

MODERN HORROR IN THE FIRST WORLD – THE STOLEN CHILDREN OF CANADA AND AUSTRALIA

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Abstract

Cultural genocide poses a particular threat to the world's indigenous peoples, even now, that the displacement of Native children from their families and their placement in institutions by the Australian and Canadian governments is well documented. Bodies of children barely old enough to talk, hundreds of unmarked graves, more and more statements by survivors, all shocked and shaped Canada in 2021. It is now clear that the common policy of the Australian and Canadian governments were policies of assimilation, with residential schools constituting an assault on Aboriginal children, an assault on Aboriginal culture, leaving the children scarred for life. As a result of such discoveries, members of the stolen generations have filed lawsuits in both Canada and Australia. Intervening the fields of education policies and cultural genocides, relying on comparative case studies whilst using qualitative methods and considering key factors such as the environment at the premises, the targeted group, as well as litigation, this work seeks to find the similarities and differences between the boarding school system of the two countries. Thus, by the end of reading this article, the reader will know, that the answer to the question of whether or not the Australian and Canadian system of targeted discrimination can be classified as genocide is yes.

1. Introduction

Racial justice is still something that is yet to be achieved all over the world even in the 21st century. Many individuals have been subjected to inhumane prejudice, and suffered individual discrimination, and some still do. According to the European Commission, racial discrimination is “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”.¹ Besides the European Commission, the United Nations also addresses the problem, with its mission continuing to be focused on combating racism and eliminating racial discrimination, and international organizations, whether universal or regional, governmental or non-governmental

¹ European Commission – Home Affairs: Glossary – Racial Discrimination Viewed: 2022.03.16. Available at: https://ec.europa.eu/home-affairs/pages/glossary/racial-discrimination_en

are called upon to cooperate in the fight against the tyranny and oppression of racism, racial segregation, apartheid, and genocide, so that all peoples of the globe might live in peace².

International treaties have been established that oblige governments to work towards the abolition of all types of racial discrimination. These include the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Suppression and Punishment of the Crime of Apartheid and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. However, formal, legal equality has not resulted in the abolition of inequitable distinctions based on skin color: significant disparities continue in education, housing, jail, family structure, unemployment, wealth, and advancement chances.

The term cultural genocide, a form of racial discrimination, is appropriate to describe the aboriginal experience in Canada and Australia. The recent discovery of nearly 1,300 unmarked graves³ at four former residential schools in western Canada has startled and horrified Canadians. This number will only grow as more inquiry is conducted, considering fresh gravesites being discovered every week. Indigenous people have long anticipated such discoveries, as the legacy of Canada's Indian residential school system has haunted their families and lives. However, the news has reopened old wounds. Stories of pupils digging graves for their peers, unmarked burials on school grounds, and students who disappeared in mysterious circumstances have long been told by survivors of residential schools. The poor treatment of Aboriginal people in Canada is similar to that of Indigenous Australians, Australia's Stolen Generation, the generations of children removed under various government policies. The Truth and Reconciliation Commission of Canada, as well as the authors of the Australian report titled *Bringing them Home*, the name given to the final report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families conducted by the Human Rights and Equal Opportunity Commission (now called the Australian Human Rights Commission), have received and collected many of these experiences, these being examined by this thesis.

After defining the main forms of racial discrimination, genocide, cultural genocide and apartheid, this work seeks to compare the residential school systems of both Canada and Australia. It will focus on points of similarity, such as litigation, conditions at the premises, and

² Declaration of Race and Racial Prejudice, 1978 Viewed: 2022.02.19. Available at: <https://bit.ly/3CG9J6v>

³ Scientific American - Canada's Residential Schools Were a Horror Viewed: 2022.03.15 Available at: <https://www.scientificamerican.com/article/canadas-residential-schools-were-a-horror/>

targeted groups of residential schools, as well as investigate the question of whether or not the Australian and Canadian system of targeted discrimination can be classified as genocide.

2. Method:

Relying on comparative case studies whilst using qualitative methods, I wish to compare government policies regarding boarding schools, as well as examine the atrocities at these institutions to answer the research question of whether or not the Canadian and Australian Aboriginal education policies, the so-called residential school programs could be considered as forms of genocide. Mostly using sources in English, I researched academic papers, collections of aboriginal testimonies, as well as conventions and trial judgements of the International Criminal Tribunal for Rwanda to investigate this topic. In order to gain in-depth insight into the aboriginal tragedy that has haunted thousands of families, this paper will investigate the question from a perspective on political science, considering various aspects, these being the establishment of Indigenous boarding schools, the conditions at these institutions, the targeted group of government policies, as well as litigation in the two examined countries.

3. Basic Concepts of racial discrimination

The Universal Declaration of Human Rights declares that all human beings are born free and equal in dignity and rights, and that everyone has the right to all of the rights and freedoms outlined therein, regardless of race, color, or country of origin.⁴ Racial discrimination is what occurs when these declared rights are not taken into consideration, and groups of people suffer maltreatment due to characteristics such as their race.

There are two main forms of discrimination, these being direct and indirect. Direct discrimination occurs when you are treated unfairly in comparison to another individual or group of people, due to the circumstance that you possess a protected trait, someone believes you have a protected trait (discrimination by perception), or the fact that you are linked to someone who has that protected attribute (known as discrimination by association).⁵ The other type, indirect discrimination occurs when a policy applies equally to everyone yet

⁴ United Nations Universal Declaration of Human Rights 1948 Viewed: 2022.03.29. Available at: <https://www.jus.uio.no/lm/en/pdf/un.universal.declaration.of.human.rights.1948.portrait.letter.pdf>

⁵ Equality and Human Rights Commission - What is direct and indirect discrimination? Viewed: 2022.03.29. Available at: <https://www.equalityhumanrights.com/en/advice-and-guidance/what-direct-and-indirect-discrimination>

disadvantages a group of persons who share a protected feature.⁶ An example of this would be employers asking all workers to work on a day with considerable religious significance for particular religious groups. This is expected of all workers, however it hinders certain employees from exercising their religious beliefs.

Racial discrimination can also be categorized into acts such as genocide, apartheid, and cultural genocide, all of these being serious violations of the principle of equality in dignity and rights. In the following points, genocide and cultural genocide will be defined one by one, being backed up with examples from history.

3.1. Genocide

The word genocide was first used by Raphael Lemkin, a Polish lawyer, in his book titled ‘Axis Rule in Occupied Europe’. The word itself consists of two parts, the Greek prefix being *genos*, meaning tribe, and the Latin suffix *cide*, meaning killing. It was partly in response to Nazi practices of systematic slaughter of Jews during the Holocaust that Lemkin developed the term, and on the other hand, in response to previous events in history where actions were targeted against a certain group based on their religion or race.⁷ It was also Raphael Lemkin, who later took part in a campaign to have genocide classified and codified as an international crime, which happened in 1946, being recognized under international law by the United Nations General Assembly. Two years later, it was codified as an independent crime in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, also known as the Genocide Convention. „The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.”⁸ As of 2022, this Convention has been ratified by 149 states, and it has been stated numerous times by the International Court of Justice, that it incorporates concepts that are part of general international customary law, meaning that even if States have not ratified it, as a matter of law, they are all bound by the premise that genocide is a crime punishable under international law.⁹

⁶ Ibidem

⁷ United Nations – Genocide Viewed: 2022.02.19. Available at: <https://www.un.org/en/genocideprevention/genocide.shtml>

⁸ Convention on the Prevention and Punishment of the Crime of Genocide, page 1, Viewed: 2022. 02.20. Available at: https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf

⁹ United Nations – Genocide Viewed: 2022.02.19. Available at: <https://www.un.org/en/genocideprevention/genocide.shtml>

The Second Article of the Convention contains the definition of genocide. “In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the 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”¹⁰.

