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A GENOCIDE THE WORLD HAS IGNORED: HOLDING GOVERNMENTS AND THE CATHOLIC CHURCH ACCOUNTABLE FOR RESIDENTIAL AND BOARDING SCHOOLS THROUGH THE ICC

CONTENT WARNING: The following article discusses violence against children and the atrocities of the Indigenous Residential School System in the United States and Canada.

INTRODUCTION

On May 27, 2021, Tk'emlúps te Secwépemc (Kamloops Indian Band) Chief Rosanne Casimir confirmed “the remains” of 215 Indigenous¹ children, “some as young as three years old, were discovered in a mass, unmarked grave at the Kamloops Indian Residential School” (IRS) in Canada.² Shortly thereafter, at the former Marieval IRS, the Cowessess First Nation discovered another mass grave where the remains of 751 children were found.³ Sadly, this is a small glimpse into the tragic history of Canada’s residential schools.⁴ From 1883 to

1. In this Note, the term “Indigenous” is used to describe the original inhabitants and occupants of a territory that was colonized. In some instances, Indigenous people(s) may be used to describe tribal groups. Uses of the term “Indian” and “Native American” reference the original text and description of the historical records.

2. Ian Austen & Dan Bilefsky, *Hundreds More Unmarked Graves Found at Former Residential School in Canada*, N.Y. TIMES (July 30, 2021), <https://www.nytimes.com/2021/06/24/world/canada/indigenous-children-graves-saskatchewan-canada.html>; see also Press Release, Office of The Chief of the Kamloops Indian Band, Missing Children at Residential Schools in Canada (May 27, 2021) (on file with author).

3. Austen & Bilefsky, *supra* note 2.

4. Residential schools were a predominantly government funded Euro-Canadian education system that operated from the 1870s until 1996. These schools were typically co-run with religious organizations and were often underfunded. The government provided little to no oversight regarding the care and education Indigenous children received. This lack of oversight, and general racism, led to poor living conditions, extreme abuse, and death for many Indigenous children. See *What were Residential Schools in Canada?*, SETTLEMENT.ORG (Sept. 29, 2021), <https://settlement.org/ontario/immigration-citizenship/citizenship/first-nations-inuit-and-metis-peoples/what-were-canada-s-residential-schools/>.

1997, Canada had over 139 IRS in operation, and scholars estimate that over “150,000 First Nations, Inuit and Métis children” were taken from their homes and forced to attend IRS as part of compulsory assimilation.⁵ Some estimates suggest that as many as six thousand Indigenous children died due to the living conditions and abuse they endured, however, these numbers are likely to increase as more investigations are underway.⁶ Notably, these numbers do not fully represent the lasting impact IRS left on Indigenous communities, as survivors, relatives, and friends struggle to cope with the glaring psychological and physical impacts of settler colonialism that still exist today.⁷

At IRS, Indigenous children were subjected to physical assault, racism, malnutrition, disease, and sexual abuse, all at the hands of officials who ran these institutions.⁸ These schools stripped away any ties Indigenous children had to their communities—traditional braids were forcibly cut, personal belonging, such as clothing, were seized, and children were beaten if they spoke their native language.⁹ Yet, despite decades of stories from IRS survivors about the trauma they endured, the non-Indigenous community largely ignored these atrocities.¹⁰ Sadly, it took the discovery of mass graves to expose the chilling history of IRS

5. Ian Mosby & Erin Millions, *Canada's Residential Schools Were a Horror*, SCI. AM. (Aug. 1, 2021), <https://www.scientificamerican.com/article/canadas-residential-schools-were-a-horror/>; see also Union of Ontario Indians, *An Overview of the Indian Residential School System 4* (2013), <https://www.anishinabek.ca/wp-content/uploads/2016/07/An-Overview-of-the-IRS-System-Booklet.pdf>.

6. See Carina Luo, *Missing Children of Indian Residential Schools: On Discovery of Unmarked Graves at former Indian Residential School Sites in Canada*, LEDDY LIBR. (Sept. 6, 2022), <https://storymaps.arcgis.com/stories/cfe29bee35c54a70b9621349f19a3db2>.

7. See generally A. Bombay et al., *Suicidal thoughts and attempts in First Nations communities: links to parental Indian residential school attendance across development*, 10 J. OF DEV. ORIGINS OF HEALTH & DISEASE 123, 124 (2019).

8. See Cheyenne McNeill, *Four N.C. Schools Identified in Interior Department's Federal Indian Boarding School Report*, EDUCATIONDNC (May 13, 2022), <https://www.ednc.org/four-n-c-schools-identified-in-interior-departments-federal-indian-boarding-school-report/>; see also Luo, *supra* note 6.

9. McNeill, *supra* note 8; see also Hanson et al., *The Residential School System*, INDIGENOUS FOUND. (Sept. 2020), https://indigenousfoundations.arts.ubc.ca/the_residential_school_system/#:~:text=The%20purpose%20of%20the%20residential,were%20strictly%20regulated%20by%20timetables.

10. Austen & Bilesfsky, *supra* note 2.

to the majority of people previously ignorant to their existence.¹¹ As more graves are discovered, the Catholic Church, who operated approximately 70 percent of the residential schools, and the Canadian government, face growing pressure from Indigenous communities for reconciliation and reparations.¹²

Although the Canadian government and the Catholic Church have taken steps towards reconciliation, these efforts have fallen short, failing to acknowledge the genocide Indigenous communities endured or to hold the responsible parties accountable.¹³ For example, in 2006, a group of survivors of the IRS system won a class action lawsuit which required the responsible parties to pay CA\$4.7 billion in reparations.¹⁴ In reality, the payments were predominantly covered by the Canadian government.¹⁵ The Catholic Church paid only CA\$1.2 million, with an additional CA\$21 million to be paid later.¹⁶ Further, the Catholic Church never paid the additional amount in full, and was deemed to have fulfilled its financial obligations after paying only CA\$1.2 million.¹⁷ Furthermore, only recently and after years of denial, did the Catholic Church acknowledge its role in the IRS system, whereas the Canadian government began taking steps towards reconciliation more than a decade ago.¹⁸

11. *Canada: 751 Unmarked Graves Found at Residential School*, BBC (June 24, 2021), <https://www.bbc.com/news/world-us-canada-57592243>.

12. Austen & Bilesfsky, *supra* note 2; see *Hundreds of Unmarked Graves Found at Another Former School for Indigenous Children*, NPR, <https://www.npr.org/2021/06/24/1009784025/hundreds-of-unmarked-graves-found-at-another-indigenous-school-in-canada> (last updated June 24, 2021, 1:30 PM).

13. See Tabitha de Bruin, *Indian Residential Schools Settlement Agreement*, THE CANADIAN ENCYC. (Jan. 16, 2020), <https://www.thecanadianencyclopedia.ca/en/article/803anada-residential-schools-settlement-agreement>.

14. Ian Austen, *How Catholics Avoided Paying Millions in Reparations for Residential Schools*, N.Y. TIMES (Apr. 2, 2022), <https://www.nytimes.com/2022/04/02/world/803anada/catholics-reparations-indigenous-canada-schools.html>.

15. *Id.*

16. Tom Cardoso, *How the Catholic Church was Freed from Obligation to Residential School Survivors*, THE GLOBE & MAIL (Oct. 4, 2021), <https://www.theglobeandmail.com/canada/article-how-the-church-was-freed-from-obligation-to-school-survivors/>.

17. *Id.*

18. *Truth and Reconciliation Commission of Canada*, GOVT. OF CAN., <https://www.rcaanc-cirnac.gc.ca/eng/14501244055592/1529106060525> (last modified Sept. 29, 2022); see also *In Canada, The Pope Delivers An Apology To Indigenous Peoples*, NPR (July 29, 2022, 5:00 PM),

Notably, the IRS system in Canada was not solely created by the Canadian government nor by the Catholic Church.¹⁹ Rather, the Canadian system, which focused on dispossession and violence to destroy entire populations, was created to parallel the “Industrial [Indian] Boarding Schools” (IBS) in the United States (US), suggesting the US was a key perpetrator of IRS in Canada.²⁰ In 2022, the Department of the Interior of the US, released the first Federal Indian Boarding School Initiative Investigative Report, which further supports the connection between the Catholic Church and the US government.²¹

The US report revealed that over a 150 year period, beginning in the early 1800s, more than four hundred federally funded boarding schools existed in the US and many were co-run with religious institutions.²² The US schools operated by the philosophy: “kill the Indian, and save the man.”²³ The report also indicated more than fifty burial sites of Indigenous children who died at US boarding schools exist with more expected to be discovered.²⁴ Yet, unlike Canada, the US has taken minimal steps towards acknowledging its own involvement in genocide.²⁵ In

<https://www.npr.org/2022/07/29/1114468497/in-canada-the-pope-delivers-an-apology-to-indigenous-peoples>.

19. See *The Davin Report, 1879*, NISHNAWBE ASKI NATION, http://rschools.nan.on.ca/article/the-davin-report-1879-1120.asp#_ftnref1 (last visited Nov. 20, 2022).

20. NICHOLAS DAVIN FLOOD, REPORT ON INDUSTRIAL SCHOOLS FOR INDIANS AND HALF-BREEDS 2 (1879).

21. See generally BRYAN NEWLAND, ASSISTANT SECRETARY-INDIAN AFFAIRS, FEDERAL INDIAN BOARDING SCHOOL INITIATIVE INVESTIGATIVE REPORT 49, 81 (2022).

