



**Office of the Independent
Special Interlocutor**

for Missing Children and Unmarked
Graves and Burial Sites associated
with Indian Residential Schools

**Bureau de l'interlocutrice
spéciale indépendante**

pour les enfants disparus et les tombes
et les sépultures anonymes en lien avec
les pensionnats indiens

**Submission to the UN Special Rapporteur on the Rights of Indigenous Peoples
Canada Visit 2023**

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Searching for and Recovering the Missing Children and Unmarked Burials associated with Indian Residential Schools

Background and Context of the Missing Children and Unmarked Burials

1. The existence of unmarked graves and burial sites of children who died while being forced to attend Indian Residential Schools¹ in Canada is a stark example of the ongoing harm of assimilative government laws and policies that have targeted Indigenous Peoples. The Indian Residential School System was put in place for the express purpose of “killing the Indian in the child” and has been characterized as genocide by the Truth and Reconciliation Commission of Canada (TRC) and Canada’s National Inquiry on Missing and Murdered Indigenous Women and Girls (MMIWG National Inquiry).
2. For over 100 years, more than 150,000 First Nation, Inuit and Métis children were taken from their parents and communities and placed in state-funded, church-run Indian Residential Schools. The first and longest operating Indian Residential School opened 1828, the Mohawk Institute in Ontario. The last to close was the Gordon Indian Residential School in Saskatchewan in 1996.
3. Based on significant documentary evidence and Survivor testimony, the TRC concluded that many children who were forcibly taken to these institutions were subject to neglect, mistreatment, and extreme physical, sexual, spiritual and mental abuse by those entrusted with their care. They were forbidden to speak Indigenous languages and forced to learn the colonizers’ languages. They were told that their spirituality, customs and traditions were not only inferior, but were heathen and savage. They were indoctrinated to be ashamed of their own identities, of their families and of their communities.
4. Unfortunately, many First Nations, Inuit and Métis children were never returned home from Indian Residential Schools. Survivors have shared information of children who were there one day then disappeared the next, of newborn babies being put into incinerators, of being forced to dig the graves of children who died

¹ In this submission, the terms “Indian Residential Schools” and “Indian Residential School System” are used to refer to the institutions, including “hostels”, that were funded by the Canadian government, and administered by various church entities, for the direct purpose of removing First Nations, Inuit and Métis children from their families and communities to forcibly assimilate them within Canada. Some have chosen to drop the use of the term “Indian” from “Indian Residential Schools” and instead use the term “Residential Schools” on the basis that the inclusion of the term “Indian” may provide the incorrect impression that Inuit and Métis children were not forced to attend these institutions. The System, however, that was set up and imposed on Indigenous Peoples was formally and legally known as the “Indian Residential School System”. The Independent Special Interlocutor chooses to use the historical and formal name for two reasons: (1) it emphasizes the explicitly racist intent of this System; and (2) it differentiates them from private boarding schools. The term used is in no way meant to deny or diminish the experiences of any Survivors of Indian Residential Schools, whether First Nation, Inuit or Métis.

and of knowing where on former Indian Residential School grounds children are buried in unmarked graves.

5. In the years following the TRC and the MMIWG Inquiry, there is a growing recognition amongst Canadians that the Indian Residential School System constituted genocide.
6. In May 2015, shortly before the TRC Final Report was released, then Supreme Court of Canada Chief Justice Beverley McLachlin gave a public speech declaring that Canada developed an “ethos of exclusion and cultural annihilation” targeting Indigenous Peoples and that Canada’s assimilation laws and policies “in the language of the 21st century [is] cultural genocide.”²
7. In June 2019, Prime Minister Justin Trudeau told Canadians that the government accepted the MMIWG National Inquiry’s conclusion that Canada committed genocide against Indigenous Peoples.³
8. In interviews after he delivered an apology to Survivors for the Catholic Church’s role in the Indian Residential School System, Pope Francis said that what happened in the Indian Residential Schools was genocide.⁴
9. On October 27, 2022, the House of Commons passed NDP MP Leah Gazan’s motion with unanimous consent recognizing the Indian Residential Schools System as genocide. The motion states:

That, in the opinion of the House that the government must recognize what happened in Canada's Indian residential schools as genocide, as acknowledged by Pope Francis and in accordance with article II of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide.
10. These are important first steps for Canada to formally recognize the gross human rights violations that Indigenous Peoples within Canada have experienced at the hands of successive governments.
11. Survivors, Indigenous families and communities have been speaking their truths for decades and some started searching for the missing children long ago. There have been many confirmations over the years of unmarked burials of children who were never returned home from Indian Residential School dating back as early as the 1970s.
12. Volume 4 of the TRC's Final Report (2015) was the first attempt at a systematic nation-wide investigation into why and under what circumstances thousands of Indigenous children died in Indian Residential Schools. Despite experiencing

² John Lehman, “Chief Justice says Canada attempted ‘cultural genocide’ on aboriginals,” *Globe and Mail*, May 28, 2015. <https://www.theglobeandmail.com/news/national/chief-justice-says-canada-attempted-cultural-genocide-on-aboriginals/article24688854/>

³ <https://www.thestar.com/politics/federal/2019/06/04/we-accept-the-finding-that-this-was-genocide.html>

⁴ <https://www.cbc.ca/news/indigenous/pope-francis-residential-schools-genocide-1.6537203>

several barriers in completing its mandate, the Commission was able to gather information from historical records and Survivor testimonies. The TRC found that the policy and regulatory gaps, lack of oversight and care, and inadequate funding resulted in an unnecessarily high death rate at Indian Residential Schools.