This definition is reproduced verbatim in Art. 6 Rome Statute of the International Criminal Court (ICC), Art. 2 Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and Art. 4 Statute of the International Criminal Tribunal for Rwanda (ICTR).¹¹ According to the Convention, for an offender to be guilty of genocide, the group targeted, intended to be destroyed must fall under one of the following four categories: national, ethnic, racial, or religious group. It is not only the actual genocide that is to be punished under international law, but also the conspiracy, the direct and public incitement and the attempt to commit genocide, as well as complicity in it.¹²

3.2. Cultural Genocide

The term cultural genocide, meaning the cultural destruction of a group is not defined in the UN Genocide Convention, as due to the protests of colonial governments such as Australia, the United States, the United Kingdom and France, cultural genocide was left out of the final text, even though Lemkin fought hard for it to be included. However, cultural genocide exists, this term meaning the systematic destruction of traditions, values, language, and other elements that make one group of people distinct from another. Lemkin believes that there are two ways of committing a crime of genocide, one being physical genocide, meaning the actual killing of the

¹⁰ Convention on the Prevention and Punishment of the Crime of Genocide Viewed: 2022. 02.20. Available at: https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf

¹¹ Carolina Lingaas: Defining The Protected Groups Of Genocide Through The Case Law Of International Courts, 2018 Viewed : 2022. 03.01. Available at: <https://www.internationalcrimesdatabase.org/upload/documents/20151217T122733-Lingaas%20Final%20ICD%20Format.pdf>

¹² Updated Statute Of The International Criminal Tribunal For The Former Yugoslavia Viewed: 2022.02.21. Available at: https://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf

individuals, and one being cultural genocide, where the groups' way of life is undermined.¹³ "Cultural Genocide is the most significant aspect of the Convention", Lemkin contended during the development of the draft UN Convention. As he stated, he was most concerned by cultural genocide, the loss of a culture, as culture is the base of *genus*, needed to be kept alive and protected. In his 1958 autobiography 'Totally Unofficial Man' Lemkin subsequently wrote: "I defended it successfully through two drafts. It meant the destruction of the cultural pattern of a group, such as the language, the traditions, the monuments, archives, libraries, churches. In brief: the shrines of the soul of a nation. But there was not enough support for this idea in the Committee....So with a heavy heart I decided not to press for it."¹⁴

Despite the fact that cultural genocide is not now recognized by international law, the consequences of cultural devastation are inherently connected to our understanding of genocide as a mass-atrocity crime. States that commit cultural genocide aim to eliminate the targeted group's political and social structures. Land is taken, people are forcibly relocated, and their freedom of movement is limited. Languages are prohibited. Spiritual leaders are punished, spiritual practices are prohibited, and spiritually valuable items are seized and destroyed. Families are also fragmented to prevent the transmission of cultural values and identity from one generation to the next. All of these actions were done by Canada and by Australia, when dealing with their Aboriginal people, both having the same end goal of forced assimilation,¹⁵ with different methods used.

3.3.The United Nations Declaration on the Rights of Indigenous Peoples

Efforts to design a special instrument addressing the protection of indigenous peoples across the world have been ongoing for decades. In 1982, due to the effective work of José R. Martínez Cobo, a working group was established to tackle the discrimination Aboriginals face. The Working Group presented the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities with a preliminary draft declaration on indigenous peoples' rights, which was eventually accepted in 1994. Due to concerns raised by States, the process went

¹³ Damien Short: Cultural genocide and indigenous peoples: a sociological approach, 2010, page 837 Viewed: 2022.02.23. Available at: <https://www.tandfonline.com/doi/pdf/10.1080/13642987.2010.512126?needAccess=true>

¹⁴ Damien Short: Cultural genocide and indigenous peoples: a sociological approach, 2010, page 839 Viewed: 2022.02.23. Available at: <https://www.tandfonline.com/doi/pdf/10.1080/13642987.2010.512126?needAccess=true>

¹⁵ Truth and Reconciliation Commission Canada, Honouring the Truth, Reconciling the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada, page 1, Viewed: 2022.03.11. Available at: https://irsi.ubc.ca/sites/default/files/inline-files/Executive_Summary_English_Web.pdf

slowly. These issues included indigenous peoples' right to self-determination and ownership over natural resources found on their customary territory. The United Nations Commission on Human Rights was replaced by the United Nations Human Rights Council in 2006 as part of reforms to the UN's human rights system. The Declaration on the Rights of Indigenous Peoples was endorsed by the United Nations Human Rights Council on June 29, 2006. After a few other alterations, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted on September 13, 2007¹⁶, to lay down the rights that "constitute the minimum standards for the survival, dignity, and well-being of the indigenous peoples of the world," according to Article 43, safeguarding the individual rights of Aboriginal people. Quoting the first article of the Declaration, "Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law¹⁷.", it is clear that according to the UN, no form of discrimination should be experienced by Aboriginals, which is not what we can see in both the Canadian, and Australian situation. It is quite interesting that this Declaration had 144 votes in favor and 4 votes against, these being Australia, Canada, New Zealand and the United States, as well as 11 abstentions (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa and Ukraine).¹⁸ Years down the line, the four countries who originally voted against the UN Declaration have changed their views and now support it, hence Canada and Australia now wanting to comply with the principles laid down in it.

¹⁶ United Nations - United Nations Declaration on the Rights of Indigenous Peoples Viewed: 2022.03.19. Available at: <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

¹⁷ United Nations Declaration on the Rights of Indigenous Peoples, Article 1 Viewed: 2022.03.21. Available at: https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

¹⁸ United Nations - United Nations Declaration on the Rights of Indigenous Peoples Viewed: 2022.03.19. Available at: <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

4. Path to genocide? Aboriginal Education Policies

Canada and Australia, two countries that have many things in common. Both federal states and constitutional monarchies, with a shared background as members of the British Commonwealth. Both having minimal populations despite occupying geographically enormous continents. There is one more thing they share: a shameful history of residential schools. In the two examined countries, the main form of discrimination was the establishment of boarding schools for Aboriginal children. The goal of them in the past was to integrate indigenous peoples into the dominant civilization in which they resided. There were many of them around the world, particularly in Latin America, North America, the Arctic, and the Pacific. In the former USSR and China, assimilationist strategies were more prevalent during the twentieth century as a method of addressing national stability and fears. In Africa, boarding schools, which were primarily modeled after colonial educational models, were frequently under-resourced and underutilized by indigenous peoples. Boarding schools in the Middle East really targeted the elites of indigenous groups, such as the Bedouin during the British Mandate and the Al Murrah in Saudi Arabia, to teach them how to negotiate with colonial powers. In the United States, American Indian children were forcefully removed from their homes throughout the 19th and early 20th centuries to attend Christian and US government-run boarding schools as a matter of state policy. It was later the Grants' Peace Policy of 1869-1870, which handed over the management of Indian reservations to Christian organizations and codified the boarding school system.¹⁹

Moving on the topic of this thesis, both in Canada and in Australia, forcible removal of First Nations children from their homes was part of the Assimilation strategy, which was founded on the misguided assumption that assimilation would improve the lives of First Nations people. The development of residential schools, which were typically run in collaboration with Christian missions with the stated goal of Christianizing indigenous peoples, was the primary technique for attaining this integration. Due to their lighter skin color, children of First Nations and white parents were particularly vulnerable to removal. Authorities believed that because of their lighter skin color, these youngsters might be more easily absorbed into the population.

¹⁹ Andrea Smith: Indigenous Peoples and Boarding Schools, page 2,3 Viewed: 2022.01.09., Available at: https://www.un.org/esa/socdev/unpfii/documents/IPS_Boarding_Schools.pdf

4.1. Comparing Canadian and Australian residential schools:

As some governments, including Rwanda, are being forced to address the unpleasant reality that genocide is still not eliminated today due to indigenous peoples increasingly asserting allegations of past and continuing maltreatment through international legal procedures, the two above-mentioned cases, these being Australia's 'Stolen Generation', and Canada's 'Hidden Holocaust', specifically draw our attention to this problem. The forceful removals of Australian Aboriginals were classified as genocide by an Australian government study, while similar allegations have been made in studies concerning native experiences in Canada's residential schools.²⁰ As Australia and Canada progressively come to terms with the harsh truth of European settlement's impact on indigenous peoples, and with more and more evidence coming to light, we can see that the two situations are quite close to one another. Examining them deeper, how similar are they? I will be comparing the two from four perspectives. First, I will focus on the targeted group in both countries, seeing who the group of people which truly suffered the consequences were. Moving on to the second point of comparison, I will analyze the establishment of such institutions in Australia and in Canada, seeing whether or not they differ from one another. Next, I will scrutinize the conditions of residential boarding schools in the two examined countries. Finally, investigating the process of litigation, I will explore the process of taking legal action in both countries. All four of the above-mentioned aspects have great importance when investigating the research question of this thesis, as in order for the guilt of both Canada and Australia to be assessed under the United Nations Convention of the Prevention and Punishment of the Crime of Genocide 1948, the act has to comply with many conditions. Investigating the targeted group will help determine whether or not the acts committed in the two examined countries had intent to destroy, in whole or in part, a national, ethnical, racial or religious group²¹, while examining the establishment and conditions of the residential schools will show if these institutions had intentions to deliberately inflict on

²⁰ Cultural Survival Quarterly Magazine: Genocide, Ethnocide, Or Hyperbole? Australia's "Stolen Generation" and Canada's "Hidden Holocaust" Viewed: 2022.03.29. Available at:

<https://www.culturalsurvival.org/publications/cultural-survival-quarterly/genocide-ethnocide-or-hyperbole-australias-stolen>

²¹ Convention on the Prevention and Punishment of the Crime of Genocide, Article 2, Viewed: 2022. 02.20.