22. *U.S. Report Identifies Burial Sites Linked to Boarding Schools for Native Americans*, NPR (May 11, 2022, 1:34 PM), <https://www.npr.org/2022/05/11/1098276649/u-s-report-details-burial-sites-linked-to-boarding-schools-for-native-americans>; see also U.S. DEP'T OF THE INTERIOR, *Letter from Bryan Newland, Assistant Secretary-Indian Affairs to Deb Haaland, Secretary of the Interior* (Apr. 1, 2022), in FEDERAL INDIAN BOARDING SCHOOL INITIATIVE INVESTIGATIVE REPORT (2022).

23. Erin Blakemore, *A Century of Trauma at U.S. Boarding Schools for Native American Children*, NAT'L GEOGRAPHIC (July 9, 2021), <https://www.nationalgeographic.com/history/article/a-century-of-trauma-at-boarding-schools-for-native-american-children-in-the-united-states#:~:text=The%20U.S.%20boarding%20schools%20inspired,ve%20been%20me.%E2%80%9D>.

24. *U.S. Report Identifies Burial Sites Linked to Boarding Schools for Native*, *supra* note 22.

25. DEP'T OF THE INTERIOR, *supra* note 22.

light of the role the US played in the creation of IRS, both the US and Canadian governments should be held responsible for their creation, commission, and administration of Indigenous genocide.

This Note provides an overview of recent legal developments regarding reparations for Indigenous communities, and argues that the Catholic Church, the Canadian government, and the US government, should be charged with genocide and held accountable in the International Criminal Court (ICC).

Part I offers a historical background of the Indian Boarding Schools in the United States, discusses the IRS systems in Canada, and outlines the involvement of religious institutions in running these schools. Part II surveys past legal attempts to hold the Canadian government and Catholic Church accountable and discusses why these attempts have been unsuccessful in non-ICC systems. Part III provides a brief history of the ICC and its prosecution of genocide crimes against Indigenous Communities and discusses the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007. Part IV describes a case study of Indigenous peoples filing genocide claims through the ICC, focusing on potential jurisdiction and admissibility issues, and argues the ICC should carve out specific considerations for Indigenous populations. Part V highlights why the ICC is the appropriate venue to try the Catholic Church and the Canadian government for genocide crimes committed against Indigenous peoples. Part VI outlines the US government involvement and why it should also be held accountable to Indigenous communities, outlining how the US can still be prosecuted by the ICC despite not adopting the Rome Statue. The Note concludes by discussing why the ICC should reexamine how genocide is defined within the confines of the Rome Statue and why government institutions must be held accountable for their past actions in the Court of Last Resort.

I. BACKGROUND

A. A Brief History of Indian Boarding Schools in the United States

The “Indian Boarding School Era” in the US began in the 1800s and ended in 1978.²⁶ The concept for boarding schools stemmed from governmental assimilation policies, which began with the passage of the Civilization Fund Act by Congress on March 3, 1819.²⁷ The fund paid religious organizations to work with the federal government to create “schools” in Indigenous territories.²⁸ At these schools, the children were taught “Christian” values to replace Indigenous cultural traditions.²⁹ Following the establishment of these initial schools, the Bureau of Indian Affairs was created to implement programs to “civilize” Indigenous people.³⁰ The US government proceeded to systematically remove Indigenous people from their lands while implementing policies aimed towards “regenerating the Indian race.”³¹ The initial basis for the policies was to strip away tribal identity and place Indigenous people “in positions where they can be controlled.”³² Then, this initial policy was expanded such

26. *Congress Creates Fund to “Civilize” Native American People*, EQUAL JUST. INITIATIVE, <https://calendar.eji.org/racial-injustice/mar/03> (last visited Nov. 13, 2022).

27. *Id.*

28. *Id.*

29. *Congress Creates Fund to “Civilize” Native American People*, *supra* note 26. The values viewed as “Christian” often comprised on colonial ideals subject to traditional gender roles. Girls were taught skills needed to keep a home, or more likely work as a servant, and boys were taught carpentry. The curriculum in some instances lacked basic education skills, leaving out instruction for math and even English. Indigenous children were subjected to a military lifestyle and punishment that could be viewed as abuse. Amanda McAllister & Taylor Krawczewski, *Assimilation through Indian Boarding Schools*, WORLD WITHOUT GENOCIDE, <http://worldwithoutgenocide.org/genocides-and-conflicts/american-indian/indian-boarding-schools> (last visited Nov. 13, 2022). Some survivors recall being forced to pray so much they developed “boarding school knees.” See also Erin Blakemore, *This 500-year-old Catholic decree encouraged colonization. Will the pope revoke it?*, NAT'L GEOGRAPHIC (Jul. 22, 2022), <https://www.nationalgeographic.com/history/article/doctrine-of-discovery-how-the-centuries-old-catholic-decree-encouraged-colonization>.

30. *Congress Creates Fund to “Civilize” Native American People*, *supra* note 26.

31. *Id.*

32. Newland, *supra* note 21, at 37.

that “[i]f it be admitted that education afford a true solution to the Indian problem, then it must be admitted that the boarding school is the very key to the situation.”³³

The first “vocational Indian Boarding School” to arise out of these assimilation policies was established by a Methodist missionary and was located on the Yakima Reservation.³⁴ The school was given to the Yakama Indian Agency and was part of the Bureau of Indian Affairs for the US.³⁵ The initial on-reservation schools evolved into off-reservation IBS.³⁶ The first federally funded “off reservation” IBS, the Carlisle Indian Industrial School, was founded in 1879 and ultimately served as the basis for the Canadian Residential School System.³⁷ Although IBS claimed to provide educational opportunities, they were a key part of the “Indian assimilation policy.”³⁸ The schools served a dual purpose: they removed the “uncivilized Indian” and controlled Indigenous people by ripping away their children to ensure Indigenous communities “behaved.”³⁹ In this way, the IBS and efforts by the US government to take Indigenous territory were interconnected.⁴⁰ As further evidence of these deceptive tactics, the money received from the US government’s sale of stolen Indigenous land was often used to finance IBS.⁴¹

At these schools, children received a very different education from that of their white peers. Indigenous culture was vilified, and Indigenous children were taught to view their traditions as uncivilized and inferior.⁴² The schools used “systematic

33. *Id.* at 38.

34. Paula Becker & David Wilma, *United States Established Fort Simcoe at the Foot of the Simcoe Mountains on August 8, 1965*, HIST. LINK.ORG ESSAY 5292 (Feb. 24, 2003), <https://www.historylink.org/File/5292>. The Yakima Indian Reservation spans 1.2 million acres in south central Washington state. See *Confederated Tribes and Band of the Yakama Nation*, COLUMBIA RIVER INTER-TRIBAL FISH COMM’N, <https://critfc.org/member-tribes-overview/the-confederated-tribes-and-bands-of-the-yakama-nation/> (last visited Nov. 12, 2022).

35. Becker & Wilma, *supra* note 34.

36. See *Past*, CARLISLE INDIAN SCH. PROJ. (Oct. 22, 2022, 8:12PM), <https://carlisleindianschoolproject.com/past/>.

37. *Id.*

38. Newland, *supra* note 21, at 21.

39. *Past*, *supra* note 36.

40. Newland, *supra* note 21, at 21.

41. *Id.* at 43.

42. *Struggling with Cultural Repression*, NAT’L MUSEUM OF THE AM. INDIAN, <https://americanindian.si.edu/nk360/code-talkers/boarding->

militarized and identity-alteration methodologies” to assimilate Indigenous children.⁴³ Indigenous names were replaced with either a number or an English name selected for them.⁴⁴ Further, in these schools, Indigenous children were required to perform manual labor “to compensate for the lack of Federal funding and for the poor [living] conditions.”⁴⁵ By the mid-1920s, “more than [80] percent of school-age Indian children were [forced] to enroll in boarding schools.”⁴⁶

The Federal Indian Boarding School Initiative Investigative Report was the first of its kind from the US government and “confirms that the [US] directly targeted American Indian, Alaska Native, and Native Hawaiian children in the pursuit of a policy of cultural assimilation that coincided with Indian territorial dispossession.”⁴⁷ The report identified approximately five hundred Indigenous children who died while attending IBS and “approximately [fifty-three] marked or unmarked graves” have been identified.⁴⁸ The report also referenced the studies by Dr. Ursula Running Bear, which describe the lasting impacts of the boarding school system on Indigenous communities.⁴⁹

The atrocities Indigenous children endured in IBS and the long-lasting community impacts provide convincing evidence that the US government was responsible for genocide.⁵⁰ Further, there is historical evidence to support the US’s role in the Indigenous assimilation system that was established in Canada.⁵¹ Yet, despite this evidence, the US government has not

schools/#:~:text=Indian%20boarding%20schools%20usually%20im-
tated,harsh%20when%20rules%20were%20broken (last visited Nov. 21, 2022).

43. McNeill, *supra* note 8.

44. *Id.*

45. *Id.*

46. Mary Annette Pember, *A History Not Yet Laid to Rest*, THE ATLANTIC (Nov. 24, 2021), <https://www.theatlantic.com/ideas/archive/2021/11/native-american-boarding-schools/620760/>.

47. U.S. DEP’T OF THE INTERIOR, *supra* note 22.

48. Newland, *supra* note 21, at 8-9.

49. Ursula Running Bear, *Boarding School Attendance and Physical Health Status of Northern Plains Tribes*, 13 APPLIED RSCH. IN QUALITY OF LIFE 633, 644 (2018).