13. The TRC documented the deaths of 3,200 children; 2,040 on the TRC's Register of Confirmed Deaths of Named Students and 1,161 on the Register of Confirmed Deaths of Unnamed Students. The Commission also recorded and analyzed the presence and condition of cemeteries located on former Indian Residential School sites.
14. The TRC issued the following Calls to Action 71-76 as a framework for a national strategy to continue this work post-TRC.

71. We call upon all chief coroners and provincial vital statistics agencies that have not provided to the Truth and Reconciliation Commission of Canada their records on the deaths of Aboriginal children in the care of residential school authorities to make these documents available to the National Centre for Truth and Reconciliation.

72. We call upon the federal government to allocate sufficient resources to the National Centre for Truth and Reconciliation to allow it to develop and maintain the National Residential School Student Death Register established by the Truth and Reconciliation Commission of Canada.

73. We call upon the federal government to work with churches, Aboriginal communities, and former residential school students to establish and maintain an online registry of residential school cemeteries, including, where possible, plot maps showing the location of deceased residential school children.

74. We call upon the federal government to work with the churches and Aboriginal community leaders to inform the families of children who died at residential schools of the child's burial location, and to respond to families' wishes for appropriate commemoration ceremonies and markers, and reburial in home communities where requested.

75. We call upon the federal government to work with provincial, territorial, and municipal governments, churches, Aboriginal communities, former residential school students, and current landowners to develop and implement strategies and procedures for the ongoing identification, documentation, maintenance, commemoration, and protection of residential school cemeteries or other sites at which residential school children were buried. This is to include the provision of appropriate memorial ceremonies and commemorative markers to honour the deceased children.

76. We call upon the parties engaged in the work of documenting, maintaining, commemorating, and protecting residential school cemeteries to adopt strategies in accordance with the following principles:

- i. The Aboriginal community most affected shall lead the development of such strategies.
 - ii. Information shall be sought from residential school Survivors and other Knowledge Keepers in the development of such strategies.
 - iii. Aboriginal protocols shall be respected before any potentially invasive technical inspection and investigation of a cemetery site.
15. Despite Survivors' public testimonies and the fact that the TRC published an entire Volume about the Missing Children in its 2015 Final Report, the issue received little attention. It was not until May 2021, when Tk'emlúps te Secwépemc confirmed over 200 potential unmarked burials of children at the site of the former Kamloops Indian Residential School in British Columbia, that Canadians and the international community became aware of the scope of these atrocities. There are now many calls for justice and accountability both within domestic law and within international forums.
16. Survivors, Indigenous leadership, and communities are working to locate, recover, investigate, protect, and commemorate these burials. This Sacred work will continue for years to come. Currently, over 100 Indigenous communities are leading search and recovery efforts across Canada with many more to follow.

Delays in Supporting the Search and Recovery of Missing Children and Unmarked Burials

17. The TRC's work revealed that there are likely unmarked burials associated with every Indian Residential School site across Canada. It also revealed that:
- Children were often sent to and died at other institutions, such as sanatoria, Indian hospitals, reformatories, and industrial schools;
 - The policies and laws to protect children at Indian Residential Schools were either not in place, slow to be implemented, and/or rarely enforced;
 - There were many different causes of death of children who were forced to attend these institutions including disease, neglect, mistreatment and criminal acts; and
 - There was a need for further work to locate, protect and commemorate the unmarked burial sites of the missing children and to find a way to identify those children once they are recovered.
18. The TRC emphasized that there were significant limitations to its work, in part because the federal government refused to provide additional funding to expand

the TRC's mandate to include a thorough investigation into unmarked burials and the missing children.

19. It has already been eight years since the TRC provided clear direction on what is needed to support Survivors, families, and communities to search and recover the missing children. While the Calls to Action are primarily aimed at Canada, the TRC also directed the federal government to work collaboratively with Indigenous Peoples, the churches who are parties to the Indian Residential Schools Settlement Agreement (IRSSA),⁵ other levels of government and relevant institutions to implement them.
20. There are several fundamental questions that Survivors, Indigenous families and communities are seeking answers to that build on the TRC's work. In Volume 4: Missing Children and Unmarked Burials, the TRC worked to answer the following questions:
 - Who and how many children died?
 - What did they die from?
 - Where are these children buried?
 - Who were the children that went missing?

Unfortunately, these questions largely remain unanswered.

21. Progress since 2015 has been too slow. Nevertheless, TRC Volume 4 and Calls to Action 71-76 provide a foundation both for the searches and investigations now being done and the work that will be completed during the Office of the Independent Special Interlocutor's mandate.

