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Oppression to Empowerment: The Role of Education in Facilitating the Right to Self-Determination of Indigenous Peoples



Maynooth University Department of Law Declaration on Plagiarism

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List of Abbreviations

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Convention on the Rights of Persons with Disabilities (CRPD)

Expert Mechanism on the Rights of Indigenous Peoples (EMRIP)

Historically Native American Fraternities and Sororities (HNAFS)

Human Rights Council (HRC)

Indian Residential School Settlement Agreement (IRSSA)

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICPRMWF)

International Covenant on Civil and Political Rights (ICCPR)

International Covenant on Economic, Social and Cultural Rights (ICESCR)

International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD)

International Labor Organization (ILO)

League of Nations (LON)

Millennium Development Goals (MDGs)

Native American Community Academy (NACA)

Royal Commission on Aboriginal Peoples (RCAP)

Sámi University of Applied Sciences (SUAS)

Sustainable Development Goals (SDGs)

Truth and Reconciliation Commission (TRC)

UNESCO Convention against Discrimination in Education (UNESCO CDE)

United Nation Educational, Scientific and Cultural Organization (UNESCO)

United Nations (UN)

United Nations Convention on the Rights of the Child (CRC)

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

United Nations Department of Economic and Social Affairs (UNDESA)

United Nations General Assembly (UNGA)

United States of America (USA)

Universal Declaration of Human Rights (UDHR),

University of North Carolina (UNC)

University of North Carolina Pembroke (UNCP)

Title: Oppression to Empowerment: The Role of Education in Facilitating the Right to Self-Determination of Indigenous Peoples.

Keywords: Indigenous Peoples, Self-Determination, Education, Oppression, Cultural Genocide, Empowerment.

Abstract

This research investigates the role of education in facilitating the right to self-determination of Indigenous Peoples and investigates if education has evolved from a tool of oppression to one for the facilitation of the right to self-determination and Indigenous empowerment. The relationship between Indigenous Peoples and international law has been a turbulent one. Over the past sixty-five years, the status of Indigenous Peoples has slowly changed within the international legal regime which has seen Indigenous Peoples transition from objects to subjects of international law. This change has added immensely to Indigenous empowerment, transforming what were once deemed to be vulnerable groups in need of protection from the States in which they resided, to self-actualising and empowered communities demanding the rights to which they are entitled. This progression is not only due to the changing role of Indigenous Peoples within the international legal order, but also owing to a change within other vital societal infrastructures, including education systems. In the context of Indigenous children, the education systems of Colonisers have, in the past, played a sinister role. It has been used as a thinly veiled attempt to oppress indigeneity and to disrupt the transmission of intergenerational knowledge and customs. One example is that of the Canadian Residential School System, designed to eliminate Indigenous identity and hinder any advancement of the right to self-determination of Indigenous groups in Canada. In more recent times, mainstream education and educational institutions have become a beacon of hope for the promotion and preservation of Indigenous identity. This suggests that education and systems of education have the potential to be valuable tools in the process of maintaining Indigenous identity in a non-Indigenous setting, a powerful engine for Indigenous empowerment and perhaps a beneficial tool for Indigenous self-determination and empowerment. Utilising a descriptive-normative approach, this work explores these themes, analyses examples of their occurrence both past and present, and offers recommendations on how this right to self-determination can be advanced both currently and in the future through education systems. This research addresses how education systems, in the context of Indigenous Peoples, can be reformed to be a catalyst of empowerment from a tool of subjugation.

Part I

Chapter 1

Introduction

1.1 Research Question and Research Trajectory

This research investigates the role of education in both facilitating and denying the right to self-determination of Indigenous Peoples and assesses how the role of education has been used as both a tool of oppression and as one for the facilitation of the right to self-determination and Indigenous empowerment. The relationship between Indigenous Peoples and international law has been a turbulent one. Over the past sixty-five years, the status of Indigenous Peoples has slowly changed within the international legal regime which has seen Indigenous Peoples transition from objects to subjects of international law.¹ This change has added immensely to Indigenous empowerment, transforming what were once deemed to be vulnerable groups in need of protection from the States in which they resided, to self-actualising and empowered communities demanding the rights to which they are entitled.² This progression is not only due to the changing role of Indigenous Peoples within the international legal order, owing to a transition from object to subject in international law, but also due to a change within other vital societal infrastructures, including education systems.³

In the context of Indigenous children, the education systems of Colonisers have, in the past, played a sinister role in subjugating Indigenous children through assimilationist policies, which through intergenerational trauma, has also subjugated Indigenous Peoples in general. In many States, Canada, Australia, the United States of America (USA) amongst others, it has been used

¹ Stefania Errico, 'Indigenous Peoples' (2018) 29 *Yearbook of International Environmental Law*. Pp. 120 -124

² UNGA, 'Report of the Special Rapporteur of the Human Rights Council on the Rights of Indigenous Peoples' (2018) UN Doc. A/73/176

³ 'Processes Of Change and Indigenous Participation' (*Culturalsurvival.org*, 2021)

<<https://www.culturalsurvival.org/publications/cultural-survival-quarterly/processes-change-and-Indigenous-participation>> Last Accessed 18 July 2021

as a thinly veiled attempt to oppress indigeneity and to disrupt the transmission of intergenerational knowledge and customs.⁴ Assimilative educational policies were used as a tool of colonisation, with colonisers attacking the vulnerability of children through the provision of education. However, in more recent times, education and educational institutions have become a beacon of hope for the promotion and preservation of Indigenous identity,⁵ this has become particularly evident in higher education institutions which will be discussed in further detail in Chapter Nine. This research further aims to identify how education and educational institutions have the potential to be valuable tools in the process of maintaining Indigenous identity in a non-Indigenous setting, a powerful engine for Indigenous empowerment and perhaps a beneficial tool for Indigenous self-determination.⁶

Utilising a descriptive-normative approach, this work explores these issues, analyses examples of their occurrence both past and present, and offers recommendations on how this can be advanced both currently and in the future. This research addresses the question of whether education, in the context of Indigenous Peoples, is a catalyst for empowerment or a tool for subjugation. By offering two detailed case studies on different education systems, the Canadian Residential School system and the current system of education provision in French Guiana, this research highlights both the historic and present dangers of an oppressive and assimilative education system and questions how this can deny the right to self-determination of Indigenous Peoples. This research will also offer insight into current initiatives used in additional education systems which seek to enhance and empower Indigenous identity and facilitating the right to self-determination.

⁴Magnusson K, 'Indigenous Identity, Lifelong Learning and Democracy' PASCAL International Observatory (*Pascalobservatory.org*, 2021) <<http://pascalobservatory.org/pascalnow/blogentry/news/Indigenous-identity-lifelong-learning-and-democracy>> Last Accessed 29 March 2021

⁵ V de Sande, A Menzies (2003) Native and mainstream parenting: A comparative study. P.127

⁶ L.B Simpson (2014) Land as pedagogy: Nishnaabeg intelligence and rebellious transformation. *Decolonization: Indigeneity, Education & Society*, 3(3). 1-24

1.2 Hypothesis and Themes Explored

This thesis seeks to highlight the link and relationship between the right to education and the right to self-determination in the context of Indigenous Peoples. In order to address the hypothesis that education can be used both a tool to facilitate the right to self-determination of Indigenous Peoples and to highlight how in the past, it has been used to deny the right to self-determination of Indigenous Peoples. To support this, a myriad of themes will be explored in this research. These include Indigenous rights, self-determination, education, oppression, intergenerational trauma, reconciliation, assimilation, empowerment, cultural identity, and cultural rights. These themes will be discussed and analysed with the support of detailed case studies, further details and justifications for which will be discussed in section four of this chapter and in Chapter Six and will be framed by a descriptive-normative research approach.

1.3 Methodology

Utilising a normative descriptive research approach, this research provides an analysis of the role of education systems and the right to education in relation to right to self-determination within the context of Indigenous Peoples.⁷ Through examining the historical relationship between these two rights and the impact this has had on Indigenous communities, in contrast with how they intersect today, this research will highlight the gaps between theory and practice.

By implementing a descriptive research approach, this work illustrates the past experiences of an Indigenous Group in an assimilative education system and how that pertained to the denial of the right to self-determination. Furthermore, implementing a normative research approach and using information and data gathered through primary and secondary sources to emphasise

⁷ V.M Robinson, Descriptive and normative research on organizational learning: locating the contribution of Argyris and Schön. (2001) *International Journal of Educational Management*. Pp. 58 - 67

the gaps in the current systems of education and how best to address them.⁸ A normative question is one that asks what 'should' be, the purpose of a normative question is to define or set the stage as to what the possibilities or opinions in a given situation.⁹ In this research, the research question will be assessed through answering normative questions which will be set against a specific criterion based on the characteristics of the right to self-determination in the context of Indigenous Peoples and the role in which education systems have played in both the denial and facilitation of that right.¹⁰

A case study is a sample group (in this work this includes specific systems of education including the historical case study of the Canadian Residential School System and the current system of education for Indigenous Peoples in French Guiana and the experiences of the Indigenous Peoples of these regions) whose characteristics are used to describe the characteristics of a larger group of which the case study is a subgroup.¹¹ The information gathered from investigating a case study may be generalized to serve the larger group. However, in the context of Indigenous Peoples, this can be a problematic approach as Indigenous Peoples around the world are recognised as diverse and heterogeneous groups. The time periods during which the presented case studies occurred are quite different and this can cause potential issues with the reality of the situation, however, great care has been taken to use case studies that are both relevant to the research question and offer a unique insight into the use of education as an empowerment right.

⁸ Sean D. Vermillion and others, 'Linking Normative and Descriptive Research with Serious Gaming' (2014) 28 *Procedia Computer Science*. Pp. 204 - 212

⁹ What Is a Normative Question? (*Learn English or Starve*, 2017)

<[¹⁰ 'Descriptive, Normative, And Impact Evaluation Designs' \(*Dmeforpeace.org*, 2021\)](https://learnenglishorstarve.wordpress.com/2017/07/25/what-is-a-normative-question/#:~:text=A%20normative%20question%20is%20one,condition%20(Yes%2FNo).> Last Accessed 26 April 2021</p></div><div data-bbox=)

<https://dmeforpeace.org/sites/default/files/M06_PP.pdf> Last Accessed 26 April 2021

¹¹ 'Descriptive Research Designs: Types, Examples & Methods' (*Formpl.us*)

<[17](https://www.formpl.us/blog/descriptive-research#:~:text=There%20are%203%20main%20data,study%20method%2C%20and%20survey%20research.> Last Accessed 26 April 2021</p></div><div data-bbox=)

This work is supported through qualitative research, which means it will focus forming and understanding of the research via a humanistic or idealistic approach.¹² The importance of utilising the qualitative method in this research is the value it adds by affording an understanding of peoples' beliefs, experiences, attitudes, behaviour, and interactions.¹³ This is of paramount importance when commenting on the lived experiences of the children and families of those children who had, and continue to have, their right to self-determination denied through education systems. As the case studies in this research will highlight, the experience of children and their families, through these education systems were often based on the subjugation and oppression of a group who were often already suffering from marginalisation.

1.4 Case Studies

This research will use case studies to support and contribute to the answer to the research question. The case studies are chosen to suit both the context of this research and the research question and follows the methods described by Gu and Warren in their work "Methods for Descriptive Studies" which outlines how to best complement research with appropriate case studies.¹⁴ Furthermore, incorporating in-depth case studies allows the production of more meaningful results from a holistic investigation into the complex and ubiquitous interactions among those at the centre of the research.¹⁵ Regarding the case study design for this work, case studies will be used, including the Canadian Residential School System and the system of educational provision in French Guiana. Further comparisons will be drawn from education

¹² Sanjay Kalra, Vibha Pathak and Bijayini Jena, 'Qualitative Research' (2013) 4 *Perspectives in Clinical Research* p. 192

¹³ Ibid

¹⁴ Y Gu and J Warren, *Methods for Descriptive Studies* in Craig Kuziemy and Francis Yin Yee Lau, *Handbook of Ehealth Evaluation: An Evidence-Based Approach* (Victoria, University of Victoria 2017). P. 11

¹⁵ L Dubé and G Paré (2003) Rigor in Information Systems Positivist Case Research: Current Practices, Trends, and Recommendations. *MIS quarterly*, pp.597-636

systems in relation to Indigenous Peoples at The Sámi University and the University of North Carolina. The chapter on ‘Justification of Case Studies’ offers further details regarding the process of choosing these cases. The design of the case studies in this research falls under the following categories: Descriptive, Cross-Sectional and Before-and-After.¹⁶

1.4.1 Descriptive Case Study

This design consists of an in-depth collection of information over time to better understand the particular cases.¹⁷ This design is especially useful for describing what implementation of specific educational policies entailed and to explore the reasons behind why events happened the way they did. This will be the approach used in the case study relating to French Guiana and the current education system in operation.

1.4.2 Cross-Sectional Case Study

A cross-sectional case study design offers a snapshot at one point in time, this design is useful in identifying sub-group experience.¹⁸ This is particularly useful within the case study of the Canadian Residential School System as that chapter will discuss the experience of Indigenous Canadians and offer further insight in the specific experiences of First Nations, Métis, and Inuit under said education system. An added benefit of the cross-section design is that it allows for consideration of current experiences and the role of memory resulting from an experience in previous years.

1.4.3 Before-and-After Case Study

¹⁶ Mills, AJ, Durepos, G and Elden Wiebe, ‘Before-And-After Case Study Design’ (2010) *Encyclopaedia of Case Study Research*. Available at <https://www.researchgate.net/publication/230557680_15_Mills_A_J_Durepos_G_and_Wiebe_E_Eds_2010_Encyclopaedia_of_Case_Study_Research_Volumes_I_and_II_Thousand_Oaks_CA_Sage> Last Accessed 22 July 2021

¹⁷ Ibid

¹⁸ Jelke Bethlehem, ‘Cross-Sectional Research’ (1999) *Research Methodology in the Social, Behavioural and Life Sciences* pp. 110 - 142

Of all case study designs, the before-and-after design is almost self-explanatory. Often referred to as a pre and post designs, this approach allows for acknowledgment of hindsight, perspective and a ‘lessons learned’ approach to specific phenomena.¹⁹ This design will be applied to both the Canadian School System, and further drawn on for a discussion on the examples of educational provision and supports at The Sámi University of Social Sciences, and the University of North Carolina.

Detailed case studies of the aforementioned educational systems will be analysed and will address how the right to self-determination in the context of Indigenous Peoples has in the past, and present in some instances, been denied through educational systems, and will offer a comprehensive discussion on some of the current forms of empowerment supported by educational systems in the facilitation of the right to self-determination.

1.5 Framing the Research Approach

According to Putt, past critiques of the social sciences focused primarily on the identity of the researcher and his or her relationship with the ‘subject’ Indigenous person, but over time more sophisticated and practical approaches have emerged related to participant focused methodologies and design.²⁰ In order to support the knowledge and understanding of the content of this thesis, which at times, can be sensitive in nature, and very specific to certain groups, many efforts have been undertaken to ensure cultural sensitivity and respect for the Indigenous Peoples discussed in this work.

There is no definitive Indigenous research model or methodologies, various guidelines and commentaries underline the need to incorporate or ensure Indigenous involvement or control

¹⁹ Dubé and Paré Note 15

²⁰J Putt, ‘Conducting Research with Indigenous People and Communities’ (2013) *Indigenous Justice* accessed at <<https://www.Indigenousjustice.gov.au/wp-content/uploads/mp/files/publications/files/brief015.v1.pdf>> Last Accessed 06 May 2021

over the enterprise. The focus is on the need for reorientation and adaption of the research business, and in its practice, of researchers' worldviews and of standard methodologies and instruments.²¹ To support the research in this thesis, a certificate course in 'Indigenous Canada' from the Faculty of Native Studies at the university of Alberta in Canada was undertaken.²² This was delivered by Indigenous Canadians to form genuine understanding and appreciation of the history and current situation of the Indigenous Peoples, both victims, survivors and families involved in the case study on the Canadian Residential School System. The content explored Indigenous histories and contemporary issues in Canada. From an Indigenous perspective, this course examined essential issues facing Indigenous Peoples today from a "historical and critical perspective highlighting national and local Indigenous-settler relations".²³ Furthermore, a research project was undertaken in collaboration with Survival International in relation to the experience of Tribal Children in French Guiana and their right to be educated in their mother tongue.²⁴ Survival International was founded in 1969 by a group of people in response the genocide of Amazon Indians.²⁵ These undertakings offer a unique and genuine appreciation for the experience of Indigenous Peoples who feature in the case studies of this work and beyond. This also aligns with fundamental protocols which pertain to any research in the Indigenous domain, including cultural sensitivity, willingness to partner with, and to involve, communities in both processes and outcomes, and that Indigenous Peoples see some benefits from the research.²⁶ Participatory research would have aided this work immensely however, due to the COVID-19 pandemic, research visits to the Sámi University of

²¹ Ibid

²² 'Indigenous Canada University of Alberta' (*Ualberta.ca*) <<https://www.ualberta.ca/admissions-programs/online-courses/Indigenous-canada/index.html>> Last Accessed 1 May 2021

²³ Ibid

²⁴ Wayana, Emerillon, Palijur, Arawak, Wayampi, and Kali'na are the six Amerindian languages spoken in French Guiana

²⁵ 'About Us' (*Survivalinternational.org*) <<https://www.survivalinternational.org/info>> Last Accessed 26 April 2021

²⁶ H Blagg, *Journeys Outside the Comfort Zone: Doing Research in the Aboriginal Domain*, in Bartels L and Richards K (eds), *Qualitative Criminology: Stories From the Field* (Sydney: Federation Press, 2011) pp. 140-154

Applied Sciences and the University of North Carolina Wilmington could not be facilitated. Informal dialogues with Indigenous educators did inform this research.

Every care has been taken to ensure language of inclusion has been utilised to ensure respect for the Peoples included in this research. With that noted, it is important to highlight that there is no accepted system of capitalisation and even United Nations practice is not consistent.²⁷

This research aims to utilise various guidelines in a clear and consistent manner and recognises that it may differ from that used by other scholars in the field. In terms of syntax, grammar and recommended technique, this thesis employs the guidelines supported by Monash University.²⁸

1.5.1 Researcher Statement of Positionality

In writing this thesis, many considerations came to mind that would impact my positionality in relation to researching and writing on experiences of Indigenous Peoples, experiences that are far removed from my own and not my experiences to share. One of the major challenges that presented itself while undertaking this research was that I am a white western male. In many ways, a representation of the colonisers that hurt Indigenous communities so much. It was important for me to acknowledge my privilege both in life and in relation to carrying out this research. Drawing on research conducted by Holmes to begin, I found it was imperative to acknowledge that positionality implies that the “social, historical and political location of the researcher influences their orientations”.²⁹ In order to address this issue and support my own understanding of the history and journey of many of the Indigenous Peoples discussed in this

²⁷ Variations of capitalisation can be seen in all UN documents pertaining to Indigenous Peoples. For example, see <<https://www.ohchr.org/Documents/Publications/fs9Rev.2.pdf>> Last Accessed 01/05/2021

²⁸As recommended by the University of Monash, this research recognises that language is enormously powerful and can be politically charged. Inclusive language has been used throughout because it is accurate, fair, respectful, and necessary. This allows an avoidance of language that marginalises people who are already marginalised. It is language that is accessible and meaningful to a wide audience.
<https://www.monash.edu/about/editorialstyle/writing/inclusive-language> Last Accessed 26/01/2021

²⁹ Andrew Gary Darwin Holmes, 'Researcher Positionality - A Consideration of Its Influence and Place In Qualitative Research - A New Researcher Guide' (2020) 8(4) *Shanlax International Journal of Education*. pp. 1-10

work, especially in relation to the case study of the experience of victims and survivors of the Canadian Residential School System, I undertook a certified course in Indigenous Canadian Studies. This was certified course run by the University of Alberta in Canada and classes were delivered by Indigenous Professors and Leaders.³⁰ By acknowledging and considering these various elements, it allowed me to take an objective view of aspects of the research which is necessary at time when writing for the Academy while allowing subjectivity to play an important role in writing of the lived experiences of different Indigenous groups. In order to further support this, certain assumptions needed to be made and accepted, using the model described by Holmes, these include ontological and epistemological assumptions as well as assumptions about human nature and agency.³¹

Timing of research can have an impact on researcher positionality, this has been described by Holmes, who maintains that the timing of research can have both positive and negative impacts.³² During the course of this research, timing was a huge issue as the impact of the COVID-19 pandemic impacted my ability to carry out research visits. Visits had been arranged for spending an extended period of time at the University of North Carolina Pembroke and at the Sámi University of Applied Sciences. However, due to the COVID-19 outbreak and international travel restrictions, these visits could not take place. This is something that I know would have benefitted my thesis and writing massively and hope to pursue these visits in the future to strengthen and build on the work in this thesis as “informants are increasingly recognized as research participants who actively influence”.³³

³⁰ 'Indigenous Canada | University of Alberta' (*Ualberta.ca*) <<https://www.ualberta.ca/admissions-programs/online-courses/indigenous-canada/index.html>> Last Accessed 17/02/22

³¹ Holmes, Note 29

³² *Ibid*

³³ Lanita Jacobs-Huey, 'The Natives Are Gazing And Talking Back: Reviewing The Problematics Of Positionality, Voice, And Accountability Among "Native" Anthropologists' (2002) 3(104) *American Anthropologist*. pp. 791 - 804

Through learning and engaging with differing methodologies, including Indigenous methodologies, I found that it allowed an authentic voice to come through my writing. One such methodology is Storytelling. I learned how essential this is within Indigenous discourse and how this form of methodology should be teller focused, according to Thomas.³⁴ Participatory research would have allowed this in a more personal and subjective manner, however, again due to COVID-19 this was not feasible. However, informal discussions through the research process with Indigenous educators allowed an element of this participatory research exist in this thesis, this also helped to “conflicts arising from using mainstream methodologies in Indigenous research”.³⁵ Stemming from this, I want to ensure that I am honouring a commitment to anti-oppressive research, which means committing to social justice and requires making a commitment to the people you are working with, personally and professionally, in order to mutually foster conditions for social justice through research.³⁶ This is because it is accepted and well established that “research can be a powerful tool for change”.³⁷ By learning to understand and respect storytelling as a methodology was incredibly important for this research. This was particularly relevant when researching and writing on the Canadian Residential School System, this is because although the schools are no longer in existence, the memories remain.³⁸ It is very important for me, through this research to demonstrate an understanding that “Residential Schools have been the single most devastating event to affect Indigenous Peoples since first contact and day to day, many former students continue to live out the horrific impact of these schools”.³⁹ This was important to both consider

³⁴ Robina Anne Thomas, ‘Honouring the Oral Traditions of the Ta’t Mustimuxw (Ancestors) through Storytelling’ in Leslie Allison Brown and Susan Strega (eds), *Research as Resistance* (Toronto: Canadian Scholars' Press, 2005) p. 177

³⁵ Margaret Kovach, ‘Emerging from the Margins: Indigenous Methodologies’ in Leslie Allison Brown and Susan Strega (eds), *Research as Resistance* (Toronto: Canadian Scholars' Press, 2005) p. 45

³⁶ Karen L. Potts and Leslie Brown, ‘Becoming an Anti-Oppressive Researcher’ in Leslie Allison Brown and Susan Strega (eds), *Research as Resistance* (Toronto: Canadian Scholars' Press, 2005) p. 17

³⁷ Ibid

³⁸ Thomas, Note 29 p. 180

³⁹ Ibid p.181

and reflect upon as, again, some of the issues discussed are far removed from my own experiences and as Kovach points out, “the individual’s ability to be knowledgeable about, conversant in, and comfortable with speaking to Indigenous knowledge systems and sharing their personal relationship to Indigenous thought”.⁴⁰ This is pertinent because it is essential to have knowledge of the politicality that can surround Indigenous knowledge systems especially given the history of assimilation. It is also important to highlight that throughout this work, sensitivities and considerations were consciously made in order to consistently respecting people and relationships as this guides our responses to questions of ownership of data obtained and used.⁴¹ This was very important for me in this work as it allows me to have a voice within the discourse, to pursue change, by joining and adding to the conversation and not claiming ownership of it.

1.6 Adding to Existing Literature

The right to self-determination has long been debated in international law⁴² and this thesis furthers the research needed to assess the key elements of identifying the role of education in the realisation of self-determination for Indigenous Peoples. This thesis also expands on the existing literature in relation to the realisation of the right to self-determination of Indigenous Peoples and in analysing this it is important to address to role played by education.⁴³ This research will help to elucidate this area in relation to theoretical development. Existing theories in this research space are logically consistent explanations regarding the relationships between well-defined components i.e., the acceptance of the impact of an education on the realisation

⁴⁰ Kovach, Note 35

⁴¹ Potts and Leslie Brown, Note 36 p. 27

⁴² H Hannum, *Autonomy, Sovereignty and Self-Determination: The Accommodation of Conflicting Rights*. (Pennsylvania: University of Pennsylvania Press, 1966) p. 3

⁴³ Drawing on the varying narratives of existing literature relating to self-determination in the context of Indigenous Peoples, such as the work of Anaya, Cirkovic, Hannum and Musgrave.

of other rights.⁴⁴ However, this research further explores linkages in the relevant theories which remain unclear by applying the current legal frameworks regarding the rights of Indigenous Peoples and how they enhance or deny additional rights, primarily the right to self-determination.

As will be elaborated on in more detail throughout this research, the fundamental problem in rights protections in international law is that it is often dependent on political will when it comes to national implementation.⁴⁵ There is a need for research in the area of the connection between international law and national implementation and the relationship between the right to education and the realisation of the right to self-determination specifically in the context of Indigenous Peoples. This compounds the need for research to be undertaken to provide a basis for the formulation of a workable international law framework which could potentially be applied to instances of marginalised groups suffering further marginalisation and a denial of rights through an inadequate education system.

1.7 Structure of the Thesis

The body of this thesis is separated into two parts. Part one explores and analyses the legal frameworks and position of the right to education and the right to self-determination within international law and in the context of Indigenous Peoples. Part two provides detailed case studies. Part one of this thesis includes chapters two, three, four and five and part two consists of chapters six, seven and eight.

Chapter two provides an introduction to Indigenous Peoples; the definitions used in the various literature and plots the legal history through examining the transition from objects to rights

⁴⁴ Kate Halvorsen, 'Notes on the Realization of the Human Right to Education' (1990) 12 *Human Rights Quarterly* pp. 341-364

⁴⁵ Pitman B. Potter, 'Obstacles and Alternatives to International Law' (1959) 53(3) *American Journal of International Law* pp. 647-651

holders under international law. This includes identifying the main claims of Indigenous Peoples and the current challenges these Peoples pose to the international legal frameworks. Chapter two further explores the challenges faced by Indigenous Peoples in the realisation of the right to self-determination. One such challenge is obtaining the right to self-determination. Chapter three assesses what is meant by the term oppression, in the context of Indigenous Peoples and how oppressive acts at the hands of a State leads to harmful results. Systems of oppression, including assimilative educational systems, were born from colonial misconceptions of superiority and in doing this many Indigenous Groups and Peoples culture, history, language, and religion were repressed greatly resulting in an entire People being oppressed. One such result of systematic oppression is genocide. This chapter assesses a more invisible aspect of genocide, one that affects Indigenous Populations directly and that is cultural genocide. This chapter further investigates how acts of oppression can lead to mass human rights abuses and even atrocities including crimes of genocide.

Chapter four examines the right to education in the international legal frameworks which seek to protect and promote the right to education. This will be supported by highlighting how the right is enshrined in numerous international, regional,⁴⁶ and national pieces of legislation, and examining what is entailed within this right, and further examining how the right is protected and monitored to ensure equity. This chapter addresses this through viewing the right to education as an empowerment right, a right, through which, all other rights can be realised. Additionally, this chapter examines how education should lay the groundwork for self-realisation and effective participation in society and in order to do so, education must be aimed

⁴⁶ 'International Law' (*Right to Education Initiative*, 2018) <<https://www.right-to-education.org/page/international-law>> Last Accessed 12 August 2020

toward “the full development of the human personality”⁴⁷ thus connecting the provision of the right explicitly to the right to self-determination.

Chapter five demonstrates the implementation of the right to education in respect of Indigenous Peoples, while offering a comprehensive analysis on how the right to education is applied and enjoyed and sometimes violated in the context of Indigenous Peoples. This chapter will also explore some of the foremost concepts in relation to Indigenous-based pedagogical approaches to education. Finally, this chapter discusses ways in which education and the systems which provide educational settings for Indigenous students can be heightened to empower and enhance the right to self-determination in relation to Indigenous Peoples.

Chapter six provides an introduction to, and detailed justification for, the chosen case studies in this research. It further provides a comprehensive understanding and insight into the history, peoples, laws, and politics of the chosen States and how their systems of education can be both a facilitator of the right to self-determination and a denier of the right to self-determination in the context of Indigenous Peoples.

Chapter seven investigates the case study of the Canadian Residential School System and how the volatile system was used to deny the right to self-determination of the Indigenous Peoples of Canada. Through an examination of the historical education system and the contemporary system of education in Canada this chapter demonstrates the how systems of education were used in the past as a means of oppression and assimilation of Indigenous Peoples and evaluating how the process of reconciliation can be supported by addressing the education system in relation to Indigenous Peoples.

⁴⁷ See Universal Declaration of Human Rights, art. 26(2); International Covenant on Economic, Social and Cultural Rights, art. 13(1).

Chapter eight explores a growing concern of a detrimental education in the context of Indigenous Peoples.⁴⁸ There is a worrying situation which has been gradually emerging among the Amerindian population of French Guiana. The major discussion point in this case study is the denial of the right to self-determination through an educational system for Indigenous children. This will be exemplified through language rights and how the failure to incorporate Indigenous languages into the curriculum of the schools is leading to a disconnect between Indigenous children their communities, culture, and heritage. This chapter highlights the ways in which a denial of an appropriate education through the use of native languages and mother tongue for Indigenous children is a denial of the right to self-determination through the provision of the education system in French Guiana.

The thesis concludes with an analysis of the successes and ongoing challenges of the implementation of the right to education and the connection between this right and the realisation of the right to self-determination. A number of recommendations regarding the need for amendment of the current legal regime are also proffered in this chapter, along with proposals for future research.

⁴⁸ In Chapter Eight, the term ‘Tribal Peoples’ is referred to throughout the chapter, the use of this word will be explored in further detail in the present chapter.

