EVERY 66 HOURS. DEAD OR DISAPPEARED. A COLONIAL GENDERED LENS ON GENOCIDE: CASE STUDY ON CANADA'S GENOCIDE AGAINST INDIGENOUS WOMEN, GIRLS, AND 2SLGBTQQIA PEOPLE

Megan Uren[*]

ABSTRACT

Genocide is happening today, and it will be happening tomorrow. It is not yet time to tell volunteers to stop dredging the Red River for dead bodies of Indigenous women and girls nor time for red dresses to stop being hung on the Highway of Tears. There are dead bodies in the water. There are missing bodies who were taken along wooded highways. . .

This article evaluates the current rates of violence against Indigenous women in Canada within (1) the greater context of an ongoing colonial genocide against Indigenous peoples and (2) with a narrow-gendered lens on women. First, I will provide background on the international legal definition of genocide, and the perceptions behind physical, biological, and cultural genocide. Next, I will compare how colonial genocide differs from the Holocaust protype of genocide. Then, I will outline how colonial genocide against Indigenous peoples in Canada has evolved over time by dividing the centuries-long genocide into three broad stages. The first stage of colonial genocide began during the onset of colonial invasion in North America and was the most lethal stage in terms of reducing total Indigenous population by massacres, disease, and war. The second stage of colonial genocide took place in the twentieth century and was characterized by a shift to government state policy which fueled the perpetration and continuance of genocide intended to destroy the social unit of Indigenous communities (namely the Indian Act, the Residential Schools system, and the Sixties Scoop). The third stage is the modern genocidal violence perpetrated against Indigenous women, girls, and Two Spirit, lesbian, gay, bisexual, transgender, queer, questioning, intersex and asexual (2SLGBTQQIA) people. Reimagining and reexamining genocide through a colonial and gendered lens reveals how genocide evolves over time and mutates in response to the resilience of the targeted group. Understanding how the current stage of violence against Indigenous women, girls, and 2SLGBTQQIA people manifested

[*] Student at the University of Denver Sturm College of Law from Glenwood Springs, CO. I earned my B.A. from Trinity University in 2020 to which I owe sincere thanks to Professor Rosa Aloisi for introducing me to genocide studies and international academic experiences that have fueled my ongoing research on genocide and women's issues. Special thanks to the Editors of the Denver Journal of International Law and Policy as well.

requires an examination of past evolving forms of genocide. Finally, I will return to the international legal definition of genocide and outline how throughout each stage of the three stages of colonial genocide, different genocidal acts align with the international legal definition of the crime of genocide.

ACKNOWLEDGING GENERALIZATIONS AND TERM LIMITATIONS OF ANALYSIS

First, while there is debate on the specific term to encompass multiple Indigenous, Aboriginal, and Native peoples, in my analysis I selected the terms Indigenous and Indigenous peoples, mirroring the terminology of the United Nations Declaration on the Rights of Indigenous Peoples.

Second, my analysis does not distinguish specific histories and current statistics between different tribes of Indigenous people in Canada. Canada's Constitution legally recognizes three categories of Indigenous peoples: Inuit, Métis, and First Nations; however, the diversity of Indigenous people in Canada encompasses more than seventy different spoken languages and cultures.[1] It is important to note that there are multiple Indigenous bands throughout Canada who have differing historical experiences with colonial genocide with varying scales of intensity over time. While Indigenous peoples are not "one homogenous group," collectively Indigenous peoples are "targeted due to their distinct culture, language, spirituality, occupation of traditional land" and therefore for the purposes of this analysis are considered a collective protected group under the international prohibition against genocide.[2]

Third, another challenge in the study of colonial genocide is quantifying a precise death count. Statistics of deaths throughout the centuries are only estimates, and in recent decades remain estimates due to the government lacking records and underreporting from Indigenous communities. This is also true for the estimated statistics on the murdered and disappeared Indigenous women throughout the past years. This is challenging because without a concrete number, it is hard to conceptualize the magnitude of loss. The paradigm of colonial genocide is full of many intangibles, including precise death count.

Fourth, for purposes of simplicity, I refer to Canada as the nation state for the genocide taking place. Importantly, the nation-state of Canada was not established until 1867, well after the onset of colonial genocide from European invasion on Indigenous lands.

Fifth, for purposes of analytical organization, I divided Canada's colonial genocide into three broad generalized stages: (1) initial outright murder during the onset of colonialism, (2) genocidal state implemented policies, and (3) modern genocidal violence against indigenous women, girls and Two Spirit, lesbian, gay, bisexual,

1. THE NATIONAL INQUIRY INTO MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS (MMIWG), A LEGAL ANALYSIS OF GENOCIDE: SUPPLEMENTARY REPORT OF THE NATIONAL INQUIRY INTO MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS, 13 (The National Inquiry eds., 2019) https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Supplementary-Report_Genocide.pdf [hereinafter MMIWG LEGAL ANALYSIS]; Erin Hanson et al., *The Residential School System*, FIRST NATION & INDIGENOUS STUD. AT UNIV. OF B. C. (Sept. 2020) https://indigenousfoundations.arts.ubc.ca/the_residential_school_system/.

2. MMIWG LEGAL ANALYSIS, *supra* note 1, at 13.

transgender, queer, questioning, intersex and asexual (2SLGBTQQIA) people. This is a broad oversimplification of the timespan of centuries-long colonial genocide; however, my division of different historical stages seeks to separate the timeline of expressed outright slaughter from that of state legislated destructive action to understand how the distinct stages interact to reinforce the most modern stage of genocide.

Sixth, my analysis examines genocide through a gendered lens. Reflecting the National Inquiry into the Missing and Murdered Indigenous Women and Girls, women and girls, along with 2SLGBTQQIA peoples are recognized in analysis. 2SLGBTQQIA peoples encompass two-Spirit, lesbian, gay, bisexual, transgender, queer, questioning, intersex, and asexual peoples.[3] Parts of the analysis narrow only to women and girls due to statistic-based reporting; however, the analysis seeks to encompass 2SLGBTQQIA peoples into the gendered context of modern genocidal violence rates. By focusing analysis on colonial genocide and its current manifestation toward Indigenous women, I am not discounting the colonial genocidal experience of Indigenous men. This article seeks to expose how the colonial genocide has resulted in a modern genocide against women specifically. Colonial genocide includes patriarchal indoctrination of European colonial social and political structures that impose inferiority on Indigenous women in both Canadian society and within their modern Indigenous communities, something that is not experienced by Indigenous men. Further, the most recent form of genocide in Canada against women is a "very gender-specific issue" because the violence against Indigenous women and girls "is committed almost exclusively by men (Indigenous and non-Indigenous)."[4]

Seventh, the term "missing" is a misnomer. "Missing" may imply that women and girls have temporarily ran away or are temporarily lost. In reality the term "missing" encompasses women and girls forcibly taken against their will or whose bodies have not yet been found.[5] The reality is far more "sinister" than the word "missing" may imply.[6] It is more accurate to term these women and girls "disappeared" since it involves the "conscious act of others involved (usually men) taking them from their friends, families, support networks, communities, and nations."[7] Disappeared is the term I will mainly use throughout this paper.

Lastly, genocide studies are intersectional, including, but not limited to the study of, law, politics, history, and cultural studies. Lastly, this analysis acknowledges the intersectionality of genocide, which includes aspecs of law, politics, and history.

---

3. THE NATIONAL INQUIRY INTO MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS (MMIWG), RECLAIMING POWER AND PLACE: EXECUTIVE SUMMARY OF THE FINAL REPORT OF THE NATIONAL INQUIRY INTO MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS, 1a (The National Inquiry eds., 2019) https://www.mmiwg-ffada.ca/final-report/ ISBN: 978-0-660-30951-4 [hereinafter MMIWG EXECUTIVE SUMMARY].

4. Pamela Palmater, *Shining Light on the Dark Places: Addressing Police Racism and Sexualized Violence against Indigenous Women and Girls in the National Inquiry*, 28 CANADIAN J. WOMEN AND L. 253, 258 (2016).

5. *Id.* at 255.

6. *Id.*

7. *Id.*

I. INTRODUCTION

"Never again" was the refrain that rang throughout the international community after the horrific genocide of the WWII Holocaust left six million Jewish people murdered within a few years. However, while the notion of brutal bloodshed sourced in ethnic hatred is conceptualized as something of the past–incapable of replication–"never again!", this is not the reality. In Rwanda in 1994, genocide happened again; over a half of a million Tutsi people, a minority ethnic group, were murdered.[8] Then, only one year later in Srebrenica, Bosnia-Herzegovina, on a continent perceived as civilized and globally dominant, genocide materialized yet again with the largest ethnic massacre in Europe since WWII: in July 1995, while the world stood by, over 8,000 Bosnian Muslim men and boys were slaughtered and plowed into mass graves.[9] Despite the perception of genocide as a horror of the past, never to be repeated, genocide is still happening today.

A. Genocide in Canada Today

Approximately every sixty-six hours, one woman is murdered or goes missing in Canada.[10] Within the past thirty years, the number of reported murdered cases and missing reports has collectively surpassed 4,000 women and girls, although the number in reality is likely higher to account for unreported and unsolved cases.[11] In addition, Indigenous women in Canada are sixteen times more likely than Caucasian women to be murdered or disappeared.[12] This gendered violence is not a new phenomenon but is connected to the longevity of a colonial genocide that has been happening since the onset of European colonialism in North America.

The most recent murder to spark media coverage and to create political pressure to address violence against Indigenous women and girls was a violent murder that took place in 2014.[13] Fifteen-year-old Tina Fontaine's body was pulled from Winnipeg's Red River with a subsequent acquittal of the white man who murdered her.[14] This murder of a child was especially infuriating because it occurred as a result of multiple stages of failed government action. As Pam Palmater writes, it is important to understand that Tina did not "slip through the cracks" but instead, "at several points in her young life police and other state officials watched her death unfold in

8. History.com Editors, *Rwandan Genocide*, HISTORY (Oct. 14, 2009) https://www.history.com/topics/africa/rwandan-genocide.

9. Sabina Niksic & Eldar Emric, *25 years on, Sbrebenica dead still being identified, buried*, WASHINGTON POST (July 9, 2020) https://www.washingtonpost.com/world/europe/25-years-on-srebrenica-dead-still-being-identified-buried/2020/07/09/16515280-c1b8-11ea-8908-68a2b9eae9e0_story.html.

