

Office of the United Nations High Commissioner for Human Rights
“Towards a better investment in the rights of the child”
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Introduction

1. In response to the call out for papers concerning the rights of the child, we make this submission on behalf of the Treaty Peoples. We submit that the current national and international laws are limited for Indigenous Nations to affect the rights of our children. Our experience of colonization that led to the genocide has affected our ability of the Indigenous Nations of Great Turtle Island (America) to transmit the healthy characteristics of their national identities to the future generations.
2. A concept ‘best interests of the child’ is a colonizer value based judgment. It is a concept that was created to continue the ‘domination and dehumanization’¹ of our Nations. This is genocide. This is the face of colonization that continues to this day.
3. Any discussion towards a better investment in the rights of the child must include an analysis of the genocide that occurs in the process of the forcible removal of Indigenous Peoples’ children from their nations and placed amongst the colonizers. Historically this occurred in the residential school system. The forcible removal that began in the residential school system continues the effects in the current child welfare systems in Canada. Early in the colonization of the western part of Great Turtle Island, our children were removed and placed into residential schools. This system continued in Canada for nearly a hundred years. The lasting effect of generations of children raised away from our nations and our values has created lasting social and physical disconnects from our territories. The forcible transferring destroys the ability of nations such as the Nehiyaw, Anishnaabe and Dene (to name a few) to transmit the healthy characteristics of their nationality to the future generations.
4. These forcible removals are in violation of the *Convention on the Rights of the Child*² and the *Convention on the Prevention and Punishment of the Crime of Genocide*.³ The paper examines the historical background in the residential schools and the effects that are in the child welfare system against the conventions and concludes with recommendations.

History of the Residential School System in Canada

5. Early in the colonization of Great Turtle Island several peace and friendship Treaties were created between the Indigenous Nations and the Crown of Great Britain.⁴ The treaties affirmed the inherent authority possessed by the Indigenous Nations to our nationality, land, laws and governments. We maintain that the authority to protect our land and our children was never relinquished at the making of the Treaties. Canada as a colony of Great Britain (treaty successor) inherited the obligations to implement the Treaties according to the Spirit and Intent.⁵ Instead the state has violated the Treaties through several means. The most important being the forcible transferring of Indigenous Peoples’ children from our own nations to the colonizer’s people and society.
6. The residential schools were created by the State of Canada to *civilize* or ‘absorb’⁶ Indigenous Peoples’ children into Canadian society. The *civilization* process is the foundation of colonial domination and dehumanization. The mandate to civilize is evidenced

in the early policy statements made by government officials and acknowledged in the Royal Commission on Aboriginal Peoples.⁷ John A. MacDonald in 1883 expressed to the House of Commons that the goal was to change the conditions of the ‘savage’ Indian child to a child that would speak, think and write like the ‘white man.’⁸ Legal scholar Kent McNeil affirms that early conceptions of colonial Aboriginal law and policy were based on theories of racial superiority or what he terms ‘social Darwinism.’⁹ Dehumanizing descriptors such as *pagan*, *heathen* and *savage* were applied against our Indigenous Nations and were basis of the forcible removal. The intent was to “kill the Indian in the child.”¹⁰