Chapter 2

Indigenous Peoples and International Law

2.1 Introduction

This chapter provides background context for the thesis discussion, by tracing the history of Indigenous Peoples from objects to subjects of international law, and to analyse the nature of their status, as rights holders, under international law. This includes identifying the main claims of Indigenous Peoples and the current challenges faced by these Peoples within the international legal frameworks. One such challenge is the realisation of the right to self-determination. This can be a difficult right to realise for a multitude of reasons when related to the experience of many Indigenous Peoples. One reason is that the perceived threat this right can present to States. One of the key pillars within Indigenous societies that has been persistently attacked in the past is education and the institutions that provide it. This point is essential in understanding the relationship between the right to education and the right to self-determination and how an appropriate education system can facilitate the right to self-determination as opposed to historical systems of education which actively denied this right.

The right to self-determination is a right of people, and as a group right, this can, in some instances, pose a threat to a State in relation to sovereignty and territorial integrity. Section two of the present chapter provides a commentary on the history of Indigenous Peoples, followed by section three which highlights the transition of Indigenous Peoples from objects to subject of international law beginning with a discussion of the International Labor Organisation and subsequent developments. Section four explores the terminology used in the literature regarding Indigenous Peoples before leading into section five which analyses the main claims of Indigenous Peoples including land claims, free, prior, and informed consent, political participation, and self-determination. Section six analyses the meaning of self-determination and its varying forms while section seven assesses the self-determination in the international

legal frameworks. Section eight of this chapter discusses self-determination specifically in the context of Indigenous Peoples followed by section nine which further investigates the relationship between self-determination and sovereignty. This chapter concludes with a discussion on the current challenges faced by Indigenous Peoples in the international legal system and the gaps within the frameworks of protection.

2.2 History of Indigenous Peoples

The exact figures of the world's population of Indigenous communities is unclear,¹ as many Indigenous communities are in rural and remote areas and are often neglected by their states in terms of census data collection.² In addition, there are also many Tribal Peoples who are 'uncontacted'³ and the estimation of their numbers varies greatly.⁴ However, according to the United Nations (UN), "[i]t is estimated that there are more than 370 million Indigenous Peoples spread across 70 countries worldwide".⁵ With the lapse in power of the world's colonising countries and the welcomed and, hard fought for, process of decolonisation of many countries,

¹ 'Indigenous Peoples Overview' (*WorldBank.org*, 2021) <<https://www.worldbank.org/en/topic/Indigenouspeoples#:~:text=There%20are%20between%20370%20and,percent%20of%20the%20extreme%20poor>> Last Accessed 26 April 2021

² 'Making Everyone Count: An Examination of The Global Census Undercount Issues Of Indigenous Populations — Trends' (*TReNDS*, 2022) <<https://www.sdsntrends.org/blog/2020/12/17/making-everyone-count?locale=en#:~:text=In%20the%202010%20U.S.%20Census,left%20out%20of%20the%20census.>> Last Accessed 2 March 2022

³ Defined by Survival International as "Peoples who have no peaceful contact with anyone in the mainstream or dominant society. There are about 100 uncontacted tribes in the world" accessed at <<https://www.survivalinternational.org/info/terminology>> (Last Accessed 06/11/2018) While the term used in this citation is "uncontacted group" it is important to acknowledge that this is a controversial term. By using the term "uncontacted" it attributes a level of ignorance to the outside world. These groups are aware of the world and advancements and choose to live in isolation. It is recommended that these groups are referred to as "Tribes in Voluntary Isolation". See <<http://www.oas.org/en/iachr/Indigenous/docs/pdf/Report-Indigenous-Peoples-Voluntary-Isolation.pdf>>

⁴ While there is no universally accepted definition for Indigenous or Tribal Peoples, the ILO offers the following differentiation between the two groups. Indigenous Peoples are descent from populations, who inhabited the country or geographical region at the time of conquest, colonisation or establishment of present state boundaries. They retain some or all of their own social, economic, cultural and political institutions, irrespective of their legal status. Tribal Peoples are distinguished by their social, cultural and economic conditions. Their status is regulated wholly or partially by their own customs or traditions or by special laws or regulations. For more see 'Who Are the Indigenous and Tribal Peoples?' (*Ilo.org*) <https://www.ilo.org/global/topics/Indigenous-tribal/WCMS_503321/lang--en/index.htm> Last Accessed 24 July 2021

⁵ United Nations Permanent Forum on Indigenous Issues, 'Indigenous Peoples, Indigenous Voices' Factsheet (*Culturalsurvival.org*) <<https://www.culturalsurvival.org/issues>> Last Accessed 3 October 2019

the rights and protections of Indigenous Peoples have slowly began to be recognised within the sphere of international law and human rights.⁶

The struggle of Indigenous Peoples around the globe is manifold and their plight is furthered by the fact that “Indigenous Peoples often have much in common with other neglected segments of societies, i.e. lack of political representation and participation, economic marginalization and poverty, lack of access to social services and discrimination”.⁷

Maltreatment and marginalisation of Indigenous Peoples is not a new phenomenon; there is a continuing debate on whether the actions of Christopher Columbus in his ‘discovery’ of the Americas can amount to an act of Genocide, as under his rule, policies of slavery and systematic extermination against the native population was commonplace.⁸ This is supported by the fact that “Columbus's programs reduced Taino numbers from as many as eight million at the outset of his regime to about three million in 1496. Perhaps 100,000 were left by the time of his departure. His policies, however, remained, with the result that by 1514 the Spanish census of the island showed barely 22,000 Indians remaining alive”.⁹ Over five hundred years ago, Europeans began to arrive in the country now known as America and proceeded to lay claim to lands.¹⁰ With these land grabs came frequent violence and terror with colonizers often slaughtering the Indigenous children, women, and men who opposed their arrival. Those Indigenous Peoples who survived the brutal violence were then faced with the danger of diseases carried by European Settlers, from which they had no immunity, and those who

⁶ CW Chen, ‘Indigenous Rights in International Law’ (2014) *Oxford Research Encyclopaedia of International Studies* accessed at

<<http://internationalstudies.oxfordre.com/view/10.1093/acrefore/9780190846626.001.0001/acrefore-9780190846626-e-77>> Last Accessed 06/11/2020

⁷ United Nations Permanent Forum on Indigenous Issues, ‘Indigenous Peoples, Indigenous Voices’ Factsheet

⁸ W Churchill, *Indians are Us*. (Maine: Common Courage Press, 1994) p. 1

⁹ Ibid

¹⁰ The Americas were not unique in the ill treatment of their Indigenous Peoples with the arrival of European Colonisers, similar instances are recorded in Africa and Australasia.

escaped disease were faced with slavery.¹¹ This point in history is, arguably, when the world began to see the beginning of genocidal patterns.

Questions and concerns regarding the protections of Indigenous peoples has been debated for centuries. As far back as the fifteenth and sixteenth century, scholars such as de Vitoria¹² applied natural law precepts and challenged the Spanish claims to native lands.¹³ De Vitoria argued that the “Indians”¹⁴ of the Americas were the true owners of their lands, with “dominion in both public and private matters”.¹⁵ De Vitoria wrote extensively on the issue, and in keeping with the Eurocentric bias of the time ‘designed’ a way in which native peoples lands could be taken from them at the behest of the new European invaders.¹⁶ This was the beginning of colonizing nations, displaying disregard for the rights of native peoples, which would remain a consistency throughout the following centuries. Theorists described the law of nations,¹⁷ or international law, as concerning itself only with the rights and duties of European and similarly *civilized* states, and as having its source entirely in the positive, consensual acts of those states, thus, reinforcing the idea that the maltreatment of Indigenous peoples was, not only acceptable, but also justified.¹⁸

¹¹ T. De Orbe Novo, *The Eight Decades of Peter Martyr D'Anghera*. (South Carolina: BiblioBazaar. 2009). p. 143

¹² It is important to note that de Vitoria was concerned with the legal process and custom that was being used by and against native peoples in the Americas rather than the abuses, they were suffering at the hands of Spanish colonizers.

¹³ S. J. Anaya, *Indigenous Peoples in International Law*. New ed. (Oxford: Oxford University Press, 2000) pp. 15

¹⁴ Applies in this context to the Indigenous peoples of the Americas. Although some consider it pejorative, according to *Survival International* “it is widely used by Indigenous Peoples themselves in parts of the Americas, especially the United States and Brazil”. Accessed at <
<https://www.survivalinternational.org/info/terminology>> Last Accessed 06/11/2018

¹⁵ Anaya Note 12 pp. 18-19

¹⁶ Ibid

¹⁷ When referring to the ‘The Law of Nations’ Vattel’s explanation is most accurate; “[t]he Law of nations modifies the intercourse of independent commonwealths in peace, and prescribes limits to their hostilities in war. It prescribes, that in peace nations should do each other as much good, and in time of war as little harm as may be possible without injuring their own proper real interests. The laws of nations, in short, establish that principle and rule of conduct which should prevent the strongest nation from abusing its power, and induce it to act justly and generously towards other states, upon the broad principle, that true happiness, whether of a single individual or of several, can only result from each adopting conduct influenced by a sincere desire to increase the general welfare of all mankind” E Vattel et al, *The law of nations*. (Indianapolis: Liberty Fund, 2008) pp ix

¹⁸ Ibid

2.3 Evolution of Treatment of Indigenous Peoples in International Law

In order to understand the transition of Indigenous Peoples within international law from being viewed as objects to subjects and rights holders, it is necessary to briefly identify the timeline of the changes regarding Indigenous Peoples within the international legal frameworks and further highlight how recent these changes have been and how these changes have contributed to the realisation of self-determination in the context of Indigenous Peoples.

2.3.1 The International Labor Organization

The International Labor Organization (ILO), published a study on Indigenous Peoples in 1953 and in 1957 adopted Convention No. 107 and Recommendation No. 104 on the Protection and Integration of Indigenous and Tribal Populations.¹⁹ These were the first international legal instruments specifically created to protect the rights of peoples whose ways of life and existence were - then, as now - threatened by dominating cultures.²⁰ While it was in fact the first time the rights of Indigenous Peoples were codified in international law, it adopted an assimilation approach.²¹ The expert meetings and proceeding were held with no “apparent participation on the Indigenous Peoples’ own designated representatives”.²²

The UN Special Rapporteur José Martínez Cobo compiled a report investigating the treatment of Indigenous Peoples, titled ‘The Problem of Discrimination against Indigenous Populations’ in 1981 and vehemently rejected the assimilation approach which had been alluded to, and encouraged by ILO Convention 107 and further maintained that “the UN’s work directed at

¹⁹ International Labour Organization (ILO), Indigenous and Tribal Populations Convention, C107 (adopted 26 June 1957, entered into force 2 June 1959)

²⁰ Leaflet No. 8: The ILO and Indigenous and Tribal Peoples' (*Ohchr.org*)

<<https://www.ohchr.org/Documents/Publications/GuideIPleaflet8en.pdf>> Last Accessed 24 July 2021

²¹ Anaya Note 10 P. 57: Anaya maintains that Convention 107 “reflects the premise of assimilation operative among dominant political elements in national and international circles at the time of the convention’s adoption”.

²² Anaya Note 12 p. 55

Indigenous peoples should rather place emphasis on their ethno-development and self-determination, and not on integration”.²³

The ILO conventions 107 and 169 were drafted in part response to the concern expressed by several governments over the question as to whether the use of the term "peoples", would mean that their right to secede from the countries in which they lived would be recognized in international law.²⁴ It was also decided that it was outside the competence of the ILO to determine how the term "self-determination" should be interpreted in general international law. It was understood, however, by many Indigenous groups involved that the Convention would not impose any limitation on self-determination nor take any position for or against self-determination.²⁵ Since its creation in 1919, the ILO has defended the social and economic rights of groups whose customs, traditions, institutions or language set them apart from other sections of national communities.²⁶ With the creation of ILO 169, for the first time, there was a distinction made between Minority and Indigenous Rights and it is important to note that with the drafting of this document, the ILO was solely concerned with the rights of Indigenous Peoples. The focus of ILO 169 displays a shift toward the importance of collective rights rather than solely the individual, which had been the case previously in many international human rights instruments. The approach taken by ILO 169 has been labelled ‘ethno-political self-government’, as the convention foresees self-governing rights of Indigenous peoples and calls for respect of their collective traditions and customary laws”.²⁷ This approach and

²³ M Åhrén, *Indigenous peoples' status in the international legal system*, First edn, (Oxford University Press, Oxford; 2016. p. 85

²⁴ ‘Implementing the ILO Indigenous and Tribal Peoples Convention No. 169’ (*ilo.org*, 2020) Available at <https://www.ilo.org/global/publications/books/WCMS_735607/lang--en/index.htm> Last Accessed 26 April 2021

²⁵ ‘Indigenous and Tribal Peoples (Indigenous and Tribal Peoples)’ (*ilo.org*)

<<https://www.ilo.org/global/topics/Indigenous-tribal/lang--en/index.htm#:~:text=The%20ILO%20has%20been%20engaged,the%20rights%20of%20these%20peoples>> Last Accessed 24 July 2021

²⁶ ILO C107 Note 18

²⁷ Åhrén Note 22 p. 95

understanding was the beginning of the transition of Indigenous Peoples within international law from objects to subjects and rights holders.²⁸

2.3.2 Subsequent Development with International Legal Frameworks

Other advancements in law such as the Universal Declaration of Human Rights (UDHR),²⁹ the International Covenant on Civil and Political Rights (ICCPR) Article 27³⁰ and the International Covenant on Economic, Social and Cultural Rights (ICESCR) Article 3³¹ offered a form of cultural protection for these groups. The UN invested in attempting to square the circle so to speak, in relation to strengthening the rights of Indigenous Peoples and in 1982 created a working Group on Indigenous Populations followed by the creation of Sub-Commission on the prevention of Discrimination and Protection of Minorities prepared a Study on the Problem of Discrimination against Indigenous Populations in 1986.³² The central goal was “to ensure that all issues concerning Indigenous peoples and national and/or ethnic, religious and linguistic minorities are fully addressed in all activities of promotion, protection and technical cooperation”.³³

The most important legal instrument that has been drafted in relation to the rights of Indigenous Peoples is the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).³⁴ The purpose of this declaration is, according to Article 43 of the document, to “constitute the minimum standards for the survival, dignity and well-being of the Indigenous

²⁸ Peter Bille Larsen and Jérémie Gilbert, ‘Indigenous Rights and ILO Convention 169: Learning from The Past and Challenging the Future’ (2020) 24(1) *The International Journal of Human Rights* pp.83-93

²⁹ Universal Declaration of Human Rights (adopted 10 December) 1948 UNGA Res 217 A(III) (UDHR)

³⁰ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

³¹ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR)

³² UN Commission on Human Rights, *Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its 34th session : study of the problem of discrimination against Indigenous populations.*, 10 March 1982, E/CN.4/RES/1982/19. Also known as the Cobo Report.

³³ UNHCR, ‘Indigenous Peoples and the United Nations Human Rights System’ Factsheet No.9/Rev.2 (2013)

³⁴ UNGA, ‘United Nations Declaration on the Rights of Indigenous Peoples’ (adopted 2 October 2007) A/RES/61/295

Peoples of the world”.³⁵ This was a momentous milestone for Indigenous Peoples within International Law as the UNDRIP established a universal framework of “minimum standards for the survival, dignity and well-being of the Indigenous Peoples”,³⁶ it elaborated on already existing human rights standards as they apply to Indigenous Peoples, it is worth of note that UNDRIP has not been universally accepted by all Indigenous groups and this will be elaborated on later in this research through the work of Irene Watson. The United Nations Indigenous Peoples’ Partnership was established in 2011 and is a commitment to the UNDRIP and has particular emphasis on Article 41 of the UNDRIP, which requires UN organs and other specialised agencies of the UN system “to contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance”.³⁷ Most recently was the UN resolution A/RES/71/321³⁸ this resolution will be discussed in further detail in section five of this chapter as its purpose was to enhance the participation of Indigenous Peoples at an international level and allow Indigenous voices be heard on issues that affect them as a group.

2.4 People and “Peoples”

It is necessary to apply a definition to the term People as it is understood in this work. One such understanding is put forward by Stephen Corry of Survival International,³⁹ who states that “[t]he word people has two superficially similar meanings. The most common is the plural of ‘person’. The other is ‘a people’ meaning an identifiable society”.⁴⁰ For the purpose of this research, the latter is taken to be the accepted understanding of the term people, constituting an

³⁵ Ibid

³⁶ Ibid

³⁷ Ibid article 41

³⁸ UNGA Resolution on Enhancing the Participation of Indigenous Peoples’ Representatives and Institutions in Meetings of Relevant United Nations Bodies on Issues Affecting Them (8 September 2017) A/RES/71/321

³⁹ Stephen Corry is a British Indigenous rights activist and the former CEO of Survival International.

⁴⁰ Stephen Corry, *Tribal Peoples for Tomorrow's World* (Freeman Press 2012) pp. 3

identifiable society. This understanding of this term is essential when discussing Indigenous Peoples as many of the rights discussed are collective rights which are fundamental to the groups' survival. While there is no universally accepted definition of Indigenous Peoples, this thesis utilises the UN definition as defined in the introduction as well as definitions used by specific Indigenous groups in the case studies in chapters seven and eight.

However, there are common denominators among the various definitions of Indigenous Peoples and these commonalities are described by Corry, who attests that “Indigenous Peoples are the descendants of those who were there before others who now constitute the mainstream and dominant society. They are defined partly by descent, partly by the particular features that indicate their distinctiveness from those who arrived later, and partly by their own view of themselves”.⁴¹ There are varying interpretations of the term and there are also alternative terms that are sometimes used interchangeably when discussing Indigenous Peoples which can vary between different geographic locations. These terms include First Peoples, Aboriginal Peoples, Native Peoples, Autochthonous Peoples, Tribal Peoples and Islanders.⁴² While the term Indigenous Peoples is used today to describe “a group which has had ultimate control of their lands taken by later arrivals: they are subject to the domination of others. Used in this sense, descent is less important than political perception”⁴³ it may also refer to any number of Tribal and Island people who have followed ways of life for many generations that are largely self-sufficient and are clearly different from the mainstream and dominant society.⁴⁴

2.5 Main Claims of Indigenous Peoples

⁴¹ Corry Note 39 p.18

⁴² 'Indigenous Terminology Guide Queen's University' (*Queensu.ca*)

<[⁴³ Corry Note 39 p.11](https://www.queensu.ca/Indigenous/terminology-guide#:~:text=%22Indigenous%22%20is%20an%20umbrella%20term,Indigenous%20Peoples'%20(UNDRIP)>
Last Accessed 19 January 2021, note 23</p></div><div data-bbox=)

⁴⁴ *Ibid* p.18

While there are many claims of Indigenous Peoples, very rarely are any two Indigenous communities claims the same, however, there are similarities. The main claims of Indigenous groups are self-determination, land rights, political representation, and free prior and informed consent. The right to self-determination has the ability to facilitate many other rights for Indigenous Peoples and education systems are essential for facilitating that right as will be demonstrated throughout this work.

2.5.1 Self-determination as a Claim of Indigenous Peoples

The process of decolonisation did not recognise the precarious position of Indigenous Peoples that existed in colonised countries, as Hannum states “[t]erritory not nationhood, was the determining factor in the decolonization process”.⁴⁵ When drafting the UDHR, there was an element of fear regarding territorial integrity of States versus the right to seek self-determination of specific groups of Peoples within a State. The drafting was influenced by occurrences at the beginning of World War II during which Germany initiated efforts to bring certain territories under their control, which inevitably led to World War II.⁴⁶ This meant that in many ways, there was a fear of groups realising the right to self-determination and what the results could be for States. However, self-determination has various forms, as will be discussed in detail later in this chapter, and the right to self-determination proves to be a consistently debated issue within the sphere of international law and politics.

There are various understandings of the realisation of the right to self-determination. It can represent liberation from a colonial power or emancipation for a disenfranchised national minority, liberty of person and survival.⁴⁷ In the context of Indigenous Peoples, the right of

⁴⁵ H Hannum, *Autonomy, Sovereignty and Self-Determination: The Accommodation of Conflicting Rights*. (University of Pennsylvania Press: Pennsylvania, 1966) p. 81

⁴⁶ 'The Early Years of The Nazi Party – The Holocaust Explained: Designed for Schools' (*Theholocaustexplained.org*) <<https://www.theholocaustexplained.org/the-nazi-rise-to-power/the-early-years-of-the-nazi-party/>> Last Accessed 26 April 2021

⁴⁷ J Gilbert, *Indigenous Peoples' Land Rights under International Law: From Victims to Actors*. (New York: Transnational Publisher, 2006) p. 200

self-determination includes more than the want and need for simply autonomy or independence, Gilbert has recognized this in his writings and has stated that “[s]elf-determination contains all the aspirations of freedom and represents the ideal of a people entitled to pursue its own destiny.”⁴⁸ The right to self-determination is instrumental in the quest for protection, rights, and justice for world’s Indigenous populations. The right can ensure and protect the cultural survival of many Indigenous groups and by States supporting the facilitation of this right, it nurtures the relationships between Indigenous Peoples and the States who colonised Indigenous lands.

2.5.2 Claim of Self-Determination

The right to self-determination is enshrined in numerous international legal and human rights instruments. Common Article 1 of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) both address the right to self-determination. The right is further stated in numerous other international and national human rights instruments, for example, the African Charter of Human and Peoples’ Rights,⁴⁹ the Declaration on the Granting Independence to Colonial Territories and Peoples,⁵⁰ the Helsinki Final Act 1975.⁵¹

The issue at the heart of the decolonization process was that while territories had been granted certain forms of independence and autonomy, as was the case of Canada, little to no consideration was given to the Indigenous Peoples of the land, this was “irrespective of pre-

⁴⁸ Ibid

⁴⁹ The African Charter on Human and Peoples' Rights (also known as the Banjul Charter) is an international human rights instrument that is intended to promote and protect human rights and basic freedoms in the African continent. Accessible at <<http://www.achpr.org/instruments/achpr/>>

⁵⁰ UNGA, ‘Declaration on the Granting of Independence to Colonial Countries and Peoples’ adopted 14 December 1960) A/RES/1514(XV)/RES/1514(XV)

⁵¹ ‘Indigenous peoples in French Guiana’ (*iwgia.org*) <<https://www.iwgia.org/en/french-guiana.html#:~:text=French%20Guiana%20has%20244%2C118%20inhabitants,Saint%20Georges%20de%20Oyapock>> Last Accessed 20 July 2021

colonial ethnic and cultural patterns”⁵² and this poses a further hindrance for Indigenous Peoples who are seeking the same right to a form of self-determination.

First, Indigenous populations “argue that they are unlike other ‘nations’ or ‘minorities’ as understood in international law, and constitute a *sui generis* category which is entitled to self-determination”.⁵³ Second, this is most likely due to the perpetual cycle of past injustices and ill-treatment at the hands of colonisers and “despite the contemporary absence of colonial structures in the classical form, Indigenous Peoples have continued to suffer impediments or threats to their ability to live and develop freely as distinct groups in their original homelands”,⁵⁴ resulting from aspects of neo-colonialism. The key phrase is “original homelands”. Many struggles faced by Indigenous Peoples are surrounded by conflicts with states and governments relating to ancestral lands. What is important to take into consideration when debating the issue at hand is that, with regard to Indigenous peoples, self-determination is not necessarily seeking secession, it can encompass a level of autonomy and a greater level of control over traditional lands and natural resources.⁵⁵ Most of the discourse regarding Indigenous Peoples and State actors is in relation to this claim of ownership of said lands and States’ concerns regarding territorial integrity, from which, States have protection against as laid out in Article 46 of UNDRIP.⁵⁶ This contributes to the control asserted by Indigenous Peoples over issues that directly affect them. This form and level of control over decision-making is central to the right of self-determination.

⁵² Åhrén Note 22 p.35

⁵³ T.D Musgrave, *Self-Determination and National Minorities*. (Oxford: Oxford University Press, 1997). p. 173

⁵⁴ Anaya Note 12 p. 86

⁵⁵ This is an important factor recognized by the GA in the preamble to UNDRIP in which it states “Convinced that control by Indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs” accessed at <https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf> Last Accessed 09/11/2018

⁵⁶ UNDRIP 2007 Art. 46 (1) states “Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States”

The special nature of the right of self-determination in the context of Indigenous Peoples is apparent as “[a]lthough self-determination presumptively benefits all human beings, its linkage with the term *peoples* in international instruments indicates the collective or group character of the principle”.⁵⁷ The collective nature of the right is further cemented into the international legal framework with its inclusion in the UNDRIP, which states in Article 3 that “Indigenous Peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development”.⁵⁸ The pursuit, and indeed achievement of, these economic, social and cultural goals are of paramount importance to Indigenous peoples as these developments are the foundation blocks for survival of many of the world’s Indigenous communities.

2.5.3 Land Claims

Gilbert addresses the unique connection Indigenous Peoples have with land, stating that “Indigenous Peoples’ claims to their ancestral lands are manifold and are based on a social, religious and cultural approach to their relationship with territories”.⁵⁹ This is not the only relationship between Indigenous Peoples and territory, as often the issue surpasses cultural connections as the land occupied by Indigenous groups is often the sole means for the group’s survival and sustainability. There is an innate connection between Indigenous Peoples and the land they occupy, not only for the ritualistic, symbolic and historic connections to particular land⁶⁰ but also, as Gilbert has described the connection between land and survival for many Indigenous groups, pointing out that “without access to their land, Indigenous communities would not access their means of livelihood”,⁶¹ and if these claims made by Gilbert are in fact

⁵⁷ Anaya Note 12 p.77

⁵⁸ UN Factsheet No.9/Rev.2 (2013) Note 32

⁵⁹ Larsen & Gilbert Note 37 p.128

⁶⁰ Ibid

⁶¹ Ibid p.117

the case, then land rights of Indigenous Peoples are instrumental for not only the cultural survival of Indigenous groups, but also their physical survival.

Article 3 of the UDHR underlines this core right, which states: “[e]veryone has the right to life, liberty and security of person”⁶² and for Indigenous Peoples to achieve this right, land ownership is integral, further supported by the international working group on Indigenous affairs which maintains “[t]he issue of land and resource rights is the most important question for the majority of the worlds Indigenous peoples”.⁶³ The vulnerable societal position of Indigenous Peoples often results in this right being abused, usually at the hands of states who are concerned more so with the economic benefits of these lands than the fundamental connections Indigenous groups have with said territory. According to the International Working Group on Indigenous Affairs “[m]any governments often oppose international recognition of Indigenous peoples’ right to self-determination more through fear of losing control over Indigenous lands than fear of losing some their overall political power”.⁶⁴ As previously stated, within the context of Indigenous Peoples, self-determination is not, generally, about independence or a claim of secession, it is usually in relation to land claims and it is for this particular reason that “[b]oth nationally and internationally, Indigenous peoples are increasingly focusing their struggles on the right to self-determination, principally over their lands and resources which continue to be threatened by national and international economic interest”.⁶⁵

Although it can be claimed “Indigenous peoples’ land claims breathe new life to the issue of land ownership within the human rights discourse, through the emerging recognition of a

⁶² Ibid

⁶³ ‘Self-Determination’ (*iwgia.org*) <<http://www.iwgia.org/images/stories/sections/human-rights/self-determ/docs/selfdetermination.pdf>> Last Accessed 06 October 2018

⁶⁴ Ibid

⁶⁵ E Cirkovic ‘Self-Determination and Indigenous Peoples in International Law’ 2007 31(2) *American Indian Law Review*. P. 376

collective right of land ownership”,⁶⁶ there is a further threat to Indigenous Peoples in the form of destruction of their lands. There have been instances when the destruction of Indigenous lands has not been merely for economic gain of a particular state, “environmental devastation is not only a by-product of war but has also been a military strategy since ancient times”.⁶⁷ If it is considered that “it is certain that if the land destruction can be associated with the intent to destroy, the definition of genocide may apply”.⁶⁸

This is the case in Guatemala during the Civil War period (1960 – 1996), when government planned scorched earth policies caused irreparable damage to Indigenous Mayan land and resulted in the destruction of the group’s livelihood.⁶⁹ In the report by the Commission for Historical Clarification, it was found that the government backed scorched earth policies amounted to an act of genocide as it sought to erase the sustainability of the Indigenous Mayan population.⁷⁰ A similar occurrence in relation to the removal of Indigenous peoples from ancestral lands was in Brazil, the Indigenous Xingu Indian population were forcefully removed from their land for the purpose of land development permitted by the state. Within months of the move twenty five percent of the Xingu tribe had died, mostly as a result of disease and sickness, from which their bodies had no immunity.⁷¹ The protection of Indigenous lands is important on many levels, traditional and cultural values, ancestral and religious values and ultimately for the sustenance of the group at hand. In many cases Indigenous groups have survived due to the land they inhabit and depend on for their livelihood and survival, “Indigenous peoples have... declared that the rights to land, territories and natural resources is the basis for their collective survival and thus inextricably linked to their right to self-

⁶⁶ Larsen & Gilbert Note 37 p.88

⁶⁷B Leebaw, ‘Scorched Earth: Environmental War Crimes and International Justice’. 2014 12(4) *Perspectives on Politics*. P. 770-788

⁶⁸ Larsen & Gilbert Note 37 p.119

⁶⁹ Report of the Commission for Historical Clarification, Guatemala; Memory of Silence (1999). p. 23 accessed at <<http://www.aaas.org/search/gss/guatemala>> Last Accessed 08/10/2016

⁷⁰ Ibid

⁷¹ 'Tribes Alive' (*Tribesalive.org*, 2021) <<https://tribesalive.org/about/tribes-alive/>> Last Accessed 23 July 2021

determination”.⁷² Usually in cases of land seizure and forced eviction from ancestral lands, there is an economic reason behind the states actions and that reason is often when lands are rich in natural resources.