10. Calculated from Indigenous internal statistics that calculated 4,000 Indigenous women murdered or missing over the past 30 years, or 3 a week, which I reduced to one every 66 hours; 4,000 estimates based on MMIWG EXECUTIVE SUMMARY.

11. *Important Facts*, ASSEMB. OF FIRST NATIONS, https://www.afn.ca/policy-sectors/mmiwg-end-violence/(last visited Feb. 4, 2022).

12. Meredith Betz, *Report Finds Violence Against Indigenous Women in Canada at Genocide Levels,* NON PROFIT Q. (June 10, 2019) https://nonprofitquarterly.org/report-finds-violence-against-indigenous-women-in-canada-at-genocide-levels/.

13. *Id.*

14. *Id.* The man was ultimately acquitted despite the strong evidence and widespread knowledge that he was Tina's killer.

slow motion."[15] Shortly before her death, police found Tina with a fifty-three-year-old intoxicated man, and despite identifying her as a foster care child, the police released her rather than ensure she was brought somewhere safe; then when later found unconscious, Tina was taken to the hospital released to Child and Family Services who placed her in a hotel.[16] Tina then disappeared again from the hotel housing foster children before her murder.[17] In response to public outrage surrounding the details of her murder, the Canadian Prime Minister allocated over $50 million for the creation of National Inquiry into Murdered and Missing Indigenous Women and Girls Inquiry (MMIWG or the Inquiry) to compile a report on violence against Indigenous Women and recommendations for prevention and solutions.[18] In 2019, the MMIWG heard testimony and evidence regarding violence perpetrated against Indigenous women, girls, and 2SLGBTQQIA people, and decided that this violence amounted to genocide and identified 231 recommendations for the Canadian government.[19] The Inquiry demanded that the Canadian government recognize its role in perpetuating a "deliberate race, identity, and gender-based genocide."[20] The Inquiry formalized what has been long recongized and endured in Indigenous communities – genocide is and has been happening, and the past and current Canadian government is to blame.[21]

B. Genocide: A Colonial Gendered Analysis

This article analyzes genocide through a colonial gendered lens and focuses on how genocide evolves in a colonial context over time, mutating to target the protected group. In the case of Canada, the current rates of disappeared and murdered Indigenous women represent the most recent evolved stage of colonial genocide. To understand the current rates of violence, the origins and evolving character of colonial genocide must be first understood. Colonial genocide against Indigenous peoples has existed since the onset of colonialism and has been reinforced over time by the political and social structures of colonialism. Further, these patriarchial structures empower the modern stage of genocide targeting Indigenous women and girls today.

Examining colonial genocide also corrects the misguided perception of what genocide is and can be. Colonial genocide challenges the fixed time, length, and mass murder prototype of the Holocaust. By first decolonizing the context surrounding the legal definition of genocide, genocide can be reimagined to more accurately reflect its presence in Indigenous communities throughout colonial history, and its disproportionately gender-based impact. Additionally, decolonizing the

15. Sherene H. Razack, *Sexualized Violence and Colonialism: Reflections on the Inquiry into Missing and Murdered Indigenous Women*, 28:2 CANADIAN J. WOMEN AND L., i (2016).

16. *Id.*

17. *Id.*

18. Dan Bilefsky, *'Why Are So Many of Our Girls Dying?' Canada Grapples With Violence Against Indigenous Women*, N.Y. TIMES, (May 30, 2019) https://www.nytimes.com/2019/05/30/world/canada/canada-indigenous-violence.html.

19. MMIWG EXECUTIVE SUMMARY, *supra* note 3, at 5.

20. *Id.*

21. Gwen Brodsky, *Indian Act Sex Discrimination: Enough Inquiry Already, Just Fix It*, 28:2 CANADIAN J. WOMEN AND L. 314 (2016).

international legal definition of genocide compels "imagining what international law could be if it had not itself been implicated historically in colonization."[22] There is therefore an irony in not only denouncing the crime of genocide itself, but also denouncing the "limitations of the international law on genocide" within the colonialized context the law was codified.[23]

C. Roadmap

First, I will examine the origin of the international legal definition of genocide and analyze the political dynamics at play during the creation of the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG or Genocide Convection). Second, I will discuss the distinctions and connections between physical and biological genocide compared to cultural genocide. Despite the Genocide Convention's overall removal of cultural genocide (apart from Article 2(e)), international case law reaffirms that cultural destruction is a fundamental cornerstone of genocide. Next, I trace the prior stages of Canada's colonial genocide: (1) widespread killing, intentional disease spread, and land removal; (2) State genocidal policy that legalized physical, biological, and cultural destruction; and (3) current rates of murdered and disappeared Indigenous Women, Girls, and 2SLGBTQQIA people. All stages engendered damaging patriarchal inferior norms onto Indigenous women, girls, and 2SLGBTQQIA people. Understanding the evolving stages of colonial genocide helps inform the basis for the current form of genocide taking place against Indigenous women, girls, and 2SLGBTQQIA people. Each stage of colonial genocide is connected to an evolving pattern of reinforcing colonial structures that maintain oppression and destroy Indigenous peoples as a protected group.

I will end my analysis by discussing the current rates of violence against Indigenous women, girls, and 2SLGBTQQIA people and how the most recent form of genocide against Indigenous people in Canada fits into a greater pattern of colonial genocide. In this section I will highlight how the connection of the state policies during the twentieth century both legalized and empowered patriarchal female inferiority, which enabled the violent targeting of Indigenous women happening today. Lastly, I will return to the legal definition of genocide and outline how distinct stages of colonial genocide align with prohibitions against genocide in the Genocide Convention.

II. GENOCIDE IN INTERNATIONAL LAW: AN OVERVIEW

A. Genocide is More Complex than Mass Murder

Genocide, the most heinous crime known to humankind, extends beyond mass murder. However, "entrenched colloquial and scholarly understandings of genocide" often confine society's understanding of genocide to mass murder.[24] Conceptualizing genocide so narrowly "belittles the complexity of genocidal violence and

22. Frédéric Mégret, *The MMIWG report: A call for decolonizing international law itself*, THE CONVERSATION (June 9, 2019), https://theconversation.com/the-mmiwg-report-a-call-for-decolonizing-international-law-itself-118443.

23. *Id.*

24. Andrew Woolford & Jeff Benvenuto, *Canada and Colonial Genocide*, 17:4 J GENOCIDE RSCH. 373, 375 (2015).

undermines its very definition, which includes both lethal and non-lethal methods of destruction."[25] Analyzing colonial genocide is a reminder that there are more "[ambiguous] lethal means of extermination than machetes, guns or gas chambers," and that victims of historical genocides also die from "slower and indirect" methods of annihilation in comparison to immediate outright murder.[26] Colonial genocide, rather than a short-term period of slaughter, is a pattern of conditions that threaten the survival of a group consistently over time.[27]

B. Origins of the International Legal Definition of Genocide

Genocide is a continuous evil that that spans back earlier than biblical times and that extends into our modern day. Genocide is "a modern word for an old crime" that arose immediately after World War II (WWII) and the Holocaust.[28] The term "genocide" was coined by Polish jurist Raphael Lemkin; *genos* means race or tribe, and *-cide* means to kill.[29] The legal definition of genocide was not incorporated into international law until 1948 with the creation of the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG or Genocide Convention), which codifies the illegality of organized murder inflicted on a targeted group. While the term genocide was not encoded into international law until after WWII, the Genocide Convention is viewed as codifying a long recognized customary norm of international law, and genocide quickly became a peremptory norm of general international law, or a jus cogens offense.[30] Genocide encompasses coordinated plans and actions targeted at the "destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves." [31] Genocidal objectives are focused on both macro and micro destruction of the targeted group. Macro destruction seeks to destroy and erase the present and future culture and identity of the group. Micro destruction aims to eradicate the individual human beings themselves. On a macro scale, there is "disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups."[32] On a micro scale, there is destruction of "personal security, liberty, health, dignity, and . . . lives of the individuals belonging to such groups."[33]

---

25. MMIWG LEGAL ANALYSIS, *supra* note 1, at 13-14.

26. Elena Lesley, *Cultural Impairment and the Genocidal Potential of Intoxicants: Alcohol Use in Colonial North America*, INT'L ASS'N OF GENOCIDE SCHOLARS, *Revisiting the Life and Work of Raphael Lemkin*, 13:1 GENOCIDE STUD. AND PREVENTION AN. INT'L J., 90 (2019).

27. Woolford, *supra* note 24, at 379.

28. Louis R. Beres, *Justice and Realpolitik: International Law and the Prevention of Genocide*, 33 AM. J. INT'L L. 123,123-24 (1988).

29. RAPHAEL LEMKIN, AXIS RULE IN OCCUPIED EUROPE: LAWS OF OCCUPATION, ANALYSIS OF GOVERNMENT, PROPOSALS FOR REDRESS, 79 (N.Y. Columbia U. Press eds., 1944).

30. MMIWG LEGAL ANALYSIS, *supra* note 1, at 3.

31. MMIWG EXECUTIVE SUMMARY 1a, *supra* note 3, at 2.

32. *Id.* at 51.

33. *Id.*

C. Conceptualization of Genocide Prior to the International Legal Definition

Lemkin initially divided genocide into three subcategories: physical, biological, and cultural.[34] Physical genocide is the physical destruction of a group and the physical weakening and annihilation of national groups.[35] Different genocide techniques, such as mass killing and endangering health via deprivation of necessities, are mechanisms by which physical genocide is perpetrated.[36] Biological genocide is the destruction of a group's reproductive capacity and is employed by policy and action targeted at decreasing the birthrate of the group, including separating sexes, rape, and gender discriminatory violence.[37] Biological genocide is achieved by dismantling their spirit and will to reproduce due to the trauma they have endured by the oppressor group (often from sexual violence or other forms of violence).[38]

Cultural genocide is a more intimate form of destruction because it aims to erase not just the human beings from existence, but also the identity of that group's past, present, and possibility for a future. Cultural genocide includes both tangible and intangible destruction.[39] Tangible destruction is the destruction of "structures and practices that allowed the group to keep living as a group."[40] Cultural genocide is also accomplished by other intangible techniques including social, economic, religious, and moral tactics to destroy the essence of a group.[41] As Lemkin wrote, "mass murder" is not an "adequate" name for actions motivated by a desire to destroy groups based upon "racial, national, or religious considerations."[42] Murder itself is not genocide. Harm directed toward others based on their protected classification is genocide; the culture of that group is the motivation for the harm.

