Treaty of Paris that provided England with France’s claims to the areas now part of the Canadian state. In consolidating its empire in North America, the *Royal Proclamation of 1763*[[8]](#footnote-8) (hereinafter the “Proclamation”) was issued.
3. Primarily, the Proclamation was issued so as to create the means in which the British Crown’s subjects were to access Indigenous Peoples’ Territories. Such a process was necessary as the Indigenous Peoples were in a superior military position, and to ensure the British Crown’s colonists’ survival, it was necessary to respect the Indigenous Peoples’ land rights. However, such recognition only went so far as certain principles of the *Doctrine of Discovery* were codified within the Proclamation. Specifically, we briefly wish to bring to CERD’s attention the following provisions of the Proclamation and the corresponding principles from the *Doctrine of Discovery*:

*“And whereas it is just and reasonable, and essential to Our Interest and the Security of Our Colonies, that the several Nations or Tribes of Indians, with whom We are connected, and who live under Our Protection, should not be molested or disturbed in the Possession of such Parts of* ***Our Dominions and Territories*** *as, not having been ceded to, or purchased by Us, are reserved to them, or any of them, as our Hunting Grounds*.”

1. This provision clearly sets out that while Indigenous Peoples were recognized as Nations, Indigenous Peoples’ rights to our Territories were characterized as only being able to use such Territories, not of ownership or title, which is made clear that such Territories were the British Crown’s “dominions and territories”. As with the *Doctrine of Discovery*, despite Indigenous Peoples occupying or possessing our Territories for millennia, the British Crown claimed title to such lands while minimizing Indigenous Peoples rights so our Territories, and making such rights subservient to the British Crown. Further, this provision also sets out the basic principle that the Indigenous Peoples maintained our rights of using our Territories unless they were either ceded to or purchased by the British Crown. Although the characterization of the Indigenous Peoples rights was incorrect based on racists ideas of the inferiority of Indigenous Peoples, and our inability to have title to our Territories equal to that of the English, the principle that any right, however characterized, cannot be transferred unless there is an agreement or treaty.[[9]](#footnote-9)

“And We do further declare it to be Our Royal Will and Pleasure . . . to reserve under **Our Sovereignty, Protection, and Dominion**, for the **Use of the said Indians**, all the Lands and Territories not included within the Limits of Our said Three New Governments, or within the Limits of the Territory granted to the Hudson's Bay Company, as also all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West, as aforesaid; and We do hereby strictly forbid, on Pain of Our Displeasure, all Our loving Subjects from making any Purchases or Settlements whatever, or taking Possession of any of the Lands above reserved, without Our especial Leave and License for that Purpose first obtained . *. . but that if, at any Time, any of the said Indians should be inclined to dispose of the said Lands,* ***that same shall be purchased only for Us, in Our name****”.[[10]](#footnote-10)*

1. Building on the previous provision, the above provisions set out the principles and process on which the British Crown, and now the Canadian state, was required to follow when dealing with Indigenous Peoples and our rights to our Territories. Specifically, again although wrongfully believing that Indigenous Peoples were inferior and could not therefore have a greater right to our Territories other than that of use, the transfer of such rights could only be made to the British Crown.[[11]](#footnote-11)
2. These principles are the basis on which the Canadian jurisprudence, including such policies and procedures that derive from such jurisprudence, has developed and continues to exist. As set out above, the dispossession of Indigenous Peoples of our Territories began as an activity sanctioned by the Pope, God’s emissary on earth, who provided that any “Christian Prince” on discovering lands where the people were not Christian, that it was God’s will that such lands become the property of the said “Christian Prince” so as to further the churches work.
3. The English and French, not wanting to run afoul of the Pope’s decrees, but very much wanting to take economic advantage of Indigenous Peoples’ Territories, modified the prevailing international legal order such that any non-Christian lands not actually in possession or occupation of a “Christian Prince” could be claimed, and if there were Indigenous Peoples on such lands, the Indigenous Peoples use of the lands were minimized as inferior than those of European use that derived economic value. Finally, beginning in the 18th century the above previous principles became “normalized” so that this now normalized state of affairs minimized and subsumed Indigenous Peoples’ rights to our Territories to that of the British Crown. Such presumed belief was based on the racial inferior mythos created to serve early European colonial aspirations and later modified and espoused to justified a status quo beneficial to the Canadian state.

**The Expression of the Principles of the Doctrine of Discovery Within the Canadian State**

1. The principles from the *Doctrine of Discovery* have informed, and continue to inform not only Canadian legislation and jurisprudence affecting our Nations’ Territories, but also the actions of government in regards to our Nations’ Territories. As a basis of “Aboriginal” law in Canada, a fundamental and allegedly immutable principle is that all of our Nations’ Territories, including lands set aside as “reserved” lands, treaty lands, and lands not subject to treaty, are subject to the false belief that the Crown has underlying title due to British assertions of its sovereignty.
2. These beliefs would have us understand that through some legalistic form of alchemy, our Nations’ Territories, in which we have uncountable years of use, occupation and sacred responsibility as provided by the Creator have been transmogrified so that such use, occupation and sacred responsibility has been severed and replaced by self-serving ontological systems of European land ownership that provides for the Crown’s alleged underlying title. We submit that this belief is not only incorrect and based on racist ideas of Indigenous Peoples, our cultures, traditions and laws, but also results in government actions harmful to our Nations and our members, including our culture, health and survival.

***Canadian Legislation***

1. As a point of demonstration, the following Canadian legislation and Supreme Court of Canada decisions contains sections that continue and perpetuate the previously noted principles that make up the *Doctrine of Discovery*:

* Section 18 (1) of the *Indian Act* provides that certain of our Territories are “reserves are held by Her Majesty for the use and benefit of the respective bands for which they were set apart, and subject to this Act and to the terms of any treaty or surrender, the Governor in Council may determine whether any purpose for which lands in a reserve are used or are to be used is for the use and benefit of the band.” In effect, even those portions of our Territories that are specifically recognized by Canadian jurisprudence as our Nations are not owned by us, but by the Crown on our behalf;
* In the 1997 Supreme Court of Canada’s decision in *Delgamuukw v. British Columbia*[[12]](#footnote-12), it was “recognized” for the first time that the concept of “Aboriginal title” could possibly exist, ***however***, with such title was characterized as only “the right to ***exclusive use and occupation***” and where such “title” could be infringed by other third parties for such reasons as the “development of agriculture, forestry, mining and hydroelectric power, the general economic development of the interior of British Columbia, protection of the environment or endangered species, and the building of infrastructure and ***the settlement of foreign populations to support those aims***;” the highlighted portions are clearly an echo of the principles contained with the *Doctrine of Discovery*; and
* In the 2014 Supreme Court of Canada’s decision in *Tsilhqot’in Nation v. British Columbia*[[13]](#footnote-13), the principles found in *Delgamuukw* were expanded on but continued with the previous conception our Territories. While this decision does provide beneficial expression of our Nations’ rights to our Territories, it nonetheless maintains some aspects of the *Doctrine of Discovery* that act to minimize our ownership of our Territories, and subsume our rights to the Crown’s assertion of sovereignty despite the absence of non-discriminatory manner of such a process. As to this latter point, the Crown’s assertion of sovereignty is accepted without question as to how such assertion was accomplished and on what legal basis does such assertion allow for it to subsume our Nations rights to our Territories that are based on countless years of being on such Territories.

1. The above legislation and Supreme Court of Canada decisions provide an example of the continued expression of the racist principles of the *Doctrine of Discovery* as it relates to our Nations’ Territories. However, our Nations submit that extrapolating these racist principles provides additional examples of the Canadian state’s governments actions towards our Nations, Territories and Peoples. Our Nations wish to bring to your attention the following examples that show the continued discrimination against the Indigenous Nations and Peoples within what is now Canada:

* The Traditional Ecological Knowledge (TEK) Elders Group[[14]](#footnote-14) is comprised of Elders who are dedicated to protecting the medicines, plant and wild life, the water, the fish, and all interdependent life forms of the forest within our Nations’ Territories. In 2014, the core group of twelve (12) TEK members gathered through our common outrage for the current state of the environment within their territory particularly the steady decline of the cohesive natural resources as a direct result of aerial spraying in our Territories. Since 2014, the TEK Elders Group has consistently informed the Ontario and Canadian governments of our concerns regarding such aerial spraying and the damage on the medicinal and food source plant life, as well as the health and well-being of the water, soil, birds, fish, amphibians, invertebrates, humans and other mammals. The TEK has attempted to share our ecological knowledge with the governments to show the damage being done by the continued aerial spraying.

However, the governments have continually failed to heed the TEK Elders Group or accept our ecological knowledge. The TEK Elders Group submits that the governments’ failure to heed their warnings or accept their ecological knowledge is primarily based on the cost efficiencies of the herbicides used for forestry purposes, and that the TEK Elders’ knowledge is viewed as being inferior in comparison to the selective use of “western” knowledge. In connection with the *Doctrine of Discovery*, such reliance on “western” knowledge to the failure to consider the TEK Elders’ knowledge is akin to the acceptance of the false belief of the supremacy of non-Indigenous knowledge over Indigenous knowledge.

The spraying program continues as the two levels of government: federal and provincial, bat the Elders from one process to another process without acknowledging their inherent rights to protect their territory and all the resources that are within their territory. It is a fundamental denial and racist denial that Indigenous Peoples have any laws to protect their territory. While the Elders have tried to convey to various officials including various government ministers that the spraying of the land is causing harm to all the creation. The government continues to say that spraying is safe but those doing the spraying are in hazmat suits designed to protect them against the chemicals being released. Those officials doing the spraying to do live with the consequences.