As previously stated, group protections were omitted from the drafting of the UDHR, which had an negative impact on the protection of rights for Indigenous Peoples, it is plausible to suggest the reason for this was due to the protection it would have allowed these peoples to their own land claims. There have been individual protections of lands in some subsequent legal instruments. Paragraph 2 of Common Article 1 of both the ICCPR and ICESCR that “[a]ll peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence”.⁷³

Yet there is an endless list of times that lands of Indigenous Peoples have been exploited for the economic gain of the state. In the *Lubicon Lake Band*⁷⁴ case in Canada there is a prime example of the issues surrounding the grabbing of Indigenous lands for the purpose of natural resource extraction.⁷⁵ The claim made by the Indigenous population of Lubicon Lake was that “oil and gas development in traditional lands threatened the environmental and economic base of the band, including the potential loss of natural resource revenues”.⁷⁶ The case, unresolved at a national level, was submitted to the Human Rights Committee on claims of violation of Articles 1 and 27 of the ICCPR. The Committee found that the group could claim individual rights for violation of article 27 but not a collective right under article 1 of the convention.⁷⁷

⁷² E. I. Daes 'An Overview of the History of Indigenous Peoples: Self-Determination and the United Nations' 2008 21(1) *Cambridge Review of International Affairs*. p. 3

⁷³ ICCPR Note 29, ICESCR Note 30

⁷⁴ *Lubicon Lake Band v. Canada*, Communication No. 167/1984 (26 March 1990), U.N. Doc. Supp. No. 40 (A/45/40) at 1 (1990).

⁷⁵ Ibid

⁷⁶ Ibid

⁷⁷ Ibid

This highlights the precarious nature of self-determination within the context of Indigenous peoples and indeed within the international legal framework and highly publicised cases.⁷⁸ Resource extraction from Indigenous territories around the world is continuously justified by governments but often there are empty promises of investment into Indigenous communities and sustainability projects but very few come to fruition, more often “revenue from the extractive sector can be used to fund social programmes for education and poverty alleviation... [b]ut unfortunately, more often than not, they also fund corruption, conflict and in the case of Indigenous peoples, a slow cultural genocide”.⁷⁹

2.5.4 Free Prior and Informed Consent

The issue of free, prior and informed consent⁸⁰ which is aimed at enhancing participation and consultation of an Indigenous population “prior to the beginning of development on ancestral land or using resources in an Indigenous population's territory”.⁸¹ This should enter the equation more frequently in relation to resource extraction on Indigenous land. Deborah Delgado-Pugley has written extensively on the issue of free, prior and informed consent and has said of the legal intent behind this process, “[n]ational prior consultation acts are meant to

⁷⁸ Possibly one of the most well-known cases in relation to ethnic land ownership claims is that of Ogoni People in Nigeria. As Royal Dutch Petroleum (RDP) focused its eyes on the fertile lands of the Ogoni region for oil extraction, the Ogoni people were forcibly exiled with no form of reparation made. There was no free, prior and informed consent of this land exploitation and the Ogoni, an ethnic minority in of the region, battled tirelessly to retain the land that was theirs. RDP's claim was aided greatly by the corrupt Nigerian government of the time, who once again were more concerned with the economic viability of the lands rather than the Indigenous claims. The family of Ken Saro-Wiwa took their claim to the United States under the Alien Tort Act, their claim was later settled out of court for a figure in excess of fifteen and a half million US dollars <<http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1033&context=yhrdlj>> Last Accessed 10/08/2018

⁷⁹ M Kernan, 'The Economics of Exploitation: Indigenous Peoples and The Impact of Resource Extraction - Counterpunch.Org' (*CounterPunch.org*, 2015) <<http://www.counterpunch.org/2015/08/20/the-economics-of-exploitation-Indigenous-peoples-and-the-impact-of-resource-extraction>> Last Accessed 9 October 2019

⁸⁰ “Free, Prior and Informed Consent (FPIC) is one of the most important principles that Indigenous Peoples believe can protect their right to participation. It is embedded in the right to self-determination. The duty of States to obtain Indigenous Peoples' FPIC entitles Indigenous people to effectively determine the outcome of decision-making that affects them, not merely a right to be involved.” UN Expert Mechanism on the Rights of Indigenous Peoples accessed at <<https://www.culturalsurvival.org/publications/cultural-survival-quarterly/free-prior-and-informed-consent-protecting-Indigenous>> (Last Accessed 09/11/2018)

⁸¹ L Fontana and J Grugel, 'The Politics Of Indigenous Participation Through “Free Prior Informed Consent”: Reflections From The Bolivian Case' (2016) 77 *World Development* pp. 250

enshrine the right, recognized by international law, of Indigenous peoples to be consulted by the State before the adoption of legal and administrative reforms that will affect them, and before the implementation of investment projects, where the project's area of influence includes their lands".⁸² The benefits brought to this by Indigenous populations alone can be incredibly fruitful as "Indigenous peoples have an intuitive relationship with nature, a wealth of traditional knowledge and have used natural resource management practices for centuries to preserve their lands".⁸³ Usually this is not the case and the negative effects of Indigenous land exploitation are copious, furthered by the fact that "the extraction of resources does not just leave an ugly physical imprint, the scarred landscape of Indigenous and nomadic lands are almost mirrored by an equally negative cultural and social imprint – endemic poverty, low level conflict and ecological collapse".⁸⁴ Within the context of Indigenous peoples it appears that "peoples have been recognised; but it is also clear that legal recognition does not mean that the rights, territories, resources and cultures of Indigenous peoples are respected".⁸⁵

Professor Erica Irene Daes has said of self-determination, in relation to Indigenous peoples, that, it is a system "through which Indigenous peoples are able to join with all other peoples that make up the state on mutually agreed upon and just terms after many years of isolation and exclusion. This process does not require the assimilation of individuals, as citizens like all others, but the recognition and incorporation of distinct peoples within the fabric of the state, on agreed terms".⁸⁶ It is once again through the overarching goal of their right to self-determination that this process of exploitation of vulnerable groups can be counteracted.

⁸² D Delgado-Pugley, 'Contesting the Limits of Consultation in the Amazon Region: On Indigenous Peoples' Demands for Free, Prior and Informed Consent in Bolivia and Peru'. (2013) 43 *Revue Générale de Droit*. pp. 151-81.

⁸³ M Mowforth, 'The Violence of Development: Resource Depletion, Environmental Crises and Human Rights Abuses in Central America'. *The Guardian* (London September 2014) accessed at <<http://www.theguardian.com/global-development/2014/sep/23/Indigenous-people-crisis-land-resources>> Last Accessed 09/10/2018

⁸⁴ Kernan Note 78

⁸⁵ Mowforth Note 82

⁸⁶ E. I Daes, E.I 'Explanatory note concerning the draft declaration on the rights of Indigenous peoples' (1993) UN Doc. E/CN. 4/Sub.2/1993/26/Add

As mentioned above, Indigenous communities have had a long history of human rights abuses at the hands of the States in which they reside; one such abuse is that of land grabs. Land grabs can be defined as “the large-scale acquisition of land for commercial or industrial purposes, such as agricultural and biofuel production, mining and logging concessions or tourism”.⁸⁷ This is another element of control asserted by States over Indigenous Peoples, further denying the right to self-determination. As will be discussed further in this section, the concept of free prior and informed consent is a supportive way that Indigenous Peoples can be included in and have a say over the use of Indigenous and ancestral lands, a small step towards recognition and inclusion in the decision-making process further enhancing the right to self-determination. Indigenous engagement in public decision making can be further supported by political participation.

2.5.5 Political Participation/Representation

An important aspect of self-determination for Indigenous Peoples is representation. Representation not only at a national or regional level, but at an international level. In September 2017, the United Nations General Assembly (UNGA) adopted, without a vote, a resolution titled, “enhancing the participation of Indigenous peoples’ representatives and institutions in meetings of relevant United Nations bodies on issues affecting them”.⁸⁸ By its terms, the Assembly welcomed recent discussions on Indigenous participation, and encouraged the Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur of the Human Rights Council on the rights of Indigenous

⁸⁷ 'Indigenous Peoples' Rights to Land and The Threat of Land Grabbing' (*iwgia.org*) <https://www.iwgia.org/images/publications/0693_fact_sheet_land_grabbing-pr.pdf> Last Accessed 23 July 2021

⁸⁸ UNGA Resolution on Enhancing the Participation of Indigenous Peoples’ Representatives and Institutions in Meetings of Relevant United Nations Bodies on Issues Affecting Them (8 September 2017) A/RES/71/321

peoples to continue to address the issue of Indigenous participation.⁸⁹ It further requested the Secretary-General to report, by the end of the Assembly's seventy fourth session, on achievements, analysis and recommendations on ways to enable such participation.⁹⁰ At the beginning of discussions at the UN regarding the participation of Indigenous Peoples, the UNGA President Miroslav Lajcak stated "that rights are not aspirational, ideals or best-case scenarios, but rather minimum standards. They are non-negotiable, and they must be respected and promoted, yet, here we are, over a decade after the adoption of the Declaration on the Rights of Indigenous Peoples with rights not being realized."⁹¹ It is also important to recognize that the new resolution does not offer full participation within the United Nations, rather it enhances "the participation of Indigenous Peoples' representatives and institutions in meetings of relevant United Nations bodies on issues affecting them."⁹² While the participation of Indigenous Peoples within the UN framework, without having to work through the States in which they reside, is a welcome symbol of progression in the recognition of the status of Indigenous peoples, it leaves a rather large gap for critique. For example, the lexicon of the Resolution displays a lack of recognition of sovereignty of Indigenous Peoples, only allowing their participation within "relevant bodies" and only on "issues affecting them" thus comprehensively restricting its scope of application.

The United Nations General Assembly (UNGA) also encouraged branches of the UN infrastructure⁹³ relating to Indigenous Peoples "to continue to address the issue of Indigenous

⁸⁹ 'Expert Mechanism on The Rights of Indigenous Peoples' (*Ohchr.org*)

<<https://www.ohchr.org/en/issues/ipeoples/emrip/pages/emripindex.aspx>> Last Accessed 26 April 2021

⁹⁰ 'Agenda of the 74Th Session of the UN General Assembly (2019-2020)' (*Un.org*)

<<https://www.un.org/en/ga/74/agenda/>> Last Accessed 24 July 2021

⁹¹ A. M. Lebeda, 'Indigenous Peoples, Member States Express Dissatisfaction with UNGA Decision' at <<http://sdg.iisd.org/news/Indigenous-peoples-member-states-express-dissatisfaction-with-unga-decision/>> Last Accessed 08/09/2018

⁹²UN Resolution 71/321 Note 87

⁹³ For example, The Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur of the Human Rights Council on the rights of Indigenous peoples.

participation”.⁹⁴ Rights of Indigenous Peoples to political participation are critical for maintaining a relationship of mutual support and respect for their communities and the States in which they reside. Without some political participation in national policy formulation, public decision-making, and public-opinion formation, the autonomy or self-government of Indigenous peoples in affiliation with larger settler states will be structured without the input and consent of the Indigenous peoples.⁹⁵ Self-determination is central to the long-term goals of many Indigenous Peoples around the world. Furthermore, self-determination is the most frequently discussed human rights notion at the United Nations Working Group on Indigenous Peoples.⁹⁶

Michael A. Murphy has argued that having a greater inclusion of Indigenous Peoples in electoral procedure and political institutions will further the understanding of their needs and claims, he has further suggested that active co-operation will have a much more beneficial result for all parties involved, for both Indigenous and non-Indigenous groups.⁹⁷ He has stated “Indigenous representation in shared rule institutions such as national legislatures need not be seen as short circuiting Indigenous self-determination ; instead, this form of political voice can be viewed as part of a broader strategy for involving Indigenous self-determination by targeting a variety of parallel and complimentary access points to political power”.⁹⁸ It is generally

⁹⁴ 'GA Adopts Resolution on Participation of Indigenous Peoples at the UN United Nations for Indigenous Peoples' (*United Nations for Indigenous Peoples | Indigenous Peoples*, 2017) <<https://www.un.org/development/desa/Indigenouspeoples/news/2017/08/general-assembly-draft-resolution-on-participation-of-Indigenous-peoples-at-the-un/>> Last Accessed 24 July 2021

⁹⁵ Mary Ellen Turpel, "Indigenous People's Rights of Political Participation and Self-Determination: Recent International Legal Developments and the Continuing Struggle for Recognition," (1992) 3(6) *Cornell International Law Journal* pp. 579-602

⁹⁶ Report of the Working Group on Indigenous Populations on its First Session, U.N. Doc. E/GN.4/Sub.2/1982/33; Report of the Working Group on Indigenous Populations on its Second Session, U.N. Doc. E/CN.4/Sub.2/1983/22; Report of the Working Group on Indigenous Populations Fifth Session, U.N. Doc. E/CN.4/Sub.2/1987/22; Report of the Working Group on Indigenous Populations on its Sixth Session, U.N. Doc. E/CN.4/Sub.2/ 1988/24; and Report of the Working Group on Indigenous Populations on its Seventh Session, U.N. Doc. E/GN.4/Sub.2/1989/36.

⁹⁷ M.A. Murphy, 'Representing Indigenous Self-Determination' (2008) 58(2) *University of Toronto Law Journal* pp. 185-216

⁹⁸ *Ibid*

accepted that “[p]arliaments as institutions, can do more to learn about [M]inority/[I]ndigenous groups and the issues they face, to reach out to these groups, and to extend some procedural accommodation of their participation in the legislative process”,⁹⁹ although this is not unanimous across the globe. One of the most successful examples of the political participation of Indigenous Peoples is that of the Sámi People. The Sámi occupy areas in northern Europe, mainly Scandinavia and their territory crosses international borders in some instances. Through the Sámi Parliament the quest for recognition of Sámi self-determination has remained a core value, and although not a body set up to distinctly tackle this issue. The presence of the parliament and success of the Sámi participation in the political structure has resulted in recognition of their claims, affirming that “[i]t is now indisputable that the Sámi have a right to cultural autonomy and this requires a certain degree of self-determination, was established in the Sámi Parliament Investigation in considering the role of the Sámi Parliament in Swedish democracy 2002”.¹⁰⁰ The Sámi parliament has been actively encouraging members of the Indigenous Sámi Communities to take a more active role within the system and it has proven successful in terms of promoting political participation for Indigenous Peoples. Most recent figures show that in Sweden, “[m]ore than 8000 of the Sweden’s presumed 20,000 Sámi population are now registered in the Sámi Parliament electoral register”.¹⁰¹ This is a hugely positive action and allows the group be their own catalyst for change. Self-determination is perhaps the most essential right and claim for Indigenous Peoples, the reason for this is twofold, what the right to self-determination entails and the process by which this right can be achieved. This is important to acknowledge as while the right to self-determination is a right of critical importance, how it can be facilitated is just as relevant and education systems can be excellent

⁹⁹ O. Protsyk, ‘*The Representation of Minorities & Indigenous Peoples in Parliament*’ Report for the Inter-Parliamentary Union (2010) accessed at <<http://www.ipu.org/splz-e/chiapas10/overview.pdf>> Last Accessed 10 October 2019

¹⁰⁰ ‘Background - Sametinget’ (*Sametinget*, 2021) <<https://www.sametinget.se/9688>> Last Accessed 10 October 2019

¹⁰¹ Ibid

facilitators of that right when executed in an appropriate manner. The case studies in Chapter Seven and Eight will elaborate further on this point.

2.6 Self-Determination in the Context of Indigenous Peoples

2.6.1 Origins of the Concept of Self-Determination

The right to self-determination is one of the most important principles of international law and is first and foremost, a right of people. Historically, the expansion of empires, and the evolution of the concept of political sovereignty, as developed after the Treaty of Westphalia, demonstrates the emergence of self-determination during the modern era.¹⁰² Following the events of the Industrial Revolution many groups of people recognized their shared history, geography, language, and customs. Nationalism became a uniting ideology for groups that felt subordinated or disenfranchised inside larger states; in this situation, self-determination can be seen as a reaction to imperialism.¹⁰³ Such groups often pursued independence and sovereignty over territory, but sometimes a different sense of autonomy has been pursued or achieved.¹⁰⁴

The American Revolution of the 1770s witnessed one of the first assertions of the right of national and democratic self-determination, because of the explicit invocation of natural law, the natural rights of man, as well as the consent of, and sovereignty by, the people governed.¹⁰⁵ Similarly, the French Revolution was motivated by the ideas of self-determination on that Old World continent.¹⁰⁶ During the early nineteenth century, most of the nations of Spanish

¹⁰² David Williams, 'Managing Sovereignty: The World Bank and Development in Sub-Saharan Africa' (2003) 123(3) *Mondes en développement*. pp. 5-21

¹⁰³ 'Lumen Learning – Simple Book Production' (*Courses.lumenlearning.com*) <<https://courses.lumenlearning.com/suny-hccc-worldhistory2/chapter/self-determination-and-new-states/>> Last Accessed 26 April 2021

¹⁰⁴ Jackson J Spielvogel, *Western Civilization* (Belmont: Thomson Wadsworth, 2009). p. 767

¹⁰⁵ Miller Unterberger B, 'Self-Determination | Encyclopaedia of American Foreign Policy | Find Articles At BNET.Com' (*Web.archive.org*, 2002) <https://web.archive.org/web/20080220083041/http://findarticles.com/p/articles/mi_gx5215/is_2002/ai_n19132482> Last Accessed 26 April 2021

¹⁰⁶ Chimène Keitner, 'Self-Determination: The Legacy of The French Revolution', *International Studies Association* (2000)

America achieved independence from Spain,¹⁰⁷ this was further supported by the USA with the implementation of the Monroe Doctrine, a policy that opposed European colonialism in the Americas.¹⁰⁸

2.6.2 The History of Self-Determination and the Wilson - Lenin Approaches

Self-determination has at its core the belief that peoples should have control, as a collective, of the decisions affecting their own lives. With this in mind, it can be understood that concepts of self-governance, autonomy and democracy lie at the heart self-determination.¹⁰⁹ As mentioned above, it was not until the twentieth century that the dialogue around self-determination gained real traction during a turbulent time for the world. World War I resulted in the redrawing of the boundaries of many parts of the world, dividing and partitioning many territories and creating multi-ethnic and multi-religious populations in various parts of the world and, perhaps understandably, such drastic changes to the political and physical landscape would create difficulties in the implementation of self-determination. US President Woodrow Wilson and Soviet leader Vladimir Lenin were instrumental in the formation of the doctrine of self-determination as a political principle throughout Europe and the Americas. The U.S.S.R. was the first to declare self-determination at an international level in 1917. Lenin's *Theses on the Socialist Revolution and the Right of Nations to Self-Determination*, promoted self-determination not only for 'Austria, the Balkans, and particularly Russia', but also for those peoples who had been colonised by invaders, he went on to affirm that Socialists must "demand the unconditional and immediate liberation of the colonies without compensation".¹¹⁰ This vocal support for self-determination was further re-affirmed in a number of documents that

¹⁰⁷ 'The Independence of Latin America', *Britannica* Available at <<https://www.britannica.com/place/Latin-America/The-independence-of-Latin-America>> Last Accessed 26 April 2021

¹⁰⁸ Mark T. Gilderhus, "The Monroe doctrine: meanings and implications." (2006) 36(1) *Presidential Studies Quarterly* pp. 5-16

¹⁰⁹ Chapter 1 United Nations, Charter of the United Nations (adopted 24 October 1945) 1 UNTS XVI

¹¹⁰ Lenin's essays are available in *An Analysis of the Legal Arguments for Self-Determination of Bangladesh in 1971*. Available at: <http://www.academia.edu/2283742/An_Analysis_of_the_Legal_Arguments_for_Self-Determination_of_Bangladesh_in_1971> Last accessed 10 May 2016

came from the U.S.S.R. and presented at an international level, which testified to “the liberation of all colonies; the liberation of all dependant, oppressed, and non-sovereign peoples”¹¹¹ with the conditions for peace.

For Lenin, the principle of self-determination was anchored in the class struggle with the ultimate goal being a worldwide socialist revolution and he believed strongly that the right to self-determination was embedded in socialist ideology stating that a denial of the right would be “a betrayal of socialism”.¹¹² In April 1917, the Russian Provisional Government aligned itself with the principle of national self-determination declaring Russia’s purpose to be “the establishment of a permanent peace on the basis of the self-determination”.¹¹³ He viewed the world in three distinct categories, which were: Western Europe and the United States of America, Eastern Europe, and the Semi-Colonial countries, on whose behalf he advocated for their unconditional and immediate liberation, publicly stating in 1914

“[W]e fight against the privileges and violence of the oppressor nation, and do not in any way condone strivings for privileges on the part of the oppressed nation.... The bourgeois nationalism of any oppressed nation has a general democratic content that is directed against oppression, and it is this content that we unconditionally support. At the same time, we strictly distinguish it from the tendency towards national exclusiveness.... Can a nation be free if it oppresses other nations? It cannot”¹¹⁴

During the reconstruction of Europe in the aftermath of the First World War, the principle of self-determination obtained its most concrete expression. President Woodrow Wilson drafted a statement of principles for peace, known as the Fourteen Point Plan on Self-Determination,

¹¹¹ N Agrawal, Lenin on National and Colonial Questions, *The Indian Journal of Political Science* (1956) 17(3) pp. 207-240.

¹¹² V Lenin, 'Lenin: The Discussion on Self-Determination Summed Up' (*Marxists.org*, 1916) <<https://www.marxists.org/archive/lenin/works/1916/jul/x01.htm>> Last Accessed 31 January 2021

¹¹³ Heater, *National Self-Determination: Woodrow Wilson and his Legacy*, (London: Macmillan Press, 1994); A.J. Mayer, *Political Origins of the New Diplomacy 1917-1918*, (New York: Random House, 1970) p. 75

¹¹⁴ V Lenin Note 111

which was used during the peace negotiations at the end of World War One.¹¹⁵ President Woodrow Wilson's view of how self-determination should be expanded to colonial territories was tempered by the need to consider the significant interests of colonial powers. His view consisted of the right of peoples to freely choose their government in line with the concept of democracy, but also in order to preserve the territorial integrity of states.¹¹⁶ This is an interesting factor to consider with the USA having a sizable Indigenous population at the time and how this view of self-determination could be facilitated in the context of Indigenous Peoples. However, when it came to the colonial territories, Wilson took the view that self-determination must not be the sole aim of colonised peoples but rather, claims of self-determination ought to be reconciled with the significant interests of colonial powers which further exemplifies how the system in operation simultaneously sought to deny the right to self-determination of Indigenous Peoples.

Despite the idea behind Wilsonian self-determination, which recognized a people's right to govern, in practice it was very difficult to apply because of the difficulty in defining who should constitute the "people." As mentioned previously, this presents a difficult position as there is no universally recognized legal definition of "peoples" in international law,¹¹⁷ the International Court of Justice did propose a set of criteria for "people having the right of self-determination" during the 2010 advisory opinion on Kosovo's declaration of independence - the first case of a unilateral declaration of independence to be brought before the court.¹¹⁸ The criteria identified

¹¹⁵ Woodrow Wilson : Fourteen Points Speech (1918) | U.S. Embassy & Consulate in The Republic of Korea (*U.S. Embassy & Consulate in the Republic of Korea*) <<https://kr.usembassy.gov/education-culture/infopedia-usa/living-documents-american-history-democracy/woodrow-wilson-fourteen-points-speech-1918/>> Last Accessed 31 January 2021

¹¹⁶ Ibid

¹¹⁷ Duncan French, *Statehood and Self-Determination: Reconciling Tradition and Modernity in International Law* (Cambridge: Cambridge University Press, 2013) p. 46

¹¹⁸ The ICJ was requested by the United Nations General Assembly to provide an advisory opinion regarding the 2008 Kosovo declaration of independence. The territory of Kosovo was the subject of a dispute between Serbia and the new Republic of Kosovo that had been established by the declaration. This was the first case of a unilateral declaration of independence to be brought before the court. On 22 July 2010, the court delivered its advisory opinion. By a vote of 10 to 4, it ruled that the declaration of independence was not in violation of international law. The Court declared that "the adoption of the declaration of independence of the 17 February

by the ICJ were (i) ethnicity (ii) traditions and culture (iii) historical ties and heritage (iv) language (v) religion (vi) sense of identity or kinship, and (vii) the will to constitute a people and (viii) common suffering.¹¹⁹ The difficulty in applying appropriate definitions to a ‘People’ remains a contentious issue in international law.

2.6.3 Further Development of Self-Determination in International Legal Order

While many understandings of self-determination exist, and the concept has evolved throughout history. Prior to the League of Nations (LON), there existed no legal framework for self-determination, the issue had been discussed in varying forms¹²⁰ granted the issue had been discussed by LON during the Åland Islands Case,¹²¹ however, self-determination was not perceived as a cornerstone of international law until the latter part of the early twentieth century.

It is important to offer further clarity of the understanding of self-determination in this research. This means understanding the right to self-determination as more than a legal concept, that in relation to Indigenous Peoples specifically, it is an ongoing process of choice to ensure that Indigenous Communities can meet their social, cultural and economic and political needs.¹²² It includes having a collective voice and control over one’s destiny. It is also imperative to understand, in this context, that self-determination is not about creating a separate Indigenous ‘state’, which can often be a misconception regarding Indigenous Peoples, self-determination

2008 did not violate general international law because international law contains no 'prohibition on declarations of independence'; nor did the adoption of the declaration of independence violate UN Security Council Resolution 1244, since this did not describe Kosovo's final status, nor had the Security Council reserved for itself the decision on final status.

¹¹⁹ International Court of Justice, *Advisory opinion on Kosovo's declaration of independence* 2010, Separate Opinion of Judge A. A. Cançado Trindade.

¹²⁰ The Åland Islands' population's demand for self-determination was not met and sovereignty over the islands was retained by Finland, but international guarantees were given to allow the population to pursue its own culture, relieving the threat of forced assimilation by Finnish culture as perceived by the islanders. See The Åland Islands Case (1920) L.N.O.J. Spec. Supp. No. 3.

¹²¹ The Åland Islands Case (1920) L.N.O.J. Spec. Supp. No. 3.

¹²² 'Aboriginal Self-Determination - Aboriginal Cultural Capability Toolkit - VPSC' (VPSC, 2021) <<https://vpsc.vic.gov.au/html-resources/aboriginal-cultural-capability-toolkit/aboriginal-self-determination/>> Last Accessed 31 January 2021

and the relationship between these and the States in which they reside, this relationship between self-determination and sovereignty will be discussed further in this section. While the process of decolonisation could be argued to be the starting point for the development of the modern era's understanding and concept of human rights. Indeed, there appeared to be a more sinister concern on behalf of the states of "power" when drafting the UDHR, there was an element of fear regarding territorial integrity of states versus the right to seek self-determination again, influenced by the German occurrences at the beginning of World War II.

However, the UN Human Rights Committee has stated that the right to self-determination applies to 'all peoples and not merely to colonised peoples'.¹²³ This understanding of external self-determination is evident in the following situations, as outlined in General Assembly Resolution 1541(XV): "emergence as a sovereign independent State; ... free association with an independent State or ... integration with an independent State".¹²⁴

The issue of secession or external self-determination was the focal point of a landmark judgement of the Supreme Court of Canada.¹²⁵ The Court had to decide upon the legality of a unilateral secession of Québec from Canada under both Canadian and international law. The Supreme Court concluded that the right to self-determination arises in three circumstances: (i) in situations of colonialism, (ii) the alien subjugation, domination or exploitation of a people and (iii) where a people is denied any meaningful exercise of its right to self-determination within the parent State.¹²⁶ The Court concluded that '[i]n all three situations, the people in question are entitled to a right to external self-determination because they have been denied the

¹²³ Concluding Observation of the Human Rights Committee on Azerbaijan, adopted on 3 August 1994. CCPR/C/79/Add.38; A/49/40, para.4

¹²⁴ This Resolution concerned the 'Principles' to be applied to transmit information under Art.73(e) of the UN Charter and was passed on 15 December 1960, the day after the Granting of Independence to Colonial Countries and Peoples; Robert McCorquodale, 'Self-Determination: A Human Rights Approach', *International and Comparative Law Quarterly*, (1994) 43(1) p. 863

¹²⁵ Reference re Secession of Quebec, [1998] 2 S.C.R.217

¹²⁶ Secession de Quebec, SCR 217, para. 138

ability to exert internally their right to self-determination'.¹²⁷ Internal self-determination concerns the right of people to choose their political status and allegiances, their political participation and form of government, and to maintain their cultural, ethnic, historical and territorial identity.¹²⁸ The right to apply internal self-determination was stated in the Declaration on Principles of International Law, as it provides that only 'a government representing the whole people belonging to the territory without distinction as to race, creed or colour'¹²⁹ can be considered to be acting in accordance with the ethos and rights of self-determination. The right was further enshrined in the body of the UNDRIP which specifically references both the significance and importance of the right to self-determination in the preamble and in articles three and four.¹³⁰

2.7 The Right to Self-Determination in the International Legal Frameworks

As mentioned above, it is regarded as a right in international law embodying the right of all peoples to the right to self-determination and concerns the ability of a people to control their destiny. It is accepted as customary international law¹³¹ and there is support for the right to form part of *jus cogens*, a fundamental principle of international law from which no derogation is permitted.¹³² The right by which peoples freely choose their political status and strive to

¹²⁷ Ibid

¹²⁸ McCorquodale Note 124 p. 857

¹²⁹ UNGA Resolution on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security Assembly (20 November 1991) A/RES/46/18

¹³⁰ In the preamble of the UNDRIP, the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social, and cultural development is affirmed as well as noting that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law. Additionally, Article 3 states Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development and article 4 confirms that Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

¹³¹ *Advisory Opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970) (Namibia case)* I.C.J. Rep. 1971, 16, esp. 31- quoted *infra*. n. 18

¹³² Edward McWhinney, *Self-Determination of Peoples and Plural-Ethnic States in Contemporary International Law: Failed States, Nation-Building and the Alternative, Federal Option*. (Martinus Nijhoff Publishers, 2007);

develop their economic, social and cultural status remains a cornerstone of international instruments. It has at its core, the belief that peoples should have control, as a collective, of the decisions affecting their own lives. The right is affirmed in Article 21 of the Universal Declaration on Human Rights states that:

(1) Everyone has the right to take part in the government of his country directly or through freely chosen representatives.

