



**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 Expert Mechanism on the Rights of Indigenous Peoples**

Call for Inputs: Report on “Establishing monitoring mechanisms at the national and regional levels for implementation of the UN Declaration on the rights of Indigenous Peoples”

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# Applying the UN Declaration to the Search and Recovery of 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 Schools<sup>1</sup> in Canada is a stark reality 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, 2015), Canada’s National Inquiry on Missing and Murdered Indigenous Women and Girls (MMIWG National Inquiry, 2019) and by the Canadian House of Commons (2022).
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. 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, malnutrition, substandard health and living conditions, exposure to contagious diseases, mistreatment, medical experimentation, and extreme physical, sexual, spiritual and mental abuse by those entrusted with their care.
3. Unfortunately, many First Nations, Inuit and Métis children were never returned home from Indian Residential Schools. Survivors have shared testimonies 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, and of knowing where on former Indian Residential School grounds children are buried in unmarked graves.
4. In 2015, the TRC issued [94 Calls to Action](#) in its Final Report to address the history and ongoing legacy of the Indian Residential School System in Canada and advance reconciliation. The TRC identified the UN Declaration on the Rights of Indigenous Peoples as the framework for reconciliation in 21<sup>st</sup> century Canada (Call to Action 43) and called for a national action plan to fully adopt and implement the UN Declaration at all levels of government and across Canadian society (Call to Action 44).
5. In Canada, the work to implement the UN Declaration in response to TRC Calls to Action 43-44 has only just begun. On June 21, 2021, Bill C-15, the *United Nations Declaration on the Rights of Indigenous Peoples Act* came into effect. This legislation commits the Government of Canada to take all measures necessary to ensure that federal laws are consistent with the Declaration and to develop a national Action Plan, in consultation and collaboration with Indigenous Peoples. The federal government has engaged with Indigenous Peoples to develop this Plan and is [aiming to release the draft Action Plan in Spring 2023](#).

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<sup>1</sup> 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 these institutions 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.

6. Work on implementing the Declaration is also taking place at the provincial level. The Province of British Columbia (BC) enacted *The Declaration on the Rights of Indigenous Peoples Act* on November 28, 2019. On March 30, 2022, BC 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 within BC.
7. While all the TRC Calls to Action are essential for advancing reconciliation within Canada, this submission emphasizes the findings and Calls to Action in [Volume 4 of the TRC Final Report: Canada's Residential Schools: Missing Children and Unmarked Burials](#) (2015), to inform the Expert Mechanism's work. Calls to Action 71-76 call on governments, churches, and other entities to support further work related to the search and recovery of missing children and unmarked burials.
8. Despite Survivors' public testimonies and the TRC's work, the realities of the missing children and unmarked burials received little public 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.
9. While the majority of Canadians acknowledge these atrocities, a small group of Canadians continue to deny that children suffered physical, sexual, psychological, cultural and spiritual abuses in the Indian Residential School System. They dispute the existence of missing children and unmarked burials despite the TRC's indisputable evidence to the contrary. Consistent with Article 15 of the UN Declaration and the guarantee of non-repetition under UN '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,' Canada has international obligations to combat denialism through public history education.
10. Indigenous communities called for the appointment of an independent and impartial body to investigate and make recommendations to the Canadian government about the missing children and unmarked burials.

### **Mandate and Activities of the Independent Special Interlocutor**

11. On June 13, 2022, the Independent Special Interlocutor for Missing Children and Unmarked Graves and Burial Sites Associated with Indian Residential Schools was appointed with a two-year mandate. The Mandate includes: (1) engaging with Survivors, Indigenous families and communities to gather input about barriers and emerging practices relating to the identification, protection, investigation and commemoration of missing children and unmarked burials; and (2) making recommendations for a new federal legal framework that incorporates Indigenous laws, the UN Declaration and other relevant international laws to protect unmarked burial sites and support the recovery of the missing children. A [Progress Update Report](#) to the Minister of Justice and Attorney General of Canada was delivered in November 2022. An interim report will be delivered in June 2023 and a final report in June 2024.
12. The Independent Special Interlocutor is prioritizing meeting with Survivors within their territories, when invited, including attending the sites of searches for unmarked burials. She is also organizing at least six National Gatherings on Unmarked Burials. More information on these National Gatherings is available at the Office of the Independent Special Interlocutor's [website](#) along with a [Summary Report](#) of the first National Gathering in Edmonton, Alberta (September 2022). The Independent Special Interlocutor is working