Available at: https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf

the group conditions of life calculated to bring about its physical destruction in whole or in part²², or if they were mean to cause serious bodily or mental harm to members of the group.²³

4.2. Targeted Group in Canada

In Canada, it was the First Nations, Métis and Inuit children who were removed due to the government policies concerning the integration of Aboriginal peoples into the community. According to Statistics Canada, the three groups defined as the Aboriginal peoples of Canada in the Constitution Act, 1982, Section 35 are First Nations (North American Indian), Métis or Inuk (Inuit). A person may be in more than one of these three specific groups.²⁴ According to the 2016 Census, there are about 1.67 million persons in Canada who identify as Aboriginal. They are the fastest growing population in Canada, whose number grew by 42.5% between 2006 and 2016, and also the youngest population, about 44% were under the age of 25 in 2016.²⁵ The central goals of Canada's Aboriginal policy for over a century have been to eliminate Aboriginal governments, ignore Aboriginal rights, terminate the Treaties, and cause Aboriginal peoples to cease to exist as distinct legal, social, cultural, religious, and racial entities in Canada through a process of assimilation. Against them, residential schools were only one of the elements in a larger agenda of "aggressive assimilation" and colonialism. "The Canadian government pursued this policy of cultural genocide because it wished to divest itself of its legal and financial obligations to Aboriginal people and gain control over their land and resources. If every Aboriginal person had been absorbed into the body politic, there would be no reserves, no Treaties, and no Aboriginal rights."²⁶ As it can be seen from the definition of cultural genocide in the chapter 'Cultural Genocide', this being the systematic destruction of traditions, values, language, and other elements that make one group of people distinct from another, the goals of Canada's government included all of these aspects. For much of Canada's history, that experience was kept concealed until survivors of the system found the courage, bravery, and support to share their stories in thousands of court proceedings, eventually leading to the country's largest class-action lawsuit.

²² Ibidem

²³ Ibidem

²⁴ Statistics Canada -Aboriginal group of person Viewed: 2022.03.17. Available at: <https://www23.statcan.gc.ca/imdb/p3Var.pl?Function=DECI&Id=246581>

²⁵ Statistics Canada - 2016 Census topic: Aboriginal peoples Viewed: 2022.03.17. Available at: <https://www12.statcan.gc.ca/census-recensement/2016/rt-td/ap-pa-eng.cfm>

²⁶ Truth and Reconciliation Commission Canada, Honouring the Truth, Reconciling the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada, page 3, Viewed: 2022.03.14. Available at: https://irsi.ubc.ca/sites/default/files/inline-files/Executive_Summary_English_Web.pdf

4.3. Establishment of residential schools in Canada

In Canada, because competing European powers sometimes required armed alliances, full-scale efforts to “civilize” aboriginal peoples did not commence until British control was established in 1812. At a conference in Orilla, Ontario in 1846, the government decided to fully commit to Indian residential schools.²⁷ A few years later, the British North America Act stipulated that the new colonial powers were responsible for “Indians and lands reserved for the Indians” when Canada became an independent country in 1867. The policy used was “save the man; kill the Indian.” In other words, for Native peoples to become fully “human,” they would have to lose their Native cultures²⁸, the goal was to completely assimilate the Indians into the society. The idea was to purposely disconnect children from their families' and communities' educational, cultural, and spiritual influences. The first residential schools were built in New France by the catholic missionaries to offer care and education, however, due to the fact that First Nations people were mainly self-sufficient, it was difficult to compel them to attend school. Until the 1950s, the federal government and mainline Canadian churches collaborated closely to administer most schools in Canada. By 1896, the Canadian government had financed 45 church-run residential schools, of which the Catholic Church ran nearly 60%, the Anglicans ran around 30%, and the Presbyterian, Methodist, and United Churches ran the majority of the rest. Residential schools were also seen as a way of attempting to integrate Aboriginal people into the growing North American economy, but this was not the situation, as unfortunately, they were also considered as a way of forcing integration and exposing them to a virulent and harsh form of Christianity.²⁹ Christian religion was required in these schools, and there were no native cultural manifestations permitted. Children aged five to sixteen were required to attend school from 1920 through the 1950s. Approximately 100,000 young children were forced to attend these church-run institutions, where they had to undergo cultural transformations, away from their family and the outside world. Here they were highly vulnerable to abuse and neglect.³⁰

²⁷ Andrea Smith: Indigenous Peoples and Boarding Schools, page 7, Viewed: 2022.01.10, Available at: https://www.un.org/esa/socdev/unpfii/documents/IPS_Boarding_Schools.pdf

²⁸ Ibid, page 4

²⁹ Grant Charles, Mike DeGagné: Student-to-Student Abuse in the Indian Residential Schools in Canada: Setting the Stage for Further Understanding, 2013, page 344, Viewed: 2022.01.26., Available at: <https://www.tandfonline.com/doi/full/10.1080/0145935X.2013.859903>

³⁰ Pamela O'Connor (2000) Squaring the circle: how Canada is dealing with the legacy of its Indian residential schools experiment, Australian Journal of Human Rights, page 188, Viewed: 2022.01.28., Available at: <https://www.tandfonline.com/doi/pdf/10.1080/1323238X.2000.11911032?needAccess=true>

4.4. Conditions at residential schools of Canada

In Canada, the impact of these institutions on First Nations students, families, and communities was disastrous. The schools were known for their exposure to white settler culture. Isolated from their peers, youngsters were instilled with a mindset that was entirely strange to them. Children grew ashamed of being indigenous since education was solely in English and aboriginality was widely mocked in the curriculum. Academic and vocational instruction were both abysmal, and the schools' 'graduates' never learned the information and skills they required to thrive in Euro-Canadian society. The kids were frequently crammed into small rooms, fed insufficient amounts of food, refused required medical treatment, and were mistreated mentally, physically, and sexually. ““The physical abuse was every day,” one survivor, John Jones says. “And being assaulted verbally — if I didn’t do things the way that they wanted me to do, I was called a dirty, stupid Indian that would be good for nothing.”³¹ Roulette, another survivor said the following about her first day of school: “A nun silently handed me a pencil and paper and, when I didn’t respond quickly enough, punched me in the face. There was blood everywhere. I didn’t know what I did wrong. I just cried and cried, and then I had to clean up all the blood.”³² Quoting another survivor, Kiyowil, “They were pretty mean. I don’t know why they were so mean. I was getting strapped every morning because I had weak kidneys and I wet myself”.³³ Almost every student at a residential school suffered from some form of emotional trauma, and often experienced sexual abuse not just at the hands of staff, but from fellow students as well. Students typically worked hard to “beat the system” in order to survive. This system and its structure elicited one of two responses: passivity or aggression. The rewards for those who were “passive” were quite beneficial. Acceptance of the foreign language, religion, and culture was rewarded in a number of ways, including more positive attention from the adults in authority, as well as perks such as better treatment, food, and clothes. It has to be pointed out that this behavior did not mean that the student did not experience any form of abuse, but much less than those who responded to the system with aggression.³⁴ These students broke the norms of the institutions, occasionally refusing to

³¹ WBUR: Stories From Canada's Indigenous Residential School Survivors Viewed: 2022.04.15. Available at: <https://www.wbur.org/onpoint/2021/07/28/stories-from-survivors-of-canadas-indigenous-residential-schools>

³² Global News: ‘We were always hungry’: Survivors recount life in Canadian residential schools Viewed: 2022.04.16. Available at: <https://globalnews.ca/news/7937307/canadian-residential-school-survivors/>

³³ Ibidem

³⁴ Grant Charles, Mike DeGagné: Student-to-Student Abuse in the Indian Residential Schools in Canada: Setting the Stage for Further Understanding, 2013, page 349, Viewed: 2022.01.26., Available at: <https://www.tandfonline.com/doi/full/10.1080/0145935X.2013.859903>

participate with classroom or vocational teaching, stealing food to supplement the meager institutional meals, fleeing in terror and frustration, and sometimes attempting to burn the schools down. When detected, these young people were typically brutally punished since they were considered as a major danger to individual staff members' authority as well as the general purpose of integration and Christianization.³⁵ About the meals, survivors reported the food was inedible and insufficient. Children would attempt to eat it and end up throwing up, then were forced to taste their own vomit.³⁶ The sanitary conditions at these schools were also very poor, with fatality rate within them being above 50% as early as November 1907, according to the Canadian press.³⁷ In File Hills Industrial school in Saskatchewan, 69 percent of students died of tuberculosis in one decade at the turn of the century. A medical inspector carried out an investigation and warned of outbreaks, but his report was largely ignored.³⁸

For a very long time, these stories were all hidden from Canadians, and from the whole world. It was later the Commission, which was established by the Indian Residential Schools Settlement Agreement, who spent six years traveling across Canada to hear from Aboriginal people who had been taken from their families as children, forcibly if necessary. More than 6,000 people testified before the Commission, the majority of whom had lived at the institutions as children. The reports of that experience are often difficult to believe, as events that could have occurred in a nation like Canada, which has long prided itself on being a model of democracy, peace, and prosperity.