D. Exclusion of Cultural Genocide from the Genocide Convention

Global historical and political dynamics are crucial to understanding the context behind the legal definition of genocide and resulting limitations with respect to cultural genocidal language.[43] First, the Genocide Convention emerged in response to the horrific events of the Holocaust, followed by international guilt. The political will for the creation of the Genocide Convention "flowed almost entirely from universal reaction to the Holocaust" with the principal responsibility falling on the newly formed United Nations.[44] The unique post-war experience of the Holocaust and global political dynamics of western colonial powers resulted in a narrow definition of genocide in the Genocide Convention. Despite Lemkin's conception of

34. MMIWG LEGAL ANALYSIS, *supra* note 1, at 6.

35. *Id.*; LEMKIN, *supra* note 29, at 87.

36. Lemkin, *supra* note 29, at 87.

37. *Id.* at 86; MMIWG LEGAL ANALYSIS, *supra* note 1, at 6, 8, 16.

38. Mégret, *supra* note 22.

39. Leora Bilsky & Rachel Klagsbrun, *The Return of Cultural Genocide?*, 29:2 EUR. J. INT'L L. 373, 374 (2018) http://www.ejil.org/pdfs/29/2/2878.pdf

40. MMIWG EXECUTIVE SUMMARY, *supra* note 3, at 6 (quoting Raphael Lemkin, *Genocide as a Crime under International Law*, 41:1 AMERICAN J. INT'L L. 145, 145-51).

41. Lemkin, *supra* note 29, at 12.

42. Bilsky, *supra* note 39, at 374 n.3.

43. *Id.* at 375.

44. Beres, *supra* note 28, at 124-25.

three subcategories of genocide–physical, biological, and cultural–and despite the initial United Nations General Assembly (UNGA) Resolution 96(1) which framed genocide to include cultural loss, ultimately the Genocide Convention only integrated prohibitions against physical and biological genocide subcategories into the treaty.[45]

The absence of cultural genocide prohibitions was largely due to disapproval from nation states with large minority populations or colonial powers. The creation of the Genocide Convention is one example of many in which states with dominant global political power disproportionately influence the evolution and trajectory of international law in their own self-interest. These nation states sought to avoid responsibility for the crimes their nations' governments perpetrated against Indigenous peoples and other minority groups which would qualify as cultural genocide.[46] The United States and Canada both actively opposed the inclusion of cultural genocide, fearing liability for their nation's past and current Indigenous assimilation policies.[47] Contrasting opinions from other nation states emphasized the belief that a protected group can be destroyed by "destroying its cultural foundations," and that cultural genocide is "always a part of physical genocide."[48] A more fundamental view expressed by the Pakistani delegate emphasized that "not only were physical and cultural genocide intrinsically linked, but cultural genocide was the aim, whereas physical genocide was the means."[49] Objectors to the inclusion of cultural genocide concealed their political self-interest and reasoned cultural genocide should instead be implemented into other human rights instruments.[50]

Further, some voices were left out of the drafting process altogether. Namely, Indigenous voices. Despite Indigenous communities' past and present experience as a widespread target of mass murder and discrimination, Indigenous voices were both ignored and excluded from the drafting process.[51] The drafting of the international legal definition of genocide is a continuance of colonialism: the oppressor creates rules that permit the continued oppression of the targeted group to legally occur. Understanding the political power structures at play challenges the idealized perception of the Genocide Convention as a "sacred source of authority" and instead reminds of the "historically and geographically situated tradition" of colonial powers dominating the construction and interpretation of legal international norms.[52] With this awareness, "we might rethink genocide" as a form of complex cultural destruction that is not fully embodied by its legal definition.[53] Yet this presents the struggle of "dismantling the master's house with the master's tools."[54] Decolonizing

45. Lemkin, *supra* note 29, at 6; MMIWG LEGAL ANALYSIS, *supra* note 1, at 7; Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277 art 1-3 [hereinafter *Genocide Convention*].

46. Bilsky, *supra* note 39, at 389-90.

47. *Id.*; MMIWG LEGAL ANALYSIS, *supra* note 1, at 7.

48. Bilsky, *supra* note 39, at 389 (quoted language from Czechoslovakia, Belorussia, Ecuador, and the Soviet Union).

49. *Id.*

50. *Id.*

51. MMIWG LEGAL ANALYSIS, *supra* note 1, at 7.

52. Mégret, *supra* note 22.

53. *Id.*

54. *Id.* (quoting American writer Audre Lorde).

genocide speaks to the need to understand the biased influence of nations who utilized their privileged position of power to shield themselves from international scrutiny. Genocide needs to be reexamined with the western-democratic filter removed. Genocide is much more atrocious than simply mass murder and death because the ultimate goal of genocide is to eradicate not just a group, but also to destroy the group's cultural being and identity in its past, present, and future capacities.

Ultimately, the legal definition, upon compromise within the international community, was formulated into five prohibitions rather than Lemkin's three categories. The political compromise allowed for a collective affirmation on the prohibition of genocide and a monumental treaty codifying customary international law. However, by largely removing the conception of cultural genocide from the convention, it undermined the understanding that "destruction of collective identity is the fundamental driving force of genocidal activities aimed at destroying [a] group."[55]

E. The International Legal Definition of Genocide

Under the Genocide Convention, genocide is an international crime which can be committed in times of war and peace.[56] Under Article II, genocide is any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such:

a) Killing members of the group;
b) Causing serious bodily or mental harm to members of the group;
c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
d) Imposing measures intended to prevent births within the group;
e) Forcibly transferring children of the group to another group.[57]

Under the Genocide Convention, the following acts are punishable:

a) Genocide;
b) Conspiracy to commit genocide;
c) Direct and public incitement to commit genocide;
d) Attempt to commit genocide;
e) Complicity in genocide.[58]

Under Article XVI, revision requests to the Convention may be made at any time by any contracting party via notification to the United Nations Secretary General.[59]

55. Bilsky, *supra* note 39, at 390.
56. *Genocide Convention*, *supra* note 45, at art. 1.
57. *Id.* at art. 2.
58. *Id.* at art. 3.
59. *Id.* at art. 16.

F. International Case Law Interpretation and Application of the International Legal Definition

There is a misguided assumption that for genocide to occur, immediate death of members of the group must be the result. However, the legal definition of genocide includes non-fatal genocidal acts, such as "serious bodily or mental harm" under Article 2(b). Case law also affirms that non-fatal acts can also be genocidal in nature. The International Criminal Tribunal for the former Yugoslavia (ICTY), in Prosecutor v. Tolimir Zdravko, affirmed that "methods of destruction that do not immediately kill the members of the group, but ultimately seek their physical destruction" are genocidal acts and can be thought of as "conditions of life calculated to bring about physical destruction."[60] Examples include:

- subjecting the group to a subsistence diet
- failing to provide adequate medical care
- systematically expelling members of the group from their homes
- creating circumstances that would lead to a slow death (lack of proper food, water, shelter, clothing, sanitation)
- subjecting members of the group to excessive work or physical exertion."[61]

Additionally, despite the only "cultural" prohibition being Article II(e), "forcibly transferring children of the group to another group," case law supports prosecution of cultural genocide and acknowledges that genocide is inextricably linked to cultural destruction. Following the Bosnian genocide, in the 1997 *Prosecutor v. Nikola Jorgic* case, the court found that the intent to destroy a group "includes more than sheer physical biological destruction" but also the "destruction of the group as a social unit in its distinctiveness and particularity and its feeling of belonging together."[62] Additionally, the court found in the *Prosecutor v. Vidoje Blagojević & Dragan Jokić* that the reasoning behind intending to destroy the group is to "harm its sociological structure."[63] The ICTY trials highlighted that while members of a group are in fact physical or biological beings, a national, ethnic, racial or religious group is much more than the collective physical human beings. The court said that a group also constitutes "the bonds among its members" and "culture and beliefs, [which] are neither physical nor biological."[64] In another ICTY judgment, the court held that a group is not only composed of its physical individuals, "but also of its history, traditions, the relationship between its members, the relationship with other

60. Prosecutor v. Tolimir Zdravko, Case No. IT-05-88/2-A, Appeal Judgment (Int'l Crim. Trib. For the Former Yugoslavia Aug. 4, 2015).

61. *Id.*

62. Karolina Wierczynska, *Evolution of the Notion of Genocide in the Context of the Jurisdiction of the National Courts*, XXVIII POLISH YEARBOOK INT'L L. 83, 90 (2006) (*citing* Prosecutor v. Nikola Jorgic, (Higher Reg'l Ct. at Dusseldorf, Sept. 26, 1997).

63. MMIWG LEGAL ANALYSIS, *supra* note 1, at 22 (referencing Prosecutor v. Vidoje Blagojević & Dragan Jokić, Case No. IT-02-60-A, Appeals Judgement ¶ 666 (Int'l Crim. Trib. for the Former Yugoslavia Jan. 17, 2005) [hereinafter *Blagojević* Appeals Judgement]).

64. *Id.* (referencing *Blagojević* Appeals Judgement).

groups, the relationship with the land."[65] Additionally, the ICTY found that the "physical or biological destruction of the group is the likely outcome of a forcible transfer of the population when this transfer is conducted in such a way that the group can no longer reconstitute itself,"[66] suggesting that the destruction of a group is accomplished when their cultural identity connections are irreparably broken. Accordingly, the "intent to destroy" a group cannot sensibly be reduced to an intent to destroy the group physically or biologically, but rather to "also destroy the culture–the social unit of the group.[67]

III. COLONIAL GENOCIDE: EXPANDING CONCEPTIONS OF GENOCIDE

The legal definition of genocide includes destruction that is "in whole" or "in part" by both lethal and non-lethal mechanisms; however, scholarship and political conceptions of genocide are often too narrowly constrained to the study of short-term events of mass murder. The term genocide emerged in response to the Holocaust, and thus society's conception of genocide often reflects the type of genocide that occurred during the Holocaust, a "limited prototype of genocide as time-intensive, mass murder" that was "calculated, coordinated within a nation-state, and well-planned by authoritarian leaders espousing ideological worldviews."[68] Genocide is often conceptualized as "industrial killing or large-scale massacre" that occurs in a finite time span like the Holocaust, the Armenian Genocide, and the Rwandan Genocide, which took place over twelve-year, eight-year, and three-month timespans respectively.[69] Large scale massacre genocides in a short-term timespan are easier to study because they produce tangible murder counts occurring over a finite amount of time. The more easily measurable the genocide is, the easier it is understood, and thus the easier it recognized by the international community.