* The Iskatewizaagegan No.39 Independent First Nation (the Nation) is located within northwestern Ontario on the shores of Shoal Lake. In 1914, the City of Winnipeg in the adjoining province of Manitoba built a massive aqueduct right next to the Nation’s community on reserve in order divert up to 100,000,000 gallons per day to the inhabitants of the city over 200km away for sanitary and household purposes. In order for the City of Winnipeg to be granted permission for such a diversion, it was required to receive permission from the province of Ontario, Canada and the International Joint Commission (the IJC), an international body created by a treaty between the United States of America and Canada to regulate shared boundary waters.

As part of the provisions for granting permission, Ontario required that the City of Winnipeg ensure that “*. . . full compensation be made to the Province of Ontario* ***and also to all private parties whose lands or properties may be taken, injuriously affected, or in any way interfered with***”. Further, the IJC in granting the requested permission required that *“the use and diversion of the waters of Shoal Lake and of Lake of the Woods for domestic and sanitary purposes by the inhabitants of the Greater Winnipeg Water District . . .* ***be permitted, subject to the conditions contained in the statutes and orders in council hereinabove recited . . . that the present approval and permission shall in no way interfere with or prejudice the rights, if any, of any person, corporation, or municipality to damages or compensation for any injuries due in whole or in part to the diversion permitted and approved of***”.

Due to the City of Winnipeg’s diversion of water, the Nation has been unable to economically develop our reserve community and have been halted in utilizing other portions of our Territories as the City of Winnipeg has feared that such development and use would degrade the quality of the water that they are diverting for our uses. Despite numerous years of attempting to be compensated as required by the Ontario Order-in-Council and the IJC Order granting the City of Winnipeg permission, neither the City of Winnipeg, Ontario, Manitoba or Canada have agreed to negotiate. The Nation submits that the government’s failure to negotiate compensation as required, and as done to all other parties affected, is based on the racist belief that the Nation’s rights are valued as lesser than those other parties, all of which is a logical extension of the principles found within the *Doctrine of Discovery*;

* Similar to the Canadian state’s treatment of minimizing our Nations’ right to our Territories, the unilateral imposition by the Canadian state of laws, regulations and policies affecting our Nations and Territories also minimize our rights as Nations of Indigenous Peoples. Canada’s unilateral imposition is based on negative racial stereotypes that act to discriminate against us by denying our inherent right to self-determination. For example, the *Financial Transparency Act* is but another example of the Canadian state’s ongoing racial discrimination by its continued adherence to racists colonial ideologies based on the principles contained with the *Doctrine of Discovery.* The Liberal Government elected in the fall of 2015 has not repealed this legislation despite a court case ruling against the legislation. Rather the government has engaged in a process of “putting a questionnaire” online but has not met with the Nations who are affected by this racist legislation which takes away our individual rights of privacy. The right of privacy is a fundamental right enjoyed by all Canadians but not by Treaty Peoples.

Due to such imposition, the Onion Lake Cree Nation, with successful economic development activities from oil extraction and other endeavours, was forced to protect its financial information and economic intellectual property by gaining a non-enforcement order against Canada. Although all other similarly situated non-Indigenous economic development operations, that is, Canadian and international corporations, were not required to divulge their financial information and economic intellectual property, our Nations were required and forced by threat of withholding of financial transfers from the Canadian state. By being forced to provide such information, our Nations were put in a position where our competitive edge in economic affairs was compromised. Such discriminatory treatment is linkable to the principles contained with the *Doctrine of Discovery*, specifically that our Nations, as Indigenous Peoples, lack the ability to govern our Territories, resources, communities or our people as other “Peoples” and Nations are capable of accomplishing, and required the Canadian state to intervene to ensure that our Nations’ leaders managed our economic resources fairly and honestly;

* In addition, the imposition of the *Financial Transparency Act* was held out to the general public as a means of imposing transparency on our Nations’ governments. However, Canada’s version of transparency was to enforce racial stereotypes and expose our Nation Peoples to racism and hatred as there was a perceived idea that our Nations and Peoples are not accountable. The transparency of Canada was to expose our Nations to the carpet baggers who mined information on the web pages to target our Nations. The state of Canada further tried to get “organizations” to give their consent to issues that directly affect our Nations. Recently, Canada and the Assembly of First Nations (AFN) signed a Memorandum of Understanding (MOU) without our consent.[[15]](#footnote-15) These processes are orchestrated and manipulated by the Canadian state for specific purposes. There were lots of collaborators who were more than happy to play along with the games[[16]](#footnote-16). What were their rewards? It seems the reward was to get their names in the media. No thought about the seventh generations and the effect that their action would have on the rest of the creation. Those governments of Indigenous Nations who were opposed to the process were branded as uncooperative and punished for non-compliance.

Such manipulation of Indigenous Peoples continues unabated. As with other state governments, the Canadian state has organized their own “group” of Indigenous Peoples who have been recognized by their political masters to make “decisions” for all Indigenous Peoples. Controllers have been used by State governments to enact regressive domestic policies designed to undermine our Nations rights;

* Canada announced in the early 1970’s the intention to build a Mackenzie Valley Pipeline to move [natural gas](https://en.wikipedia.org/wiki/Natural_gas) from the [Beaufort Sea](https://en.wikipedia.org/wiki/Beaufort_Sea) (in the high Arctic) down the Mackenzie Valley to tie into gas [pipelines](https://en.wikipedia.org/wiki/Pipeline_transport) in northern [Alberta](https://en.wikipedia.org/wiki/Alberta). The Dene Chiefs in Treaties 8 and 11 were not consulted about the pipeline. In 1973, the Chiefs led by Chief Francois Paulette[[17]](#footnote-17), along with sixteen NWT Dene Chiefs, attempted to file a caveat at the land titles office in [Yellowknife](https://en.wikipedia.org/wiki/Yellowknife,_Northwest_Territories), [Northwest Territories](https://en.wikipedia.org/wiki/Northwest_Territories) to gain a legal interest in 450,000 square miles (more than a 1,000,000 square kms) of their Territories. The Chiefs asserted their rights to their Territories, by virtue of their Dene rights, and sought to prevent the construction of the proposed Mackenzie Valley Gas Pipeline across their Territories.

The land office was unsure of the filing and referred the caveat to the [Supreme Court of the Northwest Territories](https://en.wikipedia.org/wiki/Supreme_Court_of_the_Northwest_Territories). Justice William Morrow held a six-week hearing process to establish whether the Indigenous Nations of [Treaty No. 8](https://en.wikipedia.org/wiki/Treaty_8) and [Treaty No. 11](https://en.wikipedia.org/wiki/Treaty_11) had fully understood the meaning of the treaties they had made in 1900 and 1921 respectively. There were hearings were held in a number of Indigenous communities in the Northwest Territories (some only accessible by airplane), with some hearings being held in informal settings for the convenience of witnesses, many of whom were elderly. Justice Morrow took their evidence in their languages. The witnesses who were alive at the time of treaty making gave evidence of their first-hand account of the discussions with the Treaty Commissioner.

Many witnesses testified that they did not believe that Treaty No. 8 and No. 11 extinguished their rights to the land and that the Treaties were unfulfilled. Justice Morrow [[18]](#footnote-18)agreed with these witnesses and ruled that the Chiefs had established a case which resulted in a declaration of prior interest in the 450,000 square miles of traditional land and to warrant the filing of a caveat. Mr. Justice Morrow also questioned the cede, release and surrender provisions of the Treaties. Although the ability to register the caveat was overturned by the Supreme Court of Canada, Justice Morrow's findings in respect to Aboriginal rights were not overturned.

Despite the findings of Justice Morrow, the Canadian and provincial and territorial governments in which Treaty No. 8 and Treaty No. 11 cover continue to treat the Indigenous Nations Territories as being ceded, released and surrendered. Such treatment is based on the presumed superiority of the Crown’s 100 to 120-year assertion of sovereignty claims over the Indigenous Nations’ thousand years of connection and rights to their Territories. The Crown’s presumed superiority can be traced directly back to the principles found within the *Doctrine of Discovery*, to wit European assertion of racial superiority over the Indigenous Nations through the process of the Cross, the Coin and the Crown as set out earlier in this submission;

* The Lubicon Lake Nation are Indigenous Peoples and Nations as understood within the international jurisprudence having status to self-determination. Their Nation has never entered into Treaty with any Crown or colonial state. The Lubicon Lake Nation Territory, including our Nation’s resources, is constantly being used by the colonial state without our consent. These actions by the state of Canada deny us our right to freely determine our political status and to freely pursue our economic, social and cultural development. Our right of self-determination has been systemically undermined by the actions of Canada as the state attempted to create entities to represent our interests. These actions were done without our consent.

The Lubicon Lake Nation received a letter that the state of Canada has determined that a “band” created under the Canadian legislation known as the “*Indian Act*” is the “spoke people” for the Lubicon. We have never entered into any agreement or arrangement with Canada including agreeing to come under the “*Indian Act*”. These are clear violation of our rights to freely determine our own political status and our future. These actions by the state of Canada are designed to continue to access our resources without our consent. Our Peoples reject this blatant attempt to undermine our rights within our Territory.

The Lubicon Lake Nation had filed a complaint with the Human Rights Committee who made a number of recommendations. Canada has not followed any of the Committee’s recommendations. In 2016, the Lubicon Cree Nation filed an urgent action with CERD due to the recent developments in our Territory, Canada continues its attempts to crush our Nation. Our Nation has never agreed to be part of the state of Canada.

Lubicon Lake Nation requested the CERD to find the violations and to consider taking the following measures to ensure that the Canadian state takes positive action to ensure our Nation’s free exercise of our inherent right to self-determination and that the Canadian state meets its obligation to sit with the real representatives of the Lubicon Lake Nation and quit trying to manufacture consent for our resources within our territory. CERD took up the issues raised by the Lubicon Lake Nation. It is unfortunate that Canada has not complied with any of the requests made in 2016. The situation continues to go unaddressed by Canada who pursues their own agenda to deny the Lubicon Lake Nation their rights to their territory and resources.