⁵ The Indian Residential Schools Settlement Agreement (IRSSA) was negotiated as a result of the largest class action in Canadian history, brought by Survivors of Indian Residential Schools that operated in Canada. The IRSSA came into effect in September 2007. The court-supervised IRSSA also included a Common Experience Payment (CEP) to provide monetary compensation to individual Survivors based on verified school attendance; an Independent Assessment Process for physical and sexual abuse, a health support program, the establishment of a Truth and Reconciliation Commission, and a commemoration program. Under IRSSA, the Government of Canada has 'recognized' 140 former Indian Residential Schools. There are a number of other institutions that Indigenous children were forced to attend where they experienced mistreatment and abuse that are not recognized under the IRSSA. One of the many examples of an "unrecognized" school is Île-à-la-Crosse in Saskatchewan which includes a high number of Métis Survivors who have recently launched a class action lawsuit, see this news article: [Historic Class Action Lawsuit Launched by Survivors of the Île-à-la-Crosse Residential School to Seek Recognition and Justice \(newswire.ca\)](https://www.newswire.ca/news-releases/historic-class-action-lawsuit-launched-by-survivors-of-the-île-à-la-crosse-residential-school-to-seek-recognition-and-justice-2019-09-11).

Mandate and Activities of the Independent Special Interlocutor

22. The Independent Special Interlocutor has a two-year mandate, ending in June 2024, to:
- Engage with Survivors, First Nations, Inuit and Métis governments, Indigenous organizations, Indigenous communities and families to gather information and input about barriers and concerns relating to the identification, protection, and commemoration of unmarked graves and burial sites, including the exhumation and repatriation of remains, where desired.
 - Provide information and liaise with relevant governments and organizations to assist Survivors, Indigenous families and communities address barriers and navigate federal, provincial, territorial and municipal systems to support their search and recovery of the missing children and unmarked burials. Assist communities to obtain and preserve relevant information and records from Canada, the provinces and territories and any other institutions, such as church entities, universities, and other record holders.
 - Research promising practices, gaps and barriers in the legal framework to identify recommendations to improve legal protections under Canadian law and create a new federal legal framework to protect unmarked burial sites and support the recovery of the missing children.
23. In considering a new legal framework, the Independent Special Interlocutor will incorporate the United Nations Declaration on the Rights of Indigenous Peoples, the federal *United Nations Declaration on the Rights of Indigenous Peoples Act*,⁶ and Indigenous laws and protocols as fundamental components to provide coordinated and robust mechanisms to protect the burial sites.
24. During her two-year mandate, the Independent Special Interlocutor has prioritized meeting with Survivors within their territories, when invited, including for the purpose of attending the sites of searches for unmarked burials. The Independent Special Interlocutor is also organizing at least six National Gatherings on Unmarked Burials to support knowledge exchange as follows:
- September 12-14, 2022 – National Gathering on Unmarked Burials: Supporting the Search and Recovery of Missing Children, Edmonton, Alberta
 - November 28-30, 2022 – National Gathering on Unmarked Burials: Addressing Trauma in the Search and Recovery of Missing Children, Winnipeg, Manitoba
 - January 16-18, 2023 – National Gathering on Unmarked Burials: Affirming Indigenous Data Sovereignty, Vancouver, British Columbia

⁶ This Act was passed by the Government of Canada on June 21, 2021 (more details below).

- March 27-29, 2023 – National Gathering on Unmarked Burials: Upholding Indigenous Law, Toronto, Ontario
 - September 2023 – National Gathering on Unmarked Burials: Supporting the Search and Recovery of Missing Children, Montreal, Quebec
 - January 2024 – National Gathering on Unmarked Burials: Supporting the Search and Recovery of Missing Children -Northern Voices, Location TBC
25. A [Summary Report](#) of the first National Gathering in Edmonton, Alberta is included to provide some context about what Survivors, Indigenous families and communities, and experts who are supporting search and recovery efforts shared during that Gathering (attached).
 26. The Independent Special Interlocutor is also working collaboratively with Canadian Geographic on [an interactive map](#) to provide information about the status of the searches and investigations for unmarked burials. The map provides aerial images and general information about the history of the sites and buildings to provide public education on the truths about unmarked burials and missing children.
 27. The Independent Special Interlocutor delivered a [Progress Update Report](#) to the Minister of Justice and Attorney General of Canada in November 2022 (attached). She will deliver an interim report in June 2023 and a final report in June 2024.
 28. The Independent Special Interlocutor will provide Summary Reports of all the Gatherings, as well as her Interim and Final Reports, to the UN Special Rapporteur as they are completed.

Evolving International and Domestic Context

29. The TRC and the MMIWG National Inquiry identified the immense scope of what Indigenous Peoples have endured, resisted, and survived in the face of colonization, genocide and human rights violations in Canada. This is not unique to Canada. Indigenous Peoples across the globe have been subjected to similar atrocities. Nor is Canada the only country that established institutions designed to “kill the Indian in the child.” It is therefore important to place the work of searching for and recovering missing children and unmarked burials within the international context.
30. In 2015, the TRC called for federal, provincial, territorial, and municipal governments to fully adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples as the framework for reconciliation. Dr. Sheryl Lightfoot, current Member of the UN Expert Mechanism on the Rights of Indigenous Peoples, has observed that in doing so, the TRC invited Canada to be bold in its efforts to address the ongoing legacy of colonialism by implementing the UN Declaration. This, in turn, would set a new international

benchmark for “any society seeking reconciliation with Indigenous Peoples through truth and reconciliation processes.”⁷