50. Hassan Kanu, *U.S. Confronts ‘Cultural Genocide’ in Native American Boarding School Probe*, REUTERS (May 18, 2022), <https://www.reuters.com/legal/government/us-confronts-cultural-genocide-native-american-boarding-school-probe-2022-05-18/>.

51. The Davin Report, *supra* note 19.

recognized its involvement or formally apologized for its role in destroying Indigenous communities.⁵²

B. A Brief History of Residential Schools in Canada

Religious organizations established some of the first IRS in Canada around 1830.⁵³ Then, in 1879, the government-supported residential school system came to fruition following the publication of *The Davin Report*.⁵⁴ The report was commissioned by Sir John A. MacDonal, Canada's Prime Minister, who tasked Nicholas Davin with visiting IBSs in the US to determine the likelihood of establishing a similar system in Canada.⁵⁵ Davin "was [so] impressed" with the boarding school system's "[successful] assimilation" and how each institution was run with support from the federal government.⁵⁶ Therefore, his report recommended the construction of a similar program between the Canadian government and religious institutions.⁵⁷ Shortly thereafter, the Canadian government established residential schools that operated for more 150 years throughout Canada based on the US IBS blueprint.⁵⁸

In 1920, the Canadian government passed the Indian Act, which instituted "compulsory [attendance] for Treaty-status children between the ages of [seven] and [fifteen]." ⁵⁹ The intent

52. Mary Annette Pember, *Death by Civilization*, THE ATLANTIC (Mar. 8, 2019), <https://www.theatlantic.com/education/archive/2019/03/traumatic-legacy-indian-boarding-schools/584293/>; see also Holly Norton & Glenys Echavarrri, *Obliterate and Forget: A Brief History of the Federal Indian Barding Schools in Colorado*, HIST. COLO. (Aug. 16, 2021), <https://www.historycolorado.org/story/2021/08/16/obliterate-and-forget>.

53. *Residential School History*, NAT'L CTR. FOR TRUTH & RECONCILIATION (Oct. 22, 2022), <https://nctr.ca/education/teaching-resources/residential-school-history/>.

54. See *The Davin Report*, *supra* note 19.

55. *Id.*

56. *Id.*

57. *Id.*

58. *Residential School History*, *supra* note 53; see also Alexander Panetta, *The U.S. and Canada Share a Troubling History with Residential Schools*, CBC NEWS (July 26, 2021), <https://www.cbc.ca/news/world/united-states-canada-residential-schools-1.6114085>.

59. Treaty status was established based on familial descent and establishes if a child is eligible for registered status. See *Indian Status in Canada*, NATIVE WOMEN'S ASS'N OF CAN., <https://www.nwac.ca/assets-knowledge-centre/Indian-Status-in-Canada-FINAL.pdf> (last visited Nov. 21, 2022); see also Karmen Carey & Erin Hanson, *Indian Status*, INDIGENOUS FOUND.,

of the Indian Act was to strip away all ties Indigenous children had to their communities in order to assimilate Indigenous people “so that they no longer existed as distinct peoples.”⁶⁰ This meant Indigenous children were punished if they acknowledged their culture in any way.⁶¹ Similar to the destructive assimilation policies utilized in the US IBS system, Indigenous children at Canadian IRS were told their cultures were inferior.⁶² Many of the children were beaten for practicing their own cultural traditions or for speaking their native language, even if they had no ability to communicate in English.⁶³

Further, the education Indigenous children received at the residential schools was substandard.⁶⁴ IRS education focused on “practical skills” of “domestic service,” however, in reality, this practice was solely a means of extracting manual labor from children in order to compensate for the schools’ lack of funding.⁶⁵ As a result of the focus on manual labor within the “curriculum,” most children barely achieved a fifth-grade education by the time they were eighteen years old and left the school system.⁶⁶

In addition to the substandard education and physical assault, Indigenous children were also subjected to sexual assault at the hands of the adults who ran the schools.⁶⁷ Further, the combination of overcrowding and underfunding at residential schools created unhealthy living conditions.⁶⁸ The combination of sexual abuse and poor living conditions resulted in the death of many Indigenous students.⁶⁹ One report from 1907 stated, “[24] percent of previously healthy Indigenous children across Canada were dying in residential schools.”⁷⁰ Sadly, this original estimate did not account for deaths of Indigenous children who were sent home because they were critically ill, which increased the death

https://indigenousfoundations.arts.ubc.ca/indian_status/ (last visited Nov. 21, 2022); see also *Residential School History*, *supra* note 53.

60. *Residential School History*, *supra* note 53.

61. *Id.*

62. Hanson, *supra* note 9.

63. *Id.*; see also *Residential School History*, *supra* note 53.

64. Hanson, *supra* note 9.

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Residential School History*, *supra* note 53.

70. Hanson, *supra* note 9.

rate to 47-75 percent.⁷¹ As a result of the abuse and inhumane conditions, the death rate in IRS escalated, so much so, that Indigenous children were more likely to die in residential schools than a Canadian soldier fighting in World War II.⁷²

The effects of the residential schools spanned multiple generations, forcing Indigenous children to assimilate and abandon their culture.⁷³ Further, the trauma inflicted by the residential schools was not only felt by the surviving Indigenous children, but also their families and communities.⁷⁴ By preventing future generations from practicing their culture, many Indigenous communities lost their traditions, amounting to cultural genocide at the hands of the Canadian government.⁷⁵ Unfortunately, these effects persist still today, and Indigenous communities continue to work to regain their lost heritage and heal from over 150 years of trauma.⁷⁶

C. Involvement of Religious Institutions in Boarding/Residential Schools

Religious institutions and governments used the “doctrine of discovery” to claim authority over Indigenous peoples during the residential school era.⁷⁷ In short, the doctrine was used as “theological justification” by religious leaders, such as the pope, to grant land rights to Christians, emphasizing that their status as religious leaders provided both authority and power to displace indigenous peoples.⁷⁸ As society progressed, the role of the

71. *Id.*

72. Daniel Schwartz, *Truth and Reconciliation Commission: By the Number*, CBC NEWS (June 2, 2015), <https://www.cbc.ca/news/indigenous/truth-and-reconciliation-commission-by-the-numbers-1.3096185>.

73. Hanson, *supra* note 9.

74. *Id.*

75. *Id.*

76. *Id.*

77. The “doctrine of discovery” was the ideology that any person, land, etc. which was “discovered” by a Christian monarch gave him title to the land and other monarchs were prohibited from interfering. Thomas McMahon, *The Great Commission, Papal Bulls and the Doctrine of Discovery: from the 4th Century to Current Law*, SSRN, Aug. 26, 2021, at 5.

78. Emily McFarlan Miller, *Churches Confront Their Role in Residential Schools for Indigenous Children*, THE WASH. POST (Oct. 8, 2021), <https://www.washingtonpost.com/religion/2021/10/08/methodist-lutheran-episcopal-native-american-residential-schools/>; *see also* McMahon, *supra* note 77, at 5.

churches in the application of this ideology faded into the background, but the foundation of the original doctrine never disappeared as Christian colonizers continued to claim land and dominate people in the name of faith.⁷⁹ Unfortunately, the concept of Christian people as “superior,” as well as their claim of authority over the land and the people who occupied it, never fully disappeared.⁸⁰ The doctrine again gained prominence when it was cited as the authority for the US Supreme Court’s holding in *Johnson v. M’Intosh*.⁸¹ The Supreme Court held the doctrine of discovery gave the US government first right to the land it took from England despite Indigenous peoples’ claims of ownership.⁸² Further, the Court concluded “the religion and character of Native Americans ... was inferior to Europeans’ ‘superior genius.’”⁸³ The US’s application was then adopted by Canada and used by governmental officials to claim legal authority over Indigenous people and their land.⁸⁴

From a religious perspective, the doctrine of discovery gave Christians divine right to convert Indigenous children, whom they viewed as “heathens,” into “civilized people,” which they achieved through the boarding and residential school systems.⁸⁵ Although many religious organizations were involved in running residential schools, most schools in both Canada and the US were run by the Catholic Church.⁸⁶ To date, the Catholic Church

79. McMahon, *supra* note 77, at 6; *but see* Blakemore, *supra* note 29. European countries utilized the Doctrine of Discovery to imply that Christianity “civilized” Indigenous people and therefore allowed the subsequent seizing indigenous land. *See generally* Alex Boyd, *What is the Doctrine of Discovery? And why do people want the Pope to denounce it?*, TORONTO STAR, <https://www.thestar.com/news/canada/2022/07/28/what-is-the-doctrine-of-discovery-and-why-do-people-want-the-pope-to-denounce-it.html> (last updated Jul. 29, 2022).

80. *First Encounters: Native American and Christians*, THE PLURALISM PROJ.: HARVARD UNIV., <https://pluralism.org/first-encounters-native-americans-and-christians> (last visited Oct. 23, 2022).

81. *See* Johnson & Graham’s Lesse v. William M’Intosh, 543 U.S. 21, 567-68 (1823).