4.5. The discovery of Indigenous children's bodies in Canada

Recent evidence suggests that many of the missing children perished in these schools. The discovery of the remains of 215 children at the grounds of a former school in British Columbia startled Canadians in May of 2021. The remains belonged to Indigenous children who attended Canada's "residential school" system, some as young as three years old. As of January 2022, more than 1,300 unmarked graves have been confirmed or suspected so far, but this number will only rise with more investigation being done, as each week, there are news of new

³⁵ Ibidem

³⁶ Global News: 'We were always hungry': Survivors recount life in Canadian residential schools Viewed: 2022.04.16. Available at: <https://globalnews.ca/news/7937307/canadian-residential-school-survivors/>

³⁷ The Truth Commission into Genocide in Canada – Hidden from History, The Canadian Holocaust (2001), page 5, Viewed: 2022.02.01., Available at: <http://canadiangenocide.nativeweb.org/genocide.pdf>

³⁸ Andrea Smith: Indigenous Peoples and Boarding Schools, page 8, Viewed: 2022.01.09., Available at: https://www.un.org/esa/socdev/unpfii/documents/IPS_Boarding_Schools.pdf

gravesites being found. Quoting an article written by Scientific American: “Given that more than 2000 graves have been identified using ground-penetrating radar at only four of the 139 federally run residential schools, the current official number of 4,120 students known to have died in the schools will end up being only a fraction of the actual total.”³⁹ Just over half a year ago, the bodies of up to 751 young people, mostly Indigenous children, were discovered at the site of a former school in Saskatchewan., this being the largest burial site up to date. The revelations have shocked a country that has endured centuries of widespread and systemic mistreatment of Indigenous peoples. Natives claimed hundreds of children had vanished from schools for decades, but they were typically regarded with skepticism.⁴⁰ “This was a crime against humanity, an assault on a First Nation people,” as told by Chief Bobby Cameron, of the Federation of Sovereign Indigenous Nations, the provincial federation of Indigenous groups. “The only crime we ever committed as children was being born Indigenous,” he stated.⁴¹ According to the National Truth and Reconciliation Commission, around 4,100 pupils went missing from schools across the country. Murray Sinclair, an Indigenous former judge who chaired the committee, said he now believes the figure is “far past 10,000.”⁴²

4.6. Targeted group in Australia

Aboriginal Australians may very well be the world's oldest human group, having come from Africa on boats 70,000 years ago, according to one theory.⁴³ They can be divided into two groups: Aboriginal peoples, who are descended from those who already lived on the island when Britain colonized it in 1788, and Torres Strait Islander peoples, who are descended from residents of the Torres Strait Islands, a group of islands off the coast of Queensland, Australia. Legally, “Aboriginal Australian” is recognized as “a person of Aboriginal or Torres Strait

³⁹ Scientific American: Canada’s Residential Schools Were a Horror Viewed: 2022. 03.22. Available at: <https://www.scientificamerican.com/article/canadas-residential-schools-were-a-horror/>

⁴⁰ The New York Times: Hundreds More Unmarked Graves Found at Former Residential School in Canada Viewed: 2022.03.22. Available at: <https://www.nytimes.com/2021/06/24/world/canada/indigenous-children-graves-saskatchewan-canada.html>

⁴¹ Ibidem

⁴² The New York Times: Hundreds More Unmarked Graves Found at Former Residential School in Canada Viewed: 2022.03.22. Available at: <https://www.nytimes.com/2021/06/24/world/canada/indigenous-children-graves-saskatchewan-canada.html>

⁴³ National Geographic: Aboriginal Australians Viewed: 2022.03.29. Available at: <https://www.nationalgeographic.com/culture/article/aboriginal-australians>

Islander descent who identifies as an Aboriginal or Torres Strait Islander and is accepted as such by the community in which he or she lives.”⁴⁴

The life of Aboriginals in Australia was similar to those of Canada. The Stolen Generations refers to a time in the country’s history when government policies forced Aboriginal children and Torres Strait Islander children to be separated from their families. Victoria was the first state to establish legislation authorizing the removal of Aboriginal children from their parents in the 1860s. Other states and territories soon followed, as did the federal government when it was founded in the early 1900s. Thousands of Aboriginal children were forcibly removed from their families, communities, and culture for over a century, many never to be seen again. The survivors of the Stolen Generations, often known as the Stolen Children, are these children. There isn't a single Aboriginal and/or Torres Strait Islander community that hasn't been irreversibly impacted by this catastrophe, affecting 1 in 3 children.⁴⁵

4.7. Establishment of residential schools Australia

Indigenous peoples and cultures were devastated by Australia's colonization: populations were decimated, traditional lands and means of self-sufficiency were taken, and government policies aimed at assimilation legitimized the separation of Indigenous children from their families so that they could grow up to be “white” Australians.⁴⁶ From the commencement of European colonization, indigenous children have been taken from their homes as a source of cheap labor, and in order to “inculcate European values and work habits in children, who would then be employed in service to the colonial settlers.”⁴⁷ Around the start of the twentieth century, the removal of Aboriginal children from their families began in Australia. The Aboriginal Protection and Restriction of the Sale of Opium Act 1897, which was followed seven years later by the Aborigines Act 1905, was the first fundamental act that established the legal basis for the removal of Aboriginal children from their families. A resolution supporting the policy of complete "absorption" of Australia's Aboriginal peoples into the European population was

⁴⁴ National Geographic – Australian Aboriginals Viewed: 2022.03.18 Available at: <https://www.nationalgeographic.com/culture/article/aboriginal-australians>

⁴⁵ The Australian Institute of Aboriginal and Torres Strait Islander Studies – The Stolen Generations Viewed: 2022.03.18. Available at: <https://aiatsis.gov.au/explore/stolen-generations>

⁴⁶ Asmi Wood (2013): Indigenous Australia for Dummies. International Journal of Critical Indigenous Studies, page 7, Viewed: 2022.01.22, Available at: <https://doi.org/10.5204/ijcis.v6i2.103>

⁴⁷ Andrea Smith: Indigenous Peoples and Boarding Schools, page 12, Viewed: 2022.01.10, Available at: https://www.un.org/esa/socdev/unpfii/documents/IPS_Boarding_Schools.pdf

passed at the 1937 Canberra conference of Commonwealth and State Aboriginal Affairs ministers, which was dominated by Western Australia, Queensland, and the Northern Territory. The generations of children removed under these various government policies became known as the Stolen Generations. Many children of mixed heritage were completely taken from their families while they were young in New South Wales, Western Australia, and the Northern Territory, and placed in segregated “training” facilities before being sent out to work. Between 1910 and 1970, one out of every three indigenous children were separated from their homes.⁴⁸ Just like in Canada, child removal practices in Australia generated a legacy of pain and loss that still affects First Nations communities, families, and individuals. Children who had been taken from their parents were made to abandon their ethnicity and accept white culture. Their names were frequently altered, many were prevented from speaking in First Nations languages, and most of the children were placed in institutions where abuse and neglect were widespread.

4.8. Conditions at residential schools in Australia

Living standards at Australian residential schools were terrible, minimal requirements essential to life were barely met. Physical labor was prioritized above education, and although nonindigenous children got five hours of instruction each day, indigenous children received two hours of education before being sent to work. Quoting one of the survivors on the topic of education, “I wanted to be a nurse, only to be told that I was nothing but an immoral black lubra, and I was only fit to work on cattle and sheep properties ... I strived every year from grade 5 up until grade 8 to get that perfect 100% mark in my exams at the end of each year, which I did succeed in, only to be knocked back by saying that I wasn’t fit to do these things ... Our education was really to train us to be domestics and to take orders.”⁴⁹ Apart from the lack of education and opportunities, avoiding assigned chores frequently resulted in public humiliation, head shaving, and bread and water diets. Children were often gathered together like animals and humiliated, their skin colors being evaluated for official records. The condition at the schools was so bad that students regularly ran away, many of whom committed suicide, or died in harsh geographical surroundings. Disease exposure and inadequate medical treatment

⁴⁸ Ibid, page 14

⁴⁹ Bringing them Home (1997), Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, page 148, Viewed: 2022.04.15., Available at: https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf

were also distinguishing characteristics of the institutions, to the point that “Residential Schools endangered the bodies of aboriginal children through exposure to disease, over work, underfeeding and various forms of abuse”.⁵⁰ Quoting one of the survivors, “I’ve seen girls naked, strapped to chairs and whipped. We’ve all been through the locking up period, locked in dark rooms. I had a problem of fainting when I was growing up and I got belted every time I fainted and this is belted, not just on the hands or nothing. I’ve seen my sister dragged by the hair into those block rooms and belted because she’s trying to protect me ... How could this be for my own good? Please tell me.”⁵¹ Furthermore, the institutions generally had poor physical infrastructure, and resources were insufficient to fix it or to make sure the children were decently clothed, nourished, and housed. According to Doris Pilkington, author of the Australian Book *Follow the Rabbit-Proof Fence*, the conditions were “more like a concentration camp than a residential school for Aboriginal children”.⁵² “There was no food, nothing. We was all huddled up in a room ... like a little puppy-dog ... on the floor ... Sometimes at nighttime we’d cry with hunger, no food ... We had to scrounge in the town dump, eating old bread, smashing tomato sauce bottles, licking them. Half of the time the food we got was from the rubbish dump.”, “It’s a wonder we all survived with the food we got. For breakfast we got a bit of porridge with saccharine in it and a cup of tea. The porridge was always dry as a bone. Lunch was a plate of soup made out of bones, sheep’s heads and things like that, no vegetables. For dinner we had a slice of bread with jam and a cup of tea. After our dinner we were locked up in a dormitory for the night.”⁵³ Every child in every placement was at risk of sexual exploitation and abuse, with girls being at more risk than boys. Citing Confidential evidence 679, from a man in Western Australia, “When I was at Castledare I was badly interfered with by one of those brothers. I still know the room [in the church]. I was taken, selectively taken, and I was interfered with by one of those brothers. And if you didn’t respond in a way, then you were hit, you were hit hard. I never told anyone that.”. Almost one-fifth (19%) of inquiry witnesses who spent time in a facility said they were physically assaulted there.⁵⁴ Children at these institutions grew up without anyone to really care for them, anyone to love them, this