31. In Canada, the work to implement the United Nations Declaration in response to TRC Calls to Action 43-44 has only just begun.⁸ On June 21, 2021, Bill C-15, the *United Nations Declaration on the Rights of Indigenous Peoples Act* came into effect. This legislation affirms that the UN Declaration on the Rights of Indigenous Peoples must be applied to federal law in Canada and commits the Government of Canada to take all measures necessary to ensure that the laws of Canada are consistent with the Declaration. The Act requires the federal government, in consultation and collaboration with Indigenous Peoples, to develop a national Action Plan. An engagement process is currently underway to develop this Plan.
32. Work on implementing the Declaration is also taking place at the provincial level. British Columbia (BC) passed Bill 41, *The Declaration on the Rights of Indigenous Peoples Act* on November 28, 2019. On March 30, 2022, the Province of British Columbia released the Declaration on the Rights of Indigenous Peoples Act Action Plan, 2022-27, which was co-developed in consultation and collaboration with Indigenous Peoples in BC.
33. The UN Declaration provides important guidance in relation to the search and recovery of missing children and unmarked burials. At the Independent Special Interlocutor’s first National Gathering in Edmonton, Alberta, Dr. Chief Wilton Littlechild, former TRC Commissioner, former North American representative to the UN Permanent Forum on Indigenous Issues, and former Expert Member of the UN Expert Mechanism on the Rights of Indigenous Peoples, spoke of the need to set this search and recovery work in the broader international context of Indigenous Peoples’ political and legal rights.
34. Dr. Chief Littlechild said that Articles 7-12 of the UN Declaration in conjunction with Indigenous laws provide the necessary elements of a new legal framework. This would provide robust protections of burial sites before, during and after searches have occurred. It would ensure that the process of searching for and recovering missing children is Indigenous-led and meets Indigenous criteria for how to conduct this work respectfully in accordance with Indigenous laws.

⁷ Sheryl Lightfoot, “Truth and Reconciliation Commission of Canada: An invitation to boldness,” in *Trading Justice for Peace? Reframing Reconciliation in TRC Processes in South Africa, Canada, and Nordic Countries*, Sigríður Guðmarsdóttir, Paulette Regan and Demaine Solomons, eds., (AOISIS Publishing, Cape Town, South Africa, 2021: 141-153), 142.

⁸ TRC Call to Action 43: “We call upon federal, provincial, territorial, and municipal governments to fully adopt and implement the *United Nations Declaration on the Rights of Indigenous Peoples* as the framework for reconciliation.”

TRC Call to Action 44: “We call upon the Government of Canada to develop a national action plan, strategies, and other concrete measures to achieve the goals of the *United Nations Declaration on the Rights of Indigenous Peoples*.”

35. The Independent Special Interlocutor observes that Survivors, Elders, and Knowledge Holders at the National Gatherings have emphasized that the application of Indigenous laws is essential to community-led processes of truth finding, healing, justice and accountability, and commemoration. This is consistent with the TRC's finding that:

Reconciliation will be difficult to achieve until Indigenous Peoples' own traditions for uncovering truth and enhancing reconciliation are embraced as an essential part of the ongoing process of truth determination, dispute resolution, and reconciliation.⁹

36. Most of the Articles in the UN Declaration are relevant to the search and recovery of unmarked burials and missing children. The Articles on non-discrimination (Articles 1, 2, 9, 14, 15, 17, 22, 24, 44), freedom from persecution (Articles 7, 8), freedom from forced relocation (Article 10), self-determination (Article 4), revitalizing Indigenous legal and governance systems (Articles 5, 9, 13, 18, 19, 25, 27, 34, 35, 40), protecting Indigenous cultural traditions, customs and burial sites (Article 11, 31), repatriation of human remains (Article 12), and compensation, redress, and justice (Article 8, 11 and 40) are all relevant to supporting Survivors, Indigenous families and communities with the search and recovery of missing children and unmarked burials. These Articles make clear that Indigenous communities are entitled to have their cultural integrity safeguarded, their ancestral territories and burial grounds protected, and the remains of their loved ones repatriated.
37. In addition, under Article 11(2) "States must provide redress through effective mechanisms, which may include restitution, developed in conjunction with [I]ndigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs."
38. The UN Expert Mechanism on the Rights of Indigenous Peoples observes that "[t]he concepts of reparation and reconciliation are closely interlinked and often overlap...In designing, implementing and analysing attempts at reparation and reconciliation, [I]ndigenous peoples and States should take into consideration that the process is as important as the outcome. Indigenous perspectives need to be incorporated at all stages, and [I]ndigenous peoples' full and effective participation is essential if the outcomes of such processes are to be successful and, indeed, legitimate."¹⁰
39. At the Independent Special Interlocutor's National Gathering in Edmonton, Alberta, Fredy Peccerelli, Executive Director of the Forensic Anthropology

⁹ *Final Report of the Truth and Reconciliation Commission of Canada*, (Winnipeg: TRC, 2015), Reconciliation, Vol. 6, 48.