A. Differences between Colonial Genocide and Holocaust Genocide

Colonial genocide is different from the genocide of the Holocaust.[70] First, the context in which the genocide starts is different. Prototypical genocides, such as the Holocaust, can occur within the context of rising nationalism, leadership change, wartime, historic power struggles between two different ethnic classes, or recent campaigns of dehumanization. Colonial genocide is rooted in an imposition of a "superior" colonial settler group over a conceptualized "inferior" Indigenous group which must be eradicated to make room for settlement. In the colonial context, the eradication of the targeted group begins with the outside oppressor's invasion and continues for centuries into the modern day. Next, unlike other historical narratives where at one point the opposing ethnic groups of a genocide coexisted, in the context of colonial genocide, from the onset of interaction between groups, there is a mission to eradicate and destroy the Indigenous groups. The very existence of the colonial

65. *Id.*

66. *Id.*

67. MMIWG LEGAL ANALYSIS, *supra* note 1, at 22 (referencing Prosecutor v. Krajisnik, Case No. IT-00-39-T, ICTY Trial Chamber response, ¶ 854 (Int'l Crim. Trib. for the Former Yugoslavia Sept. 27, 2006)).

68. MMIWG LEGAL ANALYSIS, *supra* note 1, at 9.

69. Mégret, *supra* note 22; MMIWG LEGAL ANALYSIS, *supra* note 1, at 9.

70. Mégret, *supra* note 22.

nation state is rooted in marginalization, ongoing discrimination, and genocidal acts toward Indigenous peoples over time whether by outright slaughter or coercive forceful assimilation.[71] In North America, the misogynistic patriarchal influence of colonization distinctly engendered Indigenous women as inferior in "distinct, though related ways" to experiences of Indigenous men.[72]

Next, colonial genocide is perpetrated by successive state governments through policy, acts, or omission, rather than by individuals or one singular administration. Colonial genocide therefore cannot be blamed on a "few bad apples," or a limited finite number of individuals criminally responsible for genocide. Colonial genocide is a pattern of both acts and omissions that affect and infiltrate all corners of targeted communities by deteriorating the protected group's rights to "life and security" and their economic, cultural, and social rights.[73]

Additionally, colonial genocide is different from other genocide due to its indefinite timespan that ravages Indigenous peoples "insidiously and over centuries."[74] Colonial genocide is a result of a "slow war of cultural attrition" rather than a "product of massacres."[75] Settler colonialism is a continuous "process[] of invasion" which is "not temporally bound" to one specific event but rather a structure.[76] The intent of colonial genocide is structural and implemented "gradually and intermittently" with "varying intensity" throughout decades and even centuries of different government administrations with various tactics targeted against "distinct Indigenous communities."[77] Colonial genocide is a beast that "[fluctuates] in time and space, and in different incarnations" which are ongoing in Indigenous communities.[78] Within a colonial context, genocide mutates over time in response to the resilience and adaptations of the targeted group.[79] Despite centuries of targeted attempts by colonial powers to destroy Indigenous peoples, Indigenous communities have resiliently adapted and survived as a group. This resilience must not be mistaken for a failed genocide, but rather that due to the resilience of the targeted group, colonial power structures have continued to mutate genocidal acts in response to "resistance and social change."[80] Often, genocide mutations are sourced in changed government policy or are enabled by government inaction to protect the targeted group.

B. Prosecution Challenges for Colonial Genocide

The entrenched active and passive participation of state governments presents a challenge for prosecution of colonial genocides. There is a trend to prosecute

71. MMIWG EXECUTIVE SUMMARY, *supra* note 3, at 53; Erin Hanson, *The Indian Act*, FIRST NATION & INDIGENOUS STUD. AT UNIV. OF B.C. (2009), https://indigenousfoundations.arts.ubc.ca/the_indian_act/ [hereinafter E. Hanson].

72. MMIWG EXECUTIVE SUMMARY, *supra* note 3, at 230.

73. MMIWG LEGAL ANALYSIS, *supra* note 1, at 9.

74. *Id.*

75. Mégret, *supra* note 22.

76. Woolford, *supra* note 24, at 380.

77. MMIWG LEGAL ANALYSIS, *supra* note 1, at 9; Woolford, *supra* note 19, at 374.

78. MMIWG LEGAL ANALYSIS, *supra* note 1, at 10.

79. Woolford, *supra* note 24, at 381.

80. *Id.*

individuals rather than condemning the state as an entity, which is unhelpful when considering the complex layers of colonial genocide.[81] This builds off the myth of "individual masterminds" who perpetrate genocide and does not reckon with the hard truth that political power structures often perpetrate genocide. Colonial genocide does not conform to fixed timelines and is instead expansive across leadership changes over time. However, the norm for prosecuting genocide targets individual offenders acting on behalf of the state, "in accordance with a state policy, or those acting on behalf of an organization that was State-like in its attempts to exercise control over territory and seize political power."[82] This trend of prosecution does not address the complexity of state-integrated action in colonial genocide. In analyzing patterns of genocide, state policy enables the formation or continuation of genocide by the state through the legalization of policy that is genocidal. State policy can legalize discrimination, polarization, and persecution of a group.[83] Genocide is a "systematic crime" which leans on "law, bureaucracy, and the business sector" for its execution.[84] Over lengthy periods of time, there is a pattern of "domination and dehumanization"[85] and "dispossession, elimination, and replacement" during colonial genocide.[86] However, despite the integral role that the state as a government and sector play in perpetuating the status quo of dehumanization on the target group during ongoing genocide, there is not an easy route to prosecution.

C. Democratic States and Genocide Denial

Because colonial genocide often occurs in democratic regimes of settler colonial states with dominant global political influence, there is also a tendency to explain genocidal acts as acts of racism, thus denying genocide. There is a misplaced view that genocide is committed only by totalitarian and authoritarian regimes; however, democracies are also perpetrators of genocide.[87] Colonial genocide has taken place, and arguably continues to take place, in democratic states, perceived as and self-labeled as "civilized nations," like the United States, Australia, Brazil, and Canada. These states exist within the "settler colonial present" which is a space of "cultural hybridity" between different Indigenous communities and between Indigenous and non-Indigenous peoples within the colonial nation-state.[88] Canada is an example in which the ongoing colonial genocide against Indigenous communities has long been denied. Because the "obliteration of Indigenous peoples" exists on gradual timeline spanning centuries, with policy carried out by multiple Canadian government administrations, there is a "Canadian consciousness to dismiss Canada's

81. Woolford, *supra* note 24, at 9.

82. William A. Schabas, *State Policy as an Element of International Crimes*, 98:3 J. CRIM. L. AND CRIMINOLOGY 953, 954 (2008).

83. Gregory H. Stanton, *The Ten Stages of Genocide*, GENOCIDE WATCH (2016) http://genocidewatch.net/genocide-2/8-stages-of-genocide/.

84. Bilsky, *supra* note 39, at 377.

85. MMIWG LEGAL ANALYSIS, *supra* note 1, at 17.

86. Woolford, *supra* note 24, at 381.

87. MMIWG LEGAL ANALYSIS, *supra* note 1, at 10.

88. Woolford, *supra* note 24, at 380 (referencing Lorenzo Veracini, The settler colonial present (Basingstoke: Palgrave Macmillan, 2015).

colonial policies as racist and misconceived" rather than acknowledging them as "explicitly genocidal, and even, ongoing."[89]

D. Why Canada?

The United States, while a global hegemon, already has an international reputation for hypocrisy, deviation from international consensus, and unwarranted American exceptionalism. I selected Canada for the case specific analysis on colonial genocide in a democratic state to contrast the ongoing genocide with Canada's stereotyped global reputation as a state in good human rights standing, and "innocent" to wrongdoing. Additionally, in light of the 2019 National Inquiry's labeling of the violence against women as genocide, Canada's colonial genocide against Indigenous peoples, while often neglected from scholarship, is gaining more spotlight, and deserves layered analysis and reflection.

IV. COLONIAL GENOCIDE IN CANADA

Genocide against Indigenous peoples has been ongoing in Canada since the onset of colonialism. The colonial genocide has evolved and mutated over time, initially beginning as outright murder, massacre, and lethal disease spread by European settlers and then evolving in to state-policy intended to destroy the social unit of Indigenous communities. Its current incarnation is violence against Indigenous women, girls, and 2SLGBTQQIA people. Each stage is connected to the prior and subsequent stages of colonial genocide, and this macro perspective allows for the most current manifestation of genocide to be contextualized in terms of both root causes as well as its place in a larger long-term pattern. The stage of state-sponsored policy intended to destroy Indigenous peoples during the twentieth century was enabled by the colonial structure of the Canadian state already set in place and is a policy that legalized viewing and treating Indigenous women inferior to the status of men. The current rates of violence against Indigenous women and girls are a "crisis centuries in the making."[90]

A. Colonial Context

The Canadian colonial genocide against Indigenous peoples is enabled by the social and political structures of colonialism throughout centuries. The Canadian state was "founded on colonial genocidal policies that are inextricably linked to Canada's contemporary relationship with Indigenous peoples."[91] Canadian history is permeated by "policies of physical, structural, and legal erasure," perpetrated by "individual masterminds" as well as "a collective, burgeoning nation-state."[92] Canada, as a state, reinforces centuries-old gender and racial disparities created by colonial structures by implementing policies that socially and economically marginalize Indigenous peoples.[93]

89. MMIWG LEGAL ANALYSIS, *supra* note 1, at 11.
90. MMIWG EXECUTIVE SUMMARY 1a, *supra* note 3, at 231.
91. MMIWG LEGAL ANALYSIS, *supra* note 1, at 24.
92. *Id.* at 11.
93. MMIWG EXECUTIVE SUMMARY 1a, *supra* note 3, at 51.