82. *Id.*

83. Blakemore, *supra* note 29.

84. McMahon, *supra* note 77.

85. Miller, *supra* note 78.

86. TRUTH AND RECONCILIATION COMMISSION OF CANADA, *THEY CAME FOR THE CHILDREN: CANADA, ABORIGINAL PEOPLES, AND THE RESIDENTIAL SCHOOLS* 15 (2012); Peter Smith, *U.S. Report Details Church-State Collusion on Indigenous*

has released little to no records from this residential school era; however, the atrocities Indigenous children endured have been described by many survivors.⁸⁷ It is also important to note the government provided little to no oversight regarding the treatment of Indigenous children at residential schools or government officials simply “looked the other way” which allowed the abuses to continue without consequences.⁸⁸

As a result of these crimes by the Catholic Church, Indigenous communities continue to suffer.⁸⁹ Multiple generations of Indigenous communities lost their children, and families were ripped apart. Those who survived struggle to cope with the trauma they endured, leading to addiction, abuse, and suicide.⁹⁰ The effect on Indigenous culture is also concerning. Recent reports indicate “there are approximately 70 Indigenous languages spoken in Canada,” however, of those “[forty] ha[ve] fewer than 500 fluent speakers remaining.”⁹¹ Considering all the effects on Indigenous communities following the residential and boarding school eras, a strong case can be made for cultural genocide at the hands of the Catholic Church.⁹²

II. LEGAL ACTION

The following examples outline the most successful legal attempts to hold the Canadian government and the Catholic Church accountable for their crimes against Indigenous communities. Each section will discuss specific gaps in accountability. Additionally, these sections will outline the restitution process and highlight how this process caused more harm to survivors.

Schools, PBS NEWS HOUR (May 14, 2022, 3:34 PM), <https://www.pbs.org/news-hour/nation/u-s-report-details-church-state-collusion-on-indigenous-schools>.

87. Luo, *supra* note 6; The survivors have shared stories of inhumane abuse such as the use of needles to pierce tongues if a child spoke their native language, malnutrition, being locked in cages or chained to beds, electric shock, genital searches, forced abortions, sexual abuse, and death. *See id.*

88. Hanson, *supra* note 9.

89. *Id.*

90. Piotr Wilk et al., *Residential Schools and the Effects on Indigenous Health and Well-Being in Canada-A Scoping Review*, 38 PUB. HEALTH REV. 1, 2 (2017).

91. Masud Khawaja, *Consequences and Remedies of Indigenous Language Loss in Canada*, 11 SOCIETIES 1, 1 (2021).

92. Ka'nhehsí:io Deer, *Pope Says Genocide Took Place at Canada's Residential Schools*, CBC NEWS (Jul. 30, 2022, 6:05 AM), <https://www.cbc.ca/news/indigenous/pope-francis-residential-schools-genocide-1.6537203>.

The restitution discussion will also address how this process showed cultural ignorance, despite good intentions. Further, there was a lack of an Indigenous presence when decisions were made regarding monetary compensations from these lawsuits, despite the claims of fair representation for all sides. The following sections will discuss The Indian Residential Schools Settlement Agreement (IRSSA). Specifically, each section will provide an overview of the Common Experience Payment (CEP), the Independent Assessment Process (IAP), and the Truth and Reconciliation Committee (TRC) which all stem from the IRSSA. Lastly, the Catholic Church's efforts to provide restitution to Indigenous communities and how the Church has largely escaped monetary accountability despite legal evidence will be described.

A. Indian Residential Schools Settlement Agreement

In the 1980s and 1990s, residential school survivors in Canada came together and began advocating to receive compensation for the abuse they endured at residential schools.⁹³ Organizations, such as the Royal Commission on Aboriginal Peoples (RCAP) and the Assembly of First Nations, helped survivors by providing resources for legal action.⁹⁴ By the early 2000s, there were more than twelve thousand filed cases awaiting litigation.⁹⁵ Eventually, the volume of litigation became so unwieldy that the Canadian government requested “the Honorable Frank Iacobucci to undertake negotiations aimed at producing a comprehensive settlement to address the legacy of residential schools.”⁹⁶ The negotiations involved the Canadian government, the Churches, and the affected Indigenous communities, culminating in IRSSA.⁹⁷ The IRSSA went into effect on September 19, 2007, and, with an estimated compensation package of “approximately \$5 billion [Canadian dollars],” it was the largest class action lawsuit in Canadian history.⁹⁸ The IRSSA was split

93. *The Indian Residential School Settlement Agreement*, Indian Residential School History and Dialogue Centre, THE UNIV. OF B.C., <https://irshdc.ubc.ca/learn/the-indian-residential-school-settlement-agreement/> (last visited Oct. 23, 2022).

94. Mayo Moran, *The Role of Reparative Justice in Responding to the Legacy of Indian Residential Schools*, 64 THE UNIV. OF TORONTO L.J. 530, 531 (2014).

95. *Id.*

96. *Id.*

97. *Id.*

98. de Bruin, *supra* note 13; *see also* Moran, *supra* note 94, at 532.

into five sections to address the atrocities Indigenous children endured during the boarding schools and represented the interests of the Canadian government, the Churches, and the affected Indigenous communities.⁹⁹ Despite the IRSSA's good intentions, the agreement was hampered by many flaws.¹⁰⁰

1. Common Experience Payment

One major outcome of the IRSSA was the CEP which set aside \$1.9 billion Canadian dollars in compensation for which survivors could apply.¹⁰¹ Under the CEP, survivors would receive \$10,000 for their first school year and then \$3,000 for every subsequent year.¹⁰² By 2014 the program had received approximately 105,000 applications and more than seventy-eight thousand individuals were deemed eligible for reparations, with the average award amount around \$20,000.¹⁰³ It should also be noted that these funds only applied to the survivors of federally-funded residential schools.¹⁰⁴ Survivors of Indian Day Schools and IRS that were not funded, at least in part, by the Canadian government, were initially ineligible for any of the CEP funds despite these schools being operated by the same organizations that ran federally funded IRS.¹⁰⁵ Then, in 2019, “the Indian Days Schools Settlement was approved by the federal court of [Canada] and the claims application process opened in January [of 2020].”¹⁰⁶

2. Independent Assessment Process

The Independent Assessment Process (IAP) was established as an avenue for processing “claims of sexual abuse and serious physical and psychological abuse” stemming from time spent in the residential schools.¹⁰⁷ The IAP expected to receive between

99. de Bruin, *supra* note 13.

100. *Id.*

101. *Id.*

102. Moran, *supra* note 94, at 532.

103. *Id.*

104. de Bruin, *supra* note 13.

105. *Id.*; see also Nic Meloney, *Day School Claimants Say Lessons About Trauma Should have been Learned from Residential School Settlement*, CBC News (Feb. 23, 2020, 10:00 AM), <https://www.cbc.ca/news/indigenous/indian-residential-day-schools-survivors-lessons-learned-1.5471425>.

106. Meloney, *supra* note 105.

107. de Bruin, *supra* note 13.

twelve thousand and fifteen thousand claims from survivors, but, by the 2012 application deadline, the program received more than thirty-seven thousand.¹⁰⁸ As of 2014, the IAP distributed more than \$2.275 billion Canadian dollars to survivors.¹⁰⁹ Although the IAP had good intentions, it required survivors to relay their traumatizing experiences to an attorney over the course of multiple interviews in order to complete the required paperwork.¹¹⁰

Following the interview, there was a formal hearing, where survivors were again required to share their stories via testimony before an adjudicator.¹¹¹ Often, the adjudicator lacked the expertise to understand the cultural significance of the experiences, nor did they understand the harm caused by forcing survivors to repeatedly, and publicly, recount all of their endured abuses.¹¹² In some cases, adjudicators concluded a survivor's testimony lacked sufficient emotion to warrant compensation.¹¹³ The criteria for an emotional response was based on the adjudicator's opinion of an appropriate response by the survivor, introducing obvious bias.¹¹⁴ Therefore, in the absence of an "expected response," the adjudicator concluded that the survivor reached a sufficient level of healing and, therefore, compensation was no longer warranted.¹¹⁵ This method of adjudication, in addition to the insensitivity regarding survivors' horrific abuse, was an overtly western approach to a problem created by colonization.¹¹⁶ The "psychocentric approach," common to western legal systems, failed to address, or even consider, the different responses of people depending on culture, and represented a further example of colonial oppression, despite the intention of compensating

108. Moran, *supra* note 94, at 534.

109. *Id.*

110. Meloney, *supra* note 105.

111. Konstantin S. Petoukhov, Violence, Compensation, and Settler Colonialism: Adjudicating Claims of Indian Residential School Abuse through the Independent Assessment Process (2019) (Ph.D. thesis, Carleton University) (on file with the Carleton University Library).

112. *Id.* at 155.

113. *Id.* at 125, 155.

114. *Id.* at 72, 125.

115. *Id.* at 125.

116. Rachel L. Burrage, *Beyond Trauma: Decolonizing Understandings of Loss and Healing in the Indian Residential School System of Canada*, 78 J. OF SOCIAL ISSUES 27, 4 (2022).

survivors for the abuses sustained while forcibly attending residential schools.¹¹⁷

3. Truth and Reconciliation Commission

The TRC was established to uncover the lasting impacts of residential school system and gain a deeper understanding of those impacts on current indigenous communities.¹¹⁸ Over the course of six years, members of the TRC interviewed more than 6,500 survivors and witnesses to better understand the trauma these individuals were forced to endure as children.¹¹⁹ During this time, the TRC also reviewed more than five million records that were provided by the Canadian government in order to create a more comprehensive historical record.¹²⁰ After six years of research and interviews, the TRC provided a summary of their findings which included a “6 volume final report” with ninety-four “calls to action” to guide future reconciliation efforts.¹²¹ A major conclusion of the TRC was that the Indigenous people of Canada suffered cultural genocide due to the IRS system.¹²²

B. Legal Action Taken by Indigenous Communities Against the Catholic Church

Although other religious organizations were involved with running residential schools, the Catholic Church operated most schools.¹²³ Despite its involvement, the Catholic Church largely evaded court mandated reparations to survivors due to legal loopholes. In 2006, the Catholic Church was part of the IRSSA settlement¹²⁴ and was ordered to pay \$63.2 million to

117. *Id.* at 22.