(2) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.¹³³

Article 1(2) of the Charter of the United Nations affirms self-determination as one of the purposes of the organisation, namely, “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace”.¹³⁴ Article 55 of the Charter calls for the promotion of a number of social and economic goals “[w]ith a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples”.¹³⁵ The right to self-determination is further enshrined in Article 1 of the both International Covenant on Civil and Political Rights (ICCPR)¹³⁶ and Article 1(1) International Covenant on Economic, Social and Cultural Rights (ICESCR).¹³⁷ Article 1(1) of both Covenants states "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."¹³⁸

James Crawford, *Brownlie's Principles of Public international Law*, 8th ed., (Oxford: Oxford University Press 2012) p. 513; Antonio Cassese, *International Law in a Divided World*, (Oxford: Oxford University Press, 1986)

¹³³ Art.21 United Nations Universal Declaration of Human Rights 1948

¹³⁴ UN Charter, 1945, Art.1(2)

¹³⁵ Ibid, Art.55

¹³⁶ International Covenant on Civil and Political Rights, 1966 (ICCPR), Art. 1, opened for signature 19 Dec. 1966, 999 U.N.T.S. 171 (entered into force 23 Mar. 1976)

¹³⁷ International Covenant on Economic, Social and Cultural Rights (ICESCR), Art.1, opened for signature 19 Dec. 1966, 993 U.N.T.S. 3 (entered into force 3 Jan 1976)

¹³⁸ ICCPR, Art 1(1); ICESCR, Art 1(1)

Additionally, Article 15 of the UDHR states that everyone has the right to a nationality and that no one should be arbitrarily deprived of a nationality or denied the right to change nationality.¹³⁹ Self-determination is further outlined as one of the seven basic principles in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States 1970.¹⁴⁰ According to this instrument "the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations"¹⁴¹ embraces the right of all peoples to "freely to determine, without external interference, their political status and to pursue their economic, social and cultural development"¹⁴² as well as the duty of every State "to respect this right in accordance with the provisions of the Charter".¹⁴³ It further adds that "the establishment of a sovereign and independent State, the free association or integration with an independent State, or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination",¹⁴⁴ highlighting the importance of sovereign statehood and the political authority of the state.

2.7.1 Internal v External Self-Determination

For this section, two main forms of self-determination will be considered in detailing the history and current position of the doctrine of self-determination. They are external and internal self-determination. Internal self-determination is the right of the people of a state to govern themselves without outside interference.¹⁴⁵ External self-determination is the right of peoples to determine their own political status and to be free of alien domination, including formation

¹³⁹ Universal Declaration of Human Rights, 1948 (UDHR), UNGA Res. 217A(III)., *GAOR, 3rd Session, Part I, Resolutions, 71*, U.N. GAOR, 3d Sess., 1st plen. Mtg., U.N. Doc. A/810, Dec. 12, 1948

¹⁴⁰ Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States 1970, UN GA Res. 2625 (XXV), in accordance with the Charter of the United Nations

¹⁴¹ Ibid

¹⁴² Ibid

¹⁴³ Ibid

¹⁴⁴ Ibid

¹⁴⁵ H Hannum, 'Legal Aspects Of Self-Determination', *Princeton Encyclopaedia* (2021) Available at <<https://pesd.princeton.edu/node/511#:~:text=Internal%20self%2Ddetermination%20is%20the,of%20their%20own%20independent%20state.>> Last Accessed 26 April 2021

of their own independent state.¹⁴⁶ External self-determination is applied most frequently in the post-colonial context, as it directly affects the territory and boundaries of a state. However, in relation to the relationship between the right to education and the right to self-determination the focus is on internal self-determination. It is also important to highlight that the right to self-determination, which can be realized through secession, can also be realized internally and can be manifested in a variety of ways.¹⁴⁷ There are many views within the literature on this topic and some scholars do not agree with the internal versus external concept of self-determination, many view it as a more intrinsic concept.¹⁴⁸ Irene Watson discusses the right to self-determination in the context of Indigenous peoples, as enshrined in UNDRIP, highlighting the importance of language in determining the lives of Indigenous peoples. She writes “on the one hand UNDRIP recognizes the right to self-determination and, on the other hand it limits self-determination to being exercised in accord with state power”.¹⁴⁹ This view is crucial to understanding the relationship between the right to self-determination and how it can be affected by the provision of education as will be discussed in more detail in chapter five. While the two most broadly discussed theories that contribute to this dialogue are the Wilsonian and Leninian theories of self-determination, the inclusion of the right to self-determination within the UNDRIP is by far the most significant achievement in the advancement of the right as it pertains to Indigenous Peoples.

First Indigenous Populations “argue that they are unlike other ‘nations’ or ‘minorities’ as understood in international law, and constitute a *sui generis* category which is entitled to self-determination”.¹⁵⁰ Second, as previously mentioned this is most likely due to the perpetual

¹⁴⁶ Ibid

¹⁴⁷ Stephen May, *Language and Minority Rights; Ethnicity, Nationalism and the Politics of Language*, 2nd ed. (New York: Routledge, 2012). p.302

¹⁴⁸ S. James Anaya, *Indigenous Peoples in International Law*, 2nd ed. (Oxford: Oxford University Press, 200), p.105.

¹⁴⁹ Irene Watson, *Indigenous Peoples as Subjects of International Law* (Oxfordshire: Routledge, 2018). pp. 98, 104.

¹⁵⁰ Musgrave Note 52 p. 173

cycle of past injustices and ill-treatment at the hands of colonisers and “despite the contemporary absence of colonial structures in the classical form, Indigenous Peoples have continued to suffer impediments or threats to their ability to live and develop freely as distinct groups in their original homelands”.¹⁵¹ The key phrase is “original homelands”, many struggles faced by Indigenous Peoples are surrounded by conflicts with states and governments relating to ancestral lands and Indigenous groups having a say over, and control of their lands and how those lands are used. What is important to take into consideration when debating the issue at hand is that, within regard to Indigenous peoples, self-determination is not necessarily seeking secession, it can encompass a level of autonomy and a greater level of control over traditional lands and natural resources.¹⁵² Most of the discourse regarding Indigenous Peoples and state actors is in relation to this claim of ownership of said lands and States’ concerns regarding territorial integrity, from which, States have protection against as laid out in Article 46 of UNDRIP.¹⁵³

Regardless, the right to self-determination is a fundamental right for Indigenous Peoples and is vital for the enhancement of their rights.¹⁵⁴ The collective enjoyment of human rights, such as self-determination, is a precondition for individual human rights protection; since individuals do not exist in isolation from a community, repression of the collective concretely affects individuals, particularly Indigenous individuals whose identities are closely connected to their people.¹⁵⁵ It reflects the importance given to groups, communities, families and

¹⁵¹ Anaya Note 12 p.86

¹⁵² This is an important factor recognized by the GA in the preamble to UNDRIP in which it states “Convinced that control by Indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs” accessed at <https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf> (Last Accessed 09/11/2018)

¹⁵³ UNDRIP 2007 Art. 46 (1) states “Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States”

¹⁵⁴ Christian Erni and Marianne Jensen (eds), ‘Self-Determination’, *Indigenous Affairs*, International Work Group for Indigenous Affairs (IWGIA), Vol.3(1) 5

¹⁵⁵ Turpel Note 94

collectives in many societies.¹⁵⁶ The protection of this right to self-determination is therefore vital for Indigenous communities as it enables them to prosper as a people, to protect and transmit their culture and language, and to have full autonomy over the political, economic and social processes of the territory in which they live. The safeguarding of this right enables communities to develop and preserve their culture and to make decisions about their communities at the political, social and economic level. Self-determination thus allows the distinctive character and nature of a community “to have this character reflected in the institutions of government under which it lives”.¹⁵⁷ The right of self-determination is a right which reveals the significance provided for communities, collectives and families in many societies.¹⁵⁸ The right therefore protects people from oppression by domination, exploitation or subjugation, or rather it is designed to. The issue of oppression in relation to Indigenous Peoples and the destruction which varying aspects of oppression can cause to Indigenous Communities is core to this research and will be discussed in more detail in the following Chapter Three which will investigate the relationship between inappropriate education systems and how the actively denied the right to self-determination of Indigenous Peoples. .

2.8 The Relationship between Self-Determination and Sovereignty

One of the main issues surrounding the right to self-determination of Indigenous Peoples is the friction that asserting this right can cause between the Indigenous Community and the State in which they reside. This is due to the State-centric view of sovereignty which considers an assertion of the right to self-determination of Indigenous Peoples, is a threat to the sovereignty

¹⁵⁶ Mojekwu, *Self-Determination: The African Perspective* in Y. Alexander and R. Friedlander (eds), *Self-Determination: National, Regional and Global Dimensions*, 1980; M. Lubis, ‘Asian Cultures and Human Rights’, and O. Ojo, ‘Understanding Human Rights in Africa’ in J. Berting (ed), *Human Rights in a Pluralist World*, 1990, pp. 115, 125

¹⁵⁷ I. Brownlie, “The Rights of Peoples in Modern International Law”, in J. Crawford (ed), *The Rights of Peoples*, (Gloucestershire: Clarendon Press, 1988) p.90

¹⁵⁸ Mojekwu Note 156

of the State.¹⁵⁹ The traditional and generally accepted concept of sovereignty has placed States at the centre since the adoption of the Peace of Westphalia. However, Indigenous Peoples challenge this approach. It is understandable that an uncertainty exists as self-determination is a product of international law and States are, of course, the main players in that field, not people. This is where the complexity of the relationship between the right to self-determination can be seen most clearly. To enjoy rights as distinct communities, “[I]ndigenous [P]eoples would have to be regarded as nations or states”,¹⁶⁰ this sounds almost impossible to achieve due to the threat to State sovereignty that this may pose. However, according to Anaya, a more sophisticated view of sovereignty now envisions states and nonstate actors as engaged in a continual process of renegotiating the nature of sovereignty. Traditionally, the nation-state is an area where the cultural boundaries match up with the political boundaries and considering historic ideology around statehood which viewed the ideal nation-state being one “that the state incorporates people of a single ethnic stock and cultural traditions”¹⁶¹. This is owed predominantly to the historic and western centric approach and understanding of Statehood considering that “[t]he very idea of a nation-state would always make it difficult for non-European Aboriginals to qualify as such”.¹⁶² Indigenous Peoples can be perceived as posing a threat to this via land claims and demands for the right to self-determination. According to the United Nation Educational, Scientific and Cultural Organisation (UNESCO), the nation “as we think of it today is a product of the nineteenth century. In modern times nation is recognised as

¹⁵⁹ Sheryl Lightfoot and David MacDonald, 'The UN as Both Foe and Friend To Indigenous Peoples And Self-Determination' (*E-International Relations*, 2020) <<https://www.e-ir.info/2020/03/12/the-un-as-both-foe-and-friend-to-Indigenous-peoples-and-self-determination/>> Last Accessed 19 July 2021.

¹⁶⁰ Anaya Note 12 p. 22

¹⁶¹ A Kazancigil and M Dogan, *The State in Global Perspective; Comparing Nations: Concepts, Strategies, Substance* (New Jersey: Blackwell, 1986) p. 188

¹⁶² Anaya Note 12 p. 22

'the' political community that ensures the legitimacy of the state over its territory and transforms the state into the state of all its citizens".¹⁶³

This is not always true when discussing Indigenous Peoples due to a long history of oppression in many Indigenous Communities, stemming from the fact that "[m]ost colonizers, rulers of settler nation-States and those who built up the nation-States following struggles for independence undermined and denigrated the Indigenous governance systems",¹⁶⁴ hindered community empowerment greatly, oppressed Indigenous values and impeded many Indigenous Peoples' right to self-determination. It is once again through the overarching goal of their right to self-determination that this process of exploitation of vulnerable groups can be counteracted. Indigenous Peoples have both the right to maintain their own "Indigenous decision-making institutions and the right to participate in decision-making processes of the State and of other actors, in particular on matters that affect them. Both dimensions are crucial to the exercise of self-governance in practice"¹⁶⁵ this right goes far in the actualisation of the right to self-determination and can be a very useful catalyst for Indigenous empowerment. As previously mentioned, the right to self-determination is a fundamental principle in international law, enshrined in article 1 (2) of the Charter of the UN and common article 1 of the ICCPR and the ICESCR.¹⁶⁶ The right to self-determination in the context of Indigenous Peoples is provided in Article 3 of UNDRIP.¹⁶⁷ It is considered a fundamental right of Indigenous Peoples, and recognises that Indigenous Peoples have a right to freely determine their political status and freely pursue their economic, social and cultural development.¹⁶⁸

¹⁶³ 'Migration and Inclusive Societies' (*unesco.org*) <<http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/nation-state/>> Last Accessed 22 October 2019

¹⁶⁴ UNGA, 'Report of the Special Rapporteur of the Human Rights Council on the Rights of Indigenous Peoples' (2018) UN Doc. A/73/176

¹⁶⁵ Ibid

¹⁶⁶ ICCPR Art 1 Note 28, ICESCR Art 1 Note 29

¹⁶⁷ UNDRIP Note 153

¹⁶⁸ Anaya Note 12 p.28, Åhrén Note 22 p.40

This is further complicated when this right is not supported by States, thus, hindering Indigenous Empowerment. Article 5 of UNDRIP states “Indigenous Peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.”¹⁶⁹ While this assertion appears strong in theory and on paper, it does not allow for the complicated relationship held between Indigenous Peoples and the States in which they reside. Perhaps the most apt description of the complexities that exist between Indigenous Peoples, self-determination and State sovereignty is put forward by Taiaiake, who asserts “[t]he challenge before us is to detach the notion of sovereignty from its current legal meaning and use in the context of the Western understanding of power and relationships. We need to create a meaning for ‘sovereignty that respects the understanding of power in [I]ndigenous cultures’¹⁷⁰. By accepting this approach, it allows for greater control for Indigenous Peoples over their own destiny, and therefore enhancing community and Indigenous empowerment. This approach could be translated into national education systems to create a greater level of understanding for the right to self-determination and how it pertains to Indigenous Peoples. By embedding this into curricula, it would support a more culturally sensitive and appropriate education system can facilitate to the right to self-determination of Indigenous Peoples.

2.9 Current Position and Challenges by Indigenous Peoples

Considering the historic maltreatment of Indigenous Peoples and the resulting nature of vulnerability these peoples continue to face, it is curious that specific group protections were not included in the UDHR. The UDHR aimed its entirety towards individual aspects of human

¹⁶⁹ UNDRIP Note 153

¹⁷⁰ A Taiaiake, *Peace, Power and Righteousness: An Indigenous Manifesto* (1999) (Oxford: Oxford University Press, 1999) p. 54

rights rather than focus on any particular elements of collective or group protections. The move away from the idea of minority protection that had been included in the workings of the law of nations, had been replaced. This move is what correctly described by Åhrén as “when the foundation for a new world order was created in the wake of World War II, protection of minority rights that the League of Nations had promoted was substituted for a set of universal individual human rights”.¹⁷¹ Why were group rights, or any form of minority protections, omitted from the drafting of the UDHR remains a question. The vulnerable status of these groups were well documented and widely known.¹⁷² To address this question it is necessary to consider the time of drafting of the UDHR, the images of the atrocities of World War II were still ingrained within the conscience of many States and people. Åhrén alludes to this in his writing on the issue, he states “[t]hese factors together had rendered the world community adverse to minority rights when it embarked on drafting a new world order in the wake of World War II”.¹⁷³ By “these factors, he is referring to the fact that the Nazi regime had used alleged needs to protect German minority groups in neighbouring countries as justification for the aggression that finally resulted in the outbreak of the war... the general perception was that the German minorities had collaborated in these efforts”.¹⁷⁴ There was a wish to protect against any potential that a minority group might have to challenge State power if they were granted group rights as was the case with the German experience at the offset of World War II.

2.10 Conclusion

The position of Indigenous Peoples has evolved in the realm of international law, successfully transitioning from objects to subjects of international law, they are often fighting an on-going battle to obtain certain rights, one such right being that of self-determination. While the

¹⁷¹ Åhrén Note 22 p. 27

¹⁷² 'Vulnerable People: Indigenous Peoples - Let's Fight Racism!' (*Un.org*)
<<http://www.un.org/en/letsfightracism/Indigenous.shtml>> Last Accessed 8 November 2019

¹⁷³ Åhrén Note 22 p. 27

¹⁷⁴ *Ibid*

doctrine of self-determination has unquestionably expanded over time, it remains a challenging right to uphold for many Indigenous Peoples. Regarding Indigenous Peoples and within the sphere of international law, self-determination can represent many facets of life. For the purpose of this work, it relates to advancement, an advancement of representation, furthering Indigenous voices regarding laws, and policies that help progress and sustain Indigenous identity and cultural survival for many Indigenous groups. As mentioned, the right to self-determination is intrinsic to Indigenous Peoples. This becomes more evident through the neglect and oppression many Indigenous communities have faced at the hands of colonisers and foreign laws designed to subjugate them. A long history of human rights abuses and oppression has resulted in a distrust between many Indigenous communities and the State in which they reside. This history of abuses of Indigenous Peoples at the hands of States, a sad history of both oppression and forced assimilation. One of the key pillars of Indigenous society that has been persistently attacked in the past has been education and the institutions that provide it. Rather than supporting and facilitating the right to self-determination, these systems, in some instances, actively denied the right and acted more like a system of oppression than a system of education. Chapter three addresses the issue of oppression and the sinister and long-lasting effects oppression of Indigenous Peoples.

Chapter 3

Oppression of Indigenous Peoples

3.1 Introduction

The aim of this chapter is to outline what is meant by oppression, in the context of Indigenous Peoples and how oppressive acts at the hands of a State can have far reaching and sinister results. This will be situated in the example of inappropriate education systems and how they acted, and sometimes continue to act, as systems of oppression of Indigenous peoples. The reality is, in many States which have Indigenous populations, there is a history, a legacy, of human rights abuses, subjugation and often, mass social injustices suffered by Indigenous Peoples. Patterns of oppression were born from a colonial misconception of superiority and through this misconception, many Indigenous Groups' and Peoples' culture, history, language, and religion was repressed greatly.¹ One result of systematic oppression can be genocide, and while physical genocide can be a direct result of oppression, this chapter lays out the often more invisible aspect of genocide, one that affects Indigenous Populations directly and that is cultural genocide, attacks on the cultural lives, values and heritage of a group. It is important to acknowledge that the term 'cultural genocide' is not officially recognised as an international crime. This issue will be explored in more detail throughout this chapter. The word genocide resonates with people around the globe. It is considered a most heinous crime; this is why it is important that the term be used and not shied away from. Not only does the term conjure powerful images, but it also holds a special meaning for those who were victims, and survivors of genocidal acts. Using the term is a powerful symbol of recognition of the abuse and injustices suffered by victims and survivors of the crime. This section further discusses how acts of

¹ M Garcia-Olp, 'How Colonization Impacts Identity Through the Generations: A Closer Look at Historical Trauma and Education' (Doctoral Thesis, University of Denver, 2018)

oppression can lead to mass human rights abuses and even atrocities including crimes of genocide. The term genocide, which is intentionally used in this chapter, is a complicated and political word to apply to many situations, since its use implies a number of legal and moral obligations. It is used to highlight the dangers that can be presented when cultural rights are oppressed. This is of particular concern when discussing education systems in which Indigenous children are students where forced assimilation through education has led to a denial of the right to self-determination in the context of Indigenous Peoples.

It is important to understand that oppression does not only occur in the present; it can, and has, occurred on a grand scale throughout history and in order to trace the journey from acts of oppression to claims of genocide, it is important to understand what is meant by oppression and acts of oppression and historical oppression which can have an intergenerational impact. It is often linked to other measures of living standards such as life expectancy, employment and income, which are standards of living that are incredibly closely related to standards of education and the institutions which provide it. As mentioned above, forced assimilation through education systems has been used in the past as a tool to deny the right to self-determination of Indigenous Peoples. Acts of oppression can lead to large scale, devastating impacts such as wars and genocides, they pose a significant danger as it can occur in multiple areas of society including through an individual, an institution, or a culture, and each of these can occur consciously or unconsciously. When discussing acts of oppression, it is important to understand that oppressive acts are suffered by groups, and “[o]ppression is something that happens to people when they are classified in groups”.² It is a generally accepted principle

² Iris Marion Young, *Five faces of oppression: Rethinking power*, (Albany: New York university Press) pp. 174-195

within international human rights law that all people should be free to pursue their life plans in their own way.³ Oppressive forces seek to diminish those plans and those people as well.⁴

This research draws on experiences of oppression through educational institutions, examining the institutional oppression that occurred and highlights how self-determination can be achieved through education and when utilised and delivered in an appropriate manner can be an extraordinary tool for Indigenous empowerment. Section two of this chapter discusses the concept of oppression and how it can manifest in various forms including, historical oppression, group oppression and institutional oppression. This is followed by section three which offers further elaboration on the lasting impact oppression has on Indigenous communities. Section four demonstrates the relationship between acts of oppression and how these acts can lead to genocide and genocidal patterns. Section five investigates the phenomenon that is cultural genocide and how the connection between oppressive acts through educational provision can result in aspects on cultural genocide. Section six of this chapter explores the possibilities of how the international community can recognise the crime of cultural genocide. Section seven offers a discussion on the survivance of Indigenous Peoples in the context of oppression. This chapter concludes with a discussion and analysis of the relationship between oppression, the right to education and the right to self-determination in the context of Indigenous Peoples.

3.2 Oppression

Oppression in the context of both minority groups and Indigenous Peoples is not a new phenomenon, it has historical roots. There exists extensive literature on the very concept of

³ Adam Thierer, 'The Right to Pursue Happiness, Earn A Living, And Innovate' (2018) *The Bridge Expert Commentary* <<https://www.mercatus.org/bridge/commentary/right-pursue-happiness-earn-living-and-innovate>> accessed 26 April 2021.

⁴ Iris Marion Young, Iris, *Five Faces of Oppression*. In Lisa Heldke and Peg O'Connor (Eds.), *Oppression, Privilege, & Resistance*. (Boston: McGraw Hill, 2004) p.1

historical oppression and how it has, in many ways, shaped many minority and Indigenous groups today.⁵ It is the process through which many minority and Indigenous groups experienced large scale injustices, oppression is often exerted by those in a position of power, through domination.⁶ It is also important to note that while all minorities experience inequalities, “Indigenous Peoples... tend to experience the most severe violent victimization”.⁷ This is absolutely true of past experiences and in many Indigenous Communities, there are scars still healing from State-sanctioned acts of both violent and non-violent acts of oppression.⁸ Oppression and repression are often two concepts which are connected. While oppression can be understood as prolonged cruel or unjust treatment or exercise of authority, repression can be described as subduing something or someone by force.⁹ Oppression can be forceful, more times than not, it is a silent system of abuse taking on an even more sinister role when in relation to Indigenous Peoples at the hands of colonisers.

3.2.1 Historical Oppression

While most historically colonised States have become independent from the States which colonised them, the abuses suffered by many Indigenous Groups as result has been ingrained into many Indigenous Communities. The concept of oppression expands on “historical trauma, a concept that includes the cumulative, massive and chronic trauma imposed on a group across generations and within the life course”.¹⁰ Acts of oppression have bled deeply into many

⁵ For more see 'Minorities and Indigenous Peoples' (*UNHCR*) <<https://www.unhcr.org/en-ie/minorities-and-Indigenous-peoples>> Last Accessed 24 July 2021

⁶ Young Note 2

⁷ Catherine Elizabeth Burnette and Charles R. Figley, "Historical Oppression, Resilience, and Transcendence: Can a Holistic Framework Help Explain Violence Experienced by Indigenous People?" (2016) 62(1) *Social Work* pp. 37-44

⁸ Zsolt Kapelner, 'Revolution Against Non-Violent Oppression' (2019) 25(4) *Res Publica*. pp. 445-461

⁹ 'Oppress Or Repress?' (*Editingandwritingservices.com*, 2015)

<<https://editingandwritingservices.com/oppress-repress/#:~:text=Oppress%20means%20to%20persecute%2Ftyrannize%2Fbully.&text=Further%2C%20people%20can%20feel%20oppressed,limit%2C%20subdue%20or%20end%20something>> Last Accessed 30 July 2021

¹⁰ B Heart and LM DeBruyn, “The American Indian holocaust: Healing historical unresolved grief” (1998) 8(2) *American Indian and Alaska native mental health research* pp. 56-78.

Indigenous communities, who have long suffered at the hands of colonising powers, experiencing suppression of countless societal and cultural elements that bind them as group including language and religious practice. Historical oppression can be used to describe “the chronic, pervasive and intergenerational experiences of oppression, that over time, may be normalized, imposed, and internalized¹¹ into the daily lives of many Indigenous Peoples”¹² attacking the foundations of a society to such an extent that the trauma is felt generations later. One such example is Residential Schools, which were commonly used across the United States and Canada as a mean to rid the nations of their Indigenous population.¹³

The trauma of the oppression experienced did not simply end when the systems ended, they continued to exist intergenerationally both internally within Indigenous communities and externally within the State. Historical oppression is a powerful tool, one that undermines whole communities through the experience of historical traumas i.e., Residential Schools which essentially stripped families’ ability to socialise and transmit culture and language to their children, thus “impairing the healthy transmission of pro-social values and beliefs and replacing such beliefs with antagonistic and oppressive social norms”.¹⁴ The connection between oppression and assimilationist education policies have debated for years and many academics have proposed a link between the oppression imposed through colonization and negative physical, social and mental health outcomes”.¹⁵ The concern with historical and intergenerational trauma is that the shared trauma “can marginalize already oppressed groups and overlook the deep strengths of Indigenous communities, families and individuals, which

¹¹ Internalised oppression and repression will be dealt with in greater detail in Chapter Nine, as an emerging a worrying trend of cultural suicide is becoming more prevalent in many Indigenous Communities

¹² Catherine Elizabeth Burnette and Charles R. Figley, "Historical Oppression, Resilience, and Transcendence: Can a Holistic Framework Help Explain Violence Experienced by Indigenous People?" (2016) 62 *Social Work* pp. 37-44

¹³ C.E McKinley *et al*, “The Historical Oppression Scale: Preliminary conceptualization and measurement of historical oppression among Indigenous peoples of the United States” (2020) 57(2). *Transcultural psychiatry*, pp.288-303

¹⁴ Ibid

¹⁵ Ibid

have sustained them for centuries”.¹⁶ As a result of historical traumas, “Indigenous Peoples have experienced historical losses, which included the loss of land, traditional and spiritual ways, self-respect from poor treatment of government officials, language, family ties, trust from broken treaties, culture and people”.¹⁷ It was through these oppressive acts that the right to self-determination of Indigenous Peoples was denied.

3.2.2 Group Oppression

Referring once again to Young, oppression refers to “a family of concepts and conditions”¹⁸ which she has divided into five categories “exploitation, marginalization, powerlessness, cultural imperialism, and violence”.¹⁹ While not all five categories need to be evident for oppressive acts to occur, they are generally seen in a manner of co-existence when relating to the lived experience of Indigenous Peoples at the hands of their Oppressors.

Individuals can of course suffer from acts of oppression. However, oppressive acts are usually designed to hinder an entire group. A social group is a collective of persons differentiated from at least one other group by cultural forms, practices, or way of life, who have “a specific affinity with one another because of their similar experience or way of life, which prompts them to associate with one another more than with those not identified with the group”.²⁰ Oppressive acts work to break down the morale of a social group and consist of “different factors, or combinations of factors, constitute the oppression of different groups, making their oppression irreducible”²¹ this understanding of oppression of a group is further by Marilyn Frye who describes oppression of a group as “an enclosing structure of forces and barriers which tends

¹⁶ Burnette and Figley Note 12

¹⁷ Burnette and Figley Note 12

¹⁸ Young Note 2

¹⁹ Ibid

²⁰ Ibid

²¹ Ibid

to the immobilization and reduction of a group or category of people”.²² Oppression is, ostensibly, an injustice faced by groups which Young reinforces by claiming that “oppression refers to structural phenomena that immobilize or diminish a group”.²³ When addressing these systematic structures of oppression a term often referred to as ‘Institutional Oppression’ is one that is essential to consider when discussing the subjugation of groups. Institutional oppression is defined as occurring when “established laws, customs, and practices systemically reflect and produce inequities based on one’s membership in targeted social identity groups”,²⁴ and essentially work towards the gradual removal of rights of the oppressed groups. The term ‘institutional’ is used here on purpose to describe how indoctrinated oppressive acts have been in many societies with Indigenous Populations. Young, writing exclusively on the oppression of Native American Groups, re-affirms this stating that “Oppression... is structural, rather than the result of a few people’s choices or policies. Its causes are embedded in unquestioned norms, habits, and symbols, in the assumptions underlying institutional rules and the collective consequences of following those rules”.²⁵ This is a trait almost always seen through history in the colonisation of new lands and the suffering of the Indigenous Peoples who occupied the lands pre-invasion. However, understanding the past does not remove the damages it has done and the intergenerational traumas that still exist as a result, “these social ills may become internalized and normative, giving rise to health problems, suicide and other disparities. Despite oppression being externally imposed, it may inadvertently become intergenerationally transmitted”.²⁶ While historical trauma is a significant factor in understanding the long-lasting impact on Indigenous groups, reconceiving the concept of self-determination as a means of

²² M Frye, Oppression. *The politics of reality: Essays in feminist theory*. Reprinted in V. Taylor, N. Whittier, and L. Rupp (Eds.) *Feminist frontiers*. (Maryland: Roman & Littlefield, 1983) p. 11

²³ Young Note 2

²⁴ C Cheney, J LaFrance, and T Quinteros, 'Institutionalized Oppression Definitions' (*Pcc.edu*, 2006) <<https://www.pcc.edu/illumination/wp-content/uploads/sites/54/2018/05/institutionalized-oppression-definitions.pdf>> Last Accessed 14 February 2021

²⁵ Young Note 2

²⁶ McKinley Note 13

empowerment of Indigenous Peoples is one way that reconciliation and progression can be nurtured. A way in which this can be facilitated is by utilising the right to self-determination via the right to education in the context of Indigenous Peoples, by having well-rounded education systems that cater for the specific needs of Indigenous identity and cultural survival. However, this has not always, and is not in some situations, the case. Indigenous peoples have long been on the receiving end of oppressive acts committed by the States in which they reside. With the arrival of colonising powers, practices of forced assimilation became widespread, usually sanctioned by the State and enshrined through policy. One of the ways in which this was actioned was through assimilative educational systems, a product of colonisation, that sought to erase Indigenous identity through education, targeting Indigenous children who were deemed to be more vulnerable and susceptible to colonial ideology and indoctrination. This form of oppression via the education being provided to Indigenous children actively denied the right to self-determination for these children and by association, their parents and community's right to self-determination.

3.2.3 Oppressive Educational Systems

One example of the most destructive and genocidal federal Indian policies was forced boarding school education for Native children.²⁷ Educational institutions in particular have played a central role in the colonisation and oppression of Indigenous Peoples. This was a system used in both the United States of America and Canada and described by Kuokkanen as being “a very effective tool in implementing racist theories and indoctrinating them in children (Indigenous and Non-Indigenous alike)”.²⁸ The experience of Indigenous Canadian children and families

²⁷ Roe Bubar and Pamela J. Thurman, *Violence Against Native Women*, (2004) 31(4) *Social Justice*, p.74.