¹⁰ "Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples: recognition, reparation and reconciliation." Report of the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/EMRIP/2019/3/Rev.1, 2 September 2019, 4.

Foundation of Guatemala (FAFG) addressed some of these same reparative themes and the importance of an Indigenous-led process when he shared the work that FAFG is doing with Mayan communities in Guatemala who have been victims of genocide. He emphasized that reparations in relation to truth-finding, accountability and justice, help to restore dignity to victims, families, and communities.

40. Canada and the International Commission on Missing Persons (ICMP) have been in contact regarding the search and recovery work that Survivors, Indigenous families and communities are leading to locate unmarked burials at former Indian Residential Schools and associated sites. The Independent Special Interlocutor is concerned about the lack of transparency in the context of the ICMP's involvement, including the lack of clarity whether Canada has consulted with Indigenous communities in relation to the Memorandum of Understanding that they have been negotiating with the ICMP.
41. This lack of transparency is concerning, given that Indigenous communities have constitutionally protected rights under section 35 of the *Constitution Act* and the UN Declaration affirms Indigenous Peoples' rights to self-determination and participation in decision-making that affects their lives and communities. Finally, the Independent Special Interlocutor has questions about ICMP's experience and expertise in respecting Indigenous sovereignty, self-determination, laws and protocols in relation to searches and investigations of unmarked burials.

Towards a New Legal Framework

42. In considering a new legal framework, the Independent Special Interlocutor is examining how new legislation, policies, and funding can support reparations measures for truth-finding, justice and accountability, healing, repatriation, commemoration, and public education.
43. Together these measures must uphold Indigenous Peoples' individual and collective rights to self-determination, freedom, human dignity and security, protection from ongoing genocide, violence, colonization, and forced assimilation. They must confirm Indigenous Peoples' rights to reparations from the State, including the recovery, protection, access to and repatriation of human remains and burial sites.
44. In considering a new legal framework, the Independent Special Interlocutor's work will be further informed by several UN reports, studies, and principles that are particularly relevant to the search and recovery of missing children and unmarked burials.
 - The United Nations 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian

Law' outlines five types of reparations: 1) restitution; 2) compensation; 3) satisfaction; 4) rehabilitation; and 5) guarantees of non-repetition.¹¹

- The Joinet-Orentlicher Principles adopted by the UN Commission on Human Rights state that victims of mass human rights violations have the right to know the truth, the right to justice, and the right to reparations. They set out the reparations measures that States must undertake to meet this obligation. These can include monetary compensation as well as symbolic forms of reparation that support truth-finding, justice and accountability, healing, repatriation, commemoration, and public education.¹²
- The UN Special Rapporteur on the Promotion of Truth, Justice, Reparation, and Guarantees of Non-recurrence made specific reference to the role of archives in ensuring that victims of mass human rights violations have access to records that may reveal the truth of what happened.¹³

Barriers that Communities Leading Searches are Experiencing

45. To date, there are several common barriers that Survivors, Indigenous families and communities leading search and recovery efforts are experiencing including:

- Access to and destruction of records;
- Complexity and timeline of searches and investigations;
- Lack of sufficient, long-term funding;
- Access to and protection of sites;
- Need for Indigenous health and wellness supports to address trauma;
- Challenges of dealing with media and public disclosures;
- Increase in the violence of denialism;
- Existing investigation processes often fail to respect Indigenous families and communities and Indigenous laws and protocols;

¹¹ United Nations Commission on Human Rights, Subcommittee on the Prevention of Discrimination and Protection of Minorities, *The Administration of Justice and the Human Rights of Detainees: Question of the Impunity of Perpetrators of Human Rights Violations (Civil and Political)*, revised final report prepared by Mr. Joinet to the Subcommittee decision 1996/199, UN Doc. E/CN.4/Sub.2/1997/20/Rev.1, 1997-10-02, updated by Diane Orentlicher, UN Doc. E/ CN.4/2005/102 (18 February 2005) and UN Doc E/CN.4/2005/102/Add.1 (8 February 2005).

¹² See note above.

¹³ de Greiff, Pablo. Report of the Special Rapporteur on the promotion of truth, justice, reparations and guarantees on non-recurrence. New York: UN General Assembly, Human Rights Council, A/HRC/21-46, 2012; de Greiff, Pablo. Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence. United Nations General Assembly. Human Rights Council, twenty-fourth session, August 28, 2013. A/HRC/24/42.

- Repatriation of children and return of lands; and
- Accountability and justice.

Each of these barriers is briefly described below.

Access to and destruction of records

46. Access to records, including those held by various levels of government within Canada and the different church entities that were funded to run Indian Residential Schools is a barrier for many communities. Specifically, barriers in accessing records include:

- Lack of transparency and information on how to access records;
- Requirements to navigate formal freedom of information processes, even where records are over 100 years old;
- Long delays before access to archives is granted;
- Not being provided with all the records that are available;
- Records that require translation, particularly French-language records;
- Records that are required for and from multiple institutions to support searches and investigations of a site;
- Accessing records that are held in archives outside Canada.

All these barriers compound the difficulty of finding information to support the search and recovery of missing children and unmarked burials and delay the gathering of necessary information.