⁵⁰ Zachary Fargher: *The Unspoken Genocide: Canada’s Residential Schools And Australia’s Stolen Generation*, page 67, Viewed: 2022.03.12., Available at: [https://cdn.auckland.ac.nz/assets/law/Documents/2021/our-research/Te-tai-haruru-journal/Vol4/Te%20Tai%20Haruru%20Journal%204%20\(2013\)%2057%20Fargher.pdf](https://cdn.auckland.ac.nz/assets/law/Documents/2021/our-research/Te-tai-haruru-journal/Vol4/Te%20Tai%20Haruru%20Journal%204%20(2013)%2057%20Fargher.pdf)

⁵¹ *Bringing them Home* (1997), Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, page 139, Viewed: 2022.04.15., Available at: https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf

⁵² Doris Pilkington Garimara- *Follow the Rabbit-Proof Fence* (1996) page 72

⁵³ *Bringing them Home* (1997), Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, page 138, Viewed: 2022.03.12., Available at: https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf

⁵⁴ *Ibid*, page 142

leaving them scarred for life, and depressed. “I’ve often thought, as old as I am, that it would have been lovely to have known a father and a mother, to know parents even for a little while, just to have had the opportunity of having a mother tuck you into bed and give you a good-night kiss – but it was never to be” – said Tasmania, who was fostered at 2 months in 1936.⁵⁵ Removing the children from their parents also had a negative impact on their skills and learning. Separation can have an impact on a variety of abilities. Some developmental phases regress just momentarily, while others become melancholy for the rest of their lives. When the organization of attachment behavior is disrupted, it is more than likely to result in learning issues, poor ego integration, and substantial control fights with caregivers. Professor Beverley Raphael, an international trauma specialist, warned the Inquiry that many separated children would have issues in relationships because their feelings had been dulled as a result of the trauma they had experienced. Several witnesses described how this had affected them, as well as their unwillingness to trust people. “One of the biggest ones is I cannot really love anyone no more. I’m sick of being hurt. Every time I used to get close to anyone they were just taken away from me. The other fact is, if I did meet someone, I don’t want to have children, cos I’m frightened the welfare system would come back and take my children.”⁵⁶

5. Were residential schools institutions of “genocide”?

The guilt of Australia can be assessed under Article 2, subsection (e) and (b) of the United Nations Convention of the Prevention and Punishment of the Crime of Genocide 1948⁵⁷, while the culpability of Canada can be assessed by Article 2, subsection (b) and (c). As stated previously, Article 2 of the Convention on Genocide defines “genocide” as:

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;

⁵⁵ Ibid, page 155

⁵⁶ Ibid, page 161

⁵⁷ Convention on the Prevention and Punishment of the Crime of Genocide, Article 2, Viewed: 2022. 02.20. Available at: https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf

(e) forcibly transferring children of the group to another group⁵⁸

5.1. Culpability of Australia

According to subsection (e), in order for the act to classify as genocide, the removal of children must have been forcibly accomplished, meaning that it was done by physical or mental compulsion, or without consent. Looking at the situation in both countries, this was definitely the case. In Australia, the testimony of Aboriginal tribes in *Bringing Them Home* illustrates the dread they faced: survivors tell of hiding their children beneath mats and shrubbery to avoid being apprehended by armed police. When children who had been concealed were discovered, there was frequently a physical confrontation, which was usually led by the mothers of the children. Furthermore, subsection (e) mentions the transferring of children of the group to another group, something that also happened with Australia's Stolen Generation. The main goal of the residential schools that aboriginal children were transferred to was breaking the bonds that bind Aboriginal children to their communities and ensuring that they never return "to the black."⁵⁹ "They changed our names, they changed our religion, they changed our date of birth, they did all that. That's why today, a lot of them don't know who they are, where they're from."⁶⁰ White Australians working for the church or the government re-parented, educated, and cared for the children. Dr Brent Waters, a child and adolescent psychiatrist, has spoken with a number of people who have been forcefully taken in NSW. "The people that I've talked to who were placed in white families were – and I haven't seen any that were absolutely fulsome about their family experience, most of them had some reservations – things seem to have gone quite well until they got into the teenage years. Then they started to become more aware of the fact that they were different. Some of these were quite light kids, but nevertheless that they were different. And it was the impact of what peers were doing and saying which seemed to be most distressing to them. And sometimes their families didn't deal with that very well. They were dismissive. 'Look, the best thing to do is just forget you were ever Aboriginal' or 'Tell them that you came from Southern Europe'. To pass off what was obviously a difference in

⁵⁸ Ibidem

⁵⁹ Zachary Fargher: *The Unspoken Genocide: Canada's Residential Schools And Australia's Stolen Generation*, page 62, Viewed: 2022.03.12., Available at: [https://cdn.auckland.ac.nz/assets/law/Documents/2021/our-research/Te-tai-haruru-journal/Vol4/Te%20Tai%20Haruru%20Journal%204%20\(2013\)%2057%20Fargher.pdf](https://cdn.auckland.ac.nz/assets/law/Documents/2021/our-research/Te-tai-haruru-journal/Vol4/Te%20Tai%20Haruru%20Journal%204%20(2013)%2057%20Fargher.pdf)

⁶⁰ *Bringing them Home* (1997), Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, page 134, Viewed: 2022.03.12., Available at: https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf

skin colour. But in none of those families was there a sense that one way to manage this situation was to recapture your sense of Aboriginality. There seemed to be no honor and dignity in being an Aboriginal, even if you'd been brought up by a family.”⁶¹

Australia's culpability can also be shown by subsection (b) of Article 2 of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide 1948, which defines genocide as “causing serious bodily or mental harm to members of the group”.⁶² The book *Bringing Them Home* describes the anguish endured by Aboriginal children whose parents never visited them and who were “routinely told that the circumstances of their removals were that their mother couldn't take care of them or had not wanted them”. “Your family don't care about you anymore; they wouldn't have given you away. They don't love you. All they are, are just dirty, drunken blacks.”⁶³ These children were scarred mentally. After being placed in state care, fostered or adopted out, or sent to work, a large percentage of Indigenous children were psychologically, physically, and sexually assaulted. The facilities' living conditions were severe, with rigid regimens, and the children were frequently hungry and cold. There was little tenderness, but lots of corporal punishment. As punishments, children were lashed, beaten, thrown in dark locations, or tied up. Depression, anxiety, low self-esteem, post-traumatic stress, and suicide are all widespread among the Stolen Generations, according to psychiatrists.⁶⁴

This act meets the definition of cultural genocide, the systematic destruction of traditions, values, language, and other elements that make one group of people distinct from another. Children who were removed from their parents for an undetermined period of time had their hair chopped off, were prohibited to speak their native language, and were given a number instead of a name. They could not practice any of their traditions and were constantly told to forget everything they knew about it, as it was something to be ashamed of.⁶⁵ Losing their language was one of the most devastating effects. “It was like somebody came and stabbed me with a knife. I couldn't communicate with my family because I had no way of communicating

⁶¹ Ibid, page 136.

⁶² Convention on the Prevention and Punishment of the Crime of Genocide, Article 2, Viewed: 2022. 02.20. Available at: https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf

⁶³ *Bringing them Home* (1997), Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, page 135, Viewed: 2022.03.12., Available at: https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf

⁶⁴ Asmi Wood (2013): Indigenous Australia for Dummies. International Journal of Critical Indigenous Studies, page 133, Viewed: 2022.03.13, Available at: <https://doi.org/10.5204/ijcis.v6i2.103>

⁶⁵ *Bringing them Home* (1997), Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, Viewed: 2022.03.12., Available at: https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf

with them any longer. Once that language was taken away, we lost a part of that very soul. It meant our culture was gone, our family was gone, everything that was dear to us was gone. When I finally met [my mother] through an interpreter she said that because my name had been changed she had heard about the other children but she'd never heard about me. And every sun, every morning as the sun came up the whole family would wail. They did that for 32 years until they saw me again. Who can imagine what a mother went through?"⁶⁶

All of these conditions definitely support the culpability of Australia.