118. *See generally Truth and Reconciliation Commission of Canada, supra* note 18.

119. *Id.*

120. *Id.*

121. *Id.*

122. Hanson, *supra* note 9.

123. *See Austen & Bilesfsky, supra* note 2.

124. Fifty Catholic entities were part of the settlement agreement. *The Catholic Entities and the Settlement Agreement*, INDIAN RESIDENTIAL SCH. HIST. & DIALOGUE CTR. COLLECTIONS, <https://collections.irshdc.ubc.ca/index.php/Detail/exhibition/494/section/497> (last visited Nov. 21, 2022); *see also* Anna Mehler Paperny, *After Pope’s Apology, Canada’s Indigenous Survivors Want Compensation, Records*, REUTERS (Apr. 4, 2022, 1:55 PM), <https://www.reuters.com/world/americas/after-popes-apology-canadas-indigenous-survivors-want-compensation-records-2022-04->

survivors.¹²⁵ Following the IRSSA settlement, the Catholic Church created the “Corporation of Catholic Entities Party to the Indian Residential School Settlement (CCEPIRSS),” which was responsible for carrying out the Catholic Church’s obligations under the settlement.¹²⁶ On behalf of the Catholic Church, the CCEPIRSS was to pay \$51 million over the next ten years, which was to be split between the Aboriginal Healing fund and Residential School survivors.¹²⁷ Another \$25 million was to be administered following a national fundraising campaign.¹²⁸ In an effort to ensure the Catholic Church adhered to its obligations, the federal government was charged with monitoring the CCEPIRSS.¹²⁹

Then, in 2013, the Canadian government questioned the Catholic Church’s deduction of their legal fees from their total financial obligation per the IRSSA.¹³⁰ Canada believed the Catholic Church could not deduct their legal fees from the money that was to be paid by the CCEPIRSS to the Aboriginal Healing fund and Residential School survivors.¹³¹ To better understand the applicability of legal fee deduction under the IRSSA, Canada’s Attorney General requested assistance from the Court of Queen’s Bench for Saskatchewan.¹³² Following this request, Canada began discussions with CCEPIRSS about its obligations under the IRSSA.¹³³ During these discussions, the CCEPIRSS believed a new agreement was reached and that the Catholic Church was only required to pay \$1.2 million, and they would be released from previous obligations under the IRSSA.¹³⁴ Ultimately, the Court agreed with the CCEPIRSS and ruled that the final agreement relieved the responsible Catholic entities of all

04/#:~:text=As%20part%20of%20a%202006,as%20counsel-
ing%2C%20and%20further%20fundraising.

125. Paperny, *supra* note 124.

126. *The Catholic Entities and the Settlement Agreement*, *supra* note 124.

127. The \$51 million was to be split with \$29 million to the Aboriginal healing fund and \$25 million “in in-kind services to Survivors.” *The Catholic Entities and the Settlement Agreement*, *supra* note 124.

128. *The Catholic Entities and the Settlement Agreement*, *supra* note 124.

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

financial commitments.¹³⁵ Of particular note in the Court's decision was the Catholic Church's inability to meet its fundraising efforts of \$25 million in five years, with "less than \$4 million" procured by 2015.¹³⁶ Although Canada began the appeals process shortly after the Court's decision, the appeal was withdrawn in 2015.¹³⁷

Sadly, this is only one of several examples since the IRSSA agreement, where the Catholic Church has avoided its financial obligation to residential school survivors. Further, in addition to these excuses, the Catholic Church claimed it could not raise the funds required under the IRSSA, yet it continued to spend millions of dollars constructing new churches demonstrating they have the capacity for reparations.¹³⁸

III. THE ICC AND UNDRIP

The following sections outline a brief history of the ICC and how its regulatory powers have evolved the modifications to the 1948 Genocide Convention following the adoption of UNDRIP. This section will also provide an overview of the ICC's possible role in prosecuting cultural genocide against Indigenous Peoples in Brazil.

A. Brief History of the ICC

The original idea of the ICC tribunal system stemmed from the Nuremberg Trials following World War II.¹³⁹ These trials were

135. Stephanie Taylor, *Canada Agreed to 'Forever Discharge' Catholic Entities from Raising \$25 million for Residential School Survivors*, CBC (Aug. 20, 2022, 1:46 PM), [https://www.cbc.ca/news/politics/canada-deal-catholic-church-fundraising-1.6557533#:~:text=Politics-,Canada%20agreed%20to%20'for-ever%20discharge'%20Catholic%20entities%20from%20raising%20\\$25,a%20final%20release%20document%20says](https://www.cbc.ca/news/politics/canada-deal-catholic-church-fundraising-1.6557533#:~:text=Politics-,Canada%20agreed%20to%20'for-ever%20discharge'%20Catholic%20entities%20from%20raising%20$25,a%20final%20release%20document%20says).

136. *Id.*

137. *The Catholic Entities and the Settlement Agreement*, *supra* note 124.

138. Jason Warrick, *'Where is Their Soul': Inside the Failed Push to Make Catholic Church Pay for Its Residential School Abuses*, CBC NEWS (Jun. 29, 2021, 2:00 AM), <https://www.cbc.ca/news/canada/saskatoon/church-residential-school-compensation-1.6082935>.

139. Claire Klobucista, *The Role of the International Criminal Court*, COUNCIL ON FOREIGN REL., <https://www.cfr.org/background/role-international-criminal-court#:~:text=The%20ICC%20was%20created%20to,over%20the%20court%20still%20rages.&text=The%20ICC%20seeks%20to%20investigate,as%20genocide%20and%20war%20crimes> (last updated Mar. 28, 2022, 2:00 PM).

established to prosecute offenses committed by Nazi officials during World War II.¹⁴⁰ The ICC as it is known today did not come about until the 1990s.¹⁴¹

During the decades following the Nuremberg Trials, war crimes were committed in multiple countries.¹⁴² In an effort to address these crimes, the United Nations (UN) created tribunals as needed and these were similar to today's ICC tribunals.¹⁴³ Yet, these trials received backlash from the international legal community who called them "inefficient and inadequate deterrents."¹⁴⁴ This criticism led countries and legal experts to call for a more "permanent court to hold perpetrators to account for the world's most serious crimes."¹⁴⁵ Then, in 1998, the UN approved a treaty to establish the ICC.¹⁴⁶

The ICC treaty was ratified by 123 member countries, and "the Rome Statute" became effective in 2002.¹⁴⁷ It is important to note that the US signed the ICC treaty, but has never formally ratified it and countries that do not ratify or sign are outside the reach of the ICC's authority.¹⁴⁸ Notably, Canada supported the ICC from its inception in the 1990s and ratified the Rome

140. *Id.*

141. *Id.*

142. *Id.*

143. Klobucista states, ". . . ad hoc international criminal tribunals [were established] to deal with war crimes in the former Yugoslavia and Rwanda." *Id.*

144. Klobucista, *supra* note 139.

145. Further, Klobucista states, "Trinidad and Tobago requested that a UN commission look into the creation of a permanent court in 1989." Klobucista, *supra* note 139.

146. *Id.*

147. Klobucista, *supra* note 139. The "Rome Statute" refers to the State of the International Criminal Court and is the name of the treaty that created the ICC [hereinafter Rome Statute]. See generally United Nations Human Rights Office of the High Commissioner, Rome Statute of the International Criminal Court (July 17, 1998), [https://www.ohchr.org/en/instruments-mechanisms/instruments/rome-statute-international-criminal-court#:~:text=An%20International%20Criminal%20Court%20\(%22the,complementary%20to%20national%20criminal%20jurisdictions; see also The States Parties to the Rome Statute, INT'L CRIM. CT., https://asp.icc-cpi.int/states-parties](https://www.ohchr.org/en/instruments-mechanisms/instruments/rome-statute-international-criminal-court#:~:text=An%20International%20Criminal%20Court%20(%22the,complementary%20to%20national%20criminal%20jurisdictions; see also The States Parties to the Rome Statute, INT'L CRIM. CT., https://asp.icc-cpi.int/states-parties) (last visited Nov. 13, 2022).

148. Klobucista, *supra* note 139; see also Kate Fitz Gibbon, *International Criminal court: Cultural Heritage Genocide*, CULTURAL PROP. NEWS (Aug. 4, 2021), <https://culturalpropertynews.org/international-criminal-court-cultural-heritage-genocide/#:~:text=The%20ICC%20has%20the%20power,an%20actual%20state%20of%20war.>

Statute.¹⁴⁹ Canada also implemented legislation regarding the “Crimes Against Humanity and War Crimes Act.”¹⁵⁰

The ICC operates from The Hague but utilizes field offices located in several countries for its investigations.¹⁵¹ The court is also comprised of a “gender-balanced bench” with members of the court representing the eighteen member states from the five UN regions.¹⁵² The ICC has international jurisdiction over select crimes but the focus for this analysis will be on the ICC’s regulation over crimes of genocide and crimes of aggression.¹⁵³

B. Brief History of the ICC and the 1948 Genocide Convention

It is important to note that the definition of genocide has varied over the last eighty years. At the 1948, UN Genocide Convention (UNGC) there were initial talks to include the term “cultural genocide.”¹⁵⁴ This term, originally coined by Raphael Lemkin, emphasized “genocide should [not] be [restricted] to [only] the immediate destruction of a national group.”¹⁵⁵ Rather, genocide could encompass devastating cultural impacts in which the offending party undertakes action to destroy the foundation or dispossess a group of their core beliefs through force.¹⁵⁶ Despite efforts to include this language, opposing parties argued that genocide already encompassed the idea of cultural genocide.¹⁵⁷ While those who supported the inclusion of the term cultural genocide, argued that the physical destruction of a national group needed separate consideration from the “prohibition of [speaking] a [traditional or national] language.”¹⁵⁸ This disagreement ultimately led to the exclusion of term cultural

149. *Canada and the International Criminal Court*, GOV’T OF CAN. (Feb. 26, 2019), https://www.international.gc.ca/world-monde/international_relations-relations_internationales/icc-cpi/index.aspx?lang=eng.