47. In addition, there have been many records destroyed over the years relating to Indian Residential Schools. Between 1936 and 1954, the Government of Canada systematically purged thousands of these records from its files. In 1973, an agreement between Public Archives Canada and the Department of Indian Affairs placed a moratorium on further records destruction.¹⁴

48. The Independent Special Interlocutor is concerned that the Supreme Court of Canada has ordered the confidential records of Survivors' applications and testimonies from the Independent Assessment Process be destroyed on September 19, 2027 unless Survivors opt to preserve the records for historical, public education and research purposes at the National Centre for Truth and Reconciliation.¹⁵ These records may contain information related to missing

¹⁴ Jorge Barrera, "Ottawa shredded school records," APTN National News, reprinted in Anishnabek News, May 7, 2013. <https://anishnabeknews.ca/2013/05/07/ottawa-shredded-school-records/>

¹⁵ The Independent Assessment Process (IAP) to adjudicate sexual and physical abuse claims and award individual monetary compensation, was one of five components of the 2006 Indian Residential Schools Settlement Agreement. The court-supervised IRSSA also included a Common Experience Payment (CEP) to provide monetary compensation to individual Survivors based on verified school attendance; a health support program, the establishment of a Truth and Reconciliation Commission, and a

children and unmarked burials that could assist Survivors, Indigenous families, and communities conducting search and recovery work.

49. Consistent with Articles 7 and 8 of the Declaration, the UN Special Rapporteur on the Promotion of Truth, Justice, Reparation, and Guarantees of Non-recurrence's recommendations and the Joinet-Orentlicher Principles, Canada has international obligations to take effective measures to provide access to records to support the search and recovery of unmarked burials and missing children. This is both to support the right of Indigenous Peoples to know the truth of what happened and ensure the non-repetition of the human rights violations that Indigenous children suffered while in the care of Indian Residential Schools.

Complexity and timeline of searches and investigations

50. There is a significant complexity to search and recovery work, including:
- *Jurisdictional complexity*: different laws apply depending on the ownership of the sites and the legal frameworks in place.
 - *Site terrains and environments affect search plans*: Each site requires a unique search plan depending on the geography and history of the site.
 - *Experts to analyze data are in short supply*: Currently, there are few experts in Canada who have the specialized experience and skills to analyse data to identify potential burials.

Each step in the search and recovery process can take years – from gathering Survivors' truths, obtaining and reviewing records, gaining access to sites, creating and carrying out robust search plans, to analyzing the results. As a result, the timeline for completing this search and recovery work will take years.

51. Consistent with Articles 11 and 12 of the Declaration, Survivors, Indigenous families and communities have a right to maintain and protect burial sites and to the repatriation of the remains of the missing children, where desired.

Lack of sufficient, long-term funding

52. The federal government, along with some provincial and territorial governments, have provided important funding to support Survivors, Indigenous families and communities leading the searches for missing children and unmarked burials. This funding is important and must continue.
53. There are, however, significant concerns regarding the funding that is currently available, including:

commemoration program. For a comprehensive account of the litigation and details of the IRSSA, see: Truth and Reconciliation Commission of Canada (2015), Vol. 5, 185-218, online: https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Volume_5_Legacy_English_Web.pdf; see also the Supreme Court of Canada decision, *Fontaine v Canada (Attorney General)*, 2017 SCC 47) https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/16797/index.do?site_preference=normal

- *Lack of clarity about how to access funding:* Those leading search and recovery work have indicated that navigating the complex applications and requirements to be approved for funding can be time-consuming and may require applying to multiple levels of governments and various departments within governments, for different types of funding.
 - *The time-limited nature of the funding available:* The time-limited nature of the funding being provided does not reflect the length of time that is required to search the sites, given the complexity of these searches and investigations.
 - *Limits on who can access funding:* Initially funding was provided only to 'Lead Communities' (those whose lands the Indian Residential School was located on) and not to other Indigenous communities whose children were taken to Indian Residential Schools. Communities that are not Lead Communities have indicated a need for funding to participate in search and recovery efforts.
 - *Limits on the uses of funding:* Initially, restrictions were placed by the Government of Canada on the use of funds, including that only former Indian Residential School properties (i.e. recognized Indian Residential Schools under the Indian Residential Schools Settlement Agreement¹⁶) could be searched; and that the funding could not be used for legal assistance, exhumation and DNA matching.
54. Those leading search and recovery work have identified the need for sufficient, long-term funding to cover the many costs associated with search and recovery efforts, including the costs associated with providing health supports, researchers, databases, search technicians, lawyers, forensic specialists, testing, exhumation and repatriation, commemoration and any other necessary costs that may arise. In the absence of sufficient funding and other supports, Survivors, Indigenous families and communities have had to find creative ways to continue their work.
55. Consistent with Articles 11 and 12 of the Declaration, appropriate funding and supports for Survivors, Indigenous families and communities leading search and recovery work should be put in place until the completion of all searches and investigations relating to unmarked burials and missing children. The Independent Special Interlocutor is concerned that sufficient, long-term funding has not yet been confirmed.

