



**UNITED NATIONS SPECIAL RAPPORTEUR ON
THE RIGHTS OF INDIGENOUS PEOPLES**

Mr. José Francisco Calí-Tzay

Visit to Canada

1-10 March 2023

End of Mission Statement

I would like to start by recognizing that we are on the Traditional Unceded Territory of the Anishinaabe Algonquin Nation.

In my capacity as the United Nations Special Rapporteur on the rights of Indigenous Peoples, I am pleased to share my preliminary observations and recommendations at the end of my official visit to Canada that took place from 1-10 March 2023. The purpose of my visit was to understand, in the spirit of mutual cooperation and constructive dialogue, how Canada implements the rights of Indigenous Peoples, in order to identify good practices and possible obstacles and to present concrete recommendations for overcoming the challenges I observed. My final assessment and recommendations to Canada will be presented in a written report to the Human Rights Council at its 54th Session later this year. Unfortunately, due to the limited time we have, my preliminary observations will not reflect the full range of issues brought to my attention, nor all the initiatives of federal and provincial governments related to the rights of Indigenous Peoples.

Let me start by thanking the Government of Canada for its cooperation with my mandate by inviting me to visit, for the welcome extended by its representatives, and for its openness and cooperation before and during the visit. I also offer my deep gratitude to Indigenous Peoples who welcomed me to their territories, especially those who traveled to share their stories and concerns with me. I am inspired by their strength and determination to continue defending their rights and seeking justice. I would also like to thank the Governments of Québec, Manitoba and British Columbia for the cooperation extended to my mandate. I regret that the government of Alberta declined my invitation to meet, especially considering the concerning situation of Indigenous Peoples in the province.

During my visit, I have had the opportunity to meet with the Governor General of Canada, the Minister of Crown-Indigenous Relations, the Minister of Justice, the Minister of Indigenous Services Canada, the Minister of Northern Affairs, representatives of Global Affairs Canada, representatives of the federal and provincial governments, members of Parliament and—the judiciary, the Canadian Human Rights Commission, the Canadian Ombudsperson for Responsible Enterprise, the National Centre for Truth and Reconciliation, the Independent Special Interlocutor for Missing Children and Unmarked Graves and Burial Sites, former members of the Truth and Reconciliation Commission and the National Inquiry on Missing and Murdered Indigenous Women and Girls, the International Commission on Missing Persons and two federal prisons. I heard directly from a broad range of First Nations, Inuit, and Métis governments, organisations and individuals in Ontario, Québec, Manitoba, Alberta and British Columbia, as well as civil society organisations working for their rights.

I acknowledge the progress made by Canada towards the promotion and protection of the rights of Indigenous Peoples since the visits of my predecessors in 2003 and 2013 and the many efforts by Canada to implement their recommendations. During my visit I was informed of both good practices and possible obstacles to the promotion and protection of the rights of Indigenous Peoples. I commend the Canadian government on a number of positive measures including the passage of Bill C-15, the United Nations Declaration on the Rights of Indigenous Peoples Act and a similar law enacted by the province of British Columbia. I encourage all provinces and territories to make similar commitments and urge all levels of government to implement these laws in accordance with international human rights standards. I will be closely monitoring the process to finalize and adopt the National Action Plan for implementation of Bill C-15, in consultation with Indigenous Peoples and I am interested to see how Canada will harmonize the Indian Act with the rights set out in the United Nations Declaration on the Rights of Indigenous Peoples Act.

Since the visit of my predecessor in 2013, the Government of Canada and its provinces have taken significant steps to engage in meaningful negotiations to transfer governance responsibilities to First Nations, Inuit and Métis authorities in relation to criminal justice, child welfare, health and other services. I congratulate the Government of Canada for signing self-government agreements with three Métis Nations. The establishment of 50 self-government negotiation tables across the

country is another important step toward reconciliation and overcoming the negative legacies of colonialism. For this reason, I encourage Canada to provide adequate funding for strengthening this process and promoting a nation-to-nation relationship. I further commend Canada for advancing representation of Indigenous Peoples in political and public life at the highest levels by appointing Indigenous women to the office of Governor General and to the Supreme Court of Canada.

I welcome the Final Report (2015) of the Truth and Reconciliation Commission (TRC) and its 94 Calls to Action and the Final Report (2019) of the National Inquiry on Missing and Murdered Indigenous Women and Girls (MMIWG) that included 231 Calls for Justice. In 2021, the Government of Canada passed legislation to mark September 30 as a National Day for Truth and Reconciliation, to observe the ongoing impacts of Residential Schools. I encourage all provinces and territories to make the same acknowledgment.