5.2. Litigation in Australia

It is clear that Indigenous children's and communities' experiences in Canada are similar to those of young Australian First Peoples and children. Just as in Canada, Aboriginal and Torres Strait Islander peoples have long advocated for a thorough historical truth-telling process in Australia. The Royal Commission's Report on Aboriginal Deaths in Custody the Bringing Them Home report, the final report of the Council for Aboriginal Reconciliation, and the final report of the Referendum Council are all significant steps forward in understanding the effects of colonization, dispossession, forced removal, and trauma on Aboriginal and Torres Strait Islander peoples, as well as their remarkable resilience.⁶⁷ The state government of Western Australia was the first to act, delivering an apology on May 27, 1997. By 2001, every state and territory had issued an apology. First Nations peoples and their supporters launched a campaign to raise awareness and create support for a federal apology. Over the years, the National Sorry Day Committee organized a variety of activities, including the 2000 Walk for Reconciliation over the Sydney Harbour Bridge. Kevin Rudd's Labor Party won the federal election in 2007 and gained government. It advocated for a formal public apology to the victims of child abduction, particularly the Stolen Generations.⁶⁸ Thousands of people gathered in Canberra for the event witnessed the apology, which was aired across the country. Those who were impacted by the Apology had a wide range of feelings. While few believed that this would entirely erase previous grief, many believed it was an important first step in the healing process. Released on 26 May 2017, another important step was definitely the Uluru Statement from the Heart, when

⁶⁶ Ibid, page 113

⁶⁷ Reconciliation Australia – Truth-telling Viewed: 2022.03.23. Available at: <https://www.reconciliation.org.au/reconciliation/truth-telling/>

⁶⁸ National Museum Australia (2008): National Apology Viewed: 2022.04.06 Available at: <https://www.nma.gov.au/defining-moments/resources/national-apology>

delegates at the First Nations National Constitutional Convention, convened over four days near Uluru in Central Australia. The statement, which was released after the convention, calls for the inclusion of a "First Nations Voice" in the Australian Constitution, as well as the establishment of a Makarrata Commission to oversee a process of "agreement-making" and truth-telling between the Australian government and Aboriginal and Torres Strait Islander peoples. Quoting the Statement, "We seek constitutional reforms to empower our people and take a rightful place in our own country. When we have power over our destiny our children will flourish. They will walk in two worlds and their culture will be a gift to their country.", we can see that it expresses Aboriginal and Torres Strait Islander aspirations for a "fair and honest relationship with the Australian people...based on justice and self-determination."⁶⁹ It is clear what the Aboriginals want: "In 1967 we were counted, in 2017 we seek to be heard. We leave base camp and start our trek across this vast country. We invite you to walk with us in a movement of the Australian people for a better future."⁷⁰ They want reconciliation, they want recognition, they seek apologies. This was something they could not reach from 1996 until 2007, when Australia's conservative government, led by Prime Minister John Howard, refused to apologize to the Stolen Generations. When *Bringing them Home* was first released, Prime Minister John Howard was certain that "this generation of Australians" would not apologize or shoulder the blame for past generations' crimes. Tony Abbott, the Leader of the Opposition, also said it was "time to move on."⁷¹ One of the 54 recommendations in the 1997 "Bringing them Home" report, which explored the forcible removal of Indigenous children from their families, was to issue a public apology to the Stolen Generations. "The Government has to explain why it happened. What was the intention? I have to know why I was taken. I have to know why I was given the life I was given and why I'm scarred today. Why was my Mum meant to suffer? Why was I made to suffer with no Aboriginality and no identity, no culture? Why did they think that the life they gave me was better than the one my Mum would give me?" – asked Victoria, member of the Stolen Generations. "An apology is important because I've never been apologised to. My mother's never been apologised to, not once, and I would like to be apologised to." – she said.⁷² Now, in 2022, there is finally hope. According to a

⁶⁹ Uluru Statement from The Heart Viewed: 2022.03.23. Available at:

https://www.referendumcouncil.org.au/sites/default/files/2017-05/Uluru_Statement_From_The_Heart_0.PDF

⁷⁰ Ibidem

⁷¹ Zachary Fargher: *The Unspoken Genocide: Canada's Residential Schools And Australia's Stolen Generation*, page 72, Viewed: 2022.04.12., Available at: [https://cdn.auckland.ac.nz/assets/law/Documents/2021/our-research/Te-tai-haruru-journal/Vol4/Te%20Tai%20Haruru%20Journal%204%20\(2013\)%2057%20Fargher.pdf](https://cdn.auckland.ac.nz/assets/law/Documents/2021/our-research/Te-tai-haruru-journal/Vol4/Te%20Tai%20Haruru%20Journal%204%20(2013)%2057%20Fargher.pdf)

⁷² *Bringing them Home* (1997), Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, page 241, Viewed: 2022.04.15., Available at: https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf

statement by Australian Prime Minister, Scott Morrison, the Morrison Government is committed to delivering \$378.6 million for a financial and well-being reparation plan for the Stolen Generations members who were taken from their families as youngsters. “Earlier this year I met with the Healing Foundation and survivors of the stolen generations, and I committed then that I would look at this important issue. Today we are delivering on that commitment with practical action that will positively impact the health and wellbeing of Stolen Generations survivors, their families and communities.”⁷³ - stated by the Prime Minister. Ken Wyatt, the Minister for Indigenous Australians, said that the Morrison Government's priority was to facilitate intergenerational healing. “This announcement reflects the Government’s commitment to recognize and acknowledge the wrongs of the past as part of the nation’s journey to reconciliation, and this scheme represents a major step forward towards healing.”- said Wyatt.⁷⁴ The program began accepting applications a few weeks ago, on March 1, 2022, and will operate through June 20, 2026. If deemed applicable, victims will, in acknowledgement of the harm caused by forcible removal, receive a one-time payment of \$75,000. Furthermore, each victim will have the opportunity to tell a senior government official their story about the effect of their deportation, have it acknowledged, and get a face-to-face or written apology for their removal and associated trauma, if they choose to.⁷⁵ Money is rarely what survivors want. Quoting Brenda McDonnell, 64 year old survivor, “Compensation is not what everyone wants—we need healing centres across Australia so people can move on and heal their incessant pain. For many of the other victims that I’ve talked to, compensation wasn’t an issue. We all want someone to acknowledge that what had happened to us was wrong. Reparations and compensation is different: We need justice.”⁷⁶ Article 8 of the Universal Declaration of Human Rights (1948) states that “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”.⁷⁷ Applicants will be able to receive this. They will have access to healing and reconnection to Country programs. According to the Victorian Aboriginal Legal Service the initiative is an essential step toward reducing inequity for Aboriginal people, but it must be implemented carefully. There are already many institutions which take part in this. The Healing

⁷³ PRIME MINISTER OF AUSTRALIA: Media Release 2021.08.05. Viewed: 2022.04.16. Available at: <https://www.pm.gov.au/media/stolen-generations-redress-scheme>

⁷⁴ Ibidem

⁷⁵ Ibidem

⁷⁶ Creative Spirits : Compensation for Stolen Generation members Viewed: 2022.04.16. Available at: <https://www.creativespirits.info/aboriginalculture/politics/stolen-generations/compensation-for-stolen-generation-members>

⁷⁷ United Nations Universal Declaration of Human Rights 1948 Viewed: 2022.03.29. Available at: <https://www.jus.uio.no/lm/en/pdf/un.universal.declaration.of.human.rights.1948.portrait.letter.pdf>

Foundation recognizes the continued struggle of survivors and sponsors a variety of programs that meet the Stolen Generations' unique healing needs. Their work is guided by an expert reference group made up of survivors from the Stolen Generations from all throughout Australia.⁷⁸

5.3. Culpability of Canada

According to subsection (c), in order for the act to classify as genocide, it has to be “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;”, meaning the circumstances must be harsh enough to kill a significant portion of the targeted population.⁷⁹ Prosecutor v Akayeshu is a case that clarifies the requirements that must be met to meet paragraph (c), while Prosecutor v Kayishema⁸⁰ broadens this list, adding other elements to it. According to these two judgments, conditions include: bare subsistence diet, scarcity of medical supplies, as well as inadequate housing, hygiene, and clothing.⁸¹ Looking at the conditions of residential schools in Canada, this list of requirements is definitely met. When not obeying the laid-out rules, children experienced harsh forms of punishment, which very often lead to their deaths. “Boys sometimes peed their bed, and the counselor would make us form two lines facing each other with our belt in our hands. And as each of the person that was being punished for peeing the bed [passed], we would have to whip them with our belt as they passed to the lines. I chose not to with my friends, and as a result, I had to go through that line and get whipped myself. And each time their punishment took place, I chose not to whip them, but to get punished with them.”—John Jones, residential school survivor stated.⁸² Many Indigenous children who were taken to residential schools never returned home, according to the Truth and Reconciliation Commission. Some perished of illnesses such as

⁷⁸ Healing Foundation : Stolen Generations Viewed: 2022.04.16. Available at:

<https://healingfoundation.org.au/stolen-generations/>

⁷⁹ Convention on the Prevention and Punishment of the Crime of Genocide, Article 2, Viewed: 2022. 02.20.