7. The Canadian government legislated the forcible transferring through its colonial laws.¹¹ The laws convey the intent to destroy Indigenous Peoples’ as Nations by the forcible removal. The laws ensured the compulsory attendance of the children and imprisonment or fines if the parents did not comply with the legislation. The removal was coerced and children were forcibly confined to residential schools for the most formative years of their lives away from loving families, communities, and nations for years at a time. On average the age was 4-16 years of age that children were forcibly confined to the residential schools.
8. It was acknowledged in the drafting stages of the crime of genocide that human groups depend on their children for the continuance of their distinct identities as nations.¹² The forcible removal would lead to the eventual disappearance of the national group. This destruction occurs through the forced transfer that causes the massive and widespread experience of the collective serious bodily and mental harm against Indigenous Peoples’ children. This collective experience is evidenced in many reports, books, and academic articles in Canada.¹³ The collective experience of torture, sexual predatory acts, forced starvation, forced labour, and death by disease causes the massive and collective serious bodily and mental harm against the children.¹⁴
9. The effect of the widespread colonial violence and terror committed against scores of children is that Indigenous Peoples’ collectively were forcibly indoctrinated by the violence that began in the residential school system. An example would be insertion of a needle in the tongue of a child for a prolonged period of time for speaking in the Indigenous language.¹⁵ There is no doubt this torturous experience would compel the child to think, speak and write in the colonial language being imposed over him/her. Throughout the history of the system children were beaten, whipped, shackled, handcuffed, starved and forced into labour by the system. Other examples include the massive widespread experience of sexual violence. It was determined by a Canadian judge that the residential school system was a system of institutionalized pedophilia.¹⁶ There are many other methods and ways that children were dominated and dehumanized. Children grow up into adults and a child that has not had the chance for early healthy human development will exhibit symptoms of a person that has experienced great oppression.
10. The effects are catastrophic because Indigenous children are transmitting trauma and dysfunction onto further generations. The result is the possible disappearance of our distinct identities as national groups as each generation passes off the patterns of trauma and dysfunction. The greatest effect is the dislocation from our territories. Collectively Indigenous Peoples do not remember that we have a relationship of protection and care of our Mother Earth. Children indoctrinated in a colonial language through acts of violence will not remember that Indigenous laws are codified into the languages of our Treaty Peoples.

11. The long term impacts exhibited by Indigenous Peoples/Nations today are the widespread and massive social issues that are rampant in our communities. Suicides, drug and alcohol additions, poverty (to name a few) are the direct result of the residential school era.¹⁷ The result is that over time Indigenous Peoples are collectively forcibly indoctrinated (assimilated) into Canadian society. The worst effect is the dysfunctional parenting patterns exhibited by the survivors.¹⁸

Child Welfare Systems

12. The collective trauma brought about by the residential school phase is then used by the very dominating society that created that trauma (dysfunction) to justify the child welfare system phase of the process. The government of Canada invokes the conditions (traumatic parenting patterns) it created that leads to the mass removal in the child welfare systems. The provincial legislation compels the forcible transferring of Indigenous Peoples' children at catastrophic rates.¹⁹ It is reported that in some provinces 80 percent of children in care are aboriginal, yet they make up only 5 percent of the total population of Canada.²⁰ Under the dominating and dehumanizing policy termed the 'best interests of the child' the colonization process continues.

13. The violence that children endured in the residential school system is experienced by our children in the system today.²¹ The collective serious bodily and mental harm has not ceased. The death rates of children in the system are evidenced by the recent media reports. In the worst case scenario, the forcible removals in the residential school system and the effects in the child welfare system destroy our Nations as our children do not relate to our Indigenous laws, languages, spirituality, cultures, families, and most importantly an identity that embodies a relationship with Mother Earth. The continuance of our national group identity is crucial to our survival as Treaty Peoples. We depend on our children to carry on and transmit to the next generations our distinctiveness as the original nations on Great Turtle Island.

Conclusions

14. We are calling on the High Commissioner for Human Rights to address this most serious and imperative issue. The issue is that our children belong to our Treaty Peoples and Nations, communities and families to protect. The forcible state removal of Indigenous Peoples' children from our Nations into the dominating society (residential schools and child welfare systems) is a violation of the *Convention on the Rights of the Child* which affirms the right of the child to an identity and culture.