Despite the positive measures taken by Canada, Indigenous Peoples continue to face serious obstacles to achieving full enjoyment of their individual and collective rights. The current human rights situation of Indigenous Peoples in Canada cannot be fully understood without considering the legacy of residential schools and the intergenerational trauma they created. Over 150,000 First Nations, Métis and Inuit children were separated from their families and forced to attend the government-funded schools between the 1870s and 1997. In every place I visited, I heard about how Indian Residential Schools, more appropriately termed ‘institutions,’ fractured familial and community ties. For over 100 years, successive generations of children, many from the same communities and families, were sent to these institutions and never returned in numbers that may never be fully known. This experience was largely hidden from Canada’s history until the 2021 discovery of 215 unmarked graves at Kamloops residential school captured the world’s attention.

Investigations into unmarked graves and efforts to collect archival information have revealed numerous accounts of Indigenous children who entered residential schools, hospitals and mental health facilities and went missing, often with no information provided to their families. Children were subjected to physical and sexual abuse and many survivors now live with post-traumatic stress, substance abuse, depression and other mental health issues. Access to information is critical for these families looking for closure and healing. The Catholic Church, healthcare facilities and any other institutions holding records are encouraged to disclose this documentation. I encourage Canada and the provinces to make it easier for survivors and the families of missing children to access information by taking legislative and other measures.

During my visit, I observed that the legacies of colonialism and the history of abuse and discrimination have left survivors and their families with a deep mistrust of Canadian institutions. First Nations, Métis and Inuit peoples want to lead the repatriation of the remains of their missing children in a culturally relevant way with adequate financial support from Canada to cover the costs of forensic investigation, exhumation and/or commemoration healing and wellness.

Numerous concerns were presented about the 2023 Technical Arrangement with the International Commission on Missing Persons that Canada reportedly concluded without consulting Indigenous Peoples. I fully support Indigenous Peoples calls for a survivor-centered, indigenous-led investigation to mitigate against further harm in accordance with the TRC Call to Action 76. Existing investigation processes of burial sites must respect Indigenous Peoples' laws and protocols relating to grieving, death, and burial practices. There is a significant need to fund culturally relevant Indigenous health and well-being supports to address trauma and to remove obstacles to accessing burial sites, particularly when they are located on private lands.

I welcome the Federal Government's creation of the National Advisory Committee on Residential Schools, Missing Children and Unmarked Burials and the appointment of an Independent Special Interlocutor for Missing Children and Unmarked Graves and Burial Sites. The Federal Government has also provided dedicated funding for Indigenous Peoples to undertake research to identify missing children and unmarked burials. However, concerns were expressed by Indigenous representatives that the nature of funding agreements does not allow sufficient time to conduct investigations; is limited to communities whose lands encompass Residential Schools; and does not permit funds to be used for legal assistance, exhumation and DNA matching.

I received disturbing reports about the rise of 'denialism' in relation to the discovery of unmarked graves and call on Canada to counter misinformation about residential schools with education and awareness-raising. Educating the public about the history of Residential Schools requires the preservation of a large body of evidence documenting grave and systemic violations of Indigenous children's human rights who were forced to attend Canadian Residential Schools. The Supreme Court of Canada's order to destroy testimonies and other records in 2027 frustrates education efforts and may obstruct future attempts to collect evidence of physical, sexual, and emotional abuse and other criminal wrongdoing, including potential information about the location of unmarked burial sites. I call upon the Government of Canada to urgently act to preserve this documentation in cooperation with Indigenous Peoples.

Canada has taken important steps towards recognition and redress of the abuse and trauma caused by residential schools and day schools. The House of Commons unanimously recognized the Residential School system as genocide on 27 October 2022, building on the 2015 finding of the Truth and Reconciliation Commission of Canada. The government of Canada has also settled and is continuing to resolve a number of class action claims of survivors and their families. However full resolution of Residential School claims is necessary to achieve true reconciliation, including for Catholic church-run institutions and residential schools established by provinces. I call upon the Government to favorably settle the claims of Métis survivors and their families. I also learned that some survivors who suffered severe trauma were not emotionally prepared to present claims by the government's deadline but may wish to do so in the future. In accordance with general principles of international law that statutes of limitations should not apply to grave crimes like the

ones committed in Residential Schools, I call upon the Government of Canada to reopen the claims process for those excluded from initial settlement.