On 27 May 2016, the following communication was issued by CERD/89th/EWUAP/GH/MJA/ks. The Chair asked Canada:

In accordance with Article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee requests that the State party submit information on all of the issues and concerns as outlined above by 31 October 2016, as well as on any action already taken to address these concerns. In particular, it requests that the Government of Canada provide information on:

(a) Efforts made to adopt legislative or administrative measures to hold accountable transnational corporations registered in Canada whose activities violate or negatively affect human rights, including the rights of indigenous people and local communities;

(b) Steps taken to ensure the participation of all Lubikon Lake Nations and their elected representatives in decision-making processes that concern them;

(c) Plans, if any, to negotiate with the Lubikon Lake Nation (MuskotewSakahikan Enowuk) with regard to their land claim referred to above;

(d) Measures to implement in good faith the right to free, prior and informed consent of Aboriginal peoples whenever their rights may be affected by projects carried out on their lands.

In the year since the letter was sent by the Chair of CERD – Canada has not complied with any of steps outlined by the Committee. Canada continues its policy to crush the Lubicon Lake Nation and take the resources without our Nation’s consent;

* The Moose Cree's Unanimous Rejection of Proposed Drilling Project by Niobay Metals Inc (PR16-10977) and Need for Permanent Protection of the North French River Watershed and South Bluff Creek is a clear example of the Canadian Mining Law which allows for free entry into the territories of Indigenous Nations and allows for staking and registration of mining interests in the territories of Indigenous Nations without such Indigenous Nations’ free, prior and informed consent.

The allowance of mining permits and staking is based on the notion that the underlying title vests in the Crown. There is no recognition that our Nations have the right to say “no”. Once a company has a permit, the Indigenous Nations are pushed aside. Their concerns for water and the environment are ignored. Numerous attempts by the Moose Cree to bring the matter to the attention of various government officials have gone unanswered. This area and the North French River Watershed lies within the heart of the Moose Cree Territory. It is an area of great cultural and environmental significance to the Moose Cree Peoples. The North French River is one of last sources of clean water for the Moose Cree Peoples, the wildlife and other living beings including fish. Its protection and preservation are of paramount importance the Moose Cree deemed it permanently protected in 2002 and reaffirmed in 2015. The South Bluff Creek is highly used by the Moose Cree and have camps all along it. You can still drink the water from the creek and the sensitive wetland area supports brook trout, moose, black bear and boreal caribou. Families that occupy the area are united in their opposition to this project. The protection of this watershed is of paramount importance to the Moose Cree Peoples. The Moose Cree took the step to inform the mining companies of their position to unanimous rejection of the Ontario government's assertion to explore and mine the toxic mineral, niobium, on the South Bluff Creek watershed.

Despite the notices and letters, the Moose Cree were alarmed by a mining company posted plans on their website for mine construction in 2020 and production by 2021. These plans are for potential investors, include several road options through the Moose Cree Territory and the construction of a transmission line across the North French River Watershed. All of this is being proposed without Moose Cree consent. The South Bluff Creek is an area that is not open to mining or any other industrial development. It is not a matter of the community needing more time to better understand the economics of the project. Moose Cree will not allow any industrial development here ever.

The Moose Cree were invited on October 18, 2016 to present to the Federal Standing Committee on Environment and Sustainable Development on Canada's protected areas and conservation objectives. Canada has plans to meet ambitious targets under the Convention of Biological Diversity to protect 17% of lands and inland waters by 2020. Ontario has endorsed these targets as well. The Federal Standing Committee on Environment and Sustainable Development strongly encouraged the committee and all governments to work with Indigenous Peoples to enact and respect our protected areas in their plans. The government has not withdrawn the remaining approximately 507,000 ha of the watershed (that is still open to mining). A conservation reserve already exists in the watershed protecting 158,286 ha.

The Moose Cree people are the original people of this land and the Creator has given them this land as their home. The Moose Cree have an inherent right to their Territory. Their ancestors have lived on this land since time immemorial drawing the animals, fish and plants for their sustenance. The Moose Cree are charged by the Creator with the sacred duty of preserving and protecting the land including its waters for future generations. When their forefathers entered into the peace and friendship treaty with the British Crown, they made it clear they were not giving up the land or the resources. The Moose Cree ancestors understood making the treaty as sharing the land in a way that preserved their rights to the land. Any activity with the Moose Cree Territory requires their free, prior and informed consent prior to any development. Governments in Canada have to stop giving exploration permits in Moose Cree Territory as it is based on racist ideologies that as Indigenous Peoples, they do not have a right to their Territory, and therefore, their consent is not required; no other people can have their land staked by mining companies without their consent Canada and its provinces beliefs and actions that they can issue these permits without our consent is a violation of Indigenous Peoples rights; and

* Perhaps one of the most disturbing and blatant examples of racism based policies perpetuated by the Canadian state, that places less value on Indigenous Nations and Peoples, is the continued issue of the many Indigenous communities that do not have access to clean water. [[19]](#footnote-19) Despite having approximately 7% of the world’s fresh water, and despite Canada being a developed and modern country, many Indigenous communities must boil their water to drink, cook or bath. In some instances, lack of clean drinking water has been ongoing for many, many years; Shoal Lake #40 First Nation has not had clean drinking water for over twenty (20) years, despite living beside the lake that provides the City of Winnipeg with their drinking water. [[20]](#footnote-20) Not only is the lack of clean drinking water unacceptable, the basis behind it, which we submit is based on racism, is unconscionable. We wish to note that when a similar situation arose in Walkerton, Ontario, where the non-Indigenous town’s water system was compromised, immediate action was taken, funding provided, and an inquiry created to determine what happened and how to ensure it would not happen again. [[21]](#footnote-21) The Nations submit that the unacceptable behaviour and inactions of Canada’s governments towards taking steps to ensure clean drinking water for all Indigenous communities, particularly juxtaposed with the Walkerton example, is racist and cannot be tolerated.

1. Our Nations reject the false beliefs demonstrated in the above examples as not only wrong in fact, but also wrong in that it is premised on the racist principles contained in the *Doctrine of Discovery*, and contrary to Canada’s obligations under the Convention, the CERD’s general recommendations and concluding observations, and the Declaration. Continued adherence to this false belief is also contrary to Canada’s recent policy of “reconciliation” and alleged desire to create new relationships with our Nations. For true “reconciliation” to take place and thereby create a new relationship as so desired, Canada must abandon its reliance on racist principles that have been normalized through its jurisprudence and legislation, and contrary to its international obligations, and truly begin anew.[[22]](#footnote-22)

**Canada’s Actions are a Violation of International Obligations**

1. It is the Nations’ submission that Canada’s actions and inactions are a violation of its obligations under the following international conventions and customary norms:
2. Articles 2(1)(a), and 5(d)(v) of the *International Convention on the Elimination of All Forms of Racial Discrimination*;
3. Sections 3, 4 and 5 of the General Recommendation No. 21 of the Committee on the Elimination of Racial Discrimination;
4. Section 4 of General Recommendation No. 23 of the Committee on the Elimination of Racial Discrimination;
5. Article 1 of the *International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights*; and
6. Canada is a signatory and has ratified both the ICERD and the ICCPR. Accordingly, Canada is bound by the articles contained within each of these instruments, and to the norms that flow from each. The Nation submits below how Canada’s actions in relation its laws and policies relating to First Nations’ education, culminating in the proposed Act is a violation of its obligations under these international instruments and the norms that flow from each.

***International Convention on the Elimination of All Forms of Racial Discrimination***

1. According to Articles 2(1) (a) of ICERD, in condemning racial discrimination each State Party to the Convention *“. . . undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation*”.
2. Article 5(d)(v) provides that State Parties, in compliance with article 2 of the Convention:

“. . . *undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equally before the law, notably in the enjoyment of the following rights: . . .*

*(d)(v)* *The right to own property alone as well as in association with other;”*

1. Taking the above articles as whole into consideration, the Nation submits that Canada has failed in its obligations so contained within the articles as follows:
2. As to Article 2(1) (a), the Canadian state has engaged in discrimination against our Nations that we submit is based on our status as Nations of Indigenous Peoples. We assert that as Nations of Indigenous Peoples, we are both a sovereign nation and “Peoples” as understood by international jurisprudence, and accordingly possess the ability to have ownership and possess title to our Territories as a people. Our Nations have neither relinquished our sovereign attributes nor our ownership or title, whether through the treaty relationship or otherwise. As a component of our right to ownership and title to our Territories, our Nations have the right to develop, control and manage our natural wealth and resources on such Territories, free from interference by the state of Canada.
3. As to Article 5(d)(v), our Nations assert that Canada’s adherence to the principles within the *Doctrine of Discovery* are based on the racist colonial ideology that holds our Nations as inferior and incapable of having ownership or title to our Territories. Absent any direct evidence of transfer of any right from our individual Nations to the Crown, the belief that the Crown has a presumed underlying title to any Indigenous land is false and perpetuated through a normalization of the racist principles in the *Doctrine of Discovery* within the Canadian legislative and juridical structures and processes and racial discriminates so as to deny our Nations’ right to own property as set out in article 5(d)(v) of ICERD.

Our Nations assert that the Canadian states failure to uphold its obligations under Article 5(d)(v) in effect prevents our Nations from exercising other our rights as Indigenous Peoples. Specifically, in denying our rights to our Territories, our rights to own the property that makes up our Territories, the Canadian state also denies our rights to self-determination, to freely pursue our economic, social and cultural development and to freely dispose of our natural resources.