²⁸R Kuokkanen, "Survivance" in Sámi and first nations boarding school narratives: reading novels by Kerttu Vuolab and Shirley Sterling" (2003) *American Indian Quarterly*, pp.697-726.

will be explored in greater detail in Chapter Seven, however, in the interest of clarity it is important to draw brief reference to the systems here.

In the instance of the United States of America, the assimilationist educational policy was developed by Richard Pratt, founder of the Carlisle Residential School, considered to be the father of Native American assimilation practice through education. Through this system, the government forcibly removed Indigenous children between the ages of four and six from their homes and they could not return for twelve years. Native American boarding schools separated parents from their children, sometimes tragically forever.²⁹ This began in 1869 and occurred for nearly one hundred years. The program was designed to eradicate traditional culture, family patterns, and communal behaviours.³⁰ Pratt envisioned a common American education system which included educating Indigenous children in western ways, Pratt is ubiquitously quoted as the source of the phrase “kill the Indian, save the man,” which is understood as the official statement of the US assimilationist policy.³¹ This policy disguised as ‘common education’ was designed to oppress indigeneity and to eliminate the opportunity of intergenerational transmission of culture and heritage. While running the Carlisle School, Pratt used a process of manipulation, befriending students in order to achieve conformity and furthering subjugation. While attending the school, Indigenous children were forbidden from using their traditional names, wear their traditional clothes, speak tribal languages or practice their religion. This system was a product of its time, and not met with the outrage it should have been. This was heightened because at a time when “[w]hite Americans could not conceive a robust Native political or cultural sovereignty and when concepts of cultural relativism had not

²⁹ Desmond, Matthew and Mustafa Emirbayer, *Racial Domination, Racial Progress: The Sociology of Race in America*. (New York: McGraw-Hill, 2010) p.451.

³⁰ Bubar and Thurman Note 23

³¹ K. Tsianina Lomawaima and Jeffrey Ostler, “Reconsidering Richard Henry Pratt: Cultural Genocide and Native Liberation in An Era Of Racial Oppression” (2018) 57 *Journal of American Indian Education*. Pp.77-100

yet been developed, Pratt chose the alternative of radical assimilation”³² and oppression of Indigenous Peoples was not met with the horror of the general population of government who were supporters of the policy. It was not until the 1920s, with the emergence of the work of Anthropologist Franz Boas’s and his proposition of cultural relativism enabled some “[w]hite Americans to value the cultures and religions of Native people, but they were not part of Pratt’s intellectual universe”³³ which meant that cultural sensitivities were not appreciated or respected in Pratt’s system of education.

3.3 Impact of Oppression

While there can be vast difference in actual colonial processes, colonial education has produced very similar effects in different parts of the world, for example the similarities between the residential school systems of both the United States of America and Canada. These effects include “cultural intrusion, conflicts and confusion between cultures and values, and various strategies of survival and resistance”.³⁴ When the worst forms of racial discrimination are left unchallenged, like they so often were in the past, they have direct links to genocidal patterns, both physical and non-physical crimes of genocide and continued oppression through historical trauma inflicted on Indigenous Peoples including “land dispossession, death of the majority of the populations through warfare and disease, forced removal and relocation and assimilative boarding school experiences, and prohibiting religious practices”.³⁵

³² Ibid

³³ G Stocking Jr, “Franz Boas and the Culture Concept in Historical Perspective” (1996) 68(4) *American Anthropologist*, pp.867-882.

³⁴ Kuokkanen Note 28

³⁵T Evans-Campbell, “Historical trauma in American Indian/Native Alaska communities: A multilevel framework for exploring impacts on individuals, families, and communities” (2008) 23(3) *Journal of interpersonal violence*, pp. 316-338.

Historically, the assertion of cultural imperialism in conjunction with colonization laid the foundation for assimilation and cultural genocide.³⁶ The memory of genocide and tribal extinction inflicted by cultural imperialism is referred to as an internalized oppression called ‘soul wound’, which is felt to this day.³⁷ Indigenous Peoples in the United States of America today experience a phenomenon labelled “Historical Unresolved Grief Syndrome” resulting from the “historical trauma” experienced under cultural and economic imperialism.³⁸ This has resulted in long-term marginalisation for many Indigenous communities in the country. Marginalization is a process of exclusion, the act of relegating or confining a group of people to a lower social standing. Marginalization is in some ways worse than exploitation because society has decided that it cannot or will not use these people even for labour. Young has asserted that race is a key factor in marginalization, claiming that an example of marginalization is “when society met the needs of dominant people, linking to whiteness, but not the needs of Others. As a result, these groups are subjected to severe material deprivation and even extermination.”³⁹

3.4 From Oppression to Genocide

3.4.1 The Relationship Between Oppression and Genocide

Young has said oppressed Indigenous Peoples “become so powerless that they do not even talk about their oppression, the oppressed are silenced, and they have no voice and no will”.⁴⁰ However, through the correct forms of facilitation, proactive survivance mechanisms and the sheer resilience of Indigenous communities, these groups continue to recover and, in many aspects, have transcended oppression despite continual efforts at cultural erasure and

³⁶ Jeanette Writer, “Unmasking, Exposing, and Confronting: Critical Race Theory, Tribal Critical Race Theory and Multicultural Education”, (2008) 10(2) *International Journal of Multicultural Education* pp. 1-15

³⁷ Lisa Poupart, 2003, “The Familiar Face of Genocide: Internalized Oppression Among American Indians” (2003) 18(2), *Hypatia*, pp. 86-100.

³⁸ *Ibid*

³⁹ Garcia-Olb Note 1, Young Note 2 p.2

⁴⁰ *Ibid* p.3

genocide”.⁴¹ As will be discussed in detail in Chapter Five, this relates specifically to the provision of education for Indigenous Peoples and how through effective and appropriate educational provision, cultural survival and the right to self-determination can be supported. With this considered, it is completely credible that the marginalisation that has resulted from generations of oppression of Indigenous Peoples is a contributing factor to the vulnerable positions that many of these groups hold within the States in which they reside, making these groups extremely susceptible to acts of genocide, both physical and non-physical.⁴² As mentioned previously, the use of the term genocide in this context is no accident, it is an important and controversial word that conjures horrific images and connotations, representative of the mass acts of oppression suffered by many Indigenous Peoples, and forced assimilation through an oppressive education system was a means on committing acts of cultural genocide against Indigenous Peoples.

3.4.2 The Origins of Genocide

To form an understanding as to why term genocide evokes such resonance with victims and survivors of the crime, it is necessary to trace the evolution of this crime. There is a need to go beyond the lexical value of the word and investigate why this crime was so heinous that it warranted classification and definition. The word itself holds unprecedented power and its use is usually confined to only the most barbaric and heinous attacks on physical lives of groups. There are others however, that are of the opinion that the crime of genocide encompasses much more than the physical and can be understood in a socio-cultural context such as Raphael Lemkin who included a cultural element of the come of genocide in his original definition of

⁴¹ McKinley Note 13

⁴² 'Resisting Marginalization, Exclusion, Hate Speech And Hate Crimes And The Prevention Of Mass Atrocities - Global Centre For The Responsibility To Protect' (*Global Centre for the Responsibility to Protect*, 2020) <<https://www.globalr2p.org/publications/resisting-marginalization-exclusion-hate-speech-and-hate-crimes-and-the-prevention-of-mass-atrocities/>> accessed 28 July 2021

the crime which will be discussed further on in this chapter. These contrasting views on the definition of the crime of genocide will be addressed in this section while questioning the use and application of the word itself. The issue with the definition of the crime of genocide is the world tends to view the Holocaust as the point of reference for genocide and if the act of claimed genocide does not reflect this, then it is deemed to be not as serious or not as concerning. There is a danger in viewing genocide solely as an act of physical destruction and that danger is, that many occurrences of genocide happen throughout the world that fall short of the magnitude of the Holocaust and what does this mean for the victims and survivors of these crimes? It means that their experience remains un-vindicated, their stories untold and their lives shattered for generations.

This section will further investigate cases of genocide before the Holocaust and what those crimes were defined as before the existence of the definition. It will then address what exactly this word means to victims and survivors of such crimes and why obtaining a finding of genocide (both physical and non-physical) is so important to both victims and survivors of acts of genocide and the historical collective memory of many societies. This is an important aspect to this research, as will be discussed thoroughly in chapter seven, the scars that remain on Indigenous communities in Canada as a result of the Canadian Residential School System are as evident as ever. The Truth and Reconciliation Commission of Canada put forward a finding of cultural genocide,⁴³ the use of the term genocide was not an accident, used intentionally to reflect the horrors experienced and the human rights abuses of victims and survivors of the education system in which they found themselves who experienced acts of cultural genocide through an oppressive education system that was designed to remove all aspects of Indigeneity

⁴³ *Honouring the Truth, Reconciling for the Future* (Truth and Reconciliation Commission of Canada 2015). p.1

from Indigenous students. While the term cultural genocide may be less known, the crime of genocide has existed for centuries.

3.4.3 Genocide Before the Holocaust⁴⁴

There are examples of genocide among the most primitive societies of the past with “infanticide carried out on a wide scale in many hunter gatherer societies”.⁴⁵ Genocide did not begin solely with the Nazi extermination of Jews and other minority groups they referred to as ‘undesirables’.⁴⁶ The history of the crime of genocide is far longer than the inception of the word itself and many do not recognize or perhaps realize that the crime was happening in the world long before the Holocaust or indeed the Armenian Genocide in 1915.⁴⁷ As Docker states “the history of humanity is the history of violence: war and genocide; conquest and colonization and the creation of empires sanctioned by God or the Gods in both polytheism and monotheism: the fatal combination of democracy and empire; and revolution, massacre, torture, mutilation, cruelty”⁴⁸ and nothing embodies these sentiments more than the act of genocide. The Indigenous Peoples of the Americas suffered some of the most inhumane treatment the world had ever witnessed when European colonizers arrived to pursue wealth.⁴⁹

“[T]he Holocaust was not only not unique, but was not a particularly extreme example of genocide, at least in terms of the number of its victims... Hitler killed far fewer European Jews than the number of Indians of North and South America who died in the century or so after European discovery in 1492, while other genocides and democides might have been just as bloody”.⁵⁰

⁴⁴ The Holocaust as it is referred to in this chapter relates to Nazi Germany.

⁴⁵ W.D Rubinstein, *Genocide: A History*. (New York: Routledge, 2014). p.1

⁴⁶ I Friedman, ‘The Other Victims of the Nazis’ (*Socialstudies.org*, 1995)

<<https://www.socialstudies.org/sites/default/files/publications/se/5906/590606.html>> Last Accessed 06 June 2021

⁴⁷ ‘Introducing the Armenian Genocide’ (*Facinghistory.org*) <<https://www.facinghistory.org/resource-library/video/introducing-armenian-genocide>> Last Accessed 06 June 2021

⁴⁸ John Docker, *Origins of Violence: Religion, History and Genocide*. (London: Pluto Press, 2008). p.2

⁴⁹ Rubinstein Note 45

⁵⁰ Ibid

The Indigenous populations of the Americas stood little chance of survival when faced with the strategic military force they were met with and as a population, they share a sad collective history of exploitation and social condemnation. In his writings on genocide, Adam Jones alludes to the fact that the crime of genocide against Indigenous peoples of the Americas is sadly not a new concept and in fact they have been victim to continuous acts of genocide over the past century, pointing out that “[t]he European holocaust against Indigenous peoples of the Americas were arguably the most extensive and destructive holocaust of all time”.⁵¹ This sentiment is echoed in the writings of Ward Churchill, who has said of the genocide inflicted upon the Indigenous in the Americas “over the past five centuries is unparalleled in human history, both in sheer magnitude and in its duration”.⁵² Historians sympathetic to the plight of American Indians at the hands of European Colonisers from 1492 onwards have repeatedly noted that “while up to 95% of Indians living in the Americas perished over the century or so after the coming of the white man, most of this diminution in population occurred through such factors as the importation of virulent diseases previously unknown in the Americas, the destruction of settled lifestyles, enslavement and the psychological effects of conquest rather than through murders and slaughters”.⁵³ This horror stemmed from a European ideology of the unified population.⁵⁴ Carmichael, who has written extensively about this very topic maintains that “[t]he right to belong in Europe, as subject or citizen, was an old question which was often decided by force in different historical epochs or in what Heather Rae has called the ‘pathological homogenisation’ in state building in Europe to create ‘an ostensibly unified population’”.⁵⁵ To achieve this goal of a unified European identity many different approaches

⁵¹ A Jones, *Genocide: a comprehensive introduction* (New York: Routledge, 2006) p. 70

⁵² Ward Churchill, *A little matter of genocide: holocaust and denial in the Americas, 1492 to the present*. (San Francisco: City Lights Books, 1997). p. 97

⁵³ Rubinstein Note 45

⁵⁴ Z Bates and K MacMillan K, 'Ideologies Of Colonization' (*obo*, 2021)<<https://www.oxfordbibliographies.com/view/document/obo-9780199730414/obo-9780199730414-0034.xml>> Last Accessed 28 July 2021

⁵⁵ C Carmichael, *Genocide before the Holocaust*. (New Haven: Yale University Press, 2009) p. 27

were taken and most of which have striking similarities to some of the definitions of genocidal acts, which are written about in more depth later in this piece. There were a range of techniques used to achieve this homogenization, and they included “legal exclusions, assimilatory practices such as forced conversions, as well as more violent strategies such as expulsion and death”⁵⁶ and in this, elements of what is now known as physical and non-physical forms of genocide are evident and one of the societal institutions that were targeted and used as a means to commit non-physical acts of genocide was the education system.

There existed a shroud of illogical ideology during which “extremists styled their actions as being inevitable. Even more, they stated that this is what was needed for progress... violent attacks of ethnic minorities involved such great cognitive and physical rejection of existing community relations that they usually resulted in widespread criminality such as rape, theft and mutilation”.⁵⁷ This was portrayed to be the norm by both the State and Church. Those who committed or ordered these crimes contributed deeply to the psychological abuse as “a violent phase was then frequently followed by widespread self-harm and by a ‘culture of lies’ from the perpetrators, which means that any kind of normality was impossible to restore”.⁵⁸ This forced civilians to live or exist in a bizarre world where all sense of normality had become obscured.

When it came to move outside of Europe and into Africa and the Americas for European Colonisers, the populations of these lands were not accustomed to this warped mentality and their refusal to accept it was met with brute force and violence. The violence that occurred in these countries, the loss of life, the loss of culture all occurred without an umbrella name. How could the horror that occurred be defined? The lack of name meant the severity of the crimes were not acknowledged to the full extent. This remains true of the crime of genocide today, the

⁵⁶ Ibid

⁵⁷ Ibid p. 151

⁵⁸ Ibid

reluctance of the international legal community to elaborate on the definition has meant that victims and survivors of cultural genocide have received little or no recognition of their experiences. A fitting example of this is the Canadian Residential School System which was considered by the Truth and Reconciliation Commission of Canada as an act of cultural genocide.⁵⁹ The crime holds no legitimacy in international law even though supported by the existence of an education system which was in operation deliberately attempted to erase Indigenous culture and destroy the group's cultural survival.

3.4.4 The 'G' Word

The term genocide remains a taboo word in many states, the phrase elicits images of unimaginable crimes and horror. Where did this term that yields so much power come from? It is widely known and accepted that the term 'genocide' was coined first by Raphael Lemkin, a lawyer of Polish-Jewish descent who having suffered growing up in anti-Semitic Poland, termed the crime based on the Armenian experience at the hands of the Ottoman Turks. For Lemkin, the acceptance and classification of the crime of genocide was his life's goal, once he began the journey of seeking international acknowledgment and acceptance of the crime. Earl has commented that Lemkin's passion regarding this cause was so intense that he (Lemkin) "spent the latter part of his life and all of his money campaigning to introduce the world to the term of genocide and then have it adopted by the international legal community as a crime".⁶⁰ Legal scholars and theorists have dissected and reassembled this term and its definition over the last century and the understanding of the crime continues to evolve. Lemkin classified genocide into two different phases, he stated

"Genocide has two phases: one, destruction of the national pattern of the oppressed group; the other the imposition of the national pattern of the oppressor. This imposition,

⁵⁹ TRC Report Note 43

⁶⁰ H Earl, 'Prosecuting genocide before the Genocide Convention: Raphael Lemkin and the Nuremberg Trials, 1945-1949' (2013) 15(3) *Journal of Genocide Research*. pp. 317-37

in turn, may be made upon the oppressed population, which is allowed to remain, or upon the territory alone, after removal of the population and the colonization of the area by the oppressor's own nationals".⁶¹

Rubenstein in his writing on the concept of genocide has built further on the work of Chalk and Joassohn in relation to the application of the term to different contexts of the crime itself claiming "most typologies of genocide focus on the varieties of mass murder. Chalk and Jonassohn see four different types of genocide which they classify according to their motive 1. To eliminate real or potential threat. 2. To spread terror among real or potential victims 3. To acquire economic wealth; and 4. To implement a belief, a theory or an ideology".⁶²

To apply the Chalk and Jonassohn approach to definitions of genocide, the crime can apply to many more instances rather than simply mass killing or physical destruction of a group. The difference appears to lie in the intent or motive behind these acts of genocide. The violence that was bestowed upon the Maya population in Guatemala during the civil war was born from the governments belief that they were eliminating both real and potential threat of the rebels gaining Mayan support.⁶³ The instances of the forced removal of Indigenous children in Canada and their placement with residential schools was born from the want and desire of the church and government to implement their perceived "superior" beliefs and ideologies. The barbarity that was suffered by Amerindians in the Putumayo region of the Amazon (violence and cruelty that is beyond unfathomable) was born out of coloniser's desires to acquire economic wealth from the rubber being mined in the region paired with the insatiable need to spread terror among actual and potential victims.⁶⁴ As relevant as scholarly input and theory is to the understanding of the crime of genocide, the real weight of the definition of the crime lies solely in the hands

⁶¹ R Lemkin, *Axis rule in occupied Europe: laws of occupation, analysis of government, proposals for redress*. (Washington: Carnegie, 1944) pp. 79-95

⁶² Rubenstein Note 45 p.6

⁶³ Gerard Maguire, "The Unacknowledged Genocide: The Guatemalan Maya's quest for justice"(2020) 3(1) *NPPSH Reflections* pp. 9-32

⁶⁴ Michael Taussig, "Culture of Terror--Space of Death. Roger Casement's Putumayo Report and the Explanation of Torture" (1984) 26(3) *Comparative Studies in Society and History* pp. 467-497

of the institutions charged with its prevention and for imposing punishment for those found guilty of the crime.

With the term genocide it is important to note that there are two components to the word. There is the naming of the crime of genocide by Raphael Lemkin and then the definition of the crime of genocide as understood by the United Nations in their drafting and adoption of the 1948 UN Convention on the Prevention and Punishment of Genocide.⁶⁵ This has been argued extensively in legal scholarship and remains a contentious issue to this day. In his own eyes “Lemkin was determined to stage an intellectual and activist intervention in what he at first called ‘barbarity’ and ‘vandalism’”.⁶⁶ The former referred to “the premeditated destruction of national, racial, religious and social collectivities,” while the latter he described as the “destruction of works of art and culture, being an expression of the particular genius of these collectivities”.⁶⁷ This acknowledges the possibility of an entire group ceasing to exist without any physical loss of life rather complete annihilation of their cultural lives and identity. To echo the sentiment of Adam Jones in his writing on genocide “[i]n genocide scholarship, harder positions are guided by concerns that “genocide” will be rendered banal or meaningless by careless use... softer positions reflect concerns that excessively rigid framings (for example, a focus on the total physical extermination of a group) rule out too many actions that, logically and morally, demand to be included”.⁶⁸

3.4.5 Significance of the Term for Victims and Survivors of the Crime

There is no doubt that there exists an unquestionable bond between Indigenous Peoples the world over and their land and culture. Their identities and existence are defined by their cultural

⁶⁵ UNGA, ‘Prevention and Punishment of The Crime of Genocide, (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277 A/RES/260

⁶⁶ Jones Note 51 p. 9

⁶⁷ Ibid

⁶⁸ Ibid p. 19

heritage and identity, and these are special bonds that indeed make the group who they are. MacDonald and Hudson reflect on attacks on cultural identity and has argued that “[c]ultural genocide is more accurate than “forcible assimilation,” because groups with clearly defined identities were targeted as groups, rather than as individuals”.⁶⁹ It is reasonable to conclude that an attack of the cultural lives of any group is an attack on the group itself. In a hearing before the sub commission of the Western Hemisphere an Indigenous man from Brazil made one simple statement that embodies this special connection he claimed, in the case of Indigenous Peoples “culture is life for us”⁷⁰ thus allowing for an understanding that an attack on culture is an attack on life in many Indigenous communities. While there is a limitation of the definition of genocide within international law, “Indigenous groups continue to face systemic, widespread threats to their fundamental human rights to culture. These identity groups are increasingly conceptualizing such rights violations as cultural genocide”.⁷¹ This would suggest that even if some or all members of a group remained alive, attacks on their cultural lives and existence were just as brutal. This is a sentiment which is echoed by Kress, who reiterates the importance of and significance of cultural identity to any group and how it is a defining feature further arguing that “the primary goal of the international rule against genocide (is) to protect the existence of certain groups in light of their contributions to world civilization, a campaign leading to the *dissolution of the group as a social entity* is directly relevant to that goal”.⁷² The term genocide holds an important meaning especially for those who suffered the crime but also it displays a particular view of a state to the international community. Why is the word so significant and so important for the survivors and communities

⁶⁹ DB MacDonald and G Hudson, “The Genocide Question and Indian Residential Schools in Canada. (2012) 45(2) *Can J Political Science*. pp. 427-449

⁷⁰ *Indigenous Peoples and the Natural Environment of Brazil: Hearing before the Subcomm. On the Western Hemisphere, House Comm. On Foreign Affairs*, 103rd cong., 2nd sess. 69 (1994). p.69

⁷¹ L Kingston, “The Destruction of Identity: Cultural Genocide and Indigenous Peoples”. (2015) 14(1) *Journal of Human Rights*. pp.63-83.

⁷² C Kress, ‘The crime of genocide under international law’(2006) 6(4) *International Criminal Law Review*. pp. 461-502

affected? It is not simply due to the acts being a crime, it represents the severity of the abuses that were inflicted upon them, their families, their wider communities and their ancestors. It is an acknowledgement by an official body that something awful occurred. More importantly for the survivors of these historic abuses “cultural genocide is above all a song of bereavement, a metaphor for mourning, rebuilding a shattered self-conception through the power of words. It is for us to hear those words, heal those wounds, and to reclaim our shared humanity”.⁷³ Furthermore, it demonstrates the connection between inappropriate education systems and how they could be used to deny the right to self-determination of Indigenous Peoples through indoctrination and forced assimilation.

3.4.6 The Law and Legal Frameworks

Genocide gained special significance as a specific crime in 1948, when the UN GA adopted the Genocide Convention.⁷⁴ This meant the crime was no longer deemed to be a part of the ‘crimes against humanity’ family and now stood out on its own as a heinous crime. The law surrounding the prevention, prosecution and punishment for the crime of genocide has remained relatively unchanged since the adoption of the Genocide Convention in 1948.⁷⁵ As Cassese has pointed out “one should not be unmindful of the flaws of the Convention... (1) The definition of genocide does not embrace the extermination of a group on political grounds, nor cultural genocide”.⁷⁶ Cassese has also pointed out the numerous merits of the convention and not solely its pitfalls, for him the advantages included the fact that “[it] (a) sets out a careful definition of the crime (b) it punishes other acts connected with genocide (conspiracy, complicity, etc.); (c) it prohibits genocide regardless of whether it is perpetrated in time of war

⁷³ P Akhavan, “Cultural Genocide: Legal Label or Mourning Metaphor?” (2016) 62(1) *McGill Law Journal*. pp. 243-70.

⁷⁴ Earl Note 60

⁷⁵ Ibid

⁷⁶ Antonio Cassese, *International law*. 2nd ed. (Oxford; Oxford University Press, 2005). p. 443

or peace; (d) it considers genocide both a crime involving the criminal responsibility of the perpetrator and (and other participants), an international delinquency entailing the responsibility of the State whose authorities engage in, or otherwise participate in the commission of genocide”.⁷⁷

To highlight how new the term itself is one need look no further than the Nuremburg trials, which were created to combat one of the most well documented genocides in history. The Nuremburg trials were the first of their kind to be established, trials held before an international military tribunal, however, they too had their merits and flaws.⁷⁸ Genocide was a term used in the trials at Nuremburg and Lemkin’s work was referred to but the crime was not charged and “[u]nlike any of the other Nuremburg trials, the SS-*Einsatzgruppen* was the first and arguably only war crimes trial to deal exclusively with individuals whose sole job was their participation in the genocidal murder of Jews, making it significant in the history and prosecution of genocide in international law”.⁷⁹

One of the major flaws within the Genocide Convention, as referenced by Cassese, is the lack of recognition of the crime of cultural genocide.⁸⁰ The term is a divisive issue among the international community and among victims and survivors of physical genocides. However, does this allow for abuses that befell thousands of people as a result of cultural genocide to remain unrecognized? Considering that “while genocide has come to mean the intentional physical destruction of the group, in whole or in part, Lemkin’s definition as articulated in *Axis Rule* was much more descriptive and nuanced than the UN’s 1948 convention formulation”.⁸¹

In the next section the concept of cultural genocide will be briefly explored.

⁷⁷ Ibid

⁷⁸ K Heller, *The Nuremberg Military Tribunals And The Origins Of International Criminal Law* (Oxford: Oxford University Press 2012) p. 62

⁷⁹ Earl Note 60

⁸⁰ A Cassese, *‘International law’*. 2nd ed. (Oxford: Oxford University Press, 2005) p. 442

⁸¹ Ibid

3.5 Cultural Genocide

3.5.1 Lemkin's Understanding

To begin to form an understanding or perhaps, appreciation of why the term Cultural Genocide is of importance for victims and survivors of such crimes, it is necessary to delve into the meaning of genocide as it is currently understood by the international legal community. Drawing upon the work of Nersessian, in this section “culture refers to the wider institutions that are central to group identity. These include (but are not limited to) language, religious practices and objects, traditional practices and ways, and forms of expression”.⁸² It is also true that many Indigenous Peoples across the globe “markers of culture also include territory, modes of governance, and relationships to the natural environment, including plants and wildlife”.⁸³ Many of the world's Indigenous groups have lifestyles very different to mainstream populations, and their customs and traditions are what unite and hold these communities together and bestows an important sense of identity for the members of these groups, which has been passed down through countless generations. This would reflect Lemkin's original understanding of the crime of genocide as according to Lemkin, genocide

“does not necessarily mean the immediate destruction of a group, rather it first involves different actions aimed at the destruction of essential foundations of the lives of national groups, the objection of which would be the disintegration of the political and social institutions, of culture, of language, national feelings, religion and the economic existence of national groups and the destruction of personal security, liberty, health, dignity and even the lives of individuals belonging to such groups”.⁸⁴

Lemkin himself recognized the differing forms of genocide and “believed that a loss of any one society and culture through genocide is a loss to all humanity”.⁸⁵

⁸² D Nersessian, ‘Rethinking Cultural Genocide Under International Law’ accessed at <https://www.carnegiecouncil.org/publications/archive/dialogue/2_12/section_1/5139> Last Accessed 12/12/2014

⁸³ Kingston Note 71

⁸⁴ Earl Note 60

⁸⁵ John Docker, *Origins of Violence: Religion, History and Genocide*. (London: Pluto Press, 2008) p.3

3.5.2 Evolution of the Crime

Genocide is not confined to the past. Instances of cultural genocide continue to occur on a regular basis, especially in relation to Indigenous Peoples of the world. There are massive concerns regarding forced or coerced assimilation of Indigenous children through education and this is still happening in many parts of the world today. Arguments for both the recognition and non-recognition of the crime of cultural genocide are understandable. On the one hand, survivors of physical forms of genocide do not want the definition of the crime to be diluted by the fact that it can now refer to non-physical acts as it may be perceived as portraying what happened themselves as less severe.⁸⁶ Do they too not deserve recognition and acknowledgement? Considering the attacks on the cultural identity of Indigenous children through oppressive education systems an act of cultural genocide, the lack of recognition has left deep scars on the victims, survivors and extended communities of those who were forced to attend the schools.

3.5.3 What does Cultural Genocide mean?

The issue, as it stands, is the fact that there is no international agreement as to what exactly constitutes as cultural genocide. The Convention on the Prevention and Punishment of the Crime of Genocide 1948⁸⁷ restricts the definition of genocide to violence committed “with intent to destroy, in whole or in part, a national, ethnical, racial or religious group”.⁸⁸ Kingston argues that “[m]any advocates of Indigenous rights argue that this narrow approach fails to acknowledge the full impacts of cultural destruction, and that there is insufficient international discussion of the particular cultural threats to the world's Indigenous minorities”.⁸⁹ This desire

⁸⁶ ‘Statement given by Robbie Waisman German Holocaust Survivor’ (*Youtube.com, 2015*)
<<https://www.youtube.com/watch?v=Q8Lr9wY9p58>

> Last accessed 16 May 2019

⁸⁷ Referred to hereafter as The Genocide Convention.

⁸⁸ Article 2 Convention on the Prevention and Punishment of the Crime of Genocide 1948

⁸⁹ Kingston Note 71

to create an international acceptance of the crime has been championed by those most directly affected by the atrocity that is cultural genocide. In recent years, there has been a transition of many of these Indigenous Communities the world over from vulnerable peoples in need of protection to self-actualizing groups who rely on the instruments of international law to ensure their survival. In writing on the subject, MacDonald and Hudson define cultural genocide as “the purposeful weakening and ultimate destruction of cultural values and practices of feared out-groups”.⁹⁰ However if this definition is applied to the current understanding of the definition of the crime of genocide, could there be an opportunity to develop the international understanding and legal ramifications of the crime?