Canada has embarked on an important journey towards reconciliation that must dismantle the foundation of structural racial discrimination against Indigenous Peoples. The TRC Calls for Action have shown the way forward and should be fully implemented. As I heard during my visit, Indigenous Peoples want the Government of Canada to respect their rights on an equal footing, including but not limited to their rights to self-determination, lands, territories and resources, as well as the right to free, prior and informed consent.

The child welfare system is continuing the removal of Indigenous children from their families and communities and reproducing the negative impacts of Residential Schools. Despite comprising 7.7% of the Canadian population, over 53% of children in care are indigenous, up to 90% in some provinces. The majority of Indigenous children removed are placed with non-indigenous families, which often results in children losing their language, culture, identity and family ties. Often the decision to place Indigenous children in foster care is due to a lack of adequate housing on reserves and sometimes occurs without consulting Indigenous Peoples.

I recall that General Comment 11 of the Convention on the Rights of the Child requires that the best interest of Indigenous children be interpreted by taking into account cultural considerations and in consultation with Indigenous Peoples. For this reason, I welcome Canada's passage of Bill C-92 which acknowledges the right of Indigenous Peoples' self-government over child welfare services; however, it is discouraging to hear that some provinces have challenged this law in the courts.

Entering the child welfare system increases the risk of incarceration and of becoming murdered or missing. Indigenous youth, who make up 8% of the population in Canada, are incarcerated at a rate of around 50%. Canada must adopt holistic reforms in consultation with Indigenous Peoples to address the root causes of these problems, including racial discrimination, poverty, inadequate housing and the lack of culturally appropriate interpretation of the best interest of the Indigenous child.

Intergenerational trauma caused by residential schools and structural racial discrimination have also led to the present-day crisis concerning missing and murdered indigenous women and girls. During my visit I was alarmed by reports and testimonies about missing and murdered Indigenous women and girls. I welcome Canada's positive response to the recommendations of my predecessor and the TRC Call to Action 41 to hold a National Inquiry. In 2019, the National Inquiry was concluded and a Final Report was delivered that included 231 Calls for Justice directed at governments, institutions, social service providers, industries and all Canadians. In spite of the reports of the Royal Commission on Aboriginal Peoples (1996), TRC Calls to Action (2015) and MMIWG Calls for Justice (2019), the number of missing and murdered Indigenous women and girls continues to increase and escalated during the COVID-19 pandemic.

I commend Canada for its 2021 MMIWG National Action Plan and Federal Pathway investment of over \$2.2 billion. However, Indigenous Peoples and organisations report that this is not enough to address the growing crisis and have as a result launched their own initiatives to reduce violence against MMIWG and gender-diverse people. I welcome their initiatives, such as the establishment of national databases to track, map, and publish cases of MMIWG, and the creation of alert systems. Of particular concern is the situation unfolding in Winnipeg, Manitoba and the challenges that families have encountered in recovering the bodies of missing and murdered Indigenous women from a local landfill. I also heard pleas to investigate the situation of missing and murdered Indigenous men and boys.

The overrepresentation of Indigenous Peoples in the criminal justice system must be understood in the context of colonialism and the intergenerational trauma related to the residential schools. Disproportionately high rates of Indigenous Peoples in jails and prisons have been linked to structural racial discrimination at every level, including policing, the judicial system, and corrections. Indigenous women and gender-diverse peoples are the most impacted, representing about 50% of females incarcerated in Canada even though they make up less than 4% of the country's population. In the central provinces, including Saskatchewan and Manitoba, the numbers are as high as 85%. Indigenous Peoples are disproportionately held in higher security settings and have limited access to culturally appropriate and responsive rehabilitative programming and are disproportionately subjected to the use of force and isolation. From what I observed, specific accommodations were not in place for gender-diverse prisoners.

I was informed that Indigenous Peoples are often victims of racial profiling, arbitrary and discriminatory arrests, and excessive use of force by law enforcement that, in some cases, has resulted in death. In some provinces, victims and their relatives have not found justice. The over-policing of Indigenous Peoples, coupled with a lack of diversity and representation of Indigenous Peoples in the legal system including among judges, lawyers, and juries has significantly contributed to their over-incarceration. For this reason, I invite Canada to support and adequately fund initiatives to create indigenous-led policing courts and correctional services. Indigenous Peoples' distrust of the criminal justice system can only be overcome by addressing structural racial discrimination and fully implementing TRC Calls to Action 25-42. In particular, I invite Canada to invest in community-based, Indigenous-led policies with the aim of disrupting the poverty-to-prison 'pipeline' and embracing a justice strategy that includes recognition of Indigenous legal systems. I invite Canada to support Indigenous courts with adequate resources and to implement Section 81 of the Criminal Code in consultation with Indigenous Peoples to create alternatives to incarceration based on Indigenous legal orders. These recommendations echo the many calls I received from Indigenous Peoples for increased and more flexible funding for health, education, housing and social services so they can implement their own culturally informed programs.