150. *Id.*

151. Gibbon, *supra* note 148.

152. Klobucista, *supra* note 139.

153. *Id.*

154. Selen Kazan, *Residential Schools Graves, Canada’s “Slow” Genocide & the International Criminal Court*, YELLOWHEAD INST. (Apr. 20, 2022), <https://yellowheadinstitute.org/2022/04/20/residential-school-graves-slow-genocide/>.

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

genocide from the UNGC.¹⁵⁹ Article II of the UNGC did include language regarding “forcible transfer of children to another group,” which spans aspects of physical and cultural genocide.¹⁶⁰ This way, the idea of cultural genocide was not fully excluded from the UNGC.¹⁶¹ Notably, the Canadian government was opposed to the inclusion of the term cultural genocide and instructed its delegation to only sign if it was removed.¹⁶² Once the term cultural genocide was removed, Canada signed the UNGC even though it still included the language of Article II.¹⁶³

Today, the ICC characterizes genocide as “the specific intent to destroy in whole or in part a national, ethnic, racial, or religious group by killing its members or by other means; causing serious bodily or mental harm to members of the group”¹⁶⁴ The application of this definition has varied and originally, it was argued that genocide could not be tried on an international level but only within the offending country’s borders.¹⁶⁵ This interpretation has changed over the years since its original inception by allowing for prosecution of genocide claims by an “international penal tribunal” which was subsequently filled by the ICC.¹⁶⁶

C. The ICC, Genocide Crimes, and UNDRIP

Notably, when assessing the applicability of genocide crimes committed against Indigenous Communities, the ICC’s prosecutorial analysis must begin with the UNDRIP.¹⁶⁷ UNDRIP was

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

164. *How the Court Works*, INT’L CRIM. CT., <https://www.icc-cpi.int/about/how-the-court-works#:~:text=First%2C%20the%20crime%20of%20genocide,conditions%20of%20life%20calculated%20to> (last visited Nov. 21, 2022).

165. The specific application as described here was outlined during the 1948 Genocide Convention. See Bonnie St. Charles, *You’re on Native Land: The Genocide Convention, Cultural Genocide, and Prevention of Indigenous Land Takings*, 21 CHI. J. INT’L L. 227, 230 (2020).

166. Payam Akhavan, *Enforcement of the Genocide Convention: A Challenge to Civilization*, 8 HARV. HUM. RTS. J. 229, 235 (1995); see also Björn Schiffbauer, *The Duty to Prevent Genocide Under International Law: Naming and Shaming as a Measure of Prevention*, 12.3 GENOCIDE STUD. & PREVENTION: AN INT’L J. 83, 83-84 (2018).

167. St. Charles, *supra* note 165, at 254.

adopted by the UN in 2007.¹⁶⁸ The goal of UNDRIP was the amplification Indigenous communities' voices on an international level and shining a light on human rights violations within these communities due to colonization.¹⁶⁹ UNDRIP highlighted that Indigenous people all over the world suffered extreme loss of land, culture, and resources.¹⁷⁰ Moreover, UNDRIP provided international framework for the treatment and recognition of Indigenous Peoples and required governments to create legal protections within their own legislation for indigenous communities.¹⁷¹ Although UNDRIP does not carry any legal weight, its passage established a change in policy when it came to Indigenous rights.¹⁷² In this new era, more countries are held accountable on a world stage for their actions against Indigenous communities.¹⁷³ Further, courts look to UNDRIP as resource to determine how Indigenous communities should be treated, thereby, creating a moral obligation for offending countries.¹⁷⁴

Despite its good intentions, UNDRIP was initially met with resistance from the communities that played a large role in destroying Indigenous communities: the US, Canada, New Zealand, and Australia.¹⁷⁵ As of today, these countries have all reversed their original positions and have voted to support UNDRIP.¹⁷⁶ In fact, Canada took UNDRIP a step further and implemented the act into its national legislation in 2021, providing greater protection for Indigenous communities.¹⁷⁷ In

168. *Protection of Indigenous Peoples*, COAL. FOR THE INT'L CRIM. CT., <https://www.coalitionfortheicc.org/global-challenges-icc-protecting-indigenous-peoples> (last visited Nov. 19, 2022).

169. *See id.*

170. *Id.*

171. *See A Report on the Relationship Between Restorative Justice and Indigenous Legal Traditions in Canada*, DEP'T OF JUST., <https://www.justice.gc.ca/eng/rp-pr/jr/rjilt-jrtja/p6.html> (last visited Nov. 19, 2022).

172. *See* M. Barelli, *The Role of Soft Law in the International Legal System: The Case of the United Nations Declaration of Indigenous Peoples*, 58 INT'L & COMPAR. L. Q. 957, 957 (2009).

173. *Id.*

174. *Id.* at 960.

175. *See generally* United Nations, *United Nations Declaration on the Rights of Indigenous Peoples*, Department of Economic and Social Affairs, <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html> (last visited Nov. 21, 2022).

176. *See id.*

177. *See Backgrounder: United Nations Declaration on the Right of Indigenous Peoples Act*, DEP'T JUST. CAN.,

contrast, the US has not fully integrated UNDRIP into its legislation and only adopted it as a resolution, falling short of Canada and New Zealand who have readily embraced UNDRIP.¹⁷⁸ As such, the US's failure to adopt UNDRIP has angered many Indigenous communities who feel UNDRIP's incorporation into legislation would provide greater protection for Indigenous Peoples in the US.¹⁷⁹

IV. INDIGENOUS GENOCIDE CLAIMS FILED WITH THE ICC

The first section will outline a genocide case that was recently filed with the ICC by Indigenous Peoples in Brazil. Although the claims focus on climate change, the case highlights how the previous political administration's actions specifically sought to target Indigenous communities and destroy them. The second section focuses on why the ICC is the appropriate venue for the Indigenous Peoples' claims of genocide in Brazil and highlights how policy considerations can help carve out a way to try cases of genocide brought forth by Indigenous communities.

A. A Brief Analysis of Genocide Claims Filed by Indigenous Communities in Brazil

When it comes to Indigenous communities, the definition of genocide cannot be viewed in a vacuum. A recent example of this expanding interpretation is highlighted in the charges brought by the Indigenous Peoples of Brazil against Jair Bolsonaro at the ICC.¹⁸⁰ In August 2021, "the Articulation of Indigenous Peoples of Brazil (APIB) filed a statement at the [ICC] to denounce the

<https://www.justice.gc.ca/eng/declaration/about-apropos.html#:~:text=On%20June%202021%2C%202021%2C%20the,Canada's%20relationship%20with%20Indigenous%20peoples>, (last modified Dec. 10, 2021).

178. See Jenna Kunze, *'The United States Lags Behind' on the Rights of its Indigenous Peoples, Natives Say*, NATIVE NEWS ONLINE (May 8, 2022), <https://nativenewsonline.net/currents/the-united-states-lags-behind-on-the-rights-of-its-indigenous-peoples-natives-say>.

179. *Id.*

180. See Edson Krenak Naknanuk, *Indigenous Peoples Sue Bolsonaro at the Hague for Genocide and Get Ready for Mass Mobilizations in Brazil*, CULTURAL SURVIVAL (Aug. 23, 2021), <https://www.culturalsurvival.org/news/indigenous-peoples-sue-bolsonaro-hague-genocide-and-get-ready-mass-mobilizations-brazil#:~:text=On%20Monday%2C%20August%209%2C%202021,the%20Bolsonaro%20government%20for%20genocide>.

Bolsonaro government for genocide.”¹⁸¹ Indigenous Peoples in Brazil accused Bolsonaro of genocide for his role in the exacerbating the effects of climate change in Brazil.¹⁸² Specifically, their arguments focused on Bolsonaro’s anti-indigenous policies that led to heightened destruction of the Amazon rainforest, home to the Guajajara people.¹⁸³ Further, Bolsonaro encouraged public actions to undercut the rights of Indigenous people of Brazil and repeatedly called for the destruction of Indigenous people.¹⁸⁴ Notably, all these crimes against Indigenous people were carried out with the intent to target Indigenous culture, livelihood, and ultimately, to destroy these communities.¹⁸⁵ Further these policies produced long lasting implications that will be felt by the Indigenous Peoples of Brazil for many generations.¹⁸⁶

B. Jurisdiction of the ICC Regarding the Right of Indigenous Peoples

Although the ICC originally lacked jurisdiction over environmental claims under the Rome Statute, a policy paper in 2016 by the ICC Office of the Prosecutor outlined the ICC’s commitment to prosecuting environmental crimes.¹⁸⁷ Despite the lack of explicit textual support, the Prosecutor highlighted language to support the ICC’s jurisdiction over environmental crimes, stating “[i]nstead, this paper suggests that the Office of the Prosecutor finds that the prohibition on environmental assault can be read into the other crimes listed in the Rome Statute.”¹⁸⁸ Importantly, this opened the door for environmental crimes to be viewed “as a crime against humanity” and as “a form of

181. *Id.*

182. See generally Lily Grisafi, *Prosecuting International Environmental Crime Committed Against Indigenous Peoples in Brazil*, COLUM. HUM. RTS L. REV. 26, 26 (2020).