Available at: https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf

⁸⁰ Prosecutor v Kayishema (Clément) and Ruzindana (Obed), Trial judgment, Case No ICTR-95-1-T Viewed: 2022.03.13. Available at: <https://unictr.irmct.org/sites/unictr.org/files/case-documents/ictr-95-1/appeals-chamber-judgements/en/010601.pdf>

⁸¹ THE PROSECUTOR v. JEAN-PAUL AKAYESU Case No. ICTR-96-4-T., para 506 Viewed: 2022.03.13., Available at: <https://unictr.irmct.org/sites/unictr.org/files/case-documents/ictr-96-4/trial-judgements/en/980902.pdf>

⁸² WBUR: Stories From Canada's Indigenous Residential School Survivors Viewed: 2022.04.15. Available at: <https://www.wbur.org/onpoint/2021/07/28/stories-from-survivors-of-canadas-indigenous-residential-schools>

tuberculosis, while others died while attempting to flee, therefore subsection c), this being “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part” is definitely met. According to the Truth and Reconciliation Commission's (TRC) report on Canada's residential school system, up to 6,000 Indigenous children may have died in the 150 residential schools run by the Catholic and Anglican churches from the 1880s to 1996, and that is only a conservative measure. Since investigation is still ongoing to this day, this number is expected to rise significantly in the coming months, years. Furthermore, according to the report, living circumstances are no better than those in prisoner of war camps, with minimal clothes, sleeping on the ground, a maize and water diet, physical and sexual abuse, and wind-torn, structurally unstable school structures.⁸³ Quoting the Report, students were “treated like they were animals in a herd”, calling the whole experience “frightening, degrading, and humiliating.” Children who died of sickness, children who murdered themselves, and mysterious and unexplained deaths were also recounted to the Commission.⁸⁴ When looking at subsection b), this being “causing serious bodily or mental harm to members of the group;”, we can see that this exactly happened at these institutions. Phyllis Kretschmer, now 86, is a residential school survivor herself, and stated the following: “I received a strap along both hands and forearms. Even more traumatic was witnessing an older relative being beaten on her bare bottom in front of everyone. Seeing the rage in the priest's face as he struck my cousin repeatedly is a memory I can't forget.”⁸⁵ Quoting another survivor, “I am deaf in my right ear from being slapped in the ear and the head, and my left earrings constantly.”⁸⁶ Apart from being beaten, children, as mentioned before in the chapter on conditions at Canadian residential schools, were often abused. As was told by Alsenia, a survivor who was taught at the Blue Quills Indian Residential School near St Paul, Alberta, “I was molested by a nun.” In an interview with her, after long, heavy gasps and sobs, Alsenia talks about the abuse, one instance in particular, when she was eight years old and being washed by a nun.⁸⁷

Cultural genocide was definitely the situation at these institutions. It was clearly a systematic destruction of traditions, values, language, and other elements. ““We have been told that native

⁸³ Truth and Reconciliation Commission of Canada: Interim Report, page 5. Viewed: 2022.03.13., Available at: <https://www.falconers.ca/wp-content/uploads/2015/07/TRC-Interim-Report.pdf>

⁸⁴ Ibidem

⁸⁵ CBC News: 'I tried to be tough,' says survivor of Marieval Indian Residential School sharing her story for 1st time Viewed: 2022.04.15. Available at: <https://www.cbc.ca/news/canada/saskatchewan/cowessess-first-nation-marieval-indian-residential-school-1.6103426>

⁸⁶ Ibidem

⁸⁷ Aljazeera: 'Just another Indian': Surviving Canada's residential schools Viewed: 2022.04.15. Available at: <https://www.aljazeera.com/features/2020/3/24/just-another-indian-surviving-canadas-residential-schools>

culture was not good, and that our customs were no-good,” Alsená recalls.⁸⁸ Students were disciplined for speaking their mother tongue, everything was done in order to eradicate their native culture. All was done to destroy any memory left of their culture. This is what genocide looks like, this is cultural genocide.

All of the above-mentioned conditions definitely support the culpability of Canada.

5.4. Litigation in Canada

On September 19, 2007, the Indian Residential Schools Settlement Agreement entered into force. Former students' legal counsel, Churches' legal counsel, the Assembly of First Nations, other Indigenous groups, and the Government of Canada came to an agreement in the Settlement Agreement. The adoption of this historic treaty brings an end to the legacy of Indian Residential Schools in a fair and lasting manner. To redress the legacy of Indian Residential Schools, the Settlement Agreement comprises five major elements. It includes a Common Experience Payment (CEP), a financial retribution for all eligible former students of Indian Residential Schools, an Independent Assessment Process (IAP) for claims of sexual or serious physical abuse, measures to support healing such as the Indian Residential Schools Resolution Health Support Program and an endowment to the Aboriginal Healing Foundation, commemorative activities, and lastly, the establishment of a Truth and Reconciliation Commission (TRC).⁸⁹ At hearings, Canada was represented by people from the Canada Department of Justice, while lawyers who were legally recognized under the Indian Residential School Settlement Agreement defended survivors of the Indian Residential School system.⁹⁰ Survivors of Indian Residential Schools were not required to appear in court and were not cross-examined. Rather, survivors of Indian Residential Schools testified in private sessions held in a neutral environment, such as hotel boardrooms. Survivors also had the ability to request the presence of a counsellor, psychologist, social worker or traditional healer. Many survivors were scared to share their stories, and some even hid the fact that they took part in hearings from their family members, due to the high level of vulnerability involved in disclosing the truth

⁸⁸ Ibidem

⁸⁹ Government of Canada -Indian Residential Schools Settlement Agreement Viewed: 2022.03.10. Available at: <https://www.rcaanc-cirnac.gc.ca/eng/1100100015576/1571581687074#sect1>

⁹⁰ Rocky James (2020) An evolution in queer indigenous oral histories through the Canada Indian residential school settlement agreement, page 6 Viewed: 2022.03.22. Available at: <https://www.tandfonline.com/doi/pdf/10.1080/13642987.2017.1347354?needAccess=true>

regarding severe physical and mental abuse,⁹¹ but here were many who had the courage to speak up. Almost 7000 persons, the majority of whom were survivors of the residential school system, testified in public and private sessions. Members of the public, former school workers, and others with ties to the system testified about their experiences.⁹² It is important to point out that because Canada has taken such a long time to handle this aspect of its past, those who have filed a claim are becoming older and older. “There's now a debate over whether their medical condition is the result of a childhood injury received at a residential school or just part of aging,” -Wilson, commissioner for the Truth and Reconciliation Commission said.⁹³ Other than the before mentioned hearings, National and Regional Events were held in Canada, to hear survivors' testimonies, as well as activities to raise public awareness about the residential school system. Seven National Events, which drew up to 155,000 visitors, were hosted in Winnipeg, Inuvik, Halifax, Saskatoon, Montreal, Vancouver, and Edmonton. Each event lasted four days, with over 9000 past survivors of residential schools participating. The National Events were broadcast live on the internet and received over 93,000 views from at least 62 countries.⁹⁴

Other than this settlement, other steps have been taken to reduce social disparities and make up for the past. On behalf of the Canadian government, Prime Minister Stephen Harper delivered a public apology on June 11, 2008. Experts believe Canada's decision is momentous and might have ramifications across the Commonwealth's settler-colonial governments, such as Australia and New Zealand, where Indigenous peoples still face major socio-economic disadvantages compared to their non-Indigenous peers.⁹⁵ The apology is part of a larger effort by the government and the First Nations as parties to the agreement to address the government's role in the history of the Indian Residential Schools. The apology included the following: “Mr. Speaker, I stand before you today to offer an apology to former students of Indian residential schools. The treatment of children in Indian residential schools is a sad chapter in our history...Today, we recognize that this policy of assimilation was wrong, has caused great harm, and has no place in our country...The government now recognizes that the consequences of the Indian residential school's policy were profoundly negative and that this policy has had

⁹¹ Ibidem

⁹² The Age Of Inquiry - Truth and Reconciliation Commission of Canada , Viewed: 2022.03.22. Available at: <https://www.lib.latrobe.edu.au/research/ageofinquiry/biogs/E000202b.htm>

⁹³ CBC - Residential school survivors left with hearing loss, broken bones Viewed: 2022.03.22. Available at: <https://www.cbc.ca/news/canada/manitoba/residential-school-survivors-left-with-hearing-loss-broken-bones-1.2719564>

⁹⁴ The Age Of Inquiry - Truth and Reconciliation Commission of Canada , Viewed: 2022.03.22. Available at: <https://www.lib.latrobe.edu.au/research/ageofinquiry/biogs/E000202b.htm>

⁹⁵ ABC News: Canada acknowledges 'colonial genocide', but will it set a precedent in the Commonwealth? Viewed: 2022.03.29. Available at: <https://www.abc.net.au/news/2019-07-07/will-canadas-report-into-colonial-genocide-impact-commonwealth/11241372>

a lasting and damaging impact on aboriginal culture, heritage and language.”⁹⁶ It was very clear from Harper’s speech that the government today acknowledges that the Indian Residential Schools program has had a long-term and damaging impact on Aboriginal culture, tradition, and language. “The government now recognizes that the consequences of the Indian Residential Schools policy were profoundly negative and that this policy has had a lasting and damaging impact on Aboriginal culture, heritage and language. While some former students have spoken positively about their experiences at residential schools, these stories are far overshadowed by tragic accounts of the emotional, physical and sexual abuse and neglect of helpless children, and their separation from powerless families and communities.... Regrettably, many former students are not with us today and died never having received a full apology from the Government of Canada.”⁹⁷ On February 14, 2018, Prime Minister Justin Trudeau confirmed the government's commitment to using recognition of rights as the foundation for interactions with Indigenous peoples, stating that a new recognition and implementation of rights framework will be established to operationalize recognition.⁹⁸

Following Harper's apology, Stéphane Dion, the Liberal leader at the time, recognized his party's role in the residential schools program after ruling Canada for 70 years in the twentieth century. Gilles Duceppe of the Bloc Québécois and Jack Layton of the NDP, two additional federal party leaders, remarked on the apology and criticized the Harper government for failing to endorse the United Nations Declaration on the Rights of Indigenous Peoples. Phil Fontaine, national chief of the Assembly of First Nations, replied to the apology with applause from the audience. "Never again will we be the 'Indian problem,'" stated Fontaine. "Today is the result of the righteousness of our struggle."