B. Gendered Analysis of Genocide

Gender analysis is an often a neglected facet of genocide studies yet is a crucial element to the crime itself. "[T]he expansive female experience of genocide" goes beyond rape and sexual violence just as "the male experience is frequently and erroneously limited to killings."[94] In a macro prospective, gender is inextricably linked to genocide since biological destruction is dependent on the group's capacity to reproduce, and specifically a female's capacity to bear children. Gender destructive acts allow perpetrators to "maximize the crime's destructive impact on protected groups."[95] Gender is often "woven," either expressly or implicitly, "into the perpetrators' planning and commission of coordinated acts that make up the continuum of genocidal violence."[96]

Woven into the analysis below is how the Canadian state-sponsored policies during the twentieth century were not only genocidal in nature, but disproportionately negatively impacted women and set a foundational platform for patriarchally imposed female inferiority. The foundational, legalized gender discrimination collectively disadvantaged Indigenous women in status and autonomy, and directly connects to the modern genocidal violence against women. Additionally, from the onset of European colonialism, early Christian missionaries planted the seed of patriarchal hierarchy, initiating the dismantling of Indigenous women's leadership and poisoning Indigenous notions of gender.[97] In addition to state policies, throughout colonial genocide, Indigenous women were also subjected to rape, sexual violence, forced sterilization, increased poverty and marginalization from patriarchal imposed norms, and denied educational opportunities.[98] Since the "inception of the colonial project," Indigenous women have been "understood as sexually disposable, and social and legal institutions have sustained this logic."[99] Over time the imposition of policies legalizing female inferiority contributed to empowering the patriarchal violence that is taking place today.

C. Stage 1: Widespread Killing, Intentional Disease Spread, and Land Removal

The beginning of genocide against Indigenous peoples traces back to the onset of colonialism and was a period of premeditated murder of Indigenous peoples.[100] Since the onset of colonialism in North America, Indigenous peoples have "struggled to assert their territorial rights and political autonomy" in response to "multiple and coordinated efforts" to destroy Indigenous way of life by colonial powers.[101] During the sixteenth and seventeenth centuries, the "invasion and conquest" of North America by Europeans and their descendants constituted "the worst human

94. SARETA ASHRAPH, BEYOND KILLING: GENDER, GENOCIDE, & OBLIGATIONS UNDER INTERNATIONAL LAW 9 (Global Justice Center et al. eds., 2018).

95. *Id.* at 2.

96. *Id.*

97. MMIWG EXECUTIVE SUMMARY 1a, *supra* note 3, at 236-38.

98. Hanson, *supra* note 1; MMIWG EXECUTIVE SUMMARY 1a, *supra* note 3, at 232-33.

99. Razack, *supra* note 15, at ii.

100. MMIWG LEGAL ANALYSIS, *supra* note 1, at 24; Woolford, *supra* note 19, at 374.

101. Woolford, *supra* note 24, at 374.

holocaust the world has ever witnessed."[102] During this time, the Indigenous genocide was perpetrated by spreading diseases, "wars, genocidal violence, enslavement, forced relocations, the destruction of food sources, the devastation of ways of life, declining birth rates," and more.[103] Sixteenth century explorers dehumanized Indigenous peoples as "savages" and forcefully claimed rights to Indigenous peoples' lands.[104] The mid-1700s included scalping bounties on Indigenous people; by legal proclamation, the Canadian government offered monetary reward for Indigenous murder.[105] This is one of many examples in which genocide was legalized by the state.

This period was devastating to the Indigenous population in North America. Within the first century of colonial invasion, colonizers decimated the collective population of Indigenous communities, destroying them in part. Within the first few years of European settlers arriving, the population of Indigenous people decreased by approximately 57%.[106] During this time, smallpox infested blankets were intentionally distributed to Indigenous communities as a form of biological warfare.[107] Scientific evidence confirms that in one 9,000-year-old Indigenous community, "nearly 6 out of 10" Indigenous people died from diseases brought by European settlers to which Indigenous communities had no immunity.[108] Colonial genocide started shifting in the 1830s and 1840s from not only slaughter and biological warfare to also forcibly transferring Indigenous communities to reserves.[109] While it is impossible to know exactly how many Indigenous people died during the initial onset of colonialism, historians estimate that when European settlers arrived in the Americas, the current population of Indigenous peoples was approximately 10 million.[110] By 1900 the Indigenous population throughout the Americas was under 300,000.[111] Stage 1 caused more than outright physical destruction from slaughter and forced relation: it also caused serious bodily and mental harm to Indigenous communities, "calculated to bring about their physical destruction." [112]

---

102. David M. Smith, *Counting the Dead: Estimating the Loss of Life in the Indigenous Holocaust, 1492-Present*, SE OKLA. ST. UNIV. TWELFTH NATIVE AMERICAN SYMPOSIUM, 7 (2017).

103. *Id.*

104. MMIWG EXECUTIVE SUMMARY 1a, *supra* note 3, at 236-37.

105. MMIWG LEGAL ANALYSIS, *supra* note 1, at 24.

106. John Lindo et al., *A Time Transect of Exomes from a Native American Population Before and After European Contact*, 7:13175 NATURE COMMC'N (2016).

107. Jonathan Hobson, *Three Theoretical Approaches to Lemkin's Definition of Genocide*, *in* INT'L ASS'N OF GENOCIDE SCHOLARS, *Revisiting the Life and Work of Raphael Lemkin*, 13:1 GENOCIDE STUD. AND PREVENTION AN. INT'L J., 13 (2019).

108. Ian Johnston, *Almost 60% of Ancient Native Canadian Community Died Within Years of European Settlers Arriving, Study Reveals,* INDEPENDENT (Nov.15, 2016), https://www.independent.co.uk/news/science/first-nations-canada-european-settlers-diseases-killed-almost-60-genetic-study-british-columbia-a7418441.html

109. *Dispossession, Destruction, and Reserves*, FACING HISTORY & OURSELVES (2022), https://www.facinghistory.org/stolen-lives-indigenous-peoples-canada-and-indian-residential-schools/historical-background/dispossession-destruction-and-reserves.

110. *Genocide of Indigenous Peoples*, HOLOCAUST MUSEUM HOUSTON, https://hmh.org/library/research/genocide-of-indigenous-peoples-guide/ (last visited Feb. 8, 2022).

111. *Id.*

112. MMIWG LEGAL ANALYSIS, *supra* note 1, at 24.

D. Stage 2: State-sponsored Genocidal Policy that Legalized Physical, Biological, and Cultural Destruction

The next stage of colonial genocide involved government implemented destruction through the implementation of genocidal legislation forced assimilation, and forcible child removal. In the twentieth century, genocidal policies included the Indian Act, Residential Schools, Sixties Scoop, and breaches of human rights, which attempted to not only physically and biologically destroy Indigenous peoples, but also to destroy "the group as a social unit."[113] These state-enforced policies have had lasting destructive impact both on the survivors and their successive generations, including "increased rates of violence, death, and suicide"[114] and intergenerational collective trauma in Indigenous populations.[115] The state policies also had a lasting detrimental impact by imposing patriarchal gender inferiority.

1. The Indian Act

The Indian Act (the Act) is a Canadian federal law that legalizes state genocidal practices over time by destroying Indigenous culture and controlling the status of Indigenous peoples by detailing Indian status, bands, and reserves.[116] First, the Act details what is required to achieve "Indian" status in Canada, a perpetuation of the racist "Indian" misnomer/identifier.[117] The Act details assimilation policies "intended to terminate the cultural, social, economic, and political distinctiveness" of Indigenous peoples.[118] For example, the Act bans potlatches (important ceremonial feasts) and other cultural practices and gatherings, depriving Indigenous communities of their practice of sharing oral history and cultural tradition.[119] Banning cultural gatherings and cultural practices is one method utilized by the Canadian government to reinforce oppression and indicates an intention to destroy the group via a process of legalized discrimination and polarization. In practice, the Act is a mechanism to deprive a generation of learning cultural practices and shared history which has intergenerational impacts on loss of culture and identity.

The Indian Act was also a legal mechanism to impose inferior status and discriminatory gender-based restrictions onto Indigenous women.[120] Until 1985, under the Act, Indigenous women's

"Indian" status was dependent on her husband.[121] If an Indigenous woman married a non-Indigenous man, was widowed, or left her husband, then she ceased to have Indian status; and thus also was denied access to homeland, connection to

113. *Id.* at 1.

114. MMIWG EXECUTIVE SUMMARY 1a, *supra* note 3, at 50.

115. *Id.* at 50, 112.

116. E. Hanson, *supra* note 71.

117. Elizabeth P. Pauls, TRIBAL NOMENCLATURE: AMERICAN INDIAN, NATIVE AMERICAN, AND FIRST NATION, ENCYC. BRITANNICA (Jan. 17, 2008) https://www.britannica.com/topic/Tribal-Nomenclature-Aerican-Indian-Native-American-and-First-Nation-1386025.

118. E. Hanson, *supra* note 71.

119. *Id.*

120. *Id.;* Miriam McNab, INDIGENOUS WOMEN'S ISSUES IN CANADA, THE CANADIAN ECYCLOPEDIA (Feb 7, 2006) https://www.thecanadianencyclopedia.ca/en/article/native-womens-issues.

121. E. Hanson, *supra* note 71.

culture, family, financial resources, and community.[122] However, if an Indigenous man married a non-indigenous woman, he could retain all rights and status.[123] This patriarchal section of the Act imposed a system of dehumanization by depriving Indigenous women of their dignity and autonomy. The gender discrimination sections, which legalized gender inferiority based on patriarchal imposed structures, were recognized as a human rights abuse in the 1980s by the United Nations Human Rights Committee and Canadian Human Rights Commission, and were eventually removed from the legislation.[124] The status provisions have been found to "contribut[e] to the existing vulnerabilities that make Indigenous women more susceptible to violence."[125] However, there are still many problematic provisions including the "Second-Generation Cut-Off" rule which prevents Indigenous children from attaining "Indian" status after two generations of intermarriage with non-status partners.[126] Thus, an Indigenous woman's decisions to marry now influences and can constrain her ability and right to pass on her Indigenous status to her children. Despite the removal of these sections from the Act, decades of the destructive patriarchal practice of treating women as inferior enables the continued oppression of Indigenous women.