collaboratively with Canadian Geographic on [an interactive map](#), which provides aerial images and information about the history of the sites and buildings to support those leading searches and provide public education.

13. In considering a new legal framework, the Independent Special Interlocutor will rely on all Articles of the UN Declaration that are relevant to the search and recovery of missing children and unmarked burials, including Article 11(2) which declares that “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.” The Independent Special Interlocutor will also incorporate federal and provincial legislation on the UN Declaration, and Indigenous laws and protocols as fundamental components to provide coordinated and robust mechanisms to recover, investigate, protect, and commemorate the missing children and burial sites.

### **The Canadian Legal Framework’s Lack of Alignment with the UN Declaration**

14. The current Canadian legal framework does not adequately support Survivors, Indigenous families and communities leading search and recovery efforts nor does it align with the UN Declaration. Here are just some examples of this lack of alignment:

- **Lack of alignment with Articles relating to non-discrimination:** Although the *Canadian Bill of Rights Act* as well as provincial human rights legislation were enacted beginning in 1960, the last Indian Residential School closed in the late 1990s. During this time the justice system, including the human rights system, failed Indigenous children and families.
- **Lack of alignment with Articles relating to the protection of Indigenous burial sites:** The current legal framework does not provide the same level of protection to Indigenous burial sites as to government-run, church-run or private cemeteries. Indigenous burial sites are frequently disturbed due to excavation and construction and thereby desecrated.
- **Lack of alignment with Articles relating to self-determination and revitalization of Indigenous laws:** Survivors, Indigenous families and communities leading search and recovery efforts are required to navigate a complex jurisdictional quagmire to gain access to records and sites. In many instances, those leading searches have been denied access to sites that are privately or corporately owned. Laws were not created with Indigenous Peoples’ input nor did they contemplate the important work of recovering unmarked burials and identifying and honouring the missing children. These legal barriers impede Indigenous Peoples’ ability to uphold their responsibilities to their ancestors under Indigenous law.
- **Lack of alignment with Articles relating to repatriation:** The practice and policy of the federal government and churches was to not fund the repatriation of children who died at Indian Residential Schools to their home, their families and communities. There are examples as recent as 2016 of instances where the government refused to fund the repatriation of a child’s remains who died while being forced to attend an Indian Residential School; see, for example, the story of [Charlie Hunter](#). To date, the Canadian government and the church entities that operated Indian Residential Schools have not established clear guidelines and policies or a formal commitment to supporting the repatriation of children to their home communities when requested.

15. The UN Declaration provides important guidance in relation to the search and recovery of missing children and unmarked burials. Dr. Chief Wilton Littlechild, former TRC Commissioner, former North American representative to the UN Permanent Forum on Indigenous Issues and the UN EMRIP, 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 and would ensure that the process is Indigenous-led and meets Indigenous criteria for how to conduct this work respectfully in accordance with Indigenous laws.
16. The Independent Special Interlocutor is examining how new legislation, policies, and funding based on the principles, norms, and standards of the UN Declaration can support reparations measures for truth-finding, justice and accountability, healing, repatriation, commemoration, and public education. 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 and commemoration of human remains and burial sites.