Indeed, there are numerous articles in international human rights instruments that recognize the importance of cultural heritage and identity for all the world’s peoples. The UDHR recognizes that “everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits”.⁹¹ An example of some of the notable rights to enjoy one’s cultural life are as follows; The ICESCR refers to the right of everyone to take part in cultural life, to enjoy the benefits of scientific progress, and to benefit from the protections of scientific, literary, or artistic works.⁹² The United Nations Educational, Scientific and Cultural Organization's⁹³ Declaration on Cultural Diversity outlines the benefits of cultural diversity for international development and asserts that human rights standards protect the right to culture. The declaration maintains that “is an ethical imperative, inseparable from respect for human dignity”.⁹⁴ The recognition and respect for cultural life, heritage and values are of obvious importance, so much so, that they are included in these international legal

⁹⁰ MacDonald and Hudson Note 69 pp. 18-19

⁹¹ Universal Declaration of Human Rights (adopted 10 December) 1948 UNGA Res 217 A(III) (UDHR) Article 27(1)

⁹² International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR) Article 15

⁹³ Referred to hereafter as UNESCO

⁹⁴ UN Educational, Scientific and Cultural Organisation (UNESCO), UNESCO Universal Declaration on Cultural Diversity, (adopted 2 November 2001) Article 4

instruments, it is also valid to note that these rights are not limited to third generation rights or group rights, these are also included in first and second generational rights instruments further highlighting their importance and significance for, and to, human life. It would be no less valid to consider an attack on an individual or groups cultural life just as deadly as an attack on their physical life. Kristin Hon has given claim that cultural genocide is just as destructive as physical or biological genocide, perhaps with less bloodshed but alluded to the obliteration of a group identity through the process describing it as “nothing more or less than the total destruction of a culture so as to obliterate the identity of a people”.⁹⁵ Here lies the argument that has divided legal professional and scholars the world over, if the entire cultural heritage, identity and lineage of any given group is annihilated, and forced assimilation into mainstream society occurs, the group, as a cultural entity, separate from the mainstream population ceases to exist, and if this cessation occurred at the hands of a state who, for example, intended to eliminate this cultural group through assimilation, the group, whole or in part ceases to exist.

3.5.4 The Meaning of Genocide to Victims and Survivors

There is no doubt that there exists an unquestionable bond between Indigenous Peoples the world over and their land and culture. Their very existence is defined by their cultural heritage and identity, and these are special bonds that indeed make the group who they are. Davidson has argued that “[c]ultural genocide is more accurate than “forcible assimilation,” because groups with clearly defined identities were targeted as groups, rather than as individuals”.⁹⁶ It is reasonable to conclude that an attack of the cultural lives of any group is an attack on the group itself.

3.5.5 Lack of International Agreement

⁹⁵ K Hon, ‘Bringing cultural genocide in by the backdoor: victim participation at the ICC’(2013) 43(1) *Seton Hall Law Review*. pp. 359-409

⁹⁶ MacDonald and Hudson Note 69

There remains the issue of a complete lack of prosecution for such crimes at present because there is a lack of international legal and political will to tie down a definition of the term. To apply a definition to the crime, the words used to describe genocide by the General Assembly in 1946 in Resolution 96 must be taken into consideration. It is entirely reasonable to suggest that cultural genocide was understood within the definition as “[g]enocide is the denial of the right of existence of entire human groups”.⁹⁷ Thus, meaning if a group’s culture and society is attacked and they are forcibly removed from their lands, homes and families it would be consistent with the understanding of genocide, as the General Assembly understood it, a group who have their entire way of life upended and destroyed. It is also important to note that Indigenous peoples, not always however, usually occupy lands that are vast and rich in natural resources, for which there has been long term and systematic maltreatment at the hands of colonizing powers. This adds to the lack of political will to apply an agreed definition of the crime. Taking this into account, it does not omit the possibility of interpreting some of the international human rights instruments as including provisions to protect against cultural genocide.

3.5.5 Interpreting the Genocide Convention

The original draft of the Genocide Convention in 1947 included a very clear component for cultural genocide. This is unsurprising as this was drafted by Lemkin, who included cultural genocide in his own understanding of the crime of genocide. Under article three of the draft convention, the following five cases of cultural genocide were included in the UN definition of the crime of genocide which are:

- (a) The forcible transfer of children to another human group; or
- (b) The forced and systematic exile of individuals representing the culture of a group; or

⁹⁷ UNGA Resolution on the Crime of Genocide (11 December 1946) A/RES/96

- (c) The prohibition of the use of the national language even in private intercourse; or
- (d) The systematic destruction of books printed in the national language or of religious works or prohibition of new publications; or
- (e) The systematic destruction of historical or religious monuments or their diversion to alien uses, destruction or dispersion of documents and objects of historical, artistic, or religious value and of objects used in religious worship.⁹⁸

Of the above listed instances relating to aspects which would be deemed Cultural Genocide, only sub article A was voted through the General Assembly for inclusion in the final convention. Similar to the views held by MacDonald and Hudson in their writings on cultural genocide of Indigenous Peoples, there is a very valid reason why the remaining four articles were not included in the final wording of the convention and that being that they “would have applied to Aboriginal people”.⁹⁹ MacDonald and Hudson’s arguments for the necessity of the inclusion of cultural genocide within the Genocide Convention are mirrored by many others in the field, many of whom has been calling for this extension of definition for over forty years “[i]n 1973, Davis and Zannis called for a wider definition to include not just “mass homicide” but cultural destruction, characterized by warping and mutilating the lives of groups of people”.¹⁰⁰ This has not been a once-off call for change, the momentum behind the expansion on the definition of genocide within the 1948 convention has been called for more and more over previous years “Chrisjohn and Young in 1997, as well as Neu and Therrien in 2003, see the differences between “genocide” and “cultural genocide” as semantic rather than substantive, arguing instead for the original 1947 draft to be considered as the real standard by which genocide should be judged”.¹⁰¹ Again, this recognition and inclusion in the Genocide

⁹⁸ 'The Genocide Convention - Secretariat (1947) And Ad Hoc Committee(1948) Drafts - - Prevent Genocide International' (*Preventgenocide.org*, 1947) <<http://www.preventgenocide.org/law/convention/drafts>> Last Accessed 10 December 2019

⁹⁹ MacDonald and Hudson Note 69

¹⁰⁰ Ibid

¹⁰¹ Ibid

Convention would mean that never again can a system of education, a system designed for empowerment and an enhancer of rights, be used to deny rights to those who are most vulnerable.

3.6 Can we legislate for Cultural Genocide?

If the above is taken into consideration, the question that remains at the forefront is, could it be time for the international community to reconsider the original definitions included in the draft Genocide Convention? If the growing international recognition of the importance of cultural preservation is taken into account, it would seem like the inclusion of cultural genocide, might be welcomed. Chin has written about this exact inclusion and the logic behind it and stated that

“[t]he reason why cultural destruction has been declared a war crime is because of its overlap with genocide, in that it is an attack on a specific group of human beings defined by their religion or ethnicity with the intention of erasing their culture. The devastation of precious artefacts or religious and historical monuments is significant because of the role these objects occupy in a specific community’s collective identity. It is a crime against humanity and an attack on human dignity, not merely an attack on physical things”.¹⁰²

For this recognition to be cemented further recognition of past abuses and injustices need to formally acknowledged and firm measures for the prevention of any similar occurrences to be put in place. The lack of motivation behind this, to reiterate Kingston’s belief on the subject, is that “[c]ulture is often viewed as a residual category of human rights that has not been credited with much importance within the international community, and the full implications of cultural rights as human rights requires further exploration”.¹⁰³ For the crime of cultural genocide to be prevented in the future, jurisdiction needs to be given to international courts. That being said, a new feature in the Rome Statute of the International Criminal Court¹⁰⁴ offers the potential to

¹⁰² K Chin, ‘*Cultural Destruction: A Crime Against Humanity*’ (2016) accessed at <<http://www.brownpoliticalreview.org/2016/10/cultural-destruction-crime-humanity/>> Last Accessed 06 December 2018

¹⁰³ Kingston Note 71

¹⁰⁴ Referred to hereafter as ICC

“inject a cultural perspective into the proceedings”.¹⁰⁵ Although the crime is not specifically mentioned within the Rome Statute, there does exist a provision which allows for victim participation in a legal capacity for the duration of the investigation and trial. Kingston writes of the hope this provision provides for the field of international law and the recognition of the importance of the cultural lives and survival of the world’s peoples. This echoes the sentiment of Hon who believes that the inclusion “was justified by the belief that victims are in a prime position to help the ICC achieve its truth-finding goals, and that their participation ensures that the ICC will address their needs for both accountability and justice.”¹⁰⁶ Hon believes that cultural genocide should be internationally recognized, and further to that, that prosecutors within the International Criminal Court and other legal representatives of the victims and survivors of cases of cultural genocide “should pay special attention to the impacts of a more “culturally nuanced” approach to the prosecution of genocide”.¹⁰⁷

It is incredible to believe that there exists so many forms of opposition to the definition of the crime at an international level. It is blatantly clear that “[c]ultural genocide is a “unique wrong” that warrants independent recognition by the international community and should not be limited to a subsidiary role in cases of physical genocide”.¹⁰⁸ The lack of flexibility within international human rights jurisprudence to address the issue causes grave concern, especially when paired with the “narrow legal definitions of genocide fail to address the intentional and systematic eradication of a group's cultural existence”.¹⁰⁹ Hon is of the belief that pressing for the inclusion of “the cultural background of a conflict and a mechanism for addressing cultural harms, the ICC could provide a new avenue for addressing the issue of cultural genocide”.¹¹⁰

¹⁰⁵ Hon Note 98

¹⁰⁶ Ibid

¹⁰⁷ Hon Note 98

¹⁰⁸ Kingston Note 71

¹⁰⁹ Ibid

¹¹⁰ Hon Note 98

If this were to come to fruition, it would enhance the protection of cultural rights of Indigenous Peoples around the world. In terms of appropriate and effective educational provision, it would mean that assimilative approaches would be protected against, and the system of education can be an empowerment mechanism.

The international legal community has displayed some positive change in the face of prosecuting attacks of the cultural lives of a group. In describing the events that led to the arrest and charges against al-Mhadi, Hon affirms “the world must not forget that these are attacks on a people. The obliteration of artefacts and temples are only as significant as their physical, psychological, and human effects, and a symbolic victory is not true restoration... [w]ars may look like they are being fought in culture and ideology but repairing artefacts without addressing human losses is merely catching little fish and declaring grand victories in restorative justice”.¹¹¹ This change is essential for the recognition of the crime of cultural genocide and for the process of healing for victims and survivors of the crime.

3.7 Indigenous Survivance

To overcome oppression people must identify its causes and create a situation with fuller humanity, without resorting to oppressive tactics. This activity involves “praxis, reflection and critical dialogue about causes of dehumanization coupled with social action to change these structural inequalities”.¹¹² Indigenous Peoples have not been merely passive recipients of historical traumas, but rather have been “resisting oppression and demonstrating “survivance” and resilience throughout history”.¹¹³ What is meant by this term of survivance is the ingenuity [I]ndigenous [P]eoples have continuously demonstrated despite the adversity imposed by colonization, such as a commitment to their homeland, strength of spirit and humour.¹¹⁴

¹¹¹ Ibid

¹¹² P Freire, *Pedagogy of the Oppressed* (New York: Continuum, 2000) P. 35

¹¹³ Ibid

¹¹⁴ G Vizenor, *Survivance: Narratives of native presence*. (Nebraska: University of Nebraska Press, 2008) p. 56

However, this self survivance alone is not enough. State support and international recognition of the long-standing dangers of historically oppressed peoples face must be acknowledged and the often-on-going marginalisation of said groups can only be counteracted when working in an empowered and proactive system of reconciliation, echoed by Kuokkanen who re-affirms that “the strength of survivance is that it is not merely a response or reaction but rather a proactive stance: a willingness to take a stand, by drawing upon one’s culture and tradition”.¹¹⁵ To mirror Kingston’s sentiment previously, it is fitting to conclude this section with a plea to the international legal community to take note of the irreparable damage and threats caused by cultural genocide.

“Although the distinct recognition of cultural genocide—either via a separate international treaty or through the amendment of existing frameworks such as the UDHR—does not currently have widespread political support within the international community, it should nevertheless remain a goal that is actively, perhaps incrementally, pursued by human rights advocates”.¹¹⁶

Within the context of Indigenous Peoples’ survival, while Indigenous Groups have, in many parts, transformed from positions of intense vulnerability at the mercy of that States in which they reside, to self-actualising and resilient groups demanding recognition and rights. Burnette and Figley note that “the continued resilience of Indigenous Peoples’ survivance, transcendence, and coping are remarkable, representing distinct forms of connectedness, meaning and spirituality, and holistic conceptualizations of wellness and harmony with the environment that provide lessons for non-Indigenous People”¹¹⁷ which is testament to the will for survival, both physical and cultural. This will be explored further in Chapter Seven which will discuss the ways in which Indigenous children in Canadian residential schools attempted to uphold their cultural identity and integrity while suffering under an oppressive education system.

¹¹⁵ Kuokkanen Note 28

¹¹⁶ Kingston Note 71

¹¹⁷ Burnette and Figley Note 12, See also Vizenor Note 130

3.8 Conclusion

As this chapter has discussed, oppressive acts have been used throughout history to further marginalize already vulnerable groups. Oppressive educational systems provided to and for Indigenous children can result in harmful effects. What can be deduced from this is that an adequate or appropriate education system can further enhance and facilitate the right to self-determination in the context of Indigenous peoples this eliminates or rather reduces the likelihoods of oppressive educational policies being implemented today however as chapter eight will highlight, there are there are some situations where these forms of educational policies can be still witnessed today. However, what this chapter has demonstrated is the connection between oppression through educational systems and the way in which this can lead to more sinister occurrences for example, cultural genocide.

The lasting impact of oppressive acts on marginalized groups will be discussed in greater detail in Chapter seven regarding the Canadian residential school systems. Which is a prime example of how an educational system can be an engine for cultural genocide. While the concept of cultural genocide is still not fully acknowledged or accepted within the remit of international law the reality of its occurrence must be acknowledged and systems of education must be viewed as having the potential to facilitate this crime if not implemented appropriately. What needs to be acknowledged and protected most is the fact that the right to education is an empowerment right this has been mentioned previously but worth mentioning again because when this right is attacked at its foundations is when the right to self-determination is denied and violated in many ways.

Chapter 4

Education in International Law

4.1 Introduction

This chapter examines the role of international human rights law frameworks in relation to the right to education. This involves an assessment of both the purpose and protection of the right to education within the international human rights regime to establish the importance of this right and to further the understanding of the connection between the right to education and the right to self-determination. This is essential as this examination of the international frameworks will highlight the weakness that exists between international law and national implementation of these laws. This weakness is what has previously allowed inappropriate education systems exist and continue to exist in some States, French Guiana for example. Before discussing the States that will be used for the case studies, this chapter will first identify and analyse the international legal frameworks which seek to protect and promote the right to education. The aim of this chapter is not to critique international human rights law, rather acknowledge its shortcomings and identify how it can be used to enhance rights and acknowledge that even if States live up to their international obligations (*de jure*), the *de facto* situation can lead to the denial of the right to self-determination of Indigenous Peoples via educational policies. International human rights law can of course help to promote and protect the educational needs of Indigenous Children; however, the shortcomings must be acknowledged.

The right to education is enshrined in numerous international, regional, and national pieces of legislation,¹ but, what does the right to education entail, how is it protected and monitored to ensure equity? First and foremost, the right to education is an empowerment right, a right,

¹ 'International Law' (*Right to Education Initiative*, 2018) <<https://www.right-to-education.org/page/international-law>> Last Accessed 12 August 2020

through which, all other rights can be realised.² The human right to education is a fundamental, but limited, right under international human rights law and multiple treaties address the right to education cementing it as a “powerful tool by which economically and socially marginalized adults and children can lift themselves out of poverty and participate fully as citizens.”³ This chapter will assess how education should lay the groundwork for self-realisation and effective participation in society. This will focus on how education must be aimed toward “the full development of the human personality”⁴ thus connecting the provision of the right explicitly to the right to self-determination. The right to education has been championed amongst some of the most well-known intergovernmental organisations for example, UNICEF and UNESCO, but this does not guarantee the right, nor does it enable its longevity. This chapter will layout the right to education in international human rights law, the obligation that States must provide education for all peoples and how this form of educational attainment can be to the detriment of many Indigenous groups around the world. Section two of this chapter analyses the nature of international human rights law followed by section three which highlights the way in which education is a fundamental right in international human rights law. Section four of this chapter discusses the benefits of the right to education and section five explores the relationship between the right to education and the right to self-determination. This is followed by an assessment of the protection of the right to education under the UN treaty frameworks in section six and section seven presents a discussion on how education can enhance social acceptance. Section eight identifies what are deemed to be violations of the right to education and section nine investigates the enhancement of the right to education through creating more inclusive systems using the 4As approach which will be presented here. Section ten analyses further the

² ‘Right To Education’ (*UNESCO*) <<https://en.unesco.org/themes/right-to-education#:~:text=Education%20in%20itself%20is%20an,of%20opportunity%20and%20universal%20access>> Last Accessed 26 April 2021

³ Ibid

⁴ See Universal Declaration of Human Rights, art. 26(2); International Covenant on Economic, Social and Cultural Rights, art. 13(1).

obligations of States in the provision of education and section eleven offers context on the current situation regarding global Education and this chapter concludes with a discussion on the nature of the right to education and questions the applicability of these issues in relation to the specific experience of Indigenous Peoples.

4.2 The Nature of International Human Rights Law

It must be acknowledged that, inevitably, there arises a “tension between the substance of human rights, and the form they take internationally”.⁵ This means that the international frameworks set out a standard and it is the duty of States to implement this standard at a national level. One such tension is the inconsistencies among States regarding the implementation of international laws at a national level.

The international human rights movement was made undoubtedly stronger with the drafting and eventual adoption of the United Nations General Assembly adopted of the Universal Declaration of Human Rights (UDHR) on 10 December 1948.⁶ Drafted as ‘a common standard of achievement for all peoples and nations’, the Declaration for the first time in human history spelled out basic civil, political, economic, social and cultural rights that all human beings should enjoy.⁷ It has, over time, become widely accepted as the fundamental norms of human rights that everyone should respect and protect. The UDHR, together with the ICCPR, ICESCR form the so - called International Bill of Human Rights.⁸ Since 1948, a series of international human rights treaties and other instruments have conferred legal form on inherent human rights and developed the body of international human rights frameworks as it is currently understood.⁹

⁵ Frederic Megret, *The Nature of International Human Rights Obligations* in: Daniel Moeckli, Sandesh Sivakumaran, Sangeeta Shah, and David Harris (eds.), *International Human Rights Law*, (Oxford: Oxford University Press, 2010) p.2

⁶ Universal Declaration of Human Rights (adopted 10 December) 1948 UNGA Res 217 A(III) (UDHR)

⁷ A Clapham, *Human rights: A very short introduction*. (Oxford: Oxford University Press, 2015) p.19

⁸ UNHCR, ‘The International Bill of Human Rights’ Factsheet No.2/Rev.1 (1948)

⁹ ‘Timeline Of Major International Human Rights Treaties | Australian Human Rights Commission’ ([Humanrights.gov.au](https://humanrights.gov.au)) <<https://humanrights.gov.au/our-work/timeline-major-international-human-rights-treaties>> Last Accessed 29 March 2021

Of course, additional instruments and protocols have been adopted at regional levels designed to reflect the particular human rights concerns of a given region and some States have also adopted constitutions and other laws which formally protect basic human rights.¹⁰ However, it must be acknowledged that international law has to be general, to encourage State acceptance and national implementation.¹¹ International law cannot be everything for everyone, there are drawbacks and implementation is one of these drawbacks. While respect for human rights requires the establishment of the rule of law at the national and international levels, there can be a disconnect between the two levels of law and the implementation of these norms at a national level can sometimes lead to a misguided protection.¹²

In international human rights law, the obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights.¹³ However, as this research will show, these protections can stop short in terms of protections for Indigenous Peoples through the provision of education and how the right to education, when implemented incorrectly, can impede the actualisation of the right to self-determination of Indigenous Peoples.

The shortcomings of national implementation of international protections can illustrate how the educational experience of Indigenous Peoples can be greatly influenced by how States interpret and implement international human rights standards and how this can either deny or

¹⁰ Velaers Jan, Constitutional Versus International Protection of Human Rights: Added Value or Redundancy? The Belgian Case, in the Light of the Advisory Practice of the Venice Commission, *Revue interdisciplinaire d'études juridiques*, 2016 77(2), pp. 265-295.

¹¹ Heath Pickering, 'Why Do States Mostly Obey International Law?' (2014) *E-International Relations* <<https://www.e-ir.info/2014/02/04/why-do-states-mostly-obey-international-law/>> Last Accessed 26 April 2021

¹² Jack Donnelly, "International Human Rights: A Regime Analysis" (1986) 40(3) *International Organization* pp. 599-64

¹³ 'International Law' (*Ohchr.org*) <<https://www.ohchr.org/en/professionalinterest/pages/internationallaw.aspx>> Last Accessed 29 March 2021

facilitate the right to self-determination through the provision of appropriate education.¹⁴ However, to begin to formulate an understanding of the landscape that is education in international human rights law, it is important to note that the right to education is established by two means, normative international instruments and political commitments by governments,¹⁵ meaning that while the international frameworks offer various frameworks for the right, the obligation is on individual States to implement and uphold their obligations within the provision of education and to ensure it is delivered via an appropriate system. A solid international framework of conventions and treaties exists to protect the right to education and States that sign up to them agree to respect, protect and fulfil this right.¹⁶ However, this is much more difficult in practice than in theory and the gap between international human rights frameworks and national implementation is great.

4.3 Education as a Fundamental Right in International Human Rights Law

Before discussing the purpose and protection of the right to education in international human rights law it is necessary to understand that education should be viewed, first and foremost as a fundamental right, meaning that it should belong to a group of rights that have been recognized by a high degree of protection from encroachment.¹⁷ Human rights advocates claim that every child has a right to education.¹⁸ This claim is based primarily on two premises. First, rights advocates endorse the right to education because they believe that if children receive basic primary education, they will likely be literate and numerate and will have the basic social and life skills necessary to secure a job, to be an active member of a peaceful community, and

¹⁴ Irène Bellier and Martin Préaud “Emerging Issues in Indigenous Rights: Transformative Effects of the Recognition of Indigenous Peoples” (2011) 16(3) *International Journal of Human Rights* pp.474-488

¹⁵ Simmons, B.A., 1998. Compliance with international agreements. *Annual review of political science*, 1(1), pp.75-93.

¹⁶ ‘Understanding Education As A Right’ (*Right to Education Initiative*, 2018) <<https://www.right-to-education.org/page/understanding-education-right>> Last Accessed 29 March 2021

¹⁷ ‘Peace, Justice And Strong Institutions’ (*United Nations Sustainable Development*) <<https://www.un.org/sustainabledevelopment/peace-justice/>> Last Accessed 6 June 2021

¹⁸ ‘Children’s Rights - UNICEF Ireland’ (*UNICEF Ireland*) <<https://www.unicef.ie/childrens-rights>> Last Accessed 6 June 2021

to have a fulfilling life.¹⁹ Second, rights advocates recognize that, despite this recognition of education as a right by the UDHR, for example, many children fail to benefit from even basic primary education.²⁰ This divide between the right to education in theory and practice has led human rights advocates to conclude that education must be considered a human rights issue on par with other fundamental rights concerns and issues such as the right to food or the right to freedom.²¹ The right to education is of such importance because both individuals and society benefit from the right to education.²² In many ways it is the foundation needed for human, social, and economic development and a key element to achieving lasting peace and sustainable development.²³ The denial of the right to education can have long-lasting detrimental effects on a population, so much so that UNESCO data shows that if all adults completed secondary education, globally the number of underprivileged people could be reduced by more than half.²⁴

4.4 Benefits of the Right to Education

Both individuals and society benefit from the right to education. It is fundamental for human, social, and economic development, and a key element to achieving lasting peace and sustainable development. It is a powerful tool in developing the full potential and dignity of every human being. More importantly it is essential in promoting individual and collective

¹⁹ SE Lee, Education as a Human Right in the 21st Century. *Democracy and Education*, (2013) 21(1), pp. 1-9

²⁰ '175 Million Children Are Not Enrolled In Pre-Primary Education – UNICEF' (*Unicef.org*, 2019)
<<https://www.unicef.org/press-releases/175-million-children-are-not-enrolled-pre-primary-education-unicef>>
Last Accessed 29 March 2021

²¹ Ibid

²² '10 Benefits Of Education That Will Surprise You' (*University of the People*, 2021)
<<https://www.uopeople.edu/blog/benefits-of-education-are-societal-and-personal/#:~:text=Those%20who%20get%20an%20education,overall%20health%2C%20and%20civic%20involvement.&text=Lack%20of%20access%20to%20education%20is%20considered%20the%20root%20of%20poverty>> Last Accessed 26 April 2021

²³ Lawrence Surendra, 'The Role of Education in Promoting Sustainable Development and Peace Lawrence' (MGIEP 2021)
<<https://www.gcedclearinghouse.org/sites/default/files/resources/Education%20for%20peace%20and%20sustainable%20development.pdf>> Last Accessed 29/03/2021

²⁴ 'World Poverty Could Be Cut In Half If All Adults Completed Secondary Education' (*UNESCO*, 2017)
<<https://en.unesco.org/news/world-poverty-could-be-cut-half-if-all-adults-completed-secondary-education#:~:text=A%20new%20UNESCO%20policy%20paper,all%20adults%20completed%20secondary%20school.&text=It%20shows%20that%20nearly%2060,two%20more%20years%20of%20schooling.>> Last Accessed 29 March 2021

wellbeing.²⁵ As noted in General Comment 13 of ICESCR, education is a human right in itself, more importantly. It is “an indispensable means of realizing other human rights”.²⁶ As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities.²⁷ However, the importance of education is not just on a practical level, it also offers and allows learners the opportunity to become self-actualising and develop a well-educated, enlightened, and active mind.²⁸ This is why the right to education is protected so widely within the international legal frameworks in variations in multiple instruments.

4.4.1 Empowerment Through Education

What can be understood thus far, and will be continuously highlighted in this chapter, is that the right to education is an empowerment right. In this respect, empowerment means “active participation in decision- making, equal opportunity, economic freedom, and the right to give opinion, access to the productive resources that can make enable to increase the earnings”.²⁹ This understanding of empowerment intersects with the understanding of self-determination of Indigenous Peoples and having a voice and control over their destiny.³⁰ As Albert K. Barume, the Chair of the Expert Mechanism on the Rights of Indigenous Peoples, notes “[e]ducation is key to addressing human rights violations, alleviating poverty, and creating opportunities in

²⁵ ‘Understanding Education As A Right’ (*Right to Education Initiative*, 2018) <<https://www.right-to-education.org/page/understanding-education-right>> Last Accessed 29 March 2021

²⁶ Implementation of the International Covenant on Economic, Social and Cultural Rights General Comment No. 13 (Twenty-first session, 1999) The right to education (article 13 of the Covenant) E/C.12/1999/10 para 1

²⁷ ‘About The Right To Education And Human Rights’ (*Ohchr.org*) <<https://www.ohchr.org/EN/Issues/Education/SREducation/Pages/EducationAndHR.aspx>> Last Accessed 1 May 2021

²⁸ Note 25

²⁹ *UN Empowerment Booklet* (Geneva: United Nations 2012) p.7 <<https://www.un.org/esa/socdev/ngo/outreachmaterials/empowerment-booklet.pdf>> Last Accessed 1 May 2021

³⁰ Catherine J. Iorns, *Indigenous Peoples and Self Determination: Challenging State Sovereignty*, (1992) 24(3) *Case Western Reserve Journal of International Law* pp.199-348 at p. 306

economic, social and cultural spheres. The right to education also supports the commitments on the part of States to the Sustainable Development Goals (SDGs) specifically Goal 4 on inclusive and quality education for all.”³¹ Claire Charters, the Chair of the UN Voluntary Fund for Indigenous Peoples maintains that “[e]ducation is empowerment, and critical to the realization of all of the rights contained in the Declaration and international human rights treaties”³². General comment 13³³ on education recognises that education is an empowerment right and recognises the 4A Scheme in educational provision.³⁴ This scheme will be addressed further on in subsection 4.9 of this section. The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) devoted its first study to Indigenous Peoples’ right to education, with a firm conviction that education is an indispensable means of realizing Indigenous Peoples’ right to self-determination and their capacity and ability to pursue their own economic, social and cultural development³⁵, thus re-affirming the importance of the right to education and the relationship it holds with self-determination in the context of Indigenous Peoples as a tool of empowerment, enhancing the ability of developing the full potential of everyone and ensuring human dignity, and in promoting individual and collective wellbeing as is the goal of many fundamental rights and freedoms.

³¹ Message by the Expert Mechanism on the Rights of Indigenous Peoples, the Special Rapporteur on the Rights of Indigenous Peoples, the UN Permanent Forum on Indigenous Issues and the UN Voluntary Fund for Indigenous Peoples to mark the International Day of the World’s Indigenous Peoples, Tuesday 9 August 2016. Accessed at <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20342&LangID=E>> Last Accessed 29/03/2021

³² Claire Charters, Chair of the UN Voluntary Fund for Indigenous Peoples Statement in “Indigenous Peoples should establish and control their educational systems and institutions” available at <<https://ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=20346&LangID=E>> Last Accessed 29/03/2021

³³ Office of the High Commissioner for Human Rights CESCR General Comment No. 13: The Right to Education (Art. 13) Adopted at the Twenty-first Session of the Committee on Economic, Social and Cultural Rights, on 8 December 1999 (Contained in Document E/C.12/1999/10) available at <<https://www.refworld.org/pdffid/4538838c22.pdf>> Last Accessed 29/03/2021

³⁴ ‘Human Rights Obligations: Making Education Available, Accessible, Acceptable And Adaptable’ (*Right-to-education.org*, 2001) <https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Tomasevski_Primer%203.pdf> Last Accessed 13 March 2021

³⁵ ‘Indigenous Peoples’ Right To Education – A Transformative Force For Empowerment’ (*Ohchr.org*) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20342&LangID=E>> Last Accessed 29 March 2021

4.4.2 Development

Although education has been at the heart of numerous advancements in human rights norms in the international frameworks and has also been instrumental in the education of many regarding human rights,³⁶ it has at the same time been left behind and lacking in many areas of development. It has always been a part of the international development agenda, featuring prominently in the age of the Millennium Development Goals (MDGs)³⁷ and in the Sustainable Development Goals (SDGs).³⁸ Education is a powerful agent of change and is essential to the success of every one of the seventeen sustainable development goals.³⁹ This is supported by the Technical Support team of the Economic and Social Affairs and the United Nations Development Programme has stated that [e]ducation is one of the core ‘unfinished businesses’ of the MDGs⁴⁰ that must be prioritized in the post-2015 development agenda”.⁴¹ While the protection of the right to education is well established within the frameworks of international human rights law, the purpose behind the right to education is an issue that is consistently debated and developed upon by many scholars and professionals alike. While there have been advancements and improvements, the development in the provision of education has not been consistent. For example, Indigenous children and youth often do not have access to adequate, accessible, available, and appropriate forms of education. Educational development must

³⁶ United Nations, *Human Rights Education in The School System of Europe, Central Asia And North America* (Warsaw: Office for Democratic Institutions and Human Rights, 2009). P.31

³⁷ ‘United Nations Millennium Development Goals’ (*Un.org*)

<<https://www.un.org/millenniumgoals/bkgd.shtml>> Last Accessed 1 May 2021

³⁸ ‘The 17 GOALS | Sustainable Development’ (*Sdgs.un.org*) <<https://sdgs.un.org/goals>> Last Accessed 29 March 2021

³⁹ ‘Benefits Of Education | Global Partnership For Education’ (*Globalpartnership.org*, 2021)

<<https://www.globalpartnership.org/benefits-of-education#:~:text=Education%20is%20a%20powerful%20agent,the%2017%20sustainable%20development%20goals.>> Last Accessed 1 May 2021

⁴⁰ The Millennium Development Goals (MDGs) were eight international development goals for the year 2015 that had been established following the Millennium Summit of the United Nations in 2000, following the adoption of the United Nations Millennium Declaration. These were based on the OECD DAC International Development Goals agreed by Development Ministers in the "Shaping the 21st Century Strategy".