***General Recommendation No. 21 of the Committee on the Elimination of Racial Discrimination***

1. According to section 3 of *General Recommendation No. 21*, CERD emphasized that:

“. . . *it is the duty of States to promote the right to self-determination of Peoples.*  *But the implementation of the principles of self-determination requires every State to promote, through joint and separate action, universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter of the United Nations.*”

Section 4 provides:

*“The right to self-determination of people has an internal aspect, i.e. the rights of Peoples to pursue freely our economic, social and cultural development without outside interference”.*

Section 5 provides:

*“In order to fully respect the rights of all Peoples within a State, government are again called on to adhere to and implement fully the international human rights instruments and in particular the International Convention of the Elimination of All Forms of Racial Discrimination”.*

1. These sections of *General Recommendation No. 21* clearly set out that States in guaranteeing the political, economic, social and cultural rights of those people within our boundaries must take into consideration the right of “Peoples” to self-determination. As noted above, the Nations assert that as Nations of Indigenous Peoples that they are a “Peoples” as understood by international jurisprudence and as discussed within this general recommendation. Accordingly, taken together with those articles of the ICERDas noted above, the Canadian state is required when meeting its obligations under the ICERD to fully respect all “Peoples” within its boundaries such that our right to self-determination is promoted.
2. The Nations submit that the right contained in section 5 (d)(v), to wit to right to own property alone and in association with others, is an integral component to the right of self-determination. Without a secured right to property, the ability of a self-determining Indigenous Peoples to exercise our right to freely develop our cultures and societies through the use of the natural resources found on our Territories is a hollow right. The Canadian state’s adherence to the racist principles contained in the *Doctrine of Discovery* whereby our Nations’ rights to our Territories is minimized for the benefit of the Crown is therefore not only a violation of its obligations under the ICERD, and the directions provided by CERD, but also the *International Covenant on Civil and Political Rights* (the ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (the ICESCR) as set our more fully further below. By denying our Nations’ rights to our Territories, our rights to freely dispose of the natural resources contained within such Territories is also a violation of our right to self-determination as Peoples.

***General Recommendation No. 23 of the Committee on the Elimination of Racial Discrimination***

1. According to section 4 of *General Recommendation No. 23*, CERD called on State parties to:

*“(a) Recognize and respect Indigenous distinct culture, history, language, and way of life as enrichment of the State’s cultural identity and to promote its preservation;*

*(b) Ensure that members of Indigenous Peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on Indigenous origin or identity*;

*(c) Provide Indigenous Peoples with conditions allowing for a sustainable economic and social development compatible with our cultural characteristics*;

*(d) Ensure that members of Indigenous Peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to our rights and interest are taken without our informed consent*; *and*

*(e) Ensure that Indigenous communities can exercise our rights to practice and revitalize our cultural traditions and customs and to preserve and to practice our languages”*

1. In conjunction with what has been stated above in its totality, the Nations submit that the Canadian state’s failure to meet its obligations under the ICERD and *General Recommendation No. 21 of the Committee on the Elimination of Racial Discrimination* is also a failure to heed the *General Recommendation No. 23 of the Committee on the Elimination of Racial Discrimination*: *Indigenous Peoples*. The Nations submit that the Canadian state’s continued adherence to the principles of the *Doctrine of Discovery* that minimizes our Nations’ right to our Territories, and thereby legitimizes the Canadian state’s alleged underlying title to our Territories, is based

***Article 1 of the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights***

1. According to Article 1, “*All Peoples have the right of self-determination. By virtue of that right they freely determine our political status and freely pursue our economic, social and cultural development”*.

The Nations submit that given its recommendations in *General Recommendation No. 21 of the Committee on the Elimination of Racial Discrimination* that requires States, in protecting the rights of all Peoples in the State, must adhere to and implement fully the international human rights instruments, the Canadian state must adhere to and implement fully Article 1 of the ICCPR and the ICESCR. The Nations submit that the Canadian state has not only not adhered to or implemented these articles, but have in fact violated these articles by not protecting and implementing our Nations’ inherent right to self-determination as set out in this submission. Since the Canadian state has neither adhered to nor implemented these articles, it is also in violation of ICERDand *CERD’s General Recommendation No. 21 of the Committee on the Elimination of Racial Discrimination.*

1. Although the Canadian state purports to be a “champion of human rights” on the international stage, the Nations agree with Independent Expert Alfred De Zayas’ “Recommendation to States” where he recommends the following:

*“States should practice what they preach and test our actions, in good faith, for consistency with the Purposes and Principles of the United Nations, knowing that the end does not justify the means, and that international law is by definition universal and must not be applied a la carte”.[[23]](#footnote-23)*

**Residential Schools and Child Welfare Systems and State Laws**

1. In response to the Canada’s government’s periodic report to CERD our Nations vehemently object to the claims made by the government. Canada portrays that it “has a strong legal and policy framework to combat racial discrimination”[[24]](#footnote-24) The Canadian state cites *the Canadian Charter of Rights and Freedoms*, the *Criminal Code*, and federal and provincial human rights statutes as a basis of promoting that it is peaceful and benevolent toward Indigenous Peoples and Nations. The evidence suggests the government has a long standing racist violent past and present against Indigenous Peoples.
2. The residential school system was a program designed by the state (from 1883 to 1996[[25]](#footnote-25)) that utilized a destructive and vicious framework that invoked “theories of racial superiority”[[26]](#footnote-26) — civilizing project — to forcibly remove hundreds of thousands (even millions)[[27]](#footnote-27) of Indigenous Peoples’ children from our Nations and ultimately from our Territories. Our children continue to be removed from our homes and families into the provincial child welfare systems with no end in sight.[[28]](#footnote-28) The effects and devastation of racist colonial violence in our Nations continue to be felt through the poverty, incarceration rates, suicides, addictions, among others and the most important being our relationship to our lands and territories.
3. The forcible removals of our children are in contravention to CERD’s preamble in theICERD. In which it is “convinced that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere[.]”[[29]](#footnote-29)
4. Canada’s perpetration of destruction against our Nations through its forcible removals of our children into state controlled residential institutions continues in the child welfare system. It is perilous that a state such as Canada engages in destructive conduct against our Nations and there exists no international body to examine this issue. It is imperative that CERD see through the façade that continues to be portrayed by this government.
5. Canada claims that its “Hate Propaganda”[[30]](#footnote-30)law is utilized to combat “racist violence”[[31]](#footnote-31) in its *Criminal Code*. It is critical to highlight that the Hate Propaganda law has its origins in the *United Nations* *Convention on the Prevention and Punishment of the Crime of Genocide* (UNGC)*[[32]](#footnote-32)*. The Canadian state’s participation in the drafting of the UNGC and its ratification of genocide in its domestic penal code has allowed the government to conceal a deadly and destructive past and present with respect to its racism against Indigenous Peoples.
6. Our Nations acknowledge that genocide is outside of the scope of CERD’s mandate; however, the information is critical to the framework (Hate Propaganda legislation) that Canada espouses to meet international objectives with respect to racial discrimination. We refer to genocide in the context of racial violence dominated against Indigenous Nations and Peoples in the colonization of our Homeland and territories.
7. It is important to expose the true face of Canada, rather than the one the government espouses to the world at large. Our Original Nations on Great Turtle Island depend on outside interventions from the international mechanisms such as CERD.

1. Recent legal scholarship conveys that Canada is culpable for genocide, and violates international customary laws with respect to the forcible transferring of Indigenous Peoples’ children from their families and Nations into residential schools and child welfare systems,[[33]](#footnote-33) despite claims that it has resolved the residential school issue under the Indian Residential School Settlement Agreement. Furthermore, despite the high threshold of specific intent, a case has been made to show that the state is indeed guilty for crimes against the Original Nations on Great Turtle Island.
2. As part of the Indian Residential Settlement School Agreement the Truth and Reconciliation Commission (TRC) was created to “inspire a process of truth and healing leading to reconciliation.”[[34]](#footnote-34) There is a pretense in Canadian society and in the international community that the state has redressed and accepted accountability for the residential schools through its TRC Process.
3. At this point, without deconstructing the loaded language exhibited by words such as “reconciliation” and “truth”, the question remains - Is it legal or just that a perpetrator state responsible for genocide, appoint a TRC process to investigate its conduct for creating and implementing the forcible removals of our Indigenous children?