### **Monitoring the Implementation of the UN Declaration in Canada**

17. The Independent Special Interlocutor agrees with the UN EMRIP observation 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.”<sup>2</sup>
18. Canada has recently signed a \$2.2M [Technical Arrangement](#) with the International Commission on Missing Persons (ICMP)<sup>3</sup> that contravenes this foundational principle. The Technical Arrangement overlaps with the Independent Special Interlocutor's mandate, creating a non-Indigenous parallel process that may result in conflicting recommendations.
19. The Technical Arrangement indicates that the ICMP will engage with Indigenous communities across the country regarding options for the identification and repatriation of missing children, including assessing interest in DNA matching and other forensic approaches. The Office of the Independent Special Interlocutor and other Indigenous-led organizations<sup>4</sup> who are already working to support Indigenous communities within Canada on search and recovery efforts have significant concerns about this Technical Arrangement.<sup>5</sup> These concerns include (1) the lack of input by Indigenous communities and organizations into the ICMP's work; (2) ICMP's lack of demonstrated experience and cultural competency in working with Indigenous Peoples; and (3) the lack of transparency and accountability to Indigenous Peoples regarding ICMP's reports and recommendations.

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<sup>2</sup> “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.

<sup>3</sup> [Feds will manage group providing options on residential school unmarked burials | CBC News.](#)

<sup>4</sup> This includes the National Centre for Truth and Reconciliation and the National Advisory Committee on Residential Schools, Missing Children and Unmarked Burials.

<sup>5</sup> See for example, the National Centre for Truth and Reconciliation's [public statement](#) regarding its concerns.

20. The Technical Arrangement provides Canada with broad oversight of the ICMP, including the right to comment on its draft report and determine whether ICMP's report will be made public. These wide-ranging powers are concerning because Canada has a conflict-of-interest, having financed, and administered the Indian Residential School System.
21. The ICMP's approach, which involves a non-Indigenous organization coming in, receiving a significant amount of funding from the Canadian government, and then leaving, contrasts with approaches of other organizations. For example, the Forensic Anthropology Association of Guatemala (FAFG) has developed a training program to support the development of local knowledge and forensic analysis capacity that is respectful and inclusive of Indigenous families, communities, laws and protocols. The outcome of FAFG's approach supports Indigenous self-determination and the principle of free, prior and informed consent. This ensures that funding, expertise, control over the data and decision-making stays within Indigenous communities leading search and recovery work.
22. The Independent Special Interlocutor supports the creation of Indigenous-led regional, national, and international monitoring mechanisms of the UN Declaration as these relate to the search and recovery of the missing children and unmarked burials. Also, the Independent Special Interlocutor endorses the TRC's call to establish an independent National Council for Reconciliation (Calls to Action 53-56), to monitor, evaluate, and report on the Government of Canada's progress towards reconciliation, and the implementation of the TRC's 94 Calls to Action. Although there has been some progress on establishing a National Council for Reconciliation, it has been extremely slow.
23. As of February 9, 2023, Bill C-29, the *National Council for Reconciliation Act* was passed in the House of Commons and is being reviewed in the Senate.<sup>6</sup> It is vital to establish an Indigenous-led mechanism, both at the domestic and international level, to monitor and evaluate Canada's progress in addressing the human rights violations regarding missing children and unmarked burials.
24. The Independent Special Interlocutor will also consider the potential role of national and regional Human Rights Commissions and Human Rights Non-Governmental Organizations at the domestic level to provide additional independent monitoring and evaluation of Canada's progress on implementing both the TRC and her interim and final recommendations.
25. Finally, the Independent Special Interlocutor notes that the UN EMRIP can have a significant role in holding Canada accountable at the international level for implementing the UN Declaration to ensure appropriate redress for the mass human rights violations and on-going harms relating to the missing children and unmarked burials associated with the Indian Residential School System.
26. The Independent Special Interlocutor would welcome the opportunity to meet with Dr. Sheryl Lightfoot, the UN EMRIP North American Representative, and other Expert Members to provide further information on this important matter.

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<sup>6</sup> [C-29 \(44-1\) - LEGISinfo - Parliament of Canada](#)