<<https://www.un.org/millenniumgoals/bkgd.shtml>> Last Accessed 01/05/2021

⁴¹ The Technical Support Team of the Department of Economic and Social Affairs and the United Nations Development Programme Issue Brief on Culture and Education accessed at <<https://sdgs.un.org/sites/default/files/documents/18290406tstisuesedcult.pdf>> Last Accessed 29/03/2021

acknowledge this gap. Tomasevski has said of this right, “it is imperative that States, Indigenous peoples, the United Nations and other stakeholders work together in order to increase awareness and efforts to ensure the fulfilment of this universal and fundamental human right”⁴², further highlighting how the advancements in education may further marginalise those already marginalised and create further vulnerabilities.

4.5 The Relationship between the Right to Education and the Right to Self-Determination

In terms of the right to education being an empowerment right, it directly correlates to the advancement of self-determination in the context of Indigenous Peoples. The right to self-determination can be implemented in a variety of ways, one of which is ensuring that Indigenous Peoples are consulted in, and have, decision-making power over educational policies. Having this power facilitates the development of the culture of the Indigenous group. It is vital that States recognize the central role that education plays in the lives of Indigenous Peoples and work with Indigenous groups to ensure that they have input and control over educational programs and policies, especially educational policies as it is through these policies that the right to self-determination can be further facilitated. This draws on the evolution of education systems, shifting from a system designed in its inception to be a denier of the right to self-determination to becoming a facilitator of the right to self-determination in the context of Indigenous Peoples. In order for these rights to be upheld and implemented efficiently, it means working together to address the damaging history of colonization, marginalization and discrimination experienced by Indigenous Peoples, especially through the educational systems of colonisers that were, in the past, very harmful to the survival of many Indigenous Groups. The provision of a harmful education is just as worrisome, and it is also of paramount

⁴² Message by the Expert Mechanism on the Rights of Indigenous Peoples, the Special Rapporteur on the Rights of Indigenous Peoples, the UN Permanent Forum on Indigenous Issues and the UN Voluntary Fund for Indigenous Peoples to mark the International Day of the World’s Indigenous Peoples, Tuesday 9 August 2016. Accessed at <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20342&LangID=E>> Last Accessed 29/03/2021

importance that efforts are made to ensure that Indigenous Peoples have access to education that is culturally and linguistically appropriate.⁴³ Without this inclusion, the education provided can be just as harmful as having no access to education at all, which is a similar issue faced by many Indigenous Peoples. The previous Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, has said of the importance of an appropriate education for Indigenous Children that,

“the available data shows a consistent pattern of disparity between Indigenous and non-Indigenous peoples in terms of educational access, retention and achievement in all regions of the world. Additionally, the loss of Indigenous knowledge especially in terms of ecosystem management and biodiversity conservation and sustainable use leads to the erosion of cultural and biological diversity. Support for the establishment of intercultural Indigenous schools and universities should be provided. The situation of Indigenous women and girls is of concern and special priority must be given to ensure women and girls have access to relevant education.”⁴⁴

This highlights how important the protection of the right to education is and how crucial the correct implementation of that right is. The responsibility is on States to implement and protect the right and in order to do so appropriately. States must have open dialogues with Indigenous Peoples to safeguard the protection of these rights.

The Chair of the Permanent Forum on Indigenous Issues, Alvaro Pop Ac, has attested that “States must engage and work constructively with Indigenous peoples to address barriers to education, including stigmatization of Indigenous identity, discrimination in schools, language barriers between students and teachers and inadequate consideration given to education for Indigenous students,”⁴⁵ displaying how salient State co-operation is to the achievement of this standard. Deloria Jr has recorded that in some situations, the education being provided to and

⁴³ ‘Events | United Nations Indigenous Peoples Day’ (*United Nations*, 2016) <https://www.un.org/en/events/Indigenousday/pdf/Backgrounder_Indigenous_Day_2016.pdf> Last Accessed 29 March 2021

⁴⁴ UNDESA Note 41

⁴⁵ Indigenous Peoples should establish and control their educational systems and institutions – UN experts International Day of the World’s Indigenous Peoples - Tuesday 9 August 2016 available at <<https://ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=20346&LangID=E>> Last Accessed 29 March 2021

for Indigenous children still lacks the essential elements of indigeneity and observed that in some cases “the brightest Indian students are supplementing its deficiencies with tribal knowledge and traditions and thereby transcending 500 years of culture shock to find true self-determination”⁴⁶ showing how Indigenous Students recognise and respond to the gap in the curriculum and attempt to bridge that gap themselves. Bridging this gap is a task that should be done through open dialogues with Indigenous Community Members and parents of Indigenous Students, to ensure that the curriculum understands, respects and provides for the cultural needs of the group.

Ruana Kuokkanen, who has written extensively about the experience of Indigenous Peoples and the educational experience, has noted that “one of the statements most frequently heard among Indigenous students and scholars is that we are not only educating ourselves and doing research for our own careers or personal advancement, but rather, for our entire communities; that is, the well-being and future of our people.”⁴⁷ Again this highlights the connection between self-determination, education systems and the cultural survival of many Indigenous Groups. While self-determination today is generally understood to be both “a philosophical concept and a political demand - a demand to recognize ongoing sovereignty and agency, explicitly justified by the special status of First Nations peoples,”⁴⁸ the right to self-determination also allows for the cultural survival of many Indigenous Groups and the key to enshrining this right is through the right to education, which is a protected human right, and the provision of appropriate education for Indigenous Children. As shown in Chapter Three, a violation of this right can

⁴⁶ V Deloria Jr, Higher Education and Self-Determination. (1991) 6(1) *Winds of Change* pp.18-25.

⁴⁷ Ruana Kuokkanen, *Sámi Higher Education and Research Toward Building a Vision for Future* in Minde H, editor. *Indigenous Peoples: Self-Determination Knowledge Indigeneity*. (Delft: Eburon Academic Publishers, 2008) p. 268

⁴⁸ D Perche, "Recalibrating the machinery of government for Indigenous affairs: Towards a new policy design for self-determination" (2018) 77(1), *Australian journal of public administration*, pp. 28 – 36.

result in the oppression of Indigenous children via an inappropriate education system which can result in far more sinister outcomes, for instance, acts of cultural genocide.

4.6 The Protection of the Right to Education Under UN Treaty Frameworks

The right to education is well protected in international human rights law. The purpose of this section is twofold, it will firstly layout the relevant provisions regarding the right to education within international human rights law and go on to analyse and highlight how this right is protected. The right to education is specifically mentioned in numerous frameworks. Firstly, it is enshrined in the UDHR. The UDHR affirms that education is a fundamental human right for everyone, and this right was further detailed in numerous pieces of international legislation including the International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD) 1965,⁴⁹ the ICCPR 1966,⁵⁰ the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979,⁵¹ the United Nations Convention on the Rights of the Child (CRC),⁵² the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICPRMWF) 1990,⁵³ Convention on the Rights of Persons with Disabilities (CRPD) 2006,⁵⁴ the UNESCO Convention against Discrimination in Education (UNESCO CDE) 1960,⁵⁵ and the most important and relevant for this work is the UNDRIP 2007.⁵⁶ This list is not exhaustive, rather it showcases the

⁴⁹ International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195 (CERD)

⁵⁰ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

⁵¹ See preamble, article 5(b), 10, 14(d), 16(e) 'Convention on The Elimination of All Forms of Discrimination Against Women 1966' (*Ohchr.org*, 2021) <<https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>> Last Accessed 29/03/2021

⁵² Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC)

⁵³ See Preamble, Article 12(4), 30, 45, 45 <<https://www.ohchr.org/en/professionalinterest/pages/cmw.aspx>> Last Accessed 01/05/2021

⁵⁴ Convention on the Rights of Persons with Disabilities (Adopted 24 January 2007) 61 UNTS 106 (CRPD)

⁵⁵ UN Educational, Scientific and Cultural Organisation (UNESCO) *Convention Against Discrimination in Education*, 14 December 1960

⁵⁶ Article 24 'United Nations Declaration on the Rights of Indigenous Peoples' (adopted 2 October 2007) A/RES/61/295

predominant instruments which enshrine and offer protection of the right to education. For the purposes of this research, the focus will be placed upon the provisions within the UDHR, ICESCR, CRC, UNESCO CDE and as mentioned, UNDRIP as these instruments offer specific protections for the education of children and a recognition of the importance that culture plays in the provision of their education.

4.6.1 The UDHR

It is important to highlight that the inclusion of education within the UDHR as the right to education occupies an unusual space within the international frameworks. Smith attests that “the right to education straddles the division of human rights between civil and political rights and economic, social and cultural rights embodying elements of each”,⁵⁷ and having a home within the UDHR supports the universal right to education as it should be understood. Education is specifically referenced in the UDHR under article 26 which affirms that everyone has the right to an education.⁵⁸ This is an important inclusion in a seminal human rights instrument that showcases the importance of education. The issue with relying solely upon this right is that it does not necessarily take cultural rights into account. Furthermore, the UDHR is designed to be for the individual making it less reliable for groups, such as Indigenous communities, regarding the provision for adequate and appropriate education in line with their cultural lives and heritage.

4.6.2 The ICESCR

State parties to this covenant agree to work toward the enhancing, granting and protection of economic, social, and cultural rights. These include the right to health, the right to education,

⁵⁷ Rhona K Smith, *Textbook on International Human Rights* (Oxford University Press 2014) pp.334

⁵⁸ Art 26 Universal Declaration of Human Rights (adopted 10 December) 1948 UNGA Res 217 A(III) (UDHR)

and the right to an adequate standard of living and labour rights.⁵⁹ ICESCR and the subsequent optional protocols form part of the International Bill of Human Rights.⁶⁰ The right to education is enshrined in Articles 10⁶¹, 13⁶² and 14⁶³ of the covenant. The significance of the inclusion of the right to education in this document is paramount because, unlike its predecessors, ICESCR offers a form of group rights. This is especially relevant for the right to education in the context of Indigenous Peoples as it offers a form of facilitation of the right to self-determination regarding education. This allows groups to be protected by an international human rights instrument that specifically acknowledges the importance of control over and inclusion of cultural values in educational provision.

4.6.3 The CRC

The CRC sets out the civil, political, economic, social, health and cultural rights of children.⁶⁴ As a United Nations convention, the CRC recognizes all children's rights to develop physically, mentally, and socially to their fullest potential, to express their opinions freely, and to participate in decisions affecting their future.⁶⁵ The incorporation of participating in decisions affecting their future is a fact to note as this will be a discussion point in both chapter eight and nine of this thesis. It is important to acknowledge this as participating in decision making over one's own destiny is a key component of the realisation of the right to self-determination. The CRC provides a vision of children as individuals and as members of a community, with rights and responsibilities appropriate to their age and stage of development.⁶⁶ Again, this reference

⁵⁹ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR)

⁶⁰ UNHCR, 'The Committee on Economic, Social and Cultural Rights' Factsheet No.16/Rev.1 (1993)

⁶¹ Note 58

⁶² Ibid

⁶³ Ibid

⁶⁴ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3

⁶⁵ 'The Campaign For US Ratification Of The CRC - What Is The CRC?' (*Childrightscampaign.org*, 2018)

<<https://www.childrightscampaign.org/what-is-the-crc>> Last Accessed 1 May 2021

⁶⁶ Ibid

to inclusion in community is essential to the realisation of the right to self-determination of groups. In this instrument, education is referenced specifically in articles 5, 14, 28, 29 and 30⁶⁷ and offers a comprehensive description of the importance of an education but also alludes to the significance and benefit of a culturally appropriate education.

4.6.4 UNESCO CDE

The UNESCO CDE aims to combat discrimination in the field of education.⁶⁸ Created by the body of the UN that is tasked specifically with the mission of promoting world peace and security through international cooperation in education, the sciences, and culture,⁶⁹ this document is particularly relevant to the provision of education for Indigenous students as it highlights the importance of the right to use or teach their own languages for national minority groups.⁷⁰ The relationship between the right to self-determination and the use of mother tongue in education has been discussed in chapter two, however this issue will be developed on further in chapter eight.

4.6.5 UNDRIP

A salient element of the protection of the right to education in the context of this research is found in the UNDRIP.⁷¹ While the Declaration is non-legally binding, some provisions reflect customary law and are therefore binding and it does have a remarkably strong moral force, and

⁶⁷ Convention on the Rights of the Child Note 63 Art 30

⁶⁸ UN Educational, Scientific and Cultural Organisation (UNESCO) *Convention Against Discrimination in Education*, 14 December 1960

⁶⁹ 'Right To Education' (UNESCO) <<https://en.unesco.org/themes/right-to-education#:~:text=Education%20in%20itself%20is%20an,of%20opportunity%20and%20universal%20access>> Last Accessed 26 April 2021

⁷⁰ Note 68 article 5(c)

⁷¹ 'Education | United Nations For Indigenous Peoples' (*United Nations For Indigenous Peoples | Indigenous Peoples*) <<https://www.un.org/development/desa/Indigenouspeoples/mandated-areas1/education.html>> Last Accessed 11 March 2021

it does however hold a strong moral underpinning. It is the most in-depth piece of international legislation relating to Indigenous Peoples.⁷²

Unique to UNDRIP is the fact that it provides provisions and protections relating to both the individual and collective rights of Indigenous peoples, including their ownership rights to cultural and ceremonial expression, identity, language, employment, health, education, and other issues.⁷³ The Declaration further emphasizes the rights of Indigenous peoples to maintain and strengthen their own institutions, cultures and traditions, and to pursue their development in keeping with their own needs and aspirations.⁷⁴ This is intrinsically important in relation to the right to education as it is through culturally appropriate curricula that the right to self-determination can be achieved and this declaration allows for the provision of culturally appropriate institutions for educational provision. The Declaration “prohibits discrimination against Indigenous Peoples”,⁷⁵ and it “promotes their full and effective participation in all matters that concern them and their right to remain distinct and to pursue their own visions of economic and social development.”⁷⁶ The goal of the Declaration is to encourage countries to work alongside Indigenous peoples to solve global and local issues, such as development, multicultural democracy, and decentralization.⁷⁷ This displays regard for the inclusion of Indigenous expertise and voices to be heard, to have representation and a say in matters affecting their communities and their cultural survival. This is especially significant for the implementation of an appropriate education system and culturally appropriate curricula that

⁷² Maguire, Gerard. “Human Erosion: Indigenous Peoples and Well-Being in The Anthropocene.” (2020) 31(1) *Irish Studies in International Affairs*. pp. 113–130.

⁷³ UNGA, ‘United Nations Declaration on the Rights of Indigenous Peoples’ (adopted 2 October 2007) A/RES/61/295

⁷⁴ ‘Frequently Asked Questions Declaration on The Rights of Indigenous Peoples’ (*Un.org*) <<https://www.un.org/esa/socdev/unpfii/documents/FAQsIndigenousdeclaration.pdf>> Last Accessed 19 January 2021

⁷⁵ ‘United Nations Adopts Declaration On Rights Of Indigenous Peoples’ (*UN News*, 2007) <<https://news.un.org/en/story/2007/09/231062-united-nations-adopts-declaration-rights-Indigenous-peoples>> Last Accessed 19 January 2021

⁷⁶ *Ibid*

⁷⁷ UNDRIP Note 73

will enhance the Indigenous student experience and equip them with the knowledge and heritage of their kin. Having this involvement further facilitates the right to self-determination of Indigenous Peoples.

Article 14(1) and (2) of the declaration stipulates that, in specific regard to the provision of education, that “Indigenous Peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning and Indigenous Peoples, particularly children, have the right to all levels and forms of education of the State without discrimination”⁷⁸. Article 14(3) maintains that States must take effective measures, in order for Indigenous individuals to have access to an “education in their own culture and provided in their own language”.⁷⁹ This provision is in response to years of assimilationist policies which operated in educational institutions, in which Indigenous Children were placed. An example of which is offered through a detailed case study in chapter seven on the Canadian Residential School system. Additionally, article 15 of the declaration states, in relation to the right to education, “Indigenous Peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information”.⁸⁰ Again this draws on the experience of many victims and survivors of assimilative education systems which were, and are in some cases, providing an inappropriate education to Indigenous students. This inclusion is one that reflects the need for an education system to consider the cultural complexities of a group and accommodate that in an appropriate way, thus enhancing the realisation of self-determination. According to Article 31, there is a major emphasis on the fact that Indigenous Peoples will be able to protect their cultural heritage and other aspects of their culture and tradition in order to preserve their heritage from over-

⁷⁸ UNDRIP Note 73

⁷⁹ Ibid

⁸⁰ Ibid

controlling nation-States which contributes to the right to self-determination, which as stated, can be facilitated through the right to education.⁸¹

4.7 Social Acceptance via Education

As has been made evident in the introductory sections of this chapter, the international human rights law frameworks provide well for the right to education. Human rights advocates portray in their writings the right to education as defined in international human rights treaties whereby most, if not all education, would be provided or at least financed by government. UN Special Rapporteur on the Right to Education, Katerina Tomasevski has affirmed that “the human rights literature is couched in terms of ‘should’ rather than ‘is’ because most countries have moved away from definitions of the right to education in older human rights treaties, especially from a guarantee that all education should be provided free of charge. In the world as it is today, education is described in terms of market shares and competitive prices, with university education, in particular, traded like any other service”.⁸² This takes away from one of the true purposes of education, which is that when utilised correctly, efficiently and appropriately, educational initiatives can “confront racism, xenophobia, anti-Semitism and intolerance often focus on changing the attitudes of individuals from the majority population but neglect structural and institutional racism.”⁸³ According to the Vienna Declaration of the World Conference on Human Rights 1993 para 33, “education should promote understanding, tolerance, peace and friendly relations between the nations and all racial and religious groups”⁸⁴, this further supports the empowerment of children, allowing them to evolve. Children from majority communities need not only an understanding of cultural diversity and

⁸¹ Ibid

⁸² Katerina Tomasevski, 'Has the Right to Education a Future Within the United Nations? A Behind-the-Scenes Account by the Special Rapporteur on the Right to Education 1998-2004' (2005) 5 *Human Rights Law Review*. pp 205-273

⁸³ Audrey Osler and Hugh Starkey, *Teacher education and human rights* (Meadville: Fulton, 2003) p.55

⁸⁴ Rhona K. M Smith, *Textbook on International Human Rights* (Oxford University Press 2014). Pp. 333

tolerance but also need the skills to effectively challenge racism and intolerance when they meet it.⁸⁵ It is important to recognise that it is not only human rights law that regulates education, internationally or domestically. There is also refugee law and humanitarian law, migration law and trade law.⁸⁶ Further to this and as mentioned in chapter 1, “[t]he right to education has also been recognised in ILO Conventions and international humanitarian law, as well as in regional treaties”⁸⁷.

Tomasevski further attested in her writing that creating an operational definition of the right to education for the purpose of my mandate was both easy and difficult.⁸⁸ The abundance of provisions on the right to education in a large number of international human rights treaties, supported by national constitutions and ample jurisprudence, made things easy, “and that the difficult part was forging a clear and simple legal framework to comprise all its different facets. The right to education defies classification either as a civil and political right or an economic, social and cultural one. It forms part of both Covenants and, indeed, all core human rights treaties”.⁸⁹ This highlights both the importance of the right to education and the unusual position it has within the international human rights frameworks.

4.8 Violations of the Right to Education

As mentioned in chapter one, this research focuses on the relationship between the right to education and the right to self-determination in the context and experience of Indigenous Peoples, supported by in-depth case studies in chapters seven and eight. These case studies will highlight violation of the right to education specifically in relation to Indigenous Peoples

⁸⁵ Tomasevski Note 81 p.49

⁸⁶ Tomasevski Note 81

⁸⁷ ‘International Law’ (*Right to Education Initiative*, 2018) <<https://www.right-to-education.org/page/international-law>> Last Accessed 12 August 2020, see also Stephen May and Sheila Aikman. "Indigenous education: Addressing current issues and developments." (2003) 39(2) *Comparative education* pp. 139-145.

⁸⁸ Tomasevski Note 81

⁸⁹ Ibid

through assimilative educational systems. It is also necessary at this point to document what is understood as violations of the right to education within the international frameworks, specifically the understanding supplied by General Comment 13 on the right to education.⁹⁰

This document affirms that violations of the right to education include discrimination against any individual or group, failure to address such discrimination and ensuring equality in access.⁹¹

A particularly relevant provision is that of article 31 of General Comment 13, which notes that “the failure to take deliberate, concrete, and targeted measures towards the progressive realization of secondary, higher and fundamental education in accordance with article 13 (2) (b)-(d)”⁹² is a violation of the right to education. This is particularly relevant to the case study of French Guiana as will be discussed in chapter eight and will be further discussed in chapter nine in relation to additional progressive policies designed and implemented in various education systems in relation to Indigenous students. This relies on innovative and proactive measures established to ensure the right to education is not violated, but actively protected, enhanced and supported.

4.9 Enhancement of Inclusive Education

In order for the goal of equitable and inclusive quality education and lifelong learning opportunities for all to be achieved, the Major Groups of Workers and Trade Unions, Women,

⁹⁰ ICESCR General Comment 13 Note 26 para 59

⁹¹ The full list of violations of the right to educational provision under general comment 13 includes “introduction or failure to repeal legislation which discriminates against individuals or groups, on any of the prohibited grounds, in the field of education; the failure to take measures which address de facto educational discrimination; the use of curricula inconsistent with the educational objectives set out in article 13 (1); the failure to maintain a transparent and effective system to monitor conformity with article 13 (1); the failure to introduce, as a matter of priority, primary education which is compulsory and available free to all; the failure to take “deliberate, concrete and targeted” measures towards the progressive realization of secondary, higher and fundamental education in accordance with article 13 (2) (b)-(d); the prohibition of private educational institutions; the failure to ensure private educational institutions conform to the “minimum educational standards” required by article 13 (3) and (4); the denial of academic freedom of staff and students; the closure of educational institutions in times of political tension in non-conformity with article 4” see Note 25 para 59

⁹² ICESCR General Comment 13 Note 26 para 59

Children and Youth, and Indigenous Peoples⁹³ proposed a series of amendments to the zero draft, firstly suggesting replacing the word “‘provide’ with ‘ensure’ in the goal itself”,⁹⁴ thus attributing responsibility to States to deliver on this obligation and therefore transforming the right from a provision to a fundamental right that cannot be denied. Furthermore, the group went on to demand further strengthening of the commitment to equity by specifically mentioning women, ethnic minorities and Indigenous peoples and requiring a commitment that by 2030, “women and people in vulnerable situations and marginalized people including adolescent girls, persons with disabilities, Indigenous peoples, and racial/ethnic minorities “have equal access to inclusive and culturally appropriate quality education, skills development and vocational training”⁹⁵ and has a goal within its mandate of “strengthening the provision of enabling learning environments. Ensure safe and healthy learning environments, inclusive of... Indigenous knowledge and knowledge relevant to the lives of rural populations.”⁹⁶ The 2030 Agenda also identified four key areas in which progress must be made, which are: The need to strengthen normative, policy and institutional frameworks to support culture: The contribution of cultural and creative activities to economic growth and employment, Education and training systems to strengthen the role of culture and creativity in society, and most relevant in the context of the provision of education for Indigenous Children, the protection, promotion and transmission of heritage,⁹⁷ this protection is essential for Indigenous Children to learn of their cultural heritage and affords the opportunity to transmit sacred knowledge between generations that could otherwise be lost. This enhances Indigenous empowerment and by having this

⁹³ ‘Major Groups: Workers And Trade Unions, Women, Children And Youth And Indigenous People | Department Of Economic And Social Affairs’ (*Sdgs.un.org*) <<https://sdgs.un.org/statements/major-groups-workers-and-trade-unions-women-children-and-youth-and-Indigenous-people>> Last Accessed 29 March 2021

⁹⁴ Ibid

⁹⁵ Ibid

⁹⁶ The Technical Support Team of the Department of Economic and Social Affairs and the United Nations Development Programme Issue Brief on Culture and Education accessed at <<https://sdgs.un.org/sites/default/files/documents/18290406tstisuesedcult.pdf>> Last Accessed 29/03/2021

⁹⁷ Ibid

protection recognised and implemented can truly transition many education systems into systems of facilitation of the right to self-determination of Indigenous Peoples going forward.

The 1990 World Declaration on Education for All⁹⁸ described education through a series of skills developed through the system of provision. This includes the usual elements of what might be considered as learning tools such as literacy, numeracy and problem solving,⁹⁹ however, it also notes that these skills should be combined with “knowledge, skills, values and attitudes required by human beings to survive, develop potential, to improve the quality of their lives”¹⁰⁰ which is very much in line with the concept of empowerment through education. This is why it is so essential that education systems which are designed to provide this right, are doing so in the correct and appropriate manner. This allows for the connection between the provision of the right to education and the facilitation of the right to self-determination in the context of Indigenous Children. Furthermore, the Committee on the Rights of the Child,¹⁰¹ the body of experts that monitors the implementation of the Convention, published General Comment 1 which elaborated on the right to education. The General Comment 1 on the aims of education¹⁰² provides a very clear overview of what the right to education means in terms of both realisation and actualisation. Again, the language used throughout this General Comment is very important as it highlights the seminal role played by education in terms of

⁹⁸ ‘Education Transforms Lives’ (UNESCO, 2021) <<https://en.unesco.org/themes/education/>> Last Accessed 29 March 2021

⁹⁹ ‘The Right To Education - UNICEF UK’ (UNICEF) <<https://www.unicef.org.uk/rights-respecting-schools/the-right-to-education/>> Last Accessed 29 March 2022, see also Stephen May and Sheila Aikman. “Indigenous education: Addressing current issues and developments.” (2003) 39(2) *Comparative education* pp. 139-145, S J Anaya, “Report of the special rapporteur on the rights of indigenous peoples in the situation of indigenous peoples in Canada” (2015) 32(1) *Ariz. J. Int’l & Comp. L.* p.143

¹⁰⁰ Ibid

¹⁰¹ ‘Committee On The Rights Of The Child’ (Ohchr.org) <<https://www.ohchr.org/en/hrbodies/crc/pages/crcindex.aspx>> Last Accessed 29 March 2021

¹⁰² General Comment No. 1: The Aims of Education (article 29) (2001) (Adopted by the Committee on the Rights of the Child at the Twenty-sixth Session, CRC/GC/2001/1, 17 April 2001) available at <[https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/a\)GeneralCommentNo1TheAimsofEducation\(article29\)\(2001\).aspx#:~:text=%5B1%5D%20The%20education%20to%20which,by%20appropriate%20human%20rights%20values](https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/a)GeneralCommentNo1TheAimsofEducation(article29)(2001).aspx#:~:text=%5B1%5D%20The%20education%20to%20which,by%20appropriate%20human%20rights%20values)> Last Accessed 29/03/2021

empowerment. The Committee stated that “education must be child-centred and empowering”.¹⁰³ It also important to note that this observation and recommendation applies to the curriculum as well as the educational processes, the pedagogical methods and the environment where education takes place.¹⁰⁴

The provision of education should not only include competency in literacy and numeracy, this particular issue will be highlighted in more detail in chapter eight in relation to French Guiana, but also life skills such as the ability to make well-balanced decisions; to resolve conflicts in a non-violent manner; and to develop a healthy lifestyle, good social relationships and responsibility, critical thinking, creative talents, and perhaps most importantly, it specifically recognises the need to develop “other abilities which give children the tools needed to pursue their options in life”.¹⁰⁵ This is important for the actualisation of empowerment through education and to enhance on facilitate the right to self-determination through education systems.

4.9.1 The Provision of Education via the 4A Scheme

As has been laid out above, a consequence of the nature of international law is that while the frameworks can place obligations on States, there can be inconsistency with how States implement these frameworks. The frameworks, at an international level, are outlined through a series of guarantees regarding the right to education which then need to be incorporated within national constitutions and domestic laws.¹⁰⁶ According to the former UN Special Rapporteur on the right to education, Katerina Tomasevski, these obligations can be easily

¹⁰³ Ibid

¹⁰⁴ ‘The Right To Education - UNICEF UK’ (*UNICEF*) <<https://www.unicef.org.uk/rights-respecting-schools/the-right-to-education/>> Last Accessed 29 March 202, see also S J Anaya, “Report of the special rapporteur on the rights of indigenous peoples in the situation of indigenous peoples in Canada” (2015) 32(1) *Ariz. J. Int'l & Comp. L.* p.143

¹⁰⁵ Note 100

¹⁰⁶ The World Bank, 'Compendia of International and National Legal Frameworks' (The World Bank 2019) <<https://www.worldbank.org/en/about/legal/publication/compendium-of-international-and-national-legal-frameworks>> Last Accessed 26 April 2021

structured into the 4-A scheme, which requires national governments to make education available, accessible, acceptable, and adaptable.¹⁰⁷

4.9.2 Availability

The availability provision requires two different governmental obligations: the right to education as a civil and political right requires the government to permit the establishment of educational institutions by non-State actors. The second obligation is for the right to education be a social and economic right, which requires the government to establish said Institutions, or fund them, or use a combination of these and other means to ensure that education is available.¹⁰⁸ This is an important aspect regarding the relationship between the right to education and the right to self-determination, particularly in the context of Indigenous Peoples, as connecting education to third generation rights signposts the significance of the right to groups.