***Framework of Racial Superiority***

1. Given the civilization project is born from theories of racist superiority, it is critical unpack the importance of this to the Canadian state’s conduct both historically and in contemporary times.
2. During the drafting of the UNGC, state governments, such as the Ukraine and the USSR contended that cultural genocide is a central tenet of the crime.[[35]](#footnote-35) The strong opposition with respect to the deletion of cultural genocide concerned that “fascism, Nazism and doctrines of racial superiority”[[36]](#footnote-36) are at the root of genocide and should remain in the preamble to the UNGC.
3. The concern by the Ukraine and USSR delegations, highlights an important principal that is embodied in ICERD: “Considering that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, in whatever form and wherever they exist, and that the Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960 (General Assembly resolution 1514 (XV)) has affirmed and solemnly proclaimed the necessity of bringing them to a speedy and unconditional end.”[[37]](#footnote-37)
4. Mr. Morozov, USSR delegate, emphasized his astonishment that some delegations raised objections to the “organic connexion between fascism and racial theories and genocide being emphasized in the convention on genocide. Should the General Assembly accept that view, it would by that very fact demonstrate its refusal to condemn racial theories, or to admit that those theories led to genocide. It was clear that such theories were incompatible with the Charter. To say that the crime of genocide had no connexion with racial theories amounted to, in fact, to a re-instatement of such theories.”[[38]](#footnote-38) Genocide followed “racial theories intended to develop racial and national hatreds, the domination of the so-called ‘higher races’ and the extermination of the so called ‘lower races’. The crime of genocide formed an integral part of the plan for world domination of the supporters of racial ideologies.”[[39]](#footnote-39) It is not a coincidence that the “colonial clause”[[40]](#footnote-40) was a topic during the drafting of the crime of genocide. The colonial clause designates to which colonial territories a UN convention will apply.
5. The USSR’s position to have cultural genocide retained in the convention directly relates to its concern that “[c]olonial policy had been a dark page in history[.]”[[41]](#footnote-41) In fact, there was contention between USSR and the United Kingdom on this “dark history” as the United Kingdom delegation “denied the moral authority of the Soviet Union Government to make any such statement, or to set itself up as a model of conduct before the world.”[[42]](#footnote-42) The USSR proposed an amendment to the “application in Non-Self-Governing Territories [being] left to the discretion of the administering powers.”[[43]](#footnote-43) Mr. Morozov proposed that it “should be replaced by a definite clause stipulating that the convention should apply not only to the signatory States, but also to the territories under their administration including all Trust Territories and Non-Self-Governing Territories.”[[44]](#footnote-44) USSR’s amendment was rejected and in response stated, “In the opinion of the USSR delegation, the reason why the colonial Powers had pressed so strongly for the omission of such a clause, which incidentally appeared in many other conventions was because they intended to have a free hand to ensure that colonial territories were maintained in a position of inferiority.”[[45]](#footnote-45)
6. Canada is a colony of Great Britain and created by an act of British Parliament.[[46]](#footnote-46) The Canadian government recommended the issue of cultural genocide be placed under the international covenant of human rights.[[47]](#footnote-47) The result of maneuvering the issue of cultural genocide under a human rights framework is that Canada’s oppression over Indigenous Nations and Peoples continues unabated and undetected from international scrutiny.
7. Racist theories are the cornerstone of the legalized persecution against Indigenous Nations and Peoples.[[48]](#footnote-48) Colonial laws forced the removal of our children into the ‘residential school system’[[49]](#footnote-49) and continue the removals into the ‘child welfare systems’[[50]](#footnote-50). The residential school system destroyed the ability to parent by the massive and widespread violence imposed against our children. The direct result is the child welfare system. The traumatic impact of the residential schools, specifically the inability to parent, is the basis that maintains racist state oppression. The state develops the standards (“inability to parent”) for forcible removal of Indigenous children into foster care homes away from their own families and territories under a further destructive auspice termed the “best interests of the child”.
8. As a concept, the concept of the “best interests of the child” is a colonizer value based judgment. It is a concept that was created to continue the “domination and dehumanization”[[51]](#footnote-51) of our Nations. This is a continuation of destruction against our Nations based on racist values and concepts maintained by the colonizer. This is the face of colonization that continues to this day. A recent media outlet reported that of the 10,501 children in care in Manitoba that 9,205 are Indigenous children.[[52]](#footnote-52) A recent study completed by Statistics Canada shows that, “while Aboriginal children represented 7% of all children in Canada in 2011, they accounted for almost half (48%) of all foster children in the country.”[[53]](#footnote-53)
9. The forcible removal of our children past and present is catastrophic and “criminal”[[54]](#footnote-54) when examined from this standpoint. There exists no international reprieve for the Original Nations on Great Turtle Island.

***Forcible Removals of Our Children***

1. The Canadian government cloaks the devastation our children endured in the residential schools with rhetoric and by the “loopholes”[[55]](#footnote-55) it created when the drafting of the crime of genocide took place from 1946-48. It is important to emphasize that this analysis is critical as to how a colonial framework based on theories of racial superiority and violence (domination and dehumanization) is maintained by Canada.

1. First, very briefly, after the ratification of the UNGC state governments were under an obligation to legislate the crime into its domestic penal codes. Canada did not implement the entire UNGC into its Criminal Code and excluded critical elements of the crime.[[56]](#footnote-56) This is supported by the discussions that took place in 1965 by the Special Committee on Hate Propaganda (hereinafter the “Special Committee”). The Canadian Civil Liberties Association to the Special Committee acknowledged the residential schools would be in violation of the UNGC.[[57]](#footnote-57) It was acknowledged by the Special Committee in its report that *“[f]or purposes of Canadian law we believe that the definition of genocide should be drawn somewhat more narrowly than in the international Convention so as to include only killing and its substantial equivalent − deliberately inflicting conditions of life calculated to bring about physical destruction and deliberately imposing measures to prevent births. The other components of the international definition, viz., causing serious bodily or mental harm to members of a group and forcibly transferring children of one group to another group with intent to destroy the group we deem inadvisable for Canada”[[58]](#footnote-58) It was also claimed that the forcible removals of children in Canada are “relatively unknown*.”[[59]](#footnote-59)

1. Senator Roebuck conceded in 1952 that involving state governments will not hold their own governments accountable for crimes under the UNGC.[[60]](#footnote-60) This begs a serious question; why go to great effort to have genocide recognized as a crime in international law then render the integrity of the crime inapplicable within domestic state borders? It shows that Canada understood the loopholes created in the ratification process. The limited crime in domestic laws would later render any possible government conduct of genocide as impossible or moot in a Canadian court.
2. We submit that the Canadian government removed any possibility for racist state violence against Indigenous Peoples’ children to be scrutinized by its own judiciary.[[61]](#footnote-61) Canada is not above international laws with respect to ICERD and other international conventions. The Hate Propaganda legislation does not protect Indigenous Peoples from long standing colonial violence. It entrenches racial domination and dehumanization.
3. Colonial violence and terror against our Nations’ children is a common and massive experience in the form of torture, forced starvation, forced labour, sexual predatory acts, and death by disease and dilapidated living conditions.[[62]](#footnote-62) So rhetoric like “abuse, mistreatment, and neglect”[[63]](#footnote-63) acknowledged in the government Apology in 2008 dodges the implication that the state has engaged in racial destruction against our Nations and Peoples.
4. Indigenous children were dehumanized by denigrations such as “savage” or “heathen” as staff officials whipped, beat, starved, confined, and committed brutal acts of sexual violence, and many other methods designed to destroy the national identity of Indigenous Peoples’ children.[[64]](#footnote-64) It is common knowledge that children were brutalized with needles through tongues and other forms of violence for speaking their languages.[[65]](#footnote-65) Short of death, atrocities of this kind will cause the collective serious bodily and mental destruction (forcible indoctrination[[66]](#footnote-66)) against our Original Nations. We depend on our children to transmit our national identities to further generations.
5. Children violated and dehumanized by racist beliefs will believe and accept those ideas about themselves and their people. Children are indoctrinated to view themselves through the eyes of the colonizer as racially inferior and not as children of Nehiyaw (Cree) people. Nehiyaw people depend on their children to transmit the healthy and beautiful aspects of their identity onto further generations.
6. Our Nations’ spiritual laws are encoded in our original languages with respect to our land (Mother Earth) for the future generations. Sharon Venne on our Indigenous laws: “We have a relationship with our Creation based on a legal system designed to protect and honour the land.”[[67]](#footnote-67) Children that are dehumanized and racially indoctrinated as inferior will not understand the languages or laws that guide or instruct a Nehiyaw, Anishinaabe, Kanaii or Dene identity are foundational to our way of life and our relationship with our Territories.
7. The collective genocidal traumatic effects (inability to parent) brought about by the residential school phase is then used by very dominating society that created that trauma (dysfunction) to justify the child welfare system phase of the process. The system carries on the racist beliefs that dominated the residential school system. The state uses its imposed standards of judgment to create the institutions that create the destructive conditions, and then use its standards of judgment to forcibly take away further generations of our Nations’ children by racially demonizing the parents for not having the parenting skills. It is well acknowledged in government reports the high rates of removal in the child welfare system is a direct effect of the residential school system.[[68]](#footnote-68) The rates of removal are appalling.[[69]](#footnote-69)
8. Our Nations’ children in the child welfare system experience the same rates of racist violence that their predecessors in the residential school endured.[[70]](#footnote-70) The suicide is rate is pandemic for children in care.[[71]](#footnote-71) Our Nations’ children are sexually preyed on while in the care of the system.[[72]](#footnote-72) The death rates of children in care are at an all-time high. Some examples include Tina Fontaine, aged 15, who was killed after she ran away from a hotel where she was in government care in Manitoba.[[73]](#footnote-73) Another young person, aged 18, Alex Gervais, in British Columbia, jumped out of a hotel window and died.[[74]](#footnote-74) Gervais was housed in the hotel room unsupervised by the ministry. The residential schools and child welfare systems have devastated our communities and Nations.
9. We assert that the effects of racist dehumanization against our Nations have resulted in the eventual and complete disappearance of our identities into state of Canada due to the traumatic patterns that are transmitted over the generations. Suicides, violence, poverty, despair, addictions, and many more egregious disasters permeate our reality. It is 134 years that Canada has forcibly removed our children from our families and Nations. We are reeling from the racism that continues to dominate our existence.

1. We assert that the racist underpinnings that drive state laws and policies with respect to Indigenous Peoples continue to oppress our Nations. Motivated by a framework that is grounded in racial superiority, the Canadian state has not changed its position with respect to the earlier policies and laws. If it has not ceased, then the catastrophe that we currently are forced to contend with will not cease either.
2. We submit that under international jurisprudence, Canada cannot unilaterally decide that international law will not be applicable to its conduct with respect to the on-going forcible transferring of our Nations’ children and the serious bodily and mental harm that our children continue to experience at the hands of the Canadian state. To reiterate, our Nations again pose the question as to whether it is it legal or just that a perpetrator state responsible for destruction against the innocent, appoint, fund and set the terms of reference for a TRC process to investigate its conduct for creating and implementing a racist framework that forcibly removes our Nations’ children?