During my visit, I observed that the situation of access to economic, social, and cultural rights has not improved since the visit of my predecessor in 2013. The enduring effects of racial

discrimination continue to cause displacement and dispossession of Indigenous Peoples from their lands, and create situations of homelessness, low educational achievement, unemployment, depression, and suicide. Indigenous women, girls, two spirited, lesbian, gay and gender diverse people, and persons with disabilities are overrepresented in almost all aspects of housing insecurity, homelessness, and poverty, and are disproportionately impacted by violence and trauma linked to precarious living situations. Indigenous Peoples shared with me their distress over the high levels of drug use and mental illness among Indigenous children and youth, which they linked to the intergenerational trauma and loss of culture caused by Residential Schools and the ongoing impacts of racial discrimination.

Addressing the indigenous housing situation is paramount to overcoming the cycle of poverty, marginalization, and insecurity that Indigenous persons are experiencing. Additionally, it is a key component of the process of reconciliation, as the current housing crisis is a direct consequence of the loss of lands and territories. Indigenous Peoples are more likely to live in substandard, overcrowded, and culturally inadequate housing than the rest of the Canadian population. This situation constitutes a barrier to securing stable employment, education, and access to social services. The Federal Housing Advocate stresses the urgent need to develop and deliver “an adequately funded for-Indigenous, by-Indigenous urban, rural and northern Indigenous housing strategy” that will “equip Indigenous governments to respond to the housing crises in their communities.”

Indigenous languages are the repository of collective knowledge, history, and memory. Languages, encapsulate uniquely indigenous ways of thinking and being. During the visit, Indigenous Residential School survivors told me that they were forbidden from speaking their Indigenous languages in Residential Schools, and in some cases were punished for it. Today, the United Nations Educational, Scientific and Cultural Organization (UNESCO) indicates that 75% of indigenous languages in Canada are in danger of disappearing. I call upon the Government of Canada to adopt the necessary measures to promote language recovery, conservation, and revitalization including implementation of TRC Calls to Action 14-15. I refer Canada to my 2021 communication ([CAN 3/2021](#)) that expresses concern over the persistent challenges faced by the Inuit of Nunavut in receiving essential public services in their language, in the education, health care and criminal justice systems. Indigenous Peoples in Québec expressed concern over recent legislative changes affecting language of instruction that are causing indigenous children and youth to drop out of school. Bill 96, *An Act respecting French as the official and common language of Québec* reinforces Québec's Charter of the French Language which does not apply to First Nations. Despite this, the law requires Indigenous high school and college students to take courses in French.

Indigenous Peoples experience the highest rates of tuberculosis and other communicable diseases, chronic health conditions and mental health issues. Indigenous Peoples also face unique barriers to access health services due to historical mistrust and structural racism. The tragic death of Joyce

Echaquan in 2020 highlights the reality of systemic racism in the healthcare system. Echaquan died at Joliette Hospital, nearly 300 kilometers from her community, Manawan First Nation. She recorded a video depicting racist treatment by hospital staff before she died without receiving the medical care she required. Indigenous Peoples are calling for the adoption of “Joyce’s Principle” to guarantee all Indigenous Peoples the right of equitable access, without discrimination, to all social and health services, as well as the right to enjoy the highest attainable standard of physical, mental, emotional, and spiritual health in accordance with the UN Declaration on the Rights of Indigenous Peoples.

I am particularly concerned about the forced and coerced sterilization of Indigenous women. The Truth and Reconciliation Commission, the National Inquiry on Missing and Murdered Indigenous Women and Girls, and the 2021 and 2022 Senate hearings have all identified forced and coerced sterilization as part of a continuum of violence against Indigenous women in the health care systems. I invite Canada to launch a formal investigation to establish policies and accountability mechanisms, and to meet with survivors to discuss options for redress and justice.

I reiterate my predecessor’s recommendation to remove any existing legal barriers to the effective exercise of indigenous self-government, including those contained in the Indian Act. As Indigenous Peoples explained to me, the Indian Act has prevented them from exercising their rights to self-determination and self-government and the right to assert their identity. Currently, the federal government has the authority to decide who has First Nations status, forcibly shaping the identities of thousands of Indigenous persons. Indigenous women shared with me that through sex discrimination in the Indian Act, thousands of Indigenous women and their descendants are denied status and associated benefits, including health care for themselves and their children. They expressed concern about Canada legislating their extinction by eliminating the First Nations status over time. I recognize the steps taken by the Government of Canada to address this discrimination through Bill S-3 but recommend further amendments to the Indian Act to eliminate the remaining discrimination, to support registration by women and their descendants newly eligible for status, and to create an affordable, reliable, timely, and accessible remedy to compensate those that have suffered the effects of discrimination.