183. *Id.* at 31-32.

184. *Id.* at 53.

185. *Id.* at 48.

186. See, e.g., *Brazil: Indigenous Rights Under Serious Threat*, HUM. RTS. WATCH (Aug. 9, 2022, 8:20 PM), https://www.hrw.org/news/2022/08/09/brazil-indigenous-rights-under-serious-threat?gclid=Cj0KCQiA-veebBhD_ARIsAFaAvrHpk3NIQimjiY0g3JB-3B1OyvKQG0cu9Zsa4No4gJizHB-RvaFozvQaAtGrEALw_wcB.

187. Grisafi, *supra* note 182, at 42.

188. *Id.*; see also Rome Statute of the International Criminal Court, *opened for signature* July 17, 1998, 2187 U.N.T.S. 90 (entered into force July 1, 2002), at art. 7(2)(a).

genocide.”¹⁸⁹ As such, this provided a possible route to expand the jurisdiction of the ICC and an avenue for Indigenous Peoples of Brazil to bring genocide claims against Bolsonaro. Although this outlines a critical approach for environmental claims, the vital take away is that the ICC argued for expansion of its jurisdictional oversight as a matter of international public policy.

V. ICC AS A VENUE FOR RESIDENTIAL AND BOARDING SCHOOL GENOCIDE CLAIMS

The ICC has the authority to charge individuals persons with genocide under the Rome Statute. Unfortunately, the definition and application of the term genocide is still contested and considering changing public policy, perhaps more variance is needed. Further, as outlined previously, the ICC can push policy and effectively expand the definition of genocide, even in a retroactive capacity, based on the ICC’s own interpretation of the Rome Statute. The first and second sections will outline recent attempts to hold the Canadian government and Catholic Church responsible for IRS before the ICC and highlight why these attempts have failed. The third section will discuss how the ICC’s interpretation of the Rome Statute as a matter of policy for environmental claims can also be applied to the IRS and IBS genocide claims. Although the ICC is technically restricted from charging governments for crimes of genocide, there is a potential for the ICC to carve out a policy exception within the language of the Rome Statute, but it will depend on the interpretation of genocide and adoption by governments.

A. The Catholic Church, the Canadian Government, and the ICC

After the discovery of the mass grave by the Tk’emlups te Secwepmec Nation, groups began calling for the ICC to investigate the Canadian government and Catholic Church for their role in IRS.¹⁹⁰ Then, in 2021, a group of lawyers filed a formal request with the Chief Prosecutor of the ICC in an effort open a

189. Grisafi, *supra* note 182, at 43-45.

190. See, e.g., *Lawyer says International Criminal Court declines request to open residential school investigation*, APTN NAT’L NEWS (Nov. 15, 2021), <https://www.aptnnews.ca/national-news/lawyer-says-international-criminal-court-declines-request-to-open-residential-school-investigation/>.

preliminary investigation.¹⁹¹ In this letter, attorneys emphasized Canada and its judicial bodies cannot be left to investigate these crimes perpetrated by their own predecessors and that an outside investigation was required.¹⁹² Unfortunately, the Prosecutor rejected this request because the deaths the ICC was being asked to investigate occurred before Canada formally ratified The Crimes Against Humanity and War Crimes Act (CAHWCA).¹⁹³

The applicability of the CAHWCA is important as this act “enables the ICC prosecutor to wield domestic powers that extend the ICC’s subpoena powers.”¹⁹⁴ This means that once an investigation is opened, the ICC could request documents that were previously been denied to the public and other parties regarding the IRS.¹⁹⁵ Notably, this would require the Catholic Church to produce documentation it has otherwise refused to share.¹⁹⁶ This obligation would also extend to the Canadian government as it is “legally obliged by the CAHWCA to abstain from [interfering with] ICC’s investigation.”¹⁹⁷

In addition to the issues with the CAHWCA, there is the “temporal jurisdiction” limitation, meaning the Rome Statute lacks prosecutable authority if the events were not criminalized before its adoption in 2002.¹⁹⁸ Further, Indigenous advocates have argued that “temporal jurisdiction” should be extended in the case of IRS because the Canadian government and Catholic Church continue to try and cover up the crimes committed against Indigenous children in the past.¹⁹⁹ These efforts by the Canadian government and the Catholic Church, extended the time of the

191. See Adam Lachacz, *Canadian lawyers request ICC investigates residential school system as crime against humanity*, CTV NEWS (Jun. 6, 2021), <https://edmonton.ctvnews.ca/canadian-lawyers-request-icc-investigate-residential-school-system-as-crime-against-humanity-1.5458806>.

192. *Id.*

193. Jeremy Appel, *ICC Turns Down Lawyers’ Request to Investigate Residential Schools*, TORONTO STAR (Nov. 19, 2021), <https://www.thestar.com/news/canada/2021/11/19/icc-turns-down-lawyers-request-to-investigate-residential-schools.html>.

194. Kazan, *supra* note 154.

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.*

199. *Id.*

offenses well into the twenty-first century in addition to increasing the type of misconduct committed.²⁰⁰

B. Defining Genocide

Another argument that has been proposed to hold the Canadian government and Catholic Church accountable is bringing charges of genocide under the UNGC which went into effect in 1949 in Canada.²⁰¹ Under the UNGC, the term genocide focuses on killing during times of war.²⁰² Further, the UNGC requires perpetrators had “*dolens specialis*” or “specific intent” to commit the crime of genocide.²⁰³ The varying definitions of genocide under the Rome Statute, CAHWCA, and the UNGC begs the question: Which definition of genocide should be employed by the ICC and how should the ICC hold parties who commit genocide accountable?

There are several arguments made by Indigenous allies, scholars, and lawyers. The first argument is that cultural genocide applies.²⁰⁴ As outlined in recent policy initiatives, the ICC has begun placing emphasis on the protection of cultural heritage and practices.²⁰⁵ Some scholars argue cultural genocide appropriately describes what happened to Indigenous communities as the intent was to destroy Indigenous “languages, religions, and cultures in Canada.”²⁰⁶ Further, Indigenous children, and by extension their communities, were subjected to forced assimilation.²⁰⁷ Another definition that has been put forth is “physical” genocide because arguments have been made that Indigenous children were forcibly taken from their communities with no intent of returning them to their families.²⁰⁸ Then once Indigenous children were at IRS, they were “killed or left to die through

200. *Id.*

201. *Id.*

202. *Id.*

203. David B. MacDonald & Graham Hudson, *The Genocide Question and Indian Residential Schools in Canada*, 45 CAN. J. OF POL. SCI. 429, 430 (2012).

204. See Payam Akhavan, *Cultural Genocide: Legal Label or Mourning Metaphor?*, 62 McGill L. J. 243, 244 (2016).

205. THE OFFICE OF THE PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT, POLICY ON CULTURAL HERITAGE 7 (2021), <chrome-extension://efaidnbnmnibpcajpcglclefindmkaj/https://www.icc-cpi.int/sites/default/files/itemsDocuments/20210614-otp-policy-cultural-heritage-eng.pdf>.

206. MacDonald & Hudson, *supra* note 203, at 430.

207. *Id.*

208. Kazan, *supra* note 154.

neglect.”²⁰⁹ Further, the intent of the IRS system was to dispossess Indigenous communities from their land and people.²¹⁰

The third definition of genocide that has been put forth is “colonial” genocide which was recently proposed in a legal analysis published as part of the National Inquiry into Missing and Murdered Indigenous Women and Girls.²¹¹ The authors of the National Inquiry study explain that “colonialism is a unique form of violence.”²¹² Specifically, colonial violence does not fit the “international legal definition of the crime of genocide.”²¹³ Under colonial genocide, the state and government are held accountable rather than one individual.²¹⁴ This shift from holding one person accountable is a departure from traditional genocide definitions and supports Indigenous ideals that the responsibility of colonialism is attributable to a group or government, not one person.²¹⁵ The National Inquiry notes that instances where the term genocide had been traditionally used applies to shorter periods of violence such as the Holocaust and the Rwandan Genocide.²¹⁶ The colonial genocide experienced during and after the IRS moved slowly and occurred over centuries with the sole intent of destroying Indigenous people, which continues to this day.²¹⁷ Considering the variations in genocide definitions, it should be noted that at its core the meaning is the same: a specific group of individuals was targeted with the intent of erasure. The IRS was unique because it focused on destroying Indigenous people by specifically targeting some of the most vulnerable members of these communities—their children.

C. Policy Considerations

It is important to note that global public policy has shifted towards reparations for Indigenous people and acknowledgement of the atrocities they endured, as exemplified by events in New

209. *Id.*

210. *Id.*

211. *Id.*

212. A LEGAL ANALYSIS OF GENOCIDE, SUPPLEMENTARY REPORT OF THE NATIONAL INQUIRY INTO MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS 9 (2019).

213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.*

217. *Id.* at 11.

Zealand.²¹⁸ Presently, the ICC will not prosecute governments or the Catholic Church for their crimes against Indigenous people.²¹⁹ On the other hand, precedent suggests the court may modify its interpretation of the Rome Statute as exemplified by its willingness to prosecute environmental claims rooted in genocide.²²⁰ This is supported by the adoption of UNDRIP by the UN in 2007.²²¹ These actions suggest there is potential that the ICC may consider the expansion of term genocide to encompass unique claims brought for and by Indigenous communities.