***Smoke and Mirrors and the Residential School Settlement Agreement***

1. The Canadian state claims the issues with respect to the residential schools are resolved through the Residential School Settlement Agreement. The Canadian state’s evasion for true accountability for the forcible removal of our children is evidenced by a few factors.
2. First, the government apology*[[75]](#footnote-75)* does not redress the horror we have endured and the destructive reality that has over shadowed our children and ultimately our Nations and our lands and territories. We depend on our Territories and this is vital to our identity as Nations of Indigenous Peoples. The forcible removals are part and parcel of the long-standing goal to extinguish the underlying title we hold to our Territories.[[76]](#footnote-76) Children violently traumatized and indoctrinated in a language that demonizes their identity will not remember that they have a responsibility to protect the land for future generations.
3. Second, the mandate of the TRC illustrates our point with respect to the dodging of full responsibility for its intent to destroy Indigenous Peoples and Nations. The commission could not hold criminal hearings or subpoena witnesses. Further, the TRC Final Report dodges the implication that the forcible removals are criminal and destructive against our Nations. The finding of “cultural genocide” does not satisfy a truthful account as cultural genocide is not a crime in international law. It does not make the state answerable to any tribunal and it allows Canada to get away with its vicious conduct against our Nations’ children.
4. The TRC conceals colonial racial violence through words that downgrade the truth. An example is reiterated in Canada’s report to CERD in which is it is claimed that the TRC was created to find a “lasting resolution to the legacy of the Indian Residential School System.”[[77]](#footnote-77) The term “legacy” connotes a gift or anything handed down from a predecessor or ancestor. It renders the effects of a racist state framework as benign or less than the destruction these institutions were intended for by the government.
5. The solution proposed is a “national reconciliation framework”[[78]](#footnote-78). Reconciliation gives the state of Canada the license to continue to destroy our Nations and our Territories with impunity. It does not return the land they have illegitimately claimed or resolve the racial destruction they have committed against our Nations and Peoples. The residential school settlement agreement is smoke and mirrors and contributes to the façade that Canada is peaceful and benevolent. To be allowed to engage in this display of lies to CERD and the international community is a disgrace to the principles embodied in ICERD and the Charter of the United Nations.
6. We submit that Canada cannot decide for itself whether it has engaged in criminal conduct and unilaterally create the process that examines its own conduct is a violation of international laws. The recent research on genocide certainly supports that the causes of racially motivated state violence committed against our Nations children in the residential school and currently in the child welfare systems causes the (trauma and dysfunction) high suicide rates, poverty, and despair that is grossly over represented in our Nations to the present day.[[79]](#footnote-79)
7. As Indigenous Peoples, we depend on our children to transmit our languages, spirituality, cultures, healthy characteristics of our identities so that we can continue to survive as the Original Nations and Peoples on Great Turtle Island.
8. The solution is embodied in the self-determination of our Nations and the decolonization of our Territories. We call on CERD to see through the smokescreen portrayed by Canada so that we can begin to heal and recover from the horrors and traumatic impacts caused by a racist regime. We call on CERD to intervene on our behalf.

**Questions for the Canadian State**

1. The Nations submit that when an invading nation claims the lands to which another nation or Peoples have an inherent connection and right based on racist principles such as the *Doctrine of Discovery* to justify such claims, then as the opening quote by Thomas Paine provided, such a nation then must legitimize such claim. In Canada, such legitimization has been the continual minimization of our Nations’ rights to our Territories and its resources, as well as who we are as Nations of Indigenous Peoples, and the destruction of our Nations through the forceful removal of our children through state sponsored laws, regulations and policies. While the Canadian state may currently wish to “reconcile” with our Nations and build a “new relationship”, our Nations will reject the Canadian states desired goals if it continues to proceed on the presumed baseline that it has a claim to our Territories that is based on the racist *Doctrine of Discovery*, and refusal to fully address the past and present harms confronting our children.
2. Our Nations assert that Canadian governmental policies and actions towards us that are supposedly based on neoliberalism concepts of equality to sooth its collective cognitive and moral dissonance has nothing to do with equality. In fact, at their foundation all current Canadian policies and actions that are based on the racist principles of the *Doctrine of Discovery* and fantasies of racial superiority, including child welfare systems, act to extinguish our identity as Nations of Indigenous Peoples and to unilaterally absorb us into the body politic. We submit that the continued adherence to *Doctrine of Discovery* and neoliberalism continues to discriminate against us in that the Canadian state does not accept us as self-determining Nations of Indigenous Peoples with the subsequent inherent rights.
3. Accordingly, the Nations respectfully requests that the UN Committee on the Elimination of Racial Discrimination to put before the Canadian State the following questions:
4. On what legal basis, both domestically and internationally, does Canada claim underlying title to Indigenous lands?
5. Does Canada support that all “Peoples” have an inherent right to self-determination, and that as a component of such a right, that all “Peoples” have a right to collectively own property and to derive whatever benefit from such property?
6. Does Canada renounce the *Doctrine of Discovery*, and the racist principles and belief that make up such a doctrine?
7. Does Canada’s recent declaration of its goal of creating a new relationship with Indigenous Peoples within Canada, including the need for reconciliation between the Canadian state and Indigenous Peoples include Canada’s international legal obligations pertaining to Indigenous Peoples, including the norms contained within such obligations?
8. Does Canada believe that having access to clean drinking water is a right that all peoples in developed and modern states are entitled?
9. Does Canada believe that it is legal or just that a perpetrator state responsible for genocide, appoint, fund and set the terms of reference for a process to investigate its conduct for creating and implementing the genocide?

1. Thomas Paine, “On First Principles of Government (1795)” from *The Thomas Paine Reader*, (Toronto: Penguin Press, 1997) at p. 464. [↑](#footnote-ref-1)
2. The Nations for this submission accept that the working definition of “Indigenous Peoples” as found in the seminal work of Special Rapporteur, Martinez Cobo in his report on the “Study of the Problem of Discrimination Against Indigenous Populations” (Cobo Report), and submits that they meet the criteria as set out in this definition, the definition from the Cobo Report reads as follows:

   “Indigenous communities, Peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on our territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations our ancestral territories, and our ethnic identity, as the basis of our continued existence as Peoples, in accordance with our own cultural patterns, social institutions and legal system.

   “This historical continuity may consist of the continuation, for an extended period reaching into the present of one or more of the following factors:

   1. Occupation of ancestral lands, or at least of part of them;
   2. Common ancestry with the original occupants of these lands;
   3. Culture in general, or in specific manifestations (such as religion, living under a tribal system, membership of an Indigenous community, dress, means of livelihood, lifestyle, etc.);
   4. Language (whether used as the only language, as mother-tongue, as the habitual means of communication at home or in the family, or as the main, preferred, habitual, general or normal language);
   5. Residence on certain parts of the country, or in certain regions of the world;
   6. Other relevant factors.

   “On an individual basis, an Indigenous person is one who belongs to these Indigenous populations through self-identification as Indigenous (group consciousness) and is recognized and accepted by these populations as one of its members (acceptance by the group).

   “This preserves for these communities the sovereign right and power to decide who belongs to them, without external interference”. UN Doc. E/CN.4/Sub.2/1986/7 and Add. 1-4. [↑](#footnote-ref-2)
3. ### *Tsilhqot’in Nation v. British Columbia* [2014] 2 SCR 257 at paragraph 69.