2. The Indian Residential School System

Indian Residential schools (Residential schools) were a form of forced colonial cultural assimilation intended to destroy the cultural social unit of Indigenous communities. The Residential schools were mandatory school systems created by the Canadian government and administered by Christian churches, with "damaging" and "explicit objectives of indoctrinating" Indigenous children into Euro-Canadian and Christian culutre.[127] Residential schools, in comparison to other state-sponsored policies, are widely accepted as genocidal action due to the Canadian government's and churches' "purposeful attempt" to "eradicate all aspects of Indigenous cultures and lifewords" via forced transportation and kidnapping of Indigenous children.[128] By forcibly taking all the Indigenous children from their homes, the institutions intended to "erase Indigenous memory" of the youngest generation and "reprogram younger generations as 'Canadians.'"[129] The suffering that resulted extended beyond erasing cultural identity and was a source of murder, disease, torture, starvation, slavery, and sexual abuse.[130]

The residential schools robbed Indigenous children of their traditional cultural childhood with their families, and instead provided low quality education and

122. The Indian Act, R.S.C. §§12(1)(b) (1985), https://laws-lois.justice.gc.ca/eng/acts/i-5/; MMIWG EXECUTIVE SUMMARY, *supra* note 3, at 35.

123. E. Hanson, *supra* note 71.

124. The Indian Act, *supra* note 122; Hanson, *supra* note 71.

125. Brodsky, *supra* note 21.

126. McNab, *supra* note 120.

127. *Id.*

128. Hanson, *supra* note 1.

129. Alfred de Zayas, *Book review: Suffer the Little Children: Genocide, Indigenous Nations and the Canadian State*, 11:1 INT'L INDIGENOUS POL'Y J., 1, 1 (Mar. 2020), doi: https://10.18584/iipj.2020.11.1.8355.

130. *Id.*

imposed European gender-stereotyped work chores. In practice, Indigenous children were forcibly separated from their families for extended periods of time to attend the schools, were forbidden from acknowledging their Indigenous heritage or culture, and forbidden to speak their own languages.[131] The academic caliber of the Residential schools was far lower than Canadian public school for Caucasian children, was hyper focused on prayer, and imposed patriarchal gender-stereotyped work on the children.[132] Indigenous boys had to perform manual agricultural labor and Indigenous girls were taught to sew and do laundry.[133] Notably, the Residential school system enforced "patriarchal Christian dogma that devalued women, enforced homophobia and transphobia" and exposed girls to increased levels of abuse.[134]

The inflicted damage from the Residential schools extends beyond eradicating culture and identity, into physical destruction. Indigineous children forced to attend Residential schools experienced widespread physical, sexual, emotional, and psychological abuse at the hands of Residential School staff.[135] This included starvation, deliberate infection of diseases, beatings, torture, rape, solitary confinement, assaults, and mistreatment.[136] Testimony from survivors describes children being "shackled to their beds" and having "needles shoved in their tongues for speaking their native languages."[137] Canadian government doctors purposefully infected Indigenous children with disease and "[subjected] Indigenous children to inhumane medical experiments," that led to mortality rates between 30 to 60 percent over the years.[138] In 1907, 24% of previously healthy Indigenous children died in Residential schools, an estimated 6,000 children.[139] However, the lethal impact of the schools was far greater because most children were sent home to die: depending on the region, anywhere from 47% to 75% of Indigenous children discharged from Residential Schools died shortly after returning home.[140]

Residential School programs were not shut down until 1996.[141] The schools were open for over a century, in which over 150,000 Indigenous children were forcibly taken and alienated from their culture and subjected to torturous suffering.[142] Children who made it through Residential Schools are known as "survivors."[143] Today, there are an estimated 80,000 survivors from the Residential Schools.[144] Despite the closure of Residential Schools, which have only been closed for less than thirty years, the effects from the genocidal action "remain ongoing" for both survivors and

131. Hanson, *supra* note 1.
132. *Id.*
133. *Id.*
134. MMIWG EXECUTIVE SUMMARY 1a, *supra* note 3, at 18.
135. Hanson, *supra* note 1.
136. MMIWG LEGAL ANALYSIS, *supra* note 1, at 24-25.
137. Hanson, *supra* note 1. (Estimates based on limited time span of the schools, not the entirety.)
138. MMIWG LEGAL ANALYSIS, *supra* note 1, at 25.
139. *Id.;* The Truth and Reconciliation Commission (TRC) of Canada estimated that 6,000 children "perished" while held in Canadian Indian Residential Schools (which does not include children who died after being discharged).
140. Hanson, *supra* note 1.
141. *Id*.
142. *Id.*
143. *Id.*; MMIWG EXECUTIVE SUMMARY 1A, *supra* note 3, at 54.
144. Woolford, *supra* note 24, at 373.

the next generation who now share "intergenerational effects of transmitted personal trauma and loss of language, culture, traditional teachings, and mental/spiritual well-being."[145]

Indigenous communities have been fighting for decades to prove the horrible history of the Residential School Systems. It was only in 2021 that the media's attention was sparked from evidence of a mass grave in British Colombia where 215 children were buried, some as young as three years old were found.[146] Some mass grave sites were in apple orchards, with graves for the murdered children forcibly dug by their young classmates.[147] The 2019 National Truth and Reconciliation Commission confirmed that at least 4,100 children died at the Residential schools in the 1900s (not including the number of children who died at home after returning from schools).[148]

The Residential Schools fall under the Genocide Convention's prohibition against forcible removal of children under ArticleII(e). Residential Schools systematically undermined Indigenous culture and additionally "disrupted families for generations" by destroying the fabric through which Indigenous culture is practiced and taught to children.[149] The Canadian government's intentional cultural destruction collectively inflicted a widespread general loss of Indigenous language and culture that has forever damaged Indigenous families and communities.[150]

3. The "Sixties Scoop"

In addition to forcibly removing Indigenous children from their communities during the Residential schooling era, child-services government officials, often without notice nor consent, kidnapped or forcibly removed Indigenous children from their families.[151] This is now referred to as the "Sixties Scoop." During the 1960s, newborns and other children were taken from Indigenous mothers without consent.[152] Most often, the government placed these children in "middle-class Euro-Canadian families" as another avenue to destroy Indigenous cultural and kin connections, which also often included increased rates of physical and sexual abuse in the foster care system.[153] It was not until 1980 that social workers were legally required to notify the Indigenous band council if children were kidnapped and removed.[154] This created yet another source of trauma in which Indigenous families, and especially

145. Hanson, *supra* note 1.

146. Ian Austen, *'Horrible History': Mass Grave of Indigenous Children Reported in Canada*, N.Y. TIMES (Oct. 5, 2021), https://www.nytimes.com/2021/05/28/world/canada/kamloops-mass-grave-residential-schools.html.

147. Lynette Fortune, Linda Guerriero & Gillian Findlay, *Down in the apple orchard*, CBC NEWS (Jan. 13, 2022), https://www.cbc.ca/newsinteractives/features/down-in-the-apple-orchard.

148. Austen, *supra* note 146.

149. Hanson, *supra* note 1.

150. *Id.*

151. *Id.*; Erin Hanson et al. *The Sixties Scoop & Aboriginal Child Welfare,* FIRST NATION & INDIGENOUS STUD. AT UNIV. OF B.C. (2009), https://indigenousfoundations.arts.ubc.ca/sixties_scoop/ [hereinafter Erin Hanson].

152. *Id.*

153. *Id.*

154. *Id.*

Indigenous mothers, had heightened fear and distress over the government's kidnapping of their children.

The percentage of Indigenous children in foster care has historically been and continues to be severely disproportionate to demographics. In the 1970s, despite being a minority population, approximately one-third of the children in foster care were Indigenous, of which, roughly 70% were placed in non-Indigenous homes where Indigenous heritage was rejected.[155] Like the Residential School system, "forcibly transferring children of the group to another group" constitutes genocide under Article II(e) of the Genocide Convention because of the intent to destroy culture. [156] The disproportionate percentage of Indigenous children in the foster case system despite their minority demographics reveals how the government used the welfare system as another route for forcible transfer of children and collective cultural destruction. Further, Indigenous children forced into the foster welfare system were often lied to about their identity, by being told they were German or Italian, and by being denied the ability to legally access their birth records.[157]

Foster care discrimination and forcibly removing children from their homes is still an ongoing problem in Canada. The disparities in the Canadian foster care system still reflect intentional forcible transportation of children from one group to another.[158] For example, as of 2008, Indigenous children, while only comprising 8% of British Columbia's population, accounted for 51% of the children in foster care and were six times more likely to be put into foster care in comparison to non-Indigenous children.[159] The forcible child transfer aspect and highly disproportionate demographic of Indigenous children in foster care "can only logically be constructed" as having the "specific aim of destroying a group as a social unit." Forcible removal of children is significant for biological destruction is decreasing the younger generation group's reproductive capacity and cultural genocide in kidnapping children is preventing them from experiencing their cultural upbringing.[160]

E. The Aftermath of Stage 2 State Policies

The repurcussions of the genocidal attacks on the stolen generations of children are still ongoing. The collective damage of the Residential Schools and Sixties Scoop traumatized generations of children who have endured their trauma into adulthood, underlying the intergenerational impact of these programs on successive generations.[161] The forcible removal of Indigenous children from their communities also destroyed the flow of passing down Indigenous culture to that generation and prevented Indigenous children from learning how to raise children and be raised in the context of their cultural heritage and community. Generations of Indigenous people

155. *Id.*

156. MMIWG LEGAL ANALYSIS, *supra* note 1, at 3 ("[F]orcibly transferring children of the group to another group" constitutes genocide when the intent is to destroy a culture); Claus Kreß, *The Crime of Genocide under International Law*, 6:4 INT'L CRIM. L. REV. 461, 484 (2006).

157. Erin Hanson, *supra* note 151.

158. *Rep. of the Auditor Gen. of Can. to the House of Common*, Off. of the Auditor Gen. of Can. at 2 (May, 2008), https://www.oag-bvg.gc.ca/internet/English/parl_oag_200805_04_e_30700.html.