4.9.3 Accessibility

The provision of accessibility can be defined differently for different levels of education as made evident by research carried out by Hajrullaia and Saliua in 2016.¹⁰⁹ They surmise that governments are obliged to provide access to education for all children in the compulsory education age-range, but not for secondary and higher education.¹¹⁰ Moreover, compulsory education ought to be free of charge while post-compulsory education may entail the payment of tuition and other charges and could thus be subsumed under ‘affordability.’¹¹¹ This aspect is

¹⁰⁷ Katerina Tomasevski, 'Human Rights Obligations: Making Education Available, Accessible, Acceptable and Adaptable' (2001) <https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Tomasevski_Primer%203.pdf> Last Accessed 13 March 2021

¹⁰⁸ Ibid

¹⁰⁹ Hajrulla Hajrullai and Basri Saliu, 'The Application Of 4-A Scheme In The Context Of Higher Education In Macedonia' (2016) 232 *Procedia - Social and Behavioral Sciences*. pp. 70-74

¹¹⁰ Hajrulla Hajrullaia and Basri Saliua, 'The Application Of 4-A Scheme In The Context Of Higher Education', *International Conference on Teaching and Learning* (2016)

<<https://pdf.sciencedirectassets.com/277811/1-s2.0-S1877042816X00183/1-s2.0-S1877042816312502/main.pdf?X>> Last Accessed 13/03/2021

¹¹¹ Tomasevski Note 107

particularly relevant to the situation in French Guiana as will be discussed in chapter eight. The crux of this issue lies with the provision of a compulsory education, which is inappropriate for the students attending. While the accessibility criteria are met, the system in operation is failing students and thus hindering their right to self-determination.

4.9.4 Acceptability

The acceptability of education has been highlighted by the addition of ‘quality’ before education in policy documents as of the 1990s,¹¹² thus urging governments to ensure that education which is available and accessible is of good quality. The minimal standards of health and safety, or professional requirements for teachers, thus must be set and enforced by the government.¹¹³ The breadth of acceptability has been extended through the development of international human rights law and been provided with a more objective lens. For example, censorship of school textbooks is no different from any other censorship, except that it is exposed as a human rights violation infrequently. The focus on Indigenous and minority rights has prioritized the language of instruction, which often makes education unacceptable if the language is foreign to young children and often to the teacher.¹¹⁴ This is of particular concern as has been previously discussed, language plays a pivotal role in the achievement of the right to self-determination of Indigenous Peoples and education systems, including the institutions which prove it, must be seen to be facilitating this right. Although the notion of corporal punishment may seem archaic now, its prohibition has transformed school discipline in many countries further broadening the criteria of acceptability.¹¹⁵ The emergence of children

¹¹² Ibid

¹¹³ For further information on this in practice, see Health and Safety Authority (HSA) - Safety and Health in Education available at <<https://www.education.ie/en/Schools-Colleges/Information/Health-Safety-Guidelines/>>

¹¹⁴ Tomasevski Note 107

¹¹⁵ Council of Europe, *Abolishing Corporal Punishment Of Children* (Council of Europe 2008).

themselves as actors, advocating for their right to and within education promises to endow the notion of acceptability with their vision of how their rights should be interpreted and applied.¹¹⁶

4.9.5 Adaptability

Adaptability within the right to education has been identified and questioned through the many court cases in relation to the right to education of children, especially prevalent in those children with disabilities.¹¹⁷ Domestic courts have uniformly held that educational institutions should adapt to children, following the thrust of the idea of the best interests of each child in the Convention on the Rights of the Child.¹¹⁸ According to Tomasevski, “this reconceptualization has implicitly faulted the heritage of forcing children to adapt to whatever schools may have been made available to them; the school effectively had a right to reject a child who did not fit or could not adapt”.¹¹⁹ Moreover, a conceptual dissociation between ‘school’ and ‘education’ has taken place in attempts to provide education to imprisoned or working children. They can seldom be taken to school and thus education must be taken to wherever they are.¹²⁰

The importance and relevance of the 4A approach to the provision of education for children is that there is a visible emergence of the transition of the role played by education in the formation of a child and the life they go on to lead. This recognition of the power of education in achieving other rights is irrevocable and displays, clearly, the relationship between education and self-actualisation for the individual and self-determination for the group.

¹¹⁶ ‘Standard 1 Rights of The Child’ (Síolta The National Quality Framework for Early Childhood Education) <<https://siolta.ie/media/pdfs/Research%20Digest%20-%20Rights%20of%20the%20child.pdf>> Last Accessed 13 March 2021

¹¹⁷ United Nations Office of the High Commissioner for Human Rights, 'Access to Justice and the right to Education for Children With Disabilities' (United Nations 2017) p.7

¹¹⁸ Gail Ferguson, (2014) Including children with disabilities in mainstream education: An exploration of the challenges and considerations for parents and primary school teachers. *Masters Dissertation*, Technological University Dublin. Available at <<https://arrow.tudublin.ie/cgi/viewcontent.cgi?article=1076&context=aaschssldis>> Last Accessed 13/03/2021

¹¹⁹ Tomasevski Note 107

¹²⁰ Ibid

4.10 Obligations and Violations of States in Respect of the Right to Education

When a State has ratified a treaty that guarantees the right to education, it has obligations to respect, protect, and fulfil this right.¹²¹ Some obligations are immediate in nature and others are progressive, examples of which will be discussed in this paragraph. First, it is important to highlight what is meant, or perhaps more accurately, what is understood by the terms respect, protect and fulfil in the context of human rights provisions. According to ‘the Right to Education Initiative’, which is an international human rights organisation focusing on the right to education, the promise of respect, protect and fulfil has specific meaning in relation to the right to education. They affirm the following understandings:

“respecting the right to education is to be understood as States refraining from interfering with the enjoyment of the right, for example, the state must respect the liberty of parents to choose schools for their children, protecting the right to education means preventing others from interfering with the enjoyment of the right, usually through regulation and legal guarantees, for example, the State must ensure that third parties, including parents, do not prevent girls or children of minorities from attending school and receiving an education and finally fulfilling the right to education, meaning the State must adopt appropriate measures towards the full realisation of the right to education , for example, the State must take positive measures to ensure that education is culturally appropriate for minorities and Indigenous peoples, and of good quality for all”.¹²²

As mentioned previously, State obligations in respect of implementing rights at a national level drawn from international human rights instruments has two forms, immediate and progressive obligations.¹²³ While the right to education is an essential and well protected right, there are acceptable reasons as to why States may need more time to adequately implement the right. As with other economic, social and cultural rights, the full realisation of the right to education can be hampered by a lack of resources and can be achieved only over a period of time, particularly

¹²¹ DJ Karp, *The Concept of Human Rights Protection and the UN Guiding Principles on Business and Human Rights*. In *Human Rights Protection in Global Politics* (New York: Springer, 2015) pp. 137-158

¹²² ‘Right To Education Initiative’ (*Right to Education Initiative*, 2021) <<https://www.right-to-education.org/page/about-us>> Last Accessed 29 March 2021

¹²³ ‘Realising Rights’ (*Ihrec.ie*, 2016) <<https://www.ihrec.ie/app/uploads/2016/12/Factsheet-1B-Realising-Rights-Key-principles-002-FNL-151216-1.pdf>> Last Accessed 20 March 2021

for countries with fewer resources.¹²⁴ This is the reason why some State obligations are more progressive in delivery, for instance, the introduction of free secondary and higher education.¹²⁵ That being said, it is accepted that no matter how limited resources are, all States have immediate obligations to implement the following aspects of right to education, this includes ensuring minimum core obligations to meet the essential levels of the right to education,¹²⁶ the prohibition of discrimination in the access to and in education, guaranteeing free and compulsory primary education for all, respecting the liberty of parents to choose schools for their children other than those established by public authorities, protecting the liberty of individuals and bodies to establish and direct educational institutions.¹²⁷ Furthermore, States must be seen to be taking appropriate steps towards the full realisation of the right to education to the maximum of its available resources.¹²⁸ A lack of resources cannot justify inaction or indefinite postponement of measures to implement the right to education, States are required to demonstrate they are making every effort to improve the enjoyment of the right to education, even when resources are scarce.¹²⁹

Finally, in terms of State obligation, States must not take retrogressive measures.¹³⁰ This requires that States must not take backwards steps or adopt measures that will repeal existing guarantees of the right to education. For instance, introducing school fees in secondary education when it had formerly been free of charge would constitute a retrogressive measure.¹³¹

The obligations on States in the provision and protection of the right to education are well

¹²⁴ Ibid

¹²⁵ Sarah Goldrick-Rab, 'Public Higher Education Should Be Universal and Free' *The New York Times* (2016) <<https://www.nytimes.com/roomfordebate/2016/01/20/should-college-be-free/public-higher-education-should-be-universal-and-free>> Last Accessed 29/03/2021

¹²⁶ Karp Note 121

¹²⁷ 'Education - Definition' (*Claiminghumanrights.org*, 2008)

<http://www.claiminghumanrights.org/education_definition.html> Last Accessed 29 March 2021

¹²⁸ Karp Note 121

¹²⁹ 'The Education Deficit' (*Human Rights Watch*, 2016) <<https://www.hrw.org/report/2016/06/09/education-deficit/failures-protect-and-fulfill-right-education-through-global>> Last Accessed 29 March 2021

¹³⁰ Karp Note 121

¹³¹ 'The Education Deficit' Note 129

established and the no-nonsense approach taken by the international community in this realisation and indeed, actualisation, highlights this importance, showcasing how both essential and powerful the right to education is.

However, there are of course, violations of obligations placed upon States. Violations of the right to education may occur through direct action of States parties (act of commission) or through their failure to take steps required by law (act of omission). Concrete examples are given in paragraph 59 of General Comment 13 which lays out the following in terms of violations of the right to education:

“By way of illustration, violations of article 13 include: the introduction or failure to repeal legislation which discriminates against individuals or groups, on any of the prohibited grounds, in the field of education; the failure to take measures which address de facto educational discrimination; the use of curricula inconsistent with the educational objectives set out in article 13 (1); the failure to maintain a transparent and effective system to monitor conformity with article 13 (1); the failure to introduce, as a matter of priority, primary education which is compulsory and available free to all; the failure to take “deliberate, concrete and targeted” measures towards the progressive realization of secondary, higher and fundamental education in accordance with article 13 (2) (b)-(d); the prohibition of private educational institutions; the failure to ensure private educational institutions conform to the “minimum educational standards” required by article 13 (3) and (4); the denial of academic freedom of staff and students; the closure of educational institutions in times of political tension in non-conformity with article 4.”¹³²

Whilst the vast majority of States have ratified international treaties that recognise the full right to education,¹³³ it is still denied to millions around the world due to lack of resources, capacity, and political will.

Furthermore, there are many States where the right to education is not protected through integration via national constitution or provided the legislative and administrative frameworks

¹³² Paragraph 59 Implementation of the International Covenant on Economic, Social and Cultural Rights General Comment No. 13 (Twenty-first session, 1999) The right to education (article 13 of the Covenant) E/C.12/1999/10

¹³³ The World Declaration on Education for All was adopted by 155 governmental delegations; the Vienna Declaration and Programme of Action was adopted by 171 governmental delegations; the Convention on the Rights of the Child has been ratified or acceded to by 191 States parties; the Plan of Action of the United Nations Decade for Human Rights Education was adopted by a consensus resolution of the General Assembly (49/184).

to ensure that the right to education is realised in practice.¹³⁴ This is particularly worrying for children of marginalised peoples, and indeed adults of said groups, as they are often the people who do not fully enjoy the right to education. In the context of Indigenous Peoples, many of whom have experienced past traumas in relation to education systems which were designed and ran with assimilationist policies. International human rights instruments have established a solid normative framework for the right to education. This is not an empty declaration of intent as its provisions are legally binding.¹³⁵ All countries in the world have ratified at least one treaty covering certain aspects of the right to education.¹³⁶ This means that all States can be made accountable through various national and international legal mechanisms. This means that the enforcement of the right to education at international level, can be upheld.

4.10.1 Monitoring the Right to Education via Human Rights Mechanisms and Systems

Various human rights' mechanisms are competent to receive individual complaints and have settled right to education breaches this way.¹³⁷ There also exists a justiciability of the right to education in certain instances, for example, where a person might have had their right to education violated, they must be able to have legal recourse before the law courts or administrative tribunals.¹³⁸ This is again why the obligation on States to provide and protect the right to education is of the utmost importance because, for Indigenous Children, a safe and culturally appropriate education system can be key to the facilitation of the right to self-

¹³⁴ Elin Martínez, 'Where Does the Right to Education Stop?' (*Human Rights Watch*, 2021) <<https://www.hrw.org/news/2015/12/11/where-does-right-education-stop>> Last Accessed 29/03/2021.

¹³⁵ 'What You Need To Know About The Right To Education' (*UNESCO*, 2020) <<https://en.unesco.org/news/what-you-need-know-about-right-education>> Last Accessed 29 March 2021

¹³⁶ Ibid

¹³⁷ 'Education' (*International Justice Resource Center*) <<https://ijrcenter.org/thematic-research-guides/education/>> Last Accessed 29 March 2021

¹³⁸ UN General Assembly, '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' adopted by the General Assembly, 21 March 2006, A/RES/60/147

determination in many ways. In terms of monitoring human rights obligations, provisions and protections, the responsibility lies within various levels of governance.

4.10.2 Monist v Dualist States

When discussing both implementation and monitoring of international human rights frameworks it is important to note that there exist two paradigms of relationship between international law and national law at a State level and this depends on whether the State operates as a monist or dualist State. Gragl comments that, as far as international law is concerned, a State has the option not just to accept, but also to integrate international law into the domestic system by relying on either the monist system or the dualist system.¹³⁹ Within the monist legal system, international law is part of the internal order which is typically used in a state, while in a dualist legal system, international and national law are considered separate entities. Thus, for the international law provisions to have any effect in a particular State, then there will be a need for the international laws to be implemented via a State's legislative process.¹⁴⁰ It is important to note here that there has always been a tension between international law and national law.¹⁴¹ This disconnect can have a profound impact on how the right to education, including the provision of an appropriate education for Indigenous children can be protected at a national level.

4.10.2.1 UN system

The Office of the High Commissioner for Human Rights works to offer the best expertise and support to the different human rights monitoring mechanisms in the United Nations system.¹⁴²

¹³⁹ Paul Gragl, *Legal Monism: Law, Philosophy, and Politics*. (Oxford: Oxford University Press, 2018). p.12

¹⁴⁰ Ibid.

¹⁴¹ Carolyn A. Dubay, 'General Principles Of International Law: Monism And Dualism' (2014) *International Judicial Monitor* <http://www.judicialmonitor.org/archive_winter2014/generalprinciples.html> accessed 1 May 2021.

¹⁴² 'Office Of The High Commissioner For Human Rights' (*ioe-emp.org*) <<https://www.ioe-emp.org/international-organisations/office-of-the-high-commissioner-for-human-rights#:~:text=The%20Office%20of%20the%20UN,human%20rights%20laws%20and%20treaties.>>> Last Accessed 30 March 2021

The UN Charter-based bodies, including the Human Rights Council, and bodies created under the international human rights treaties and made up of independent experts are mandated to monitor State parties' compliance with their treaty obligations.¹⁴³ Most of these bodies receive secretariat support from the Human Rights Council and Treaties Division of the Office of the High Commissioner for Human Rights.

The UN has monitoring bodies that support the protection and implementation of the core human rights standards for member States. There are bodies that monitor aspects of both the charter and treaty-based systems. The Charter-based system is monitored by the Human Rights Council (HRC). The monitoring mechanisms of the HRC are the Universal Periodic Review,¹⁴⁴ the Special Procedures¹⁴⁵ of the Human Rights Council, and the Human Rights Council Complaint Procedure.¹⁴⁶ Furthermore, there are ten human rights treaty bodies that monitor implementation of the core international human rights treaties, and they are: the Committee on the Elimination of Racial Discrimination, the Committee on Economic, Social and Cultural Rights, the Human Rights Committee, the Committee on the Elimination of Discrimination against Women, the Committee against Torture, the subcommittee on Prevention of Torture, the Committee on the Rights of the Child, the Committee on Migrant Workers, the Committee on the Rights of Persons with Disabilities and the Committee on Enforced Disappearances.¹⁴⁷

It is expected that such an extensive monitoring system should be in operation via the UN as the promotion and protection of human rights is one of the core principles at the centre of the

¹⁴³ 'UNSDG | UN Human Rights Treaty Bodies' (*Unsdg.un.org*) <<https://unsdg.un.org/2030-agenda/strengthening-international-human-rights/un-treaty-bodies>> Last Accessed 30 March 2021

¹⁴⁴ The UPR process involves a review of the human rights records of all UN Member States

¹⁴⁵ The special procedures of the Human Rights Council are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective.

¹⁴⁶ Is a relatively new complaint procedure was established in 2007 to address consistent patterns of violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances. The complaint procedure addresses communications submitted by individuals, groups, or non-governmental organizations that claim to be victims of human rights violations or that have direct, reliable knowledge of such violations, 'Research Guides: UN Documentation: Human Rights: Charter-Based Bodies' (*Research.un.org*, 2021) <<https://research.un.org/en/docs/humanrights/charter>> Last Accessed 30 March 2021

¹⁴⁷ Note 143

organisation since its inception.¹⁴⁸ However, there are gaps in the efficiency of the monitoring systems, these gaps could be detrimental in the promotion and protection of human rights and also the compliancy of States with their international obligations. This is why additional monitoring bodies, including UNESCO, and regional systems have worked to bridge these gaps.

4.10.2.2 UNESCO

Monitoring the implementation of the right to education at a national level and supporting States to establish solid national frameworks creating the legal foundation and conditions for sustainable quality education for all is part of the global campaign of UNESCO.¹⁴⁹ As an international agency of the United Nations, as an organisation they develop, monitor and promote education norms and standards to guarantee the right to education at country level and advance the aims of the Education 2030 Agenda. It works to ensure States' legal obligations are reflected in national legal frameworks and translated into concrete policies.¹⁵⁰ Article 4(6) of the Constitution of UNESCO requires Member States to regularly report on measures to implement standard-setting instruments at country level through regular consultations.¹⁵¹ Additionally, UNESCO utilises extensive monitoring tools for recording the situation relating to the right to education, for example, through the dedicated online Observatory,¹⁵² UNESCO

¹⁴⁸ 'Protect Human Rights | United Nations' (*United Nations*) <<https://www.un.org/en/our-work/protect-human-rights>> Last Accessed 1 May 2021

¹⁴⁹ 'UNESCO: United Nations Educational, Scientific And Cultural Organization – Office Of The Secretary-General's Envoy On Youth' (*Un.org*) <<https://www.un.org/youthenvoy/2013/08/unesco-united-nations-educational-scientific-and-cultural-organization/#:~:text=UNESCO%3A%20United%20Nations%20Educational%2C%20Scientific%20and%20Cultural%20Organization,-The%20United%20Nations&text=UNESCO's%20mission%20is%20to%20contribute,%2C%20culture%2C%20communication%20and%20information>> Last Accessed 29 March 2021

¹⁵⁰ 'What UNESCO Does For The Right To Education' (*UNESCO*) <<https://en.unesco.org/themes/right-to-education/action>> Last Accessed 28 February 2021

¹⁵¹ UN Educational, Scientific and Cultural Organisation (UNESCO), *Constitution of the United Nations Educational, Scientific and Cultural Organisation (UNESCO)* 16 November 1945

¹⁵² 'Observatory On The Right To Education' (*UNESCO*) <<https://en.unesco.org/themes/right-to-education/database>> Last Accessed 20 February 2021

takes stock of the implementation of the right to education in 195 States and using its interactive Atlas,¹⁵³ UNESCO monitors the implementation of the right to education of girls and women in countries and supported by its monitoring work, UNESCO provides technical assistance and policy advice to Member States that seek to review, develop, improve and reform their legal and policy frameworks.¹⁵⁴ Through collaboration with UN human rights bodies, UNESCO addresses recommendations to countries to improve the situation of the right to education at national level.¹⁵⁵

4.10.2.3 Regional Systems

Outside of the UN Charter and Treaty based systems of Human Rights, there are also regional human rights systems, consisting of regional instruments and mechanisms, play an increasingly important role in the promotion and protection of human rights.¹⁵⁶ Regional systems have their own human rights instruments, for example, treaties, conventions, declarations, and human rights mechanisms, for example, commissions, special rapporteurs, courts. Regional human rights then help to implement these instruments on the ground. Currently, the three most well-established regional human rights systems exist in Europe, the Americas and Africa.¹⁵⁷ Some of the benefits of regional systems of human rights protections are they help to localise international human rights norms and standards, reflecting the particular need and specific nature of human rights concerns of the region.¹⁵⁸ Additionally, they can be more effective or enforceable being monitored on a smaller scale, they can add to cultural homogeneity

¹⁵³ 'UNESCO Launches Interactive Atlas Of Girls' And Women's Right To Education' (*UNESCO*, 2019) <<https://en.unesco.org/news/unesco-launches-interactive-atlas-girls-and-womens-right-education>> Last Accessed 28 February 2021

¹⁵⁴ 'Strategy | United Nations Educational, Scientific And Cultural Organization' (*Unesco.org*, 2017) <<http://www.unesco.org/new/en/culture/about-us/how-we-work/strategy/>> Last Accessed 29 March 2021

¹⁵⁵ 'UNESCO & The UN System' (*UNESCO*, 2021) <<https://en.unesco.org/strategic-planning/UN>> Last Accessed 29 March 2021

¹⁵⁶ 'Universal Rights Group (URG) | Human Rights Independent Think Tank' (*Universal Rights Group*) <<https://www.universal-rights.org/>> Last Accessed 30 March 2021

¹⁵⁷ Ibid

¹⁵⁸ GM Wilner, "Reflections on regional human rights law" (1995) 25(1) *Georgia. Journal of International & Comparative Law* pp.407-426

considering cultural phenomena of a particular region and of course, greater accessibility due to geographic proximity.¹⁵⁹ This is particularly beneficial regarding the right to education and the systems which provide it as it allows for cultural sensitivities to be considered and monitored. Specifically in relation to Indigenous Peoples, regional systems can allow a process by which the right to self-determination can be enhanced through appropriate educational provision. By taking these cultural sensitivities into consideration at a national level, it can allow for a greater understanding and appreciation of cultural heritage and values and can contribute in positive way to the education experience of Indigenous children. This can be especially beneficial as many Indigenous communities have had negative experiences with State run education system so this can support the reconciliation process and allow Indigenous community members a level of input over the decision making in relation to the education being provided to their children and thus further facilitating the right to self-determination.

The claim that a right to education is a human right is an important claim. It is an important claim because there is a responsibility to enable children to develop an acquired set of capabilities to lead their own lives in a meaningful and fulfilling way, meaning empowerment, through which self-determination is realised and actualised.¹⁶⁰ For this human right to be implemented effectively and efficiently, there must be equality of opportunity, universal access, and enforceable and monitored quality standards. The right to education is an essential right and indispensable for the exercise of other human rights. Quality education aims to ensure the development of a fully rounded human being¹⁶¹ and furthermore, it is one of the most powerful tools in lifting socially excluded children and adults out of poverty and into society. Again, it is an empowerment right, it lifts marginalised groups out of poverty, it is an

¹⁵⁹ 'CoE Report on Culture and Cultural Heritage Orientation Paper' (Council of Europe 2019) p.12

¹⁶⁰ Stefania Giannini, 'Education is Not a Privilege, it's a Legal Right' <<https://gemreportunesco.wordpress.com/2018/11/05/education-is-not-a-privilege-its-a-legal-right/>> Last Accessed 29/03/2021

¹⁶¹ 'About What Is Quality Education' (*Unite4education.org*) <<https://www.unite4education.org/about/what-is-quality-education/>> Last Accessed 29 March 2021

indispensable means of realising other rights, it contributes to the full development of the human personality.

4.11 Current Global Education Systems

While the focus of this research is on the right to education and the facilitation of the right to self-determination via educational provision in the context of Indigenous Peoples and Children, it is also important to appreciate the birds eye view of the global situation of education standards as it is. Currently, there are approximately 258 million children and youth are out of school, according to the UNESCO Institute of Statistics.¹⁶² This total includes 59 million children of primary school age, 62 million of lower secondary school age and 138 million of upper secondary school age.¹⁶³ This is a stark statistic which further highlights the inequality of educational provision. Further to this, only 155 countries in the world have a legal guarantee of nine years or more of compulsory education with only 99 countries offering a legal guarantee of at least 12 years of free education.¹⁶⁴ A more harrowing fact regarding the current global situation of children without access to education is that 8.2% of primary school age children do not have access to a primary school education and only six in ten young people will be finishing secondary school in 2030. The impact of this inaccessibility is not resigned to children, meaning those under the age of eighteen, this is supported by the fact that the youth literacy rate, which measures educational attainment of global youth between the ages of fifteen and twenty-four years old is 91.73%, meaning 102 million youth lack basic literacy skills.¹⁶⁵ This inequality within the provision of education is a great concern and eliminating inequalities

¹⁶² UNESCO, 'New Methodology Shows that 258 Million Children, Adolescents and Youth Are Out of School' Factsheet No.56 UIS/2019/ED/FS/56 (2019)

¹⁶³ Ibid

¹⁶⁴ 'What You Need To Know About The Right To Education' (UNESCO, 2020) <<https://en.unesco.org/news/what-you-need-know-about-right-education>> Last Accessed 29 March 2021

¹⁶⁵ 'Metadata for The Global and Thematic Indicators for the Follow-Up and Review of SDG 4 and Education 2030' (UNESCO Institute for Statistics 2020) <<http://tcg.uis.unesco.org/wp-content/uploads/sites/4/2019/08/sdg4-global-indicators-4.6.pdf>> Last Accessed 29/03/2021

and disparities in education is essential in the protection of the right. For example, only 4% of the poorest youth complete upper secondary school in low-income countries, 36% of the richest do and in lower-middle-income countries, the gap is even wider: while only 14% of the poorest youth complete upper secondary school, 72% of the richest do.¹⁶⁶ According to a 2019 UNHCR report, of the 7.1 million refugee children of school age, 3.7 million - more than half - do not go to school,¹⁶⁷ further highlighting that education systems can fail those who belong to vulnerable groups and create further socio-economic barriers to for these children in the future.

4.12 Conclusion

In conclusion, with regard to the right to education and the protection of the right within international law, it is clear that the weakness of the structure lies in how international law is implemented at a regional and national level. States need to work in harmony with international actors to strike a balance between educational freedom and ensuring everyone receives a quality education. More engaged work needs to be done on promoting enabling legislation,¹⁶⁸ that will enhance the national implantation of international law, especially those in relation to human rights protections. In this regard, several countries have adopted specific laws in order to facilitate or enable the implementation of international human rights treaties in domestic law and to avoid repetitive cases.¹⁶⁹ Adoption of enabling legislation is both a legal factor fostering the implementation of international human rights obligations and an effect of the ratification of international human rights treaties. Many different types of legislation could be considered

¹⁶⁶ 'The World is Off Track in Achieving the Global Education Goal, SDG 4' (*Unesdoc.unesco.org*, 2019) <<https://unesdoc.unesco.org/ark:/48223/pf0000368935>> Last Accessed 29/03/2021

¹⁶⁷ Report of the UNHCR, *Stepping Up: Refugee Education in Crisis* (2019) available at <<https://www.unhcr.org/steppingup/wp-content/uploads/sites/76/2019/09/Education-Report-2019-Final-web-9.pdf>> Last Accessed 28 February 2021

¹⁶⁸ Enabling Legislation is defined as legislation which authorises government ministers or bodies to create detailed rules to accomplish general principles set out in the legislation. For example, it may allow a minister to create rules or laws for a particular body, such as the police, to follow. For more, see <<https://www.legalchoices.org.uk/dictionary/enabling-legislation>> Last Accessed 13 March 2021

¹⁶⁹ 'Draft Report On The Implementation Of International Human Rights Treaties In Domestic Law And The Role Of Courts' (Council of Europe 2012) 690/2012

as part of this “enabling legislation” factor. The importance of the protection of the right to education is unquestionable, however, it requires the support and strength of international co-operation. The protection of this right is essential to survival of all humans, not just those who are marginalised. Through an appropriate education, many other rights can be realised, for example, the right to self-determination. However, there are barriers to the equitable provision of education and one of the issues that continuously arises in this line of inquiry is the issue of finance and how to equitably finance education so that it is delivered to all. The disconnect is concerning, the reality is that Two-thirds of the estimated 617 million children and adolescents who cannot read a simple sentence or manage a basic mathematics calculation are in the classroom.¹⁷⁰ The Education 2030 Agenda, has attempted to support this gap between theory and practice by requiring States to allocate at least 4-6 per cent of GDP and/or at least 15-20 per cent of public expenditure to education.¹⁷¹ First and foremost, this would support ending the education deficit, which would ensure every child has a quality primary and secondary education,¹⁷² without the potential financial and systemic obstacles faced, and that governments acknowledge and combat violations, abuses, or situations that keep children out of school. This in turn depends on political will to institute strong governance systems, including via the judiciary, to uphold and fulfil the right to education.¹⁷³ In this regard, The UN must continue to hold all governments to account for violations of the right to education which is protected

¹⁷⁰ ‘617 Million Children and Adolescents Not Getting The Minimum In Reading And Math’ (UNESCO, 2017) <<https://en.unesco.org/news/617-million-children-and-adolescents-not-getting-minimum-reading-and-math>> Last Accessed 13 March 2021

¹⁷¹ ‘Education 2030 Framework for Action (UNESCO, 2015) | Education Within The 2030 Agenda For Sustainable Development’ (*Sdg4education2030.org*, 2015) <<https://www.sdg4education2030.org/education-2030-framework-action-unesco-2015>> Last Accessed 28 February 2021, ‘Leading SDG 4 - Education 2030’ (UNESCO) <<https://en.unesco.org/themes/education2030-sdg4>> Last Accessed 28 February 2021

¹⁷² ‘The Education Deficit: Failures to Protect and Fulfil The Right To Education In Global Development Agendas’ (Human Rights Watch 2016).

¹⁷³ P Rueckert, ‘10 Barriers to Education That Children Living in Poverty Face’ (*Global Citizen*, 2019) <<https://www.globalcitizen.org/en/content/10-barriers-to-education-around-the-world-2>> Last Accessed 28 February 2021

through its legislation.¹⁷⁴ This should extend to any country or government representative appointed to lead on global education issues must first abide by international human