   [↑](#footnote-ref-3)
4. Robert J. Miller, “The Doctrine of Discovery” from ***Discovering Indigenous Lands: The Doctrine of Discovery in the English Colonies***, (New York: Oxford University Press, 2012) at p.p. 9 -15 [↑](#footnote-ref-4)
5. *Ibid* at p.p. 15-19. [↑](#footnote-ref-5)
6. *Ibid* at p. 21. It is interesting to note that although the Supreme Court of Canada has stated in its *Tsilhqot’in Nation v. British Columbia*decisionthat the doctrine of *terra nullius* never applied in Canada, we would submit that in fact it did and still does in that the Courts have consistently held that the infringement of Indigenous Peoples rights to our Territories can be justified by a “pressing public purpose”. It is not a large stretch of the imagination to hear the echoes of *terra nullius* in this principle whereby Indigenous use of our Territories is not in accordance with “public purpose” standards and thereby any Indigenous right to such Territories can be infringed. [↑](#footnote-ref-6)
7. Of note in this regard is the work of English philosopher John Locke in his “*Two Treaties of Government”* which has been argued was written in order to justify the dispossession of Indigenous Peoples and deflect claims that European rights to lands in our colonies were limited by the prior occupation of Indigenous Peoples. Please see *John Locke: The Devonshire Farmer and the Dispossession Of the Amerindians of Belize And Guyana* by Tara Letwiniuk, a thesis submitted in conformity with the requirements for the degree of Master of Laws Graduate Department of Law University of Toronto, 1998. [↑](#footnote-ref-7)
8. Issued by King George III of Great Britain and Ireland on 7 October 1763. [↑](#footnote-ref-8)
9. These basic principles are congruent with the conclusions reached by Special Rapporteur Miguel Alfonso Martinez in his Final Report “Study on Treaties, Agreements and Other Constructive Arrangements Between States and Indigenous Populations”. [↑](#footnote-ref-9)
10. Text of the *Royal Proclamation 1763* access from Canada’s Indigenous and Northern Affairs website at <https://www.aadnc-aandc.gc.ca/eng/1370355181092/1370355203645> on June 1, 2017. [↑](#footnote-ref-10)
11. It is also part Canada jurisprudence that one party cannot transfer to another party more of a right or interest than the transferring party possessed. While England may have defeated France in its war within the North American, France neither defeated the Indigenous Peoples whose Territories it claimed as its territory, nor did France sign treaties with the Indigenous Peoples to obtain rights to such Territories. Accordingly, any rights or interests the British Crown may have received from France through the Treaty of Paris, was certainly not underlying title and absent any treaty specifically transferring any right to the British Crown, it is arguable that the Indigenous Peoples in the areas formerly claimed by France retain intact our rights. [↑](#footnote-ref-11)
12. Found at https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1569/index.do [↑](#footnote-ref-12)
13. Found at https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14246/index.do [↑](#footnote-ref-13)
14. For further information please see <http://www.midnorthmonitor.com/2015/06/30/tek-elders-position-paper-takes-stand-against-aerial-spraying>. [↑](#footnote-ref-14)
15. http://www.afn.ca/uploads/files/canada-afn-mou-final-eng.pdf [↑](#footnote-ref-15)
16. <http://www.taxpayer.com/commentaries/don-t-force-first-nations-people-to-wait-for-accountability>. All Consolidated audits are available to members through the Department of Indigenous Affairs (DIAND) or at the local First Nation office – the salaries of the Chiefs and Councillors have been part of the audit requirements of DIAND for years. It is a myth that these are secret. The schedule is not available to the “Canadian public” as the Federal Court had ruled in the *Montana Band of Indians v. Canada (Minister of Indian and Northern Affairs*) (1989) 1 F.C. 143 F.C. T.D. where Associate Chief Justice Jerome wrote at pages 153 to 155: The core of the applicants’ case and their strongest argument, is that this information is financial…information that is **confidential information** supplied to a government institution by a third party and is treated consistently in a confidential manner by the third party”. [↑](#footnote-ref-16)
17. Chief Paulette and a number of Dene Leaders attended the NGO Conference on Indigenous Populations of the Americas in 1977 at the Palais des Nations in Geneva, Switzerland. [↑](#footnote-ref-17)
18. Re: Paulette's Application (1973) 6 W.W.R. 97 (NWT S.C) [↑](#footnote-ref-18)
19. For further information please see http://www.cbc.ca/news/politics/first-nations-drinking-water-advisories-1.3982999 [↑](#footnote-ref-19)
20. For further information please see http://www.cbc.ca/news/canada/manitoba/shoal-lake-40-and-winnipeg-s-drinking-water-what-s-at-stake-1.3185733. [↑](#footnote-ref-20)
21. For further information please see http://www.cbc.ca/radio/thesundayedition/water-on-first-nations-reserves-islam-and-isis-prison-poem-pricey-glasses-heather-o-neill-1.4005479/no-excuses-for-boil-water-orders-on-first-nations-reserves-michael-s-essay-1.4005482. [↑](#footnote-ref-21)
22. As an aside, it is interesting to note that as recently as March 2017 a member of Canada’s Parliament, that is Senator Lynn Beyak, has stated on the record, including on the floor of the Senate, that “good” things came out of the Canadian Residential Schools. Briefly, beginning in the 1880’s and continuing to 1996, Canada’s Residential Schools existed where Indigenous children were often forcible removed from our communities, taken hundreds of kilometers to schools run by various religious orders, where more often than not, they were denied their culture, physical, emotional and sexually abused, and had medical experiments performed on them. Despite these common atrocities as set out in the Truth and Reconciliation Commission’s findings, Senator Beyak bemoaned the “good” that “well-intentioned” priest and nuns were overshadowed by these atrocities. Senator Beyak provided examples of such “good” as learning the “Christian faith” and the ability to speak “English”. This aside is brought up in this discussion to demonstrate that although Canada may deny the existence of the *Doctrine of Discovery* and its racist principles and beliefs, Senator Beyak’s statement provide clear evidence that such racist beliefs that the enforced Christian indoctrination and bringing of European culture to Indigenous Peoples is justified, which the Nations’ submit is the same principle and beliefs behind the *Doctrine of Discovery*. At the time of this writing, Senator Beyak has not retracted her statements, refused to step down from the Senate Committee on Aboriginal Affairs, and has insisted on an audit of “all money going in and out of First Nation reserves”; indeed, her views were defended by other Senators. However, due to months of public pressure, Senator Beyak was removed from her position on the Senate Committee of Aboriginal Affairs, but remains in her position as Senator to “promote the causes of her constituents”. [↑](#footnote-ref-22)
23. See A/HRC/24/38 at paragraph 55(f) at page 18. [↑](#footnote-ref-23)
24. Canada, *Consideration of reports submitted by States parties under article 9 of the Convention Canada*, United Nations Committee on the Elimination of Racial Discrimination, CERD/C/CAN/21-23/2016 at para 10. [↑](#footnote-ref-24)
25. “Where are the Children”, retrieved on line: <http://wherearethechildren.ca/en/timeline/research/> [↑](#footnote-ref-25)
26. Hirad Abtahi & Phillipa Webb, *The Genocide Convention: The Travaux Préparatoires,* vol 1 & 2 (Leiden, Netherlands: Martinus Nijhoff Publishers, 2008). The Ukraine and the USSR argued that theories of racial superiority were at the root of genocide during the drafting of the United Nations Prevention and Punishment of the Crime of Genocide from 1946-1948. [↑](#footnote-ref-26)
27. Truth and Reconciliation Commission, *Honouring the Truth, Reconciling for the Future Summary of the*