159. *Id.*

160. Kreß, *supra* note 156, at 483-84.

161. Mégret, *supra* note 22.

were robbed of their right to culture, their ability to practice and pass on cultural traditions and language, and the experience to relate to their community and to the land.[162] This loss of culture has damaging intergenerational effects and trauma.[163] Children of survivors also "endure the sufferings caused by mass violence which they did not directly experience."[164]

Another lasting consequence of colonial genocide is the resulting negative coping mechanisms Indigenous communities utilize to deal with the trauma and loss. Centuries of enduring colonial genocide has introduced harmful "efforts to cope with violence" which take root in community and in turn create additional problems.[165] Examples include addiction, self-harm, isolation, and suicide.[166] Indigenous women are more likely to be affected by these problems after surviving violence themselves or in the aftermath of violently losing a loved one.[167]

In addition, practices of land removal, patriarchal influence, and forcibly changed gender roles in Indigenous communities initiated a destructive internal cycle of domestic violence against Indigenous women.[168] The removal of Indigenous people from their land and "loss of traditional male roles of the hunter-provider have caused role conflicts, frustration and anger" which often "finds its outlet in violence against women."[169] Indigenous women, girls, and 2SLGBTQQIA people are three times more likely to experience increased levels of spousal domestic violence in comparison to non-Indigenous women.[170] According to a 1990 inquiry, one in three Indigenous women experienced domestic violence.[171] The Royal Commission on Aboriginal Peoples (1996) highlighted that "constant challenges to the culture and collective identity of Indigenous people weakened the communities" and contributed to both group and individual "alienation that led to some self-destruction and anti-social behavior."[172] The emphasis of rampant domestic violence serves to highlight two important takeaways: (1) levels of domestic violence are connected to colonialism and colonial genocide; and (2) as a result, Indigenous women, girls, and 2SLGBTQQIA people are thus more likely to be victims of violence.

Next, the resulting social and economic marginalization from colonial structures impact Indigenous women disproportionately compared to Indigenous men.[173] Indigenous women are more likely to endure poverty, lack of safe housing, food insecurity, and other socio-economic realities which compromise physical, mental, and spiritual health.[174]

---

162. MMIWG EXECUTIVE SUMMARY 1a, *supra* note 3, at 264.
163. Mégret, *supra* note 22.
164. MMIWG EXECUTIVE SUMMARY, *supra* note 3, at 54; Woolford, *supra* note 19, at 380.
165. MMIWG EXECUTIVE SUMMARY, *supra* note 3, at 462.
166. *Id.* at 435.
167. *Id.*
168. McNab, *supra* note 120.
169. *Id.*
170. *Fact Sheet: Violence Against Aboriginal Women*, NATIVE WOMEN ASS'N OF CAN. (2015) https://www.nwac.ca/wp-content/uploads/2015/05/Fact_Sheet_Violence_Against_Aboriginal_Women.pdf.
171. McNab, *supra* note 120.
172. *Id.*
173. MMIWG EXECUTIVE SUMMARY 1a, *supra* note 3, at 114.
174. MMIWG EXECUTIVE SUMMARY 1a, *supra* note 3, at 28-9.

Collectively, state-sponsored genocide destroys culture, safety, security, and financial stability for many Indigenous women.

F. Stage 3: Current Genocidal Rates of Murdered and Disappeared Indigenous Women, Girls, and 2SLGBTQQIA people

Every sixty-six hours, an Indigenous woman is murdered or disappears in Canada.[175] Murder is so normalized that volunteers have assembled for the past few years during the summer months for "Drag the Red."[176] During Drag the Red, volunteers dredge the Red River to look for dead bodies of disappeared and murdered Indigenous women and girls.[177] While driving on highways in Canada, you may see red dresses hung from branches, "serving as stand-ins" for the thousands of Indigenous women who disappear or are murdered each year.[178] There is a 400-mile remote stretch of highway known as the Highway of Tears that is the location of many kidnappings, murders, and burials of Indigenous women.[179] These red dresses memorialize the death of Indigenous girls and act as a warning of caution to others.[180]

The most recent form of genocide in Canada against women is a "very gender-specific issue" because the violence against Indigenous women and girls "is committed almost exclusively by men (Indigenous and non-Indigenous)."[181]

1. The Term "Missing"

The term "missing" is a misnomer. "Missing" may imply that women and girls have temporarily ran away or are temporarily lost. In reality the term "missing" encompasses women and girls who are "kidnapped, taken, or otherwise held against their will," or whose dead bodies have not been found.[182] The reality is far more "sinister" than the word "missing" may imply.[183] It is more accurate to term these women and girls "disappeared" since it involves the "conscious act of others involved (usually men) taking them from their friends, families, support networks, communities, and nations."[184] Disappeared is the term I will use hroughout the rest of this section.

---

175. *See* note 10 for the analysis based on data from the MMIWG EXECUTIVE SUMMARY.

176. Razack, *supra* note 15, at i.

177. Holly Alexandruk, *Drag the Red to continue for second year in Winnipeg*, GLOBAL NEWS (May 17, 2015, 5:41 PM), https://globalnews.ca/news/2003267/drag-the-red-to-continue-for-second-year-in-winnipeg/.

178. Alicia Ault, *These Haunting Red Dresses Memorialize Murdered and Missing Indigenous Women*, SMITHSONIAN MAG. (March 19, 2019), https://www.smithsonianmag.com/smithsonian-institution/these-haunting-red-dresses-memorialize-murdered-and-missing-indigenous-women-180971730/.

179. APTN NATIONAL NEWS, *Serial killers hunting large swaths of Canada: criminologist*, (May 1, 2019). https://www.aptnnews.ca/national-news/serial-killers-hunting-large-swaths-of-canada-criminologist/ (last visited Feb. 4, 2022).

180. Ault, *supra* note 178.

181. Palmater, *supra* note 4, at 258.

182. *Id.* at 255.

183. *Id.*

184. *Id.*

2. Current Rate of Violence Labeled as Genocide

In 2019, the National Inquiry labeled the current rates of violence against Indigenous women, girls, and 2SLGBTQQIA peoples a genocide.[185] The rates of violence against Indigenous women are incredibly disproportionate to the demographics, and the violence is enabled by the effects of long-term colonial genocide on Indigenous peoples. Europeans colonists "forced a male-controlled system of government and society (known as the patriarchy) on Indigenous societies."[186] This patriarchal influence from the onset of colonialism has set a foundation for the ongoing rates of murder and violence Indigenous women and girls endure today.

The issue of disappeared and murdered Indigenous women is increasingly gaining international awareness.[187] In 2004 Amnesty International published a report to the violence and discrimination against women taking place in Canada.[188] In 2010, the Native Women's Association of Canada (NWAC) established a database of the murdered and disappeared Indigenous women and girls by recording the murders and disappearances, tallying 582 reports over a five-year timespan.[189] As articulated previously, a challenge to the study of this genocide is the lack of ability to definitively conclude how many Indigenous women, girls and 2SLGBTQQIA people have been killed throughout the genocide. The 2014 MMIWG National Inquiry, which lasted five years and compiled evidence and testimony of survivors and loved ones of victims who were killed, acts as a crucial record-collecting cornerstone of victims' testimonies and begins to address this challenge. The United Nations also formally recognized in a 2017 joint statement that violence against Indigenous women and girls happens at a disproportionate frequency, severity, and in a distinct pattern when compared to other women.[190]

3. Violence Contextualized in the Greater Pattern of Colonial Genocide

The state-sponsored genocidal acts during the twentieth century both legalized and empowered patriarchal female inferiority, which normalizes the violent targeting of Indigenous women. The violence perpetrated against Indigenous women, girls, and 2SLGBTQQIA people fits into a larger pattern of colonial genocide in which there are "crucial gendered facets" of resulting destruction specifically on

185. MMIWG EXECUTIVE SUMMARY 1a, *supra* note 5.

186. McNab, *supra* note 120.

187. *Id.*

188. AMNESTY INT'L, CANADA STOLEN SISTERS: A HUMAN RIGHTS RESPONSE TO DISCRIMINATION AND VIOLENCE AGAINST INDIGENOUS WOMEN IN CANADA, AMNESTY INTERNATIONAL (2004) https://www.amnesty.ca/sites/amnesty/files/amr200032004enstolensisters.pdf.

189. NATIVE WOMEN' S ASS' N OF CANADA, SISTERS IN SPIRIT 2010 RESEARCH FINDINGS, i (Native Women's Ass'n Canada eds., (2010), https://www.nwac.ca/wp-content/uploads/2015/07/2010-What-Their-Stories-Tell-Us-Research-Findings-SIS-Initiative.pdf.

190. U.N. CRED. on the Elimination of Racial Discrimination, 93rd Sess. *Joint Statement: Canada: Violence against Indigenous women and girls*, 1, (Aug. 25, 2017), https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT_CERD_NGO_CAN_28174_E.pdf

Indigenous women, girls, and 2SLGBTQQIA people.[191] The modern targeting of Indigenous women, is a "gender-oriented" method that "destroys the very foundations of the group as a social unit and leaves long-lasting scars within a group's social fabric. The murder and kidnapping are inextricably linked to genocidal destruction."[192]

Colonialism and colonial genocide have normalized racism, discrimination, oppression, and violence against Indigenous women, girls, and 2SLGBTQQIA people. The underreported and under-recorded evidence indicates that, on average, every sixty-six hours one Indigenous woman is murdered or disappears in Canada.[193] Between 2001 and 2014, homicide rates indicated that Indigenous women were four times more likely to be murdered than non-Indigenous women.[194] This rate is even more devastating than it appears given the demographic context. Indigenous people collectively only make up 4.9% of the total population in Canada, and Indigenous women make up an estimated 2.5% of the population, yet are far more likely to be victims of violence.[195] Despite being only 2.5% of the population, Indigenous women account for over 11% of all disappeared women in Canada, which is "disproportionately high."[196] In analyzing the available statistics on solved Indigenous women homicides, Indigenous women are less likely to be murdered in a residence or by a family member, compared to non-indigenous female deaths.[197] So, while domestic violence is "part of the story," it is only a factor, "not the whole answer."[198] Furthermore, Indigenous women are seventeen times more likely to be killed on a street, road, or highway compared to non-Indigenous women (this is based only on solved homicides, however, so the real number is likely higher).[199] This reveals the systemic dehumanization of Indigenous women; their killers target them like disposable creatures, murdering them on highways as if they were animals, rather than humans. In addition to murders and kidnappings, Indigenous women also have high rates of death in police custody, are exploited by human sex trafficking, and are commonly targeted by serial killers.[200] These women are targeted based on their Indigenous identity and female gender. These acts of murder are prohibited conduct under the Genocide Convention and have the specific 'intent to destroy' women in the Indigenous protected group.