15. The forced removals are also in violation of the *Convention on the Prevention and Punishment of the Crime of Genocide*. Articles 2 (b) and (e) stipulate that it is a crime of genocide to forcibly transfer children from one group to another group and to cause the serious or bodily mental harm to members of the group.²² International jurisprudence supports our claim that this is an act of genocide.²³ The specific intent requirement is conveyed by the admitted policy intent to 'kill the Indian in the child,'²⁴ 'general political doctrine' and colonial laws that force the transfer and cause the 'massive, systemic, and wide spread' serious bodily and mental harm brought against Indigenous Peoples' children.²⁵

16. The recommendation is that the colonizer ceases all current forcible removals of our children in the child welfare system in Canada. The solution to this ongoing issue is the self-determination of our Indigenous Nations if we are to recover from the forcible removals of our children.
17. We recommend that the High Commissioner for Human Rights mandate a study and further research on this urgent matter.
18. There should be an appointment of a Special Rapporteur who would report to the High Commissioner and the Human Rights Council on the systemic violation of Indigenous Children who continue to live in a colonial system. There are many studies in other countries around the world that makes such an appointment a high priority.
19. The office of the High Commissioner should encourage other agencies within the UN system to undertake a review of the matters raised in this submission.

¹See 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; see Tamara A. Starblanket, *Genocide: Indigenous Nations and the State of Canada* (LL.M. Thesis, University of Saskatchewan, 2014) [unpublished] [Starblanket].

²*Convention on the Rights of the Child*, 2 September 1990.

³*Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, United Nations Treaty Series 77, articles 2 (b) and (e).

⁴ See the following for a review of treaty as international agreements. Miguel Alfonso-Martinez, (Special Rapporteur), *Final Report: Human Rights of Indigenous People Study on Treaties, agreements and other constructive arrangements between States and indigenous populations*, UN Commission on Human Rights, 1999, E/CN.4/Sub.2/1999/20; 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); see Andrew Gray, "Onion Lake and the Revitalisation of Treaty Six" in ed. Sharon Venne, *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) at 57-127.

⁵*The Queen v. The Secretary of State for Foreign and Commonwealth Affairs, ex parte: The Indian Association of Alberta, Union of new Brunswick Indians, Union of Nova Scotian Indians* [1984] 4 C.N.L.R. 86.

⁶ E. Brian Titley, *A Narrow Vision: Duncan Campbell Scott and the Administration of Indian Affairs in Canada* (Vancouver: University of British Columbia Press, 1986) at 50.

⁷*House of Commons, Debates* (Canada), 46 Vict. (9May 1883), 14: 1107-1108 [MacDonal]; see Canada, Royal Commission on Aboriginal Peoples, "Chapter 10: Residential Schools" vol 1 *Looking Forward, Looking Back* (Ottawa: Canada Communications Group, 1996) [RCAP].

⁸ Macdonald, *ibid.* Macdonald stated, "When the school is on the Reserve the child lives with its parents, who are savages; he is surrounded by savages, and though he may learn to read and write his habits, and training and mode of thought are Indian. He is simply a savage who can read and write....Indian children should be withdrawn as much as possible from the parental influence, and the only way to do that would be to put them in central training industrial schools where they will acquire the habits, modes and thought of white men...."

⁹ See Kent McNeil, *Social Darwinism and Judicial Conceptions of Indian Title in Canada in the 1880s* (1999) 38: 1 JOW 68.

¹⁰See Ottawa, *Statement of Apology to Former Students of the Indian Residential Schools*, June 11, 2008.

¹¹ See *An Act to Amend and consolidate the laws respecting Indians*, S.C. 1880, c. 28; see *The Indian Advancement Act*, R.S.C, 1886 c. 44, s. 137(2) and 138; see *An act further to amend the Indian Act*, 1894, c.32, 57-58 Victoria., s. 11; see *An Act to amend the Indian Act*, S.C. 1920, c. 50, s. 9 and 10.

¹² See Hiram Abtahi & Phillipa Webb, *The Genocide Convention: The Travaux Préparatoires* (Leiden, Netherlands: Martinus Nijhoff Publishers, 2008) Vols. 1 & 2.