    *Final Report of the Truth and Reconciliation Commission of Canada* (Montreal: McGill-Queen’s University Press, 2015) at 3. The federal government claims that at least 150,000 children passed through the system. It is not clear how the government draws this conclusion. The TRC recognizes 139 schools across Canada. The numbers are not accurate. The system continued for over 100 years. Based on this formula (139 schools’ X 300 children per school X 100 years), there was at least 4, 170, 000 over the entire system. Based on this rough calculation, the numbers are not forthright or honest. This estimate does not include the rates of children forcibly transferred from our Peoples and Nations into the provincial child welfare systems. It is accurate to claim that the numbers are catastrophically higher than the numbers claimed by the TRC. [↑](#footnote-ref-27)
28. Truth and Reconciliation Commission, “Chapter One: Child welfare: A system in crisis” in *Canada’s Residential Schools: The Legacy The Final Report of the Truth and Reconciliation Commission of Canada Volume 5* (Montreal: McGill-Queen’s University Press, 2015) (“The end of the residential school system did not mean that Aboriginal children were no longer forcibly separated from their families. Child welfare services carried on where the residential schools left off. More Aboriginal children are removed from their families today than attended residential schools in any one year. Following the inquiry into the death of an Aboriginal girl in Manitoba, the Honourable Ted Hughes concluded that the overrepresentation of Aboriginal children in care in Canada is “unconscionable” and “a national embarrassment”) at 11. [↑](#footnote-ref-28)
29. *International Convention on the Elimination of All Forms of Racial Discrimination* Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965 entry into force 4 January 1969, in accordance with Article 19. [↑](#footnote-ref-29)
30. *Criminal Code, An Act respecting the criminal law* R.S., 1985, c. C-46, s. 318; 2004, c. 14, s. 1, section 318. [↑](#footnote-ref-30)
31. *Supra* note 19 at para. 4. [↑](#footnote-ref-31)
32. *Convention on the Prevention and Punishment of the Crime of Genocide*, opened for signature 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951, accession by Canada 3 September 1952). [↑](#footnote-ref-32)
33. See Tamara Starblanket, *Suffer the Little Children: Genocide, Indigenous Nations and the Canadian State* (Clarity Press, 2017) [forthcoming]. The book is based on Starblanket’s thesis entitled *Genocide: Indigenous Nations and the State of Canada* (LLM Thesis, University of Saskatchewan, 2014) [unpublished]. The thesis addresses the legal question of Canadian state culpability for crimes of genocide and the violation of customary international laws on genocide with respect to the residential schools and child welfare systems. [↑](#footnote-ref-33)
34. *Supra* note 19 at para. 151. [↑](#footnote-ref-34)
35. *Supra* note 21 at 1318-1319 for the Ukraine’s position. [↑](#footnote-ref-35)
36. *Supra* note 21 at 2083. [↑](#footnote-ref-36)
37. *Supra* note 24 [↑](#footnote-ref-37)
38. *Supra* note 21 at 2044. [↑](#footnote-ref-38)
39. *Supra* note 21 at 2044. [↑](#footnote-ref-39)
40. *Supra* note 21 at 1609: 1816 [↑](#footnote-ref-40)
41. *Supra* note 21 at 1817 (“The Committee did not wish to see those dark pages prolonged by a failure to extend the provisions of the convention on genocide to the colonial territories”). [↑](#footnote-ref-41)
42. *Supra* note 21 at 1822. The UK denied many of the assertions made by the USSR and its denial is important to the overall question of its colonial history the world over. [↑](#footnote-ref-42)
43. *Supra* note 21 at 2045 [↑](#footnote-ref-43)
44. *Supra* note 21 at 2045 [↑](#footnote-ref-44)
45. *Supra* note 21 at 2046. [↑](#footnote-ref-45)
46. See Sharon Venne, “Understanding Treaty Six: An Indigenous Perspective” in ed. Michael Asch, *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality and Respect for Difference* (Vancouver: UBC, Press, 1997 at 173-207. [↑](#footnote-ref-46)
47. *Supra* note 21 at 1510. [↑](#footnote-ref-47)
48. *House of Commons, Debates* (Canada), 46 Vict. (9 May 1883), 14: 1107-1108. John A. MacDonald in his address to the House of Commons referred to Indigenous Peoples as “savages” to justify the removal of children from their families; see also Kent McNeil, “Social Darwinism and Judicial Conceptions of Indian Title in Canada in the 1880s” in *JOW* Vol. 38. No. 1 (1999) at 71. Kent McNeil, legal scholar, has observed the government’s policies with respect to conception of Indian title and the residential schools are based on “social Darwinism” or what is known as theories of racial superiority [↑](#footnote-ref-48)
49. *An Act to Amend and consolidate the laws respecting Indians*, S.C. 1880, c. 28; *The Indian Advancement Act*, R.S.C, 1886 c. 44, s. 137(2) and 138; *An act further to amend the Indian Act*, 1894, c.32, 57-58 Victoria., s. 11 [Indian Act, 1894]. The amendment secured (“the compulsory attendance of children at school. Such regulations, in addition to any other provisions deemed expedient, may provide for the arrest and conveyance to school, and detention there, of truant children and of children who are prevented by their parents or guardians from attending: and such regulations may provide for the punishment, on summary conviction, by fine or imprisonment, or both of parents or guardians, or persons having the charge of children, who fail, refuse or neglect to cause such children to attend school”); *An Act to amend the Indian Act*, S.C. 1920, c. 50, s. 9 and 10. [↑](#footnote-ref-49)
50. See Leroy Little Bear, “Section 88 of the Indian Act and the Application of Provincial Laws to Indians” in Anthony Long & Menno Boldt eds, *Governments in Conflict? Provinces and Indian Nations in Canada* (Toronto: University of Toronto Press, 1992) at 175-187. With the amendments to the *Indian* *Act*, section 88, authorizes the removal of Indigenous children by the provinces; see Marilyn Bennett, “First Nations Fact Sheet: A General Profile on First Nations Child Welfare in Canada” *First Nations Child and Family Caring Society* online: <<http://www.fncfcs.com/docs/FirstNationsFS1.pdf>> (Bennett writes, “There is no explicit reference to child welfare in either the *Indian* *Act* or the *Constitutional* *Act*, *1867*, *1982*, it has been subsequently deemed to be the responsibility of the provinces.” Bennet also refers to the Supreme Court of Canada case in which it was “confirmed in 1976 that the legal jurisdiction of the Province’s ability to extend child welfare services onto reserve, regardless of the provincial incursion into a federal sphere of responsibility”) at 2; see *Natural Parents v. Superintendent of Child Welfare*, 1976, 60 D.L.R. 3rd 148 S.C.C. [↑](#footnote-ref-50)
51. See Steven T. Newcomb, *Pagans in the Promised Land: Decoding the Christian Doctrine of Discovery* (Golden, CO: Fulcrum Publishing, 2008); see Steven T. Newcomb, “The UN Declaration on the Rights of Indigenous Peoples and the Paradigm of Domination” (2011) 20 *Griffiths Law Review* at 578. [↑](#footnote-ref-51)
52. Jillian Taylor, ‘The ultimate goal is to reduce the number of children in care’: Indigenous Affairs Minister (27 March 2016) CBC News, online: <http://www.cbc.ca/news/canada/manitoba/manitoba-carolyn-bennett-child-welfare-1.4042484> [↑](#footnote-ref-52)
53. Statistics Canada, Study: Living arrangements of Aboriginal children aged 14 and under, 2011 (Released at 8:30 a.m. eastern time in The Daily, Wednesday, April 13, 2016. [↑](#footnote-ref-53)
54. *Supra* note 28. [↑](#footnote-ref-54)
55. *Supra* note 21 at 1296; see Draft Convention on the Crime of Genocide (E/794, E/794/Corr. 1 and E/AC. 27/1, at 710. [↑](#footnote-ref-55)
56. *Supra* note 25. [↑](#footnote-ref-56)
57. Robert Davis & Mark Zannis, *The Genocide Machine in Canada* (Montreal: Black Rose Books Ltd., 1973) at 23. [↑](#footnote-ref-57)
58. Canada, House of Commons, Report to the Minister of Justice of the Special Committee on Hate Propaganda in Canada, *Hate Propaganda in Canada* (November 1966) at 61 [↑](#footnote-ref-58)
59. *Ibid*. [↑](#footnote-ref-59)
60. *Debates of the Senate*, 21st Parl, 6th Sess, No 1 (27 May 1952) at 313 (Hon. Arthur Roebuck). Senator Roebuck stated, “In view, Honourable senators, of the possibility that for years there will not be any international tribunal with penal or criminal jurisdiction, it follows logically from that article that in practice only private individuals may be prosecuted for the crime of genocide, and that they must be prosecuted according to the laws of the state in which they live or in which the crime is committed. The governments in most countries are not likely to submit their acts to the judgement of their own courts, nor are they likely to submit to those courts the question of the guilt of their high officials, whose criminal acts may have been in accordance with government policy. The truth is that this convention lacks teeth.” [↑](#footnote-ref-60)
61. David B. MacDonald & Graham Hudson, “The Genocide Question and Indian Residential Schools in Canada,” (June 2012) 45:2 in *Canadian Journal of Political Science* at 436-438. MacDonald and Hudson write on the following case, *Re Residential Schools* (2000), A.J. No. 638 9Alta. Q.B.). The authors also suggest that the courts use the domestic legislation to strike down the defendants claims of genocide in *Re Residential Schools* (2000), A.J. No. 638 9Alta. Q.B: “This judgment highlights a fairly common and contestable judicial attitude towards the UNGC as a ‘political’ or moral standard and not, absent legislation to the contrary, a legally binding document. It also ignores legal doctrine that makes international customary law an automatic part of Canadian common law, independently of legislative implementation”. [↑](#footnote-ref-61)
62. See Ward Churchill, *Kill the Indian Save the Man: The Genocidal Impact of American Indian Residential Schools* (San Francisco: City Lights Books, 2004) at 16-76; see Roland Chrisjohn, Sherri Young & Michael Maruan, *The Circle Game: Shadows and Substance in the Indian Residential School Experience in Canada* (Penticton: Theytus Books Ltd, 2006); see Canada, Royal Commission on Aboriginal Peoples, “Chapter 10: Residential Schools” vol 1 *Looking Forward, Looking Back*  (Ottawa: Canada Communications Group, 1996); see *supra* note 28. [↑](#footnote-ref-62)
63. Ottawa: *Statement of Apology to Former Students of the Indian Residential Schools*, June 11, 2008. [↑](#footnote-ref-63)
64. Chrisjohn, *supra* note 39; Agnes Grant, *No End of Grief: Indian Residential Schools in Canada* (Winnipeg: Pemmican Publications, 1996); Elizabeth Furniss, *Victims of Benevolence: The Dark Legacy of the Williams Lake Residential School* (Vancouver: Arsenal Pulp Press, 1992, 1995); Isabelle Knockwood, *Out of the Depths: The Experiences of Mi’kmaw Children at the Indian Residential School at Shubenacadie , Nova Scotia* (Lockeport, Nova Scotia, Roseway Publishing, 1992); Agnes Jack, ed, *Behind Closed Doors: Stories from the Kamloops Indian Residential School* (Penticton: Theytus Books, 2006). The list of sources is not exhaustive. [↑](#footnote-ref-64)
65. *Ibid*. [↑](#footnote-ref-65)
66. *Supra* note 28. [↑](#footnote-ref-66)
67. Sharon H. Venne, “Treaties Made in Good Faith” in *Native and Settlers – Now and Then* (Edmonton: University of Alberta Press, 2007) at 2; see also Sharon Venne, ed., *Honour Bound Onion Lake and the Spirit of Treaty Six: The International Validity of Treaties with Indigenous Peoples* (Copenhagen, Denmark: International Working Group for Indigenous Affairs, 1997) [↑](#footnote-ref-67)
68. See Aboriginal Justice Implementation Commission, “Child Welfare-The Justice System and Aboriginal People” in Report of the Aboriginal Justice Inquiry of Manitoba (November 1999) online: <http://www.ajic.mb.ca/volume.html>. [↑](#footnote-ref-68)
69. *Supra* note 30; see also Murat Yϋkselir and Evan Annett, “Where the kids are: How Indigenous children are over-represented in foster care” *Globe and Mail* (18 April 2016) online: [http://www.theglobeandmail.com/news/national/Indigenous-kids-made-up-almost-half-of-canadian-foster-children-in-2011statscan/article29616843/](http://www.theglobeandmail.com/news/national/indigenous-kids-made-up-almost-half-of-canadian-foster-children-in-2011statscan/article29616843/) [↑](#footnote-ref-69)
70. See Ernie Crey & Suzanne Fournier, *Stolen From Our Embrace: The Abduction of First Nations Children and the Restoration of Aboriginal Communities* (Vancouver: Douglas & McIntyre, 1997). [↑](#footnote-ref-70)
71. Darcy Denton, “Deaths of Alberta aboriginal children in care no ‘fluke of statistics’’ Calgary Herald (1 August 2014) online:

    http://www.edmontonjournal.com/life/Deaths+Alberta+aboriginal+children+care+fluke+statistics/9212384/story.html [↑](#footnote-ref-71)
72. Mary Ellen Turpel-Lafond, Representative for Children and Youth, ‘Too Many Victims Sexualized Violence in the Lives of Children and Youth in Care: An Aggregate Review ‘(October 2016). [↑](#footnote-ref-72)
73. Chinta Puxley, “Manitoba opens Tina Fontaine case to review by children's advocate” The Globe and Mail (15 December 2014) [↑](#footnote-ref-73)
74. ‘Teen in B.C. provincial care dies in fall from hotel window’ B.C. children's advocate calls death of Alex Gervais a tragedy, says ministry 'has a lot to answer for' CBC News (23 September 2015) online: http://www.cbc.ca/news/canada/british-columbia/teen-in-b-c-provincial-care-dies-in-fall-from-hotel-window-1.3240959 [↑](#footnote-ref-74)
75. *Supra* note 58. [↑](#footnote-ref-75)
76. Chrisjohn, *supra* note 57 at 71. [↑](#footnote-ref-76)
77. *Supra* note 19. [↑](#footnote-ref-77)
78. *Supra* note 19. [↑](#footnote-ref-78)
79. “Attawapiskat: Four things to help understand the suicide crisis”, The Globe and Mail (5 January 2017) online: <https://www.theglobeandmail.com/news/national/attawapiskat-four-things-to-help-understand-the-suicidecrisis/article29583059/> [↑](#footnote-ref-79)