The relationship of Indigenous Peoples with their lands and territories has a central role in defining their identity as distinct peoples. I repeatedly heard, during the course of my visit, that true reconciliation can only be achieved by respecting existing treaties and providing restitution and compensation for the loss of lands, territories and resources. I welcome the 2017 decision of the Supreme Court of Canada, *Tsilhqot’in Nation v British Columbia*, the first declaration of Aboriginal title in Canadian history. However, I was informed that due to high costs and complex judicial and treaty negotiation processes, some Indigenous Peoples have to abandon their land claims. Also, I heard of how trust is broken when the federal and provincial governments continue exploiting lands and resources while modern treaties are in the process of being negotiated.

During my visit, I was informed that a large number of megaprojects in Indigenous territories proceed without good faith consultation and in the absence of obtaining Indigenous Peoples' free, prior and informed consent as, in the case of Trans Mountain Pipeline. I am also concerned about the ongoing militarization of Indigenous lands and the criminalization of Indigenous human rights defenders resisting the Trans Mountain and Coastal GasLink pipelines in British Columbia. I urge the Government of Canada to end these violations and to adopt adequate measures to guarantee Indigenous Peoples' right to consultation and free, prior and informed consent, and their rights to lands, territories and resources.

I listened to testimonies of Indigenous Peoples in Ontario that shared the devastating health consequences of decades of mercury contamination of the Wabigoon and English rivers resulting in the chronic poisoning of their people, including children. I call upon the government of Canada to take all the necessary steps to provide effective remedies and adequate compensation. The impacts of climate change alongside hydroelectric power projects and clear-cutting of forests in the territory of Indigenous Peoples in Québec has negatively reshaped their subsistence lifestyles, leading to the loss of culturally significant species such as caribou. Now they are fighting to maintain their cultural and indigenous knowledge and ask the provincial government to engage in a meaningful consultation to address effective remedies, including restitution of land and compensation for the loss of resources.

Indigenous Peoples are increasingly experiencing natural disasters and other emergency situations such as wildfires, flooding, deforestation, and extreme weather events, often due to or exacerbated by the activities of extractive industries. Climate change, including the threat of displacement from coastal erosion, has created new challenges for housing security. I call upon the Government of Canada to consult with Indigenous Peoples to address these challenges including support for Indigenous-led initiatives to conserve biodiversity and prevent environmental disasters and degradation. I reiterate the findings from my 2022 thematic report to the Human Rights Council that Indigenous women are active change agents in society and champions of sustainability, their scientific knowledge has a key role to play in safeguarding ecosystems and ensuring environmental justice and equity.

Finally, I would like to stress, that on several occasions, this mandate has expressed concern that Indigenous Peoples around the world are suffering negative, sometimes devastating consequences from Canadian extractive industries, mainly mining operations. I welcome the recent creation of the Canadian Ombudsperson for Responsible Enterprise (CORE) in 2019 and look with interest to future developments. I call upon Canada to recognise its extraterritorial human rights obligations to ensure that Canadian transnational companies are held accountable for human rights violations committed abroad. The obligation to protect, respect, and fulfill human rights, recognized under international human rights law entails a duty on the part of the State not only to refrain from violating human rights but to exercise due diligence to prevent and protect individuals from abuse committed by non-State actors. I call upon the Government of Canada to uphold this important

principle of international law. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate (UN Guiding Principles on Business and Human Rights) and the State has extraterritorial obligations to take steps to prevent and redress infringements of these rights committed abroad by business entities over which it exercises control. (CESCR General Recommendation 24 (2017)).

I would like to end my statement by reiterating that Indigenous Peoples and individuals should be free from any kind of racial discrimination, in the exercise of their rights. Human rights are universal, indivisible and interdependent, and all Indigenous Peoples should have equal rights and opportunities. I urge the Government of Canada, the provinces and territories to use this momentum to advance reconciliation based on the nation-to-nation relationship with Indigenous Peoples. I would like to stress the reassurances conveyed by Canada that it is working towards a transformative future that respects and protects Indigenous Peoples rights to self-determination, lands, territories and resources.

I thank you for your attention.