¹⁶ The Indian Residential Schools Settlement Agreement (IRSSA) was negotiated as a result of the largest class action in Canadian history, brought by Survivors of Indian Residential Schools that operated in Canada. The IRSSA came into effect in September 2007. Under IRSSA, the Government of Canada has 'recognized' 140 former Indian Residential Schools. There are a number of other schools Indigenous children were forced to attend where there were also residential components but these schools are not recognized under the IRSSA.

Access to and protection of sites

56. Significant barriers exist for Survivors, Indigenous families and communities to access sites to conduct ceremonies and searches, particularly where the sites are in the process of being redeveloped or are owned by corporations or private landowners.
57. Currently, there is a lack of clear legal mechanisms to support access to and protection of these sites before, during and after searches and investigations occur. This lack of legal protection has led to disputes and strained relationships between those upholding their responsibilities under Indigenous law to protect the burials of the children and those who are refusing to provide access to the lands.
58. In some situations, federal, provincial, and municipal governments are not taking active steps to support Survivors, Indigenous families and communities in obtaining access to the land or in protecting the sites from further development.
59. Consistent with Articles 10, 11, 12 and 25 of the Declaration, access to sites should be provided so that those leading search and recovery efforts can complete effective searches and conduct ceremonies. Additionally, sites need to be protected before, during and after searches take place. If access is not granted and sites are not protected, the Independent Special Interlocutor is concerned that disputes and confrontations may arise - straining relationships and undermining reconciliation.

Need for Indigenous health and wellness supports to address trauma

60. Survivors, Indigenous families and communities are experiencing individual and collective trauma in relation to the search and recovery of unmarked burials and missing children. Many Survivors are actively participating in search and recovery efforts by walking the grounds of former Indian Residential Schools and associated sites to point out where unmarked burials may be located. This requires Survivors to step back into their own trauma to help find the missing children.
61. Those participating in search and recovery work also experience trauma. As knowledge is shared and new information is uncovered about the conditions and circumstances that led to the death of the children, individuals on search teams must be supported to address the direct, intergenerational and vicarious trauma they are experiencing.
62. Finally, every time there is another confirmation of unmarked burials, it causes collective trauma for Indigenous people, families, and communities. These confirmations remind Indigenous people of the atrocities that have been perpetrated against them by the Canadian government and churches and of the on-going, intergenerational impacts of these harmful, assimilative, genocidal laws and policies.

63. Health and wellness supports that are available through colonial systems may not provide culturally respectful, relevant and safe care for Indigenous people experiencing trauma relating to the search and recovery of missing children and unmarked burials. As a result, sufficient, long-term funding is required for Indigenous Healers and healthcare workers to provide culturally safe supports and services.
64. Consistent with Articles 21, 23 and 24, Canada has an international obligation to support Indigenous-led health and wellness initiatives that include providing mental health and wellness supports for those experiencing trauma, particularly when the trauma is the direct result of state-imposed assimilative and genocidal laws, policies and systems.

Challenges of dealing with media and public disclosures

65. Survivors, Indigenous families and communities who have publicly disclosed confirmations of potential unmarked burials have been inundated with media requests for interviews. In some cases, unethical journalists have trespassed on burial sites without permission. Many communities have had to adopt security measures to keep trespassers off the search sites. Communities are now sharing information and strategies to develop communications plans and protocols for dealing with media and trespassers.

Increase in the violence of denialism

66. A core group of Canadians continue to defend the Indian Residential Schools System. Some still deny that children suffered physical, sexual, psychological, cultural and spiritual abuses, despite the TRC's indisputable evidence to the contrary. Most recently, they are attacking the credibility of Survivors' truths and testimonies about missing children, unmarked burials, and cemeteries at Indian Residential Schools as sensationalist. They claim that Survivors are lying, exaggerating, or misremembering what happened because such atrocities could never have occurred in Canada. In some cases, they are harassing individuals and communities via email or on social media platforms.
67. There are conflicts between Indigenous communities and governments over issues of jurisdictional control, ownership, and use of land. Denialism can fuel these conflicts, particularly in the context of missing children and unmarked burials. It is important to note that denialism is a uniquely non-Indigenous problem; it therefore requires non-Indigenous people to actively work to counter denialism and to create and implement strategies to do so. Broad public support for Survivors, families, and communities conducting search and recovery work can also be strengthened through public education about the history and ongoing legacy of Indian Residential Schools in Canada.
68. Consistent with Article 15 of the Declaration, Canada has an obligation to combat denialism and ensure that education and public information reflects the truths

about missing children and unmarked burials. This is important to ensure non-repetition in accordance with the UN's 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law'.

Existing investigation processes often fail to respect Indigenous families and communities and Indigenous laws and protocols

69. Existing criminal and death investigation processes in Canada arise from and reflect colonial methods and processes. These often explicitly exclude Indigenous families and communities from participating and providing input into investigations under the guise of “forensic rigour” or to “maintain the integrity” of the investigation. These processes often do not reflect Indigenous laws and protocols relating to grieving, death, burial practices and honouring responsibilities to one’s family members and ancestors. In addition, existing investigation processes focus on examining the individual circumstances of the death of a child, and often fail to consider the systemic patterns of mistreatment and neglect of children across Indian Residential Schools that support findings relating to genocide.
70. Consistent with Articles 8 and 25, Canada has an obligation to provide effective mechanisms for redress and to support Indigenous families and communities to uphold their responsibilities to future generations. This includes ensuring proper investigations are done that include respect for Indigenous laws, protocols, and processes throughout the investigations. It also includes ensuring that the systemic patterns of mistreatment, neglect and wilful harm perpetrated against children at Indian Residential Schools that contributed to the deaths of children be fully investigated and that individuals and institutions be held accountable.