VI. HOLDING THE US ACCOUNTABLE TO INDIGENOUS COMMUNITIES

It is important to remember that the story of IRS system orchestrated by the Canadian government and Catholic Church cannot be told without looking to the US. As noted, the US's IBS system ultimately served as the blueprint for the IRS system in Canada.²²² Further, it was the intent of both the US and Canadian governments and the Catholic Church to erase Indigenous people, from what colonizers call North America, by dispossession of land and destruction of Indigenous culture.²²³

Although Canada, and even the Catholic Church, have taken steps to acknowledge their involvement of the erasure of Indigenous people, the same cannot be said for the US. One of the first formal "acknowledgements" of the role the US played in destroying Indigenous Communities was former President Barack Obama's "Native America Apology Resolution" which was signed in 2009.²²⁴ This "apology" was met with criticism because it was signed without drawing any attention to the atrocities it was meant to recognize.²²⁵ The most upsetting aspect of the apology

218. See generally Christine Chamaumeau, *New Zealand Leads the Way on Reparations for Indigenous People*, JUSTICEINFO.NET (June 28, 2021), <https://www.justiceinfo.net/en/79224-new-zealand-leads-way-reparations-indigenous-people.html>.

219. Appel, *supra* note 193.

220. Grisafi, *supra* note 182, at 26.

221. *Protection of Indigenous Peoples*, *supra* note 168.

222. Flood, *supra* note 20, at 2.

223. Newland, *supra* note 21, at 21; see also Blakemore, *supra* note 23; see Hanson, *supra* note 9.

224. Rob Capriccioso, *A Sorry Saga: Obama Signs Native American Apology Resolution; Fails to Draw Attention to It*, INDIAN L. RES. CTR. (Jan. 13, 2010), <https://indianlaw.org/node/529>.

225. *Id.*

was that it included the following disclaimer: “Nothing in [this resolution] authorizes or supports any legal claims against the United States, and the resolution does not settle any claims.”²²⁶ This hollow apology was particularly notable as other world leaders in Canada and Australia were issuing formal apologies at the same time admitting the role their governments played in the erasure of Indigenous people.²²⁷

For the US, it was not until Deb Haaland, the first Native American Secretary of the Department of the Interior, pushed the US government to acknowledge its history in the destruction of Indigenous peoples.²²⁸ Haaland and her team have since released the first Federal Indian Boarding School Initiative Investigative Report.²²⁹ Sadly, this report only scratches the surface of the atrocities the US government and its religious agents inflicted on Indigenous Communities.²³⁰ While Canada operated roughly 139 IRSs, the US established approximately 408 IBSs over 150 years.²³¹ Despite many IBS closing in the 1930s, Indigenous communities emphasize that the impacts are still felt today, highlighting the complex discovery and healing process that still remains.²³²

Despite its role in the IRS system, the US has largely escaped scrutiny by the general public, not only because of the lack of acknowledgment, but also because the ICC’S jurisdiction is not recognized by the US government.²³³ In the past this was predominantly because the US government feared the prosecution of US soldiers during times of war or on special operations abroad and because of the opinion that placing the US under the

226. *Id.*

227. *Id.*

228. Felicia Fonseca, *U.S. Grappling with Native American Boarding School History*, AP NEWS (May 13, 2022), <https://apnews.com/article/education-native-americans-cultures-congress-1052724fc31b28f7addae7f5b2e50830>.

229. *See generally* Newland, *supra* note 21.

230. *See generally* Olivia B. Waxman, *The History of Native American Boarding Schools is Even More Complicated than a New Report Reveals*, TIME (May 17, 2022, 12:42 PM), <https://time.com/6177069/american-indian-boarding-schools-history/>.

231. *Id.*

232. *Id.*

233. *See The U.S. does not recognize the jurisdiction of the International Criminal Court*, NPR (Apr. 16, 2022), <https://www.npr.org/2022/04/16/1093212495/the-u-s-does-not-recognize-the-jurisdiction-of-the-international-criminal-court>.

scrutiny of an international court compromised sovereignty.²³⁴ Fortunately, the Biden administration has shown a “[favorable] attitude towards the ICC,” particularly in context of the recent invasion of Ukraine.²³⁵ While, the Biden administration and Congress push for the ICC to try Russia for crimes against Ukraine, there is still hesitancy for the US to become a State Party.²³⁶

This inaction on the part of the US to commit to ICC membership remains a challenge for Indigenous communities who seek retribution. The ICC has the authority to exercise jurisdiction over nationals of countries, who are not members of the Rome Statute.²³⁷ Specifically, if a foreign national commits genocide within the territory “of an ICC member country,” then the ICC has grounds to prosecute the perpetrator.²³⁸ This prosecutorial power suggests evidence linking the IBS and IRS systems and may provide Indigenous communities in Canada with an avenue to hold both the US and Canada accountable before the ICC for genocide. While there are strong examples of evidence to support charges of this kind, it would take coordinated efforts by Indigenous communities and their allies to move the needle in the right direction.

CONCLUSION

Indigenous communities in both the US and Canada were subjected to a genocide that lasted hundreds of years, the effects of which continue to reverberate throughout these communities today.²³⁹ The Canadian government and the Catholic Church both have publicly acknowledged that they committed genocide against Indigenous peoples through governmental policy and

234. *Id.*

235. Caleb H. Wheeler, *Should the ICC Allow the United States to Become a State Party?*, OPINIOJURIS (Dec. 8, 2022), <http://opiniojuris.org/2022/08/12/should-the-icc-allow-the-united-states-to-become-a-state-party/>.

236. *Id.*

237. Q&A: *The International Criminal Court and the United States*, HUM. RTS. WATCH (Sept. 2, 2020), <https://www.hrw.org/news/2020/09/02/qa-international-criminal-court-and-united-states#4>.

238. *Id.*

239. See Kimberly Matheson et al., *Canada’s Colonial Genocide of Indigenous Peoples: A Review of the Psychosocial and Neurobiological Processes Linking Trauma and Intergenerational Outcomes*, 19 INT’L J. ENV’T RSCH. PUB. HEALTH 1, 2 (2022).

the IRS.²⁴⁰ Despite these admissions, previous attempts by the Canadian courts to hold both the Canadian government and Catholic Church accountable have fallen short. Attempts at the international level thus far have been unsuccessful, with the ICC declining to hear an argument for “cultural genocide.”²⁴¹

Two key reasons that charges filed through the ICC have been unsuccessful are (1) the ICC claims jurisdictional limits for crimes that occurred prior to the adoption of the Rome Statute in 2002, and (2) the ICC can only charge individuals, not a government, or an organization, like the Catholic Church.²⁴² Further, the ICC has demonstrated willingness to modify its interpretation of prior rules, which could represent opportunities for Indigenous communities. Specifically, in 2021, a new term, “cultural genocide,” was included under the Rome Statute.²⁴³ Given the ICC definition and scope of the term, it is conceivable that further interpretation of genocide may allow for a trial beyond a single defendant.

Although the US established its IBS prior to the IRS, and had a large total number of schools, the US, unlike Canada, is not a state party of the ICC and has not ratified membership within the US constitution.²⁴⁴ So, while the ICC has jurisdiction within Canada, and, therefore, to the Catholic Church operating within Canada, it does not have jurisdiction within the US. Yet, the ICC has the ability to try foreign nationals from non-ICC countries for crimes committed in ICC countries.²⁴⁵ Therefore, given the direct role played by the US government in establishing the IRS, again assuming that ICC statutes are expanded to allow for charges to be brought against an entire government or organization, the US government could be held accountable for its role in

240. Maan Alhmidi, *Trudeau’s acknowledgment of Indigenous Genocide Could Have Legal Impacts: Experts*, CTVNews (June 5, 2021, 7:29 AM), <https://www.ctvnews.ca/canada/trudeau-s-acknowledgment-of-indigenous-genocide-could-have-legal-impacts-experts-1.5457668>; see generally Jason Horowitz, *Francis Calls Abuse of Indigenous People in Canada a ‘Genocide,’* N.Y. TIMES (July 30, 2022), <https://www.nytimes.com/2022/07/30/world/americas/pope-francis-canada-genocide.html>.

241. Appel, *supra* note 193.

242. *Id.*

243. Gibbon, *supra* note 148.

244. *The U.S. does not recognize the jurisdiction of the International Criminal Court*, *supra* note 233.

245. Q&A: *The International Criminal Court and the United States*, *supra* note 237.

the IRS. Further, by expanding the interpretation of the genocide under the Rome Statute to encompass “colonial genocide,” the ICC could carve out a legal avenue for Indigenous peoples to try those responsible for destruction their communities endured.

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* B.S., Oklahoma State University (2014); M.S., Mayo Clinic Graduate School of Biomedical Sciences (2018); J.D., Brooklyn Law School (Expected 2025); Managing Editor, Brooklyn Journal of International Law (2023-2024). This Note is dedicated to the Missing Children, the Survivors, their families, and their communities who continue to endure the lasting impacts of the Residential School System. I chose this topic because these communities hold a special place in my heart and mean more to me than words could ever express. The world needs to know what happened to their children and hear these stories. A special thank you to Lucie Couillard Sosa and Samantha J. Past for their help, support, and guidance in the development of this Note. Thank you to Professor Heidi Brown and Julia Rubino for their advice and edits throughout this process. Thank you to my parents who taught me to be strong in face of adversity and always speak my mind. Finally, thank you to my fiancé, Dane Thompson, for your patience, unconditional love, and unwavering support. Without your encouragement and motivation throughout my endeavors, I would not be where I am today. All errors or omissions are my own.