---

191. MMIWG LEGAL ANALYSIS, *supra* note 1, at 8.

192. *Id.*

193. Assembly of First Nations, *supra* note 11; MMIWG EXECUTIVE SUMMARY 1a, *supra* note 3.

194. Assembly of First Nations, *supra* note 11; NATIVE WOMEN ASS'N OF CANADA, *supra* note 170.

195. *Aboriginal peoples in Canada: Key results from the 2016 Census*, STATISTICS CANADA, (Oct. 25, 2017), https://www150.statcan.gc.ca/n1/daily-quotidien/171025/dq171025a-eng.htm?indid=14430-1&indgeo=0.

196. McNab, *supra* note 120.

197. CAN. DEP'T. OF JUST., JUST FACTS: MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS, (Research and Statistics Division, 2017), https://laws-lois.justice.gc.ca/eng/acts/i-5/page-1.html.

198. Palmater, *supra* note 4, at 255.

199. CAN. DEP'T. OF JUST., *supra* note 197 (analyzing the solved homicide cases of Indigenous women between 1980 and 2014; these records are from the Canadian government, not indigenous sources).

200. MMIWG EXECUTIVE SUMMARY 1a, *supra* note 3, at 53.

The Canadian government acts as both a perpetrator and a bystander to genocide. Despite receiving 231 recommendations from the National Inquiry, the government has not implemented measures to ensure safety, equality, and access to essential services for Indigenous women.[201] Rather than protecting Indigenous women or revising colonial structures that enable colonial genocide, the government maintains the destructive status quo and leaves Indigenous communities to endure the direct, daily, and life-threatening consequences alone.[202]

4. Referring Back to the International Legal Definition of Genocide

The most current incarnation of genocide is Stage 3: current rates of murdered and disappeared Indigenous Women, Girls, and 2SLGBTQQIA people. Stage 3 evolved from Stage 1, which included widespread killing, intentional disease spread, and land removal, and Stage 2, which included State genocidal policy that legalized physical, biological, and cultural destruction.

Indigenous women, girls, and 2SLGBTQQIA people are a subcategory of an Indigenous peoples, a protected racial, ethnic, and religious group under the Genocide Convention. Throughout colonization, the Canadian government has had the "intent to destroy" in "whole or in part." The following outline condenses how colonial genocide has occurred in nearly every subcategory of Article II(a)-(e) of the Genocide Convention throughout various stages of genocide outlined above. Notably, the list of categories is not a list of elements all required for genocide. Only one subcategory (a)-(e) is needed for persecution of the crime. The Canadian government has either perpetrated or empowered the perpetration of colonial genocide against Indigenous people by:

(a) Killing members of the group

Stage 1: Cutright slaughter during colonial invasion and expansionism

Stage 2: Children killed in Residential Schools

Stage 3: Indigenous women, girls, and 2SLGBTQQIA people murdered or disappeared every sixty-six hours.

(b) Causing serious bodily or mental harm

Stage 1: Forcible transfer from land and resulting mental harm from state-sponsored massacres and loss of land

Stage 2: Kidnapping generations of children and then torturing and abusing them, mental trauma of loss culture and phycological trauma.

Stage 3: Survivors of violence have both undergone bodily and mental harm, their loved ones too have undergone mental harm from shared trauma

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part

201. MMIWG LEGAL ANALYSIS, *supra* note 1, at 25.

202. *Id.*

Stage 1: Biological warfare from smallpox blankets, forced relocation
Stage 2: Starving children in Residential Schools, and purposefully infecting children with disease.

(d) Imposing measures intended to prevent births within the group
Stage 1: Mass slaughter of Indigenous women
Stage 2: Forced sterilization of Indigenous women, separation of sexes in Residential Schools
Stage 3: Murdering women decreases capacity for procreation.

(e) Forcibly transferring children of the group to another group
Stage 2: The Residential Schools and the Sixties Scoop
Stage 3: Modern day foster care has the same effect as the Sixties Scoop

Only one of the categories (a)-(e) is needed to sufficiently constitute genocide. There are far more present than just one. Further, the following acts are punishable under the Genocide Convention: (a) Genocide, (b) Conspiracy to commit genocide, (c) Direct and public incitement to commit genocide, and (d) Attempt to commit genocide. Each stage of colonial genocide aligns with at least one of these punishable acts.

Genocide is happening today, and it will be happening tomorrow. It is not yet time to tell volunteers to stop dredging the Red River for dead bodies of Indigenous women and girls nor time for red dresses to stop being hung on the Highway of Tears. There are dead bodies in the water. There are missing bodies who were taken along wooded highways.

V. CONCLUSION

As Edmund Burke said, "the only thing necessary for the triumph of evil is for good [people] to do nothing."[203] The Canadian government has the capacity to influence positive change and address the gendered genocidal violence that is ravaging Indigenous homes today. Every sixty-six hours, an Indigenous woman or girl is murdered or disappears. The state must take positive action and stop being a bystander and enabler of violence. Like so many other genocides, this genocide is "enabled by the silence of an international community" which feels "that preventing or recognizing a particular genocide [is] not in its economic or political interest."[204] It is frightening that a state or group may order and carry out systematic and deliberate murder on a targeted population over the span of centuries. It is more terrifying that the international community did not and has not stopped it.

203. *Here's Why Genocide Keeps Happening*, ZOCALO PUBLIC SQUARE (May 1, 2015), https://www.zocalopublicsquare.org/2015/05/01/heres-why-genocide-keeps-happening/ideas/up-for-discussion/ (quoting Edmund Burke) (replacing "men" with [people]).

204. Jacqueline Murekatete, *We Cannot Afford To Be Silent*, ZOCALO PUBLIC SQUARE (May 1, 2015), https://www.zocalopublicsquare.org/2015/05/01/heres-why-genocide-keeps-happening/ideas/up-for-discussion/.

A. Good Trends

There has been increasing national and international recognition of the genocidal violence taking place against Indigenous women, girls, and 2SLGBTQQIA people. International organizations have long flagged the issue, however, as of 2019, due to the National Inquiry, there is now statistical evidence regarding the genocide on Indigenous women and girls. The report's recording of the violence and discussion of the root causes is a form of reconciliation for loved ones, and can be used to confront the Canadian government's habitual genocide denial. There has been an increasing spotlight on collective Indigenous rights in the twenty-first century, exemplified by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) adopted in 2007. Within Canada's Indigenous communities, there is indication of increased female chief leadership, as well as increased female leadership roles in regional and national political organizations.[205] Increasing recognition of genocidal violence and an increase in female leadership are positive trends that will hopefully help stop the current rates of violence against Indigenous women, girls, and 2SLGBTQQIA people in Canada.

B. Bad Trends

Perhaps the most detrimental negative trend is the maintenance of the "status quo" amid colonial genocide. Overall, despite the National Inquiry's report's results and recommendations, Canadian government action toward meaningful changes to increase safety and decrease violence is lacking. Allowing the status quo of colonial structures to maintain oppressive, disproportionate genocidal influence is destructive, both for the present and future generations. Unfortunately, there is no sincere indication of immediate change. The lack of political will and interest from the colonial oppressor group to advance Indigenous rights, at both a national and international level, continues to be "a roadblock across all initiatives."[206] Those in places of privilege at local, national, and international levels have not done enough.

C. Recommendations

The Canadian Government should follow the 231 recommendations listed by the National Inquiry. The National Inquiry was a well-funded, multiyear research that compiled thoughtful, targeted recommendations for policy change at local, national, and international levels with the potential to have a meaningful positive impact. Further, these recommendations are derived from Indigenous input and consensus. They include:

Stop Genocide Denial. Genocide denial is problematic because it denies victims justice, recognition, and healing. The white majority has a privileged position of conceptualizing past genocidal acts and current genocidal acts as sad, unfortunate, or tragedies of the past. However, collective ignorance and compliance as bystanders to the genocide within their home-state enables the trauma to continue and stagnates hope for progression. In acknowledging the genocide, the Canadian people can

205. McNab, *supra* note 120.
206. MMIWG EXECUTIVE SUMMARY 1b, *supra* note 3, at 168.

transition into better awareness and understanding, and prevention. Further, genocide denial is a form of political manipulation that complicates international relations. The Canadian government, along with other colonial settler states, like the United States and Australia, must stop denying their genocidal actions perpetrated against Indigenous peoples. Recognition, though politically unfavorable, must occur so that the country can start moving in a direction of improvement. The National Inquiry has labeled the violence against women a genocide, and the Canadian government must acknowledge the genocide and implement the National Inquiry's recommendations.

*Increase Indigenous Female Representation in Politics and Solutions***.** Female Indigenous voices are often neglected in the male-dominated and Caucasian-dominated political structures. Colonialism has an entrenched mechanism of paternalistic decision-making made on behalf of the oppressor and forced onto the oppressed. In the process of revising state-policy that addresses Indigenous peoples and Indigenous women's issues, Indigenous women and 2SLGBTQQIA people need increased representation in leadership roles, political roles, and increased participation in forming solutions that best match their own community dynamics.

Increase Protections and Safety for Indigenous Women. One method of increasing safety is through increased sentencing and arrests to deter Caucasion males from continuing to target and kill Indigenous women.

Increased Global Media Coverage. Modern rates of Indigenous violence are severely underreported in media coverage and need to be communicated with the world to increase global awareness on the issue.

Improved Historical Education for Colonial Settler States. To break the cycles of ignorance that perpetuate the maintenance of the colonial genocidal status quo, the next (and current) generations must be adequately educated on the truth of the state's violent colonial genocidal – past and present. It is best to start with a truthful representation of history beginning during primary education rather than to instill myths and lies onto the next generation of the oppressor group. There needs to be collective understanding on what Indigenous communities have endured and continue to endure at the hands of the colonial structures in place.

Dismantle the Patriarchy. Disproportionate female gender-motivated violence will continue in society so long as patriarchal psychological, political, and social structures maintain male superiority over females. Policy that targets alleviating female social and economic marginalization will rebalance gender-status. Increased female positions in leadership is another tangible step toward destroying the intangible destruction enabled by patriarchal societies.