¹³ On the transfer causing the serious bodily and mental harm see RCAP, *supra* note 4; see *supra* note 10; see Ward Churchill, *Kill the Indian Save the Man: The Genocidal Impact of American Indian Residential Schools* (San Francisco: City Lights Books, 2004); 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 Elizabeth Furniss, *Victims of Benevolence: The Dark Legacy of the Williams Lake Residential School* (Vancouver: Arsenal Pulp Press, 1992, 1995); see Constance Deiter, *From Our Mother's Arms: The Intergenerational Impact of the Residential Schools in Saskatchewan* (Etobicoke: United Church Publishing House, 1999); see Agnes Grant, *No End of Grief: Indian Residential Schools in Canada* (Winnipeg: Pemmican Publications, 1996) [Grant, No End of Grief]; see P.H. Bryce, *The Story of a National Crime being an Appeal for Justice to the Indians of Canada* (Ottawa: James Hope and Sons, Ltd., 1922); see P.H. Bryce, *Report on the Indian Schools of Manitoba and the Northwest Territories* (Ottawa: Government Printing Bureau, 1907); see Agnes Jack, ed, *Behind Closed Doors: Stories from the Kamloops Indian Residential School* (Penticton: Theytus Books, 2006); see Carl Urion, "Introduction: The Experience of Indian Residential Schooling" (1991) 18 Supplement *Canadian Journal of Native Education*; see Celia Haig-Brown, *Resistance and Renewal: Surviving the Indian Residential School* (Vancouver: Tillacum Library, 1988); see 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); see J.R. Miller, *Shingwauk's Vision: A History of the Native Residential Schools* (Toronto: University of Toronto Press, 1996); 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) [Crey]

¹⁴ See especially See *Prosecutor v. Akayesu* (Case No. ICTR-96-4-T), Judgment, 2 September 1998 [Akayesu]; see Starblanket, *supra* note 1

¹⁵ See especially *supra* note 13.

¹⁶ Grant, No End of Grief, *supra* note 13 at 229; see *R. v. Plint* [1995] B.C.J. No. 3060, March 21, 1995. Hogarth, J.

¹⁷ See Shauna Troniak, "Addressing the Legacy of the Residential Schools," in *Background Paper* (Ottawa: Canada, Library of Parliament, 2011) at 1-3 online: <http://www.parl.gc.ca/Content/LOP/ResearchPublications/2011-76-e.pdf>.

¹⁸ see Patrick J. Morrisette, "The Holocaust of First Nations People: Residual Effects on Parenting and Treatment Implications (1994) 16 (5) Contemporary Family Therapy October 381-392; see Rosalind Ing, "The Effects of Residential Schooling on Native Child-Rearing Practices" (1991) 18 *Canadian Journal of Native Education*; see Linda Bull, "Indian Residential Schooling: A Native Perspective" (1991) 18 Supplement *Canadian Journal of Native Education* at 1-64.

¹⁹ See National Collaborating Centre for Aboriginal Health, "Aboriginal and Non-Aboriginal Children in Child Protection Services" (British Columbia: National Collaborating Centre for Aboriginal Health, 2009-2010) online: <http://nccah.netedit.info/docs/fact%20sheets/child%20and%20youth/NCCAH_fs_childhealth_EN.pdf >; see Emily Alston-O'Connor, "The Sixties Scoop Implications for Social Workers and Social Work Education" online: (2010) 11 *Critical Social Work: An interdisciplinary journal dedicated to social justice* 1 <http://www.uwindsor.ca/criticalsocialwork>.

²⁰ See Cindy Blackstock et. al., "Pathways to the Overrepresentation of Aboriginal Children in Canada's Child Welfare System" (2004) *Social Services Review*, University of Chicago.

²¹ See Crey, *supra* note 13.

²² See Starblanket, *supra* note 1.

²³ For further review please see Starblanket, *ibid*.

²⁴ See *supra* note 10.

²⁵ See International Criminal Tribunal for the former Yugoslavia, Decision of Trial Chamber 1, *Radovan Karadzic, Ratko Mladic* case (Case Nos. IT-95-5-R61 and IT-95-18-R61), Consideration of the Indictment within the framework of Rule 61 of the Rules of Procedure and Evidence at para. 94; see Akayesu, *supra* note 14; see also Starblanket, *supra* note 1.