Another great step towards bettering the relations with Aboriginals of Canada was the Government of Canada’s publication of the Principles Respecting the Government of Canada’s Relationship with Indigenous Peoples, in which the government announced its commitment to a considerable departure from the status quo, as well as a fundamental shift in Canada's relationship with Indigenous peoples. “The Government of Canada is committed to achieving reconciliation with Indigenous peoples through a renewed, nation-to-nation, government-to-

⁹⁶ Facing History Ourselves - Prime Minister Harper's Apology Viewed: 2022.03.11. Available at: <https://www.facinghistory.org/stolen-lives-indigenous-peoples-canada-and-indian-residential-schools/historical-background/prime-minister-harpers-apology>

⁹⁷ Government of Canada - Statement of apology to former students of Indian Residential Schools Viewed: 2022.03.21. Available at: <https://www.rcaanc-cimac.gc.ca/eng/1100100015644/1571589171655>

⁹⁸ Government of Canada- The Attorney General of Canada's Directive on Civil Litigation Involving Indigenous Peoples Viewed: 2022.03.21. Available at: <https://www.justice.gc.ca/eng/csj-sjc/ijr-dja/dclip-dlcpa/litigation-litiges.html>

government, and Inuit-Crown relationship based on recognition of rights, respect, co-operation, and partnership as the foundation for transformative change.”⁹⁹ The principles in this document demonstrate a dedication to honesty, the rule of law, democracy, equality, non-discrimination, and human rights protection. It mentions how the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) necessitates a fundamental change in the government's interaction with indigenous peoples. These Principles serve as a beginning point for attempts to address Indigenous rights denial, which has resulted in disempowerment and assimilationist policies and practices.

The Truth and Reconciliation Commission released their report in 2015, in which they issued a total of 94 calls to action. Some of the key recommendations included:

- Legislation to protect Aboriginal languages and cultures and close the education gap;
- A public holiday to honor survivors;
- Funding for memorials, community events and museums.¹⁰⁰

Out of the 94 recommendations, 11 calls to action have been completed since the TRC released their report. Every year, the Yellowhead Institute issues a report titled Calls to Action Accountability Report, reviewing how many recommendations have actually been completed, and examining how the process is going. They believe that the federal government shows continued failure to implement the Calls to Action that would change the different realities that Indigenous peoples face in this nation.¹⁰¹ It can be seen clearly from the reports that the federal government completes fewer than two calls to action every year on average, and there are still more unfinished.⁸² If the government continues to move at its current rate, the last calls to action will not be finished until after 2060. It's certainly no coincidence that three calls to action were completed within a month of news breaking that a study of the former Kamloops Indian Residential School site revealed the remains of 215 students using ground-penetrating radar.¹⁰² The Aboriginals of Canada still do not feel that Canada is doing all that it can to complete the Calls to Action. In 2021, Prime Minister took a vacation when the country was reeling over the

⁹⁹ Government of Canada - Principles respecting the Government of Canada's relationship with Indigenous peoples Viewed: 2022.03.21. Available at: <https://www.justice.gc.ca/eng/csj-sjc/principles.pdf>

¹⁰⁰ The Age Of Inquiry - Truth and Reconciliation Commission of Canada , Viewed: 2022.03.22. Available at: <https://www.lib.latrobe.edu.au/research/ageofinquiry/biogs/E000202b.htm>

¹⁰¹ Yellowhead Institute: Calls to Action Accountability Report Viewed: 2022.03.22. Available: <https://yellowheadinstitute.org/wp-content/uploads/2021/12/trc-2021-accountability-update-yellowhead-institute-special-report.pdf>

¹⁰² Alberta Worker: Deep dives and critical analysis: Canada completed 3 of TRC's 94 calls to action in 2021 Viewed: 2022.03.22 Available at: <https://kimsiever.ca/2022/01/04/canada-completed-3-of-trcs-94-calls-to-action-in-2021/>

discovery of hundreds of children's graves outside defunct residential schools. "His words don't match his actions," one victim said.¹⁰³ They feel that the Government is not really doing anything, only getting credit for what the Indigenous do. Looking at one Action Call in particular, "public commemoration of the history and legacy of residential schools", Indigenous peoples carry out the difficult work of meaningful truth and reconciliation. In this case, the Tk'emlps te Secwépemc were the ones spearheading the search for their lost ancestors in the face of years of inaction by settler politicians and governments, while Canada responded with a half-hearted and symbolic response.¹⁰⁴

To summarize what the situation of Native Canadians are, I will quote Jaris Swidrovich, first Indigenous faculty pharmacist in Canada, who perfectly sums up the situation. "Indigenous people are just not seen as the highest priority. Look, for instance, with what we've been able to do with COVID by making it a priority, or what we're able to do when there's a natural disaster. When these kinds of things happen, the necessary resources are made available and then things change... If these Calls to Action were even close to being that much of a priority, well, this would be a very different world already."

Conclusion

The Canadian and Australian state's true goal was to integrate Aboriginal children by erasing their cultural identity and replace it with that of a white settler. In these circumstances, I conclude that the assimilationist aim carried out on such a large scale to destroy Aboriginal society as it existed historically fulfills the Convention of the Prevention and Punishment of the Crime of Genocide's provisions, making this an act of direct cultural genocide in both countries. There was a direct intention to accomplish the goal effect of integrating Aboriginal people into white society, using boarding schools as the tool for destroying their own culture. The *mens rea* requirement is premised upon the idea that one must possess a guilty state of mind and be aware of his or her misconduct¹⁰⁵, and the physical destruction has to have been planned, premeditated, and purposefully inflicted. There is no argument on whether or not these requirements are met, it is clear they are. The infliction was intentional, the school

¹⁰³ Yellowhead Institute: Calls to Action Accountability Report page 4, Viewed: 2022.03.22. Available: <https://yellowheadinstitute.org/wp-content/uploads/2021/12/trc-2021-accountability-update-yellowhead-institute-special-report.pdf>

¹⁰⁴ Ibid, page 10

¹⁰⁵ Cornell Law School: Legal Encyclopedia- Mens Rae Viewed: 2022.04.15. Available at: https://www.law.cornell.edu/wex/mens_rea

circumstances were not by chance. The government knew about the conditions, knew about the death rates, knew about everything that was going on at these institutions. It was all part of one big plan, eradication of Aboriginal cultures. In Canada, Murray Sinclair, Chairperson for the Truth and Reconciliation Commission, stated in an interview that: “mass graves, deaths, no surprise really, of course we knew”.¹⁰⁶ In Australia, it was all the same. They were aware that children were being abused, that no true education was being provided, and that the impact of these schools on children were horrible. The churches can justly be blamed for the everyday atrocities the children faced, but the federal government of both countries bears the ultimate responsibility for handing over education to churches without proper financing, accountability mechanisms, or monitoring. That is to say, the government can be considered to have purposefully sought destruction as a goal since it acted knowing that such devastation was occurring on a huge scale and would continue unless it interfered, and it had the ability to change the situation but chose not to.

The aforementioned, in my opinion, meets the criteria of the Convention, demonstrating that Canada and Australia both perpetrated genocide against its indigenous peoples through the Residential Schools, and there is sufficient evidence to show this.

The loss, sorrow, and suffering that Aboriginal people have suffered as a result of separation laws, policies, and practices can never be repaid sufficiently. The loss of a child's or parent's love and devotion cannot be replaced. Children's psychological, physical, and sexual abuse by adults who saw them as part of a "despised race" cannot be fully compensated. These people in Australia and Canada have been scarred, scarred for life. There is no respite. There is no relief. There is no respect, and no recompense.

¹⁰⁶ The Manitoban: TRC Chairman Declares Residential Schools Genocide (2012) Viewed: 2022.04.15, available at: <http://www.themanitoban.com/2012/02/trc-chairman-declares-residential-schools-genocide/9266>

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