Repatriation of children and return of lands

71. Survivors, Indigenous families and communities have different ideas about what repatriation involves and how and when it should take place. It is difficult to decide whether exhumations should be done. Some say the children should be left to rest where they are buried. Others say that the children cannot rest because they have not been properly or respectfully buried by their loved ones or with appropriate Indigenous ceremonies specific to the child’s Nation.
72. Consistent with Articles 11 and 12 of the Declaration, and UN principles and guidelines on reparations, Canada has an international obligation to take effective measures to recognize and protect the right of Survivors, families, and communities to repatriate human remains and lands associated with missing children, unmarked burials, and cemetery sites.
73. The Independent Special Interlocutor is conducting a review of existing international and domestic legislation and policy related to repatriating the human remains of Indigenous Peoples. There is also an urgent need to document the

complex history and current land ownership of burial and cemetery sites associated with Indian Residential Schools. Some sites are now privately owned and others are endangered by land development projects. Many communities want these lands repatriated to their Nations to ensure that sites are properly protected.

Accountability and justice

74. Survivors, Indigenous families and communities are calling for accountability and justice both at the domestic and international level. In the context of missing children and unmarked burials, accountability and justice may mean different things to different people, including:
- Establishing a domestic and/or international commission of inquiry or tribunal;
 - Prosecuting individual perpetrators;
 - Holding institutions accountable;
 - Protecting the unmarked burials;
 - Pausing or stopping planned development until searches and investigations for unmarked burials are completed;
 - Conducting appropriate Indigenous ceremonies;
 - Reparations and redress;
 - Returning lands where burials are located to Indigenous communities; and
 - Identifying and repatriating the children to their families and communities.
75. Dr. Chile Eboe-Osuji, former President of the International Criminal Court, shared his view that there are challenges in seeking justice for the missing children and their families at the International Criminal Court. He noted that while the definition of genocide articulated in the Rome Statute would almost certainly encompass the architects of the Indian Residential School System, the Court's jurisdiction is limited to events that occurred after 2002. Dr. Eboe-Osuji acknowledged the difficult relationship between law and justice and noted with regret that sometimes the law itself can be the source of injustice.
76. Survivors, Indigenous families and communities have called for accountability and justice both against individual perpetrators and against the government and churches. Questions remain regarding the mechanisms that may exist to hold those accountable in the context of colonial genocide, due to the long-term, sustained, and on-going effort to destroy Indigenous Peoples within Canada.
77. Consistent with Articles 8, 11 and 40, Canada has an obligation to provide appropriate mechanisms of justice, redress and compensation for violations of human rights and harms it has committed.

Emerging Protocols and Practices

78. There are many emerging protocols and practices that reflect collaborative work to support the search and recovery of unmarked burials and missing children. Survivors, Indigenous families and communities leading this work have put in place important protocols and practices.

Upholding Indigenous legal principles, practices and processes

79. Indigenous communities leading search and recovery work have implemented policies and processes that are based on their distinct Indigenous legal systems to guide search and recovery work. This includes applying Indigenous laws to:
- Implement policies and processes to gather Survivors truths and testimonies in respectful, culturally relevant and trauma-informed ways;
 - Share knowledge within and amongst affected communities about the status and results of search and recovery work; and
 - Gather to participate in commemoration and memorialization activities and ceremonies where unmarked burials are located.

Putting in place collaborative agreements

80. Survivors, Indigenous families and communities leading search and recovery work have put in place collaborative agreements with local churches, municipal and provincial governments, universities, museums, and police services to share information and work together to support the search and recovery of missing children and unmarked burials.

Establishing expert advisory groups

81. A number of expert advisory bodies have been established both by the federal government (i.e. National Advisory Committee on Residential Schools, Missing Children and Unmarked Burials) and on a voluntary basis (i.e. Canadian Archaeological Association Working Group on Unmarked Graves), which are providing advice and sharing information with Indigenous communities leading search and recovery work.

Knowledge sharing across Indigenous Communities

82. Survivors, Indigenous families and communities leading search and recovery work have created informal and formal mechanisms to share knowledge across communities. This has enabled Indigenous communities who are just beginning their search and recovery process to learn from those who are further along. In British Columbia, for example, there are regular Regional Gatherings that facilitate the sharing of information amongst Indigenous communities leading search and recovery work.

Suggested Community Visits and Contacts

83. There are search and recovery efforts led by Survivors, Indigenous families and communities across Canada. Some communities are further ahead in the search and recovery process than others that you may wish to meet with and/or visit.
84. If the UN Special Rapporteur is scheduled to visit a particular province or territory, the Independent Special Interlocutor can provide suggestions or facilitate connections with Indigenous communities to arrange meetings.
85. The Independent Special Interlocutor would also like to request a meeting with the UN Special Rapporteur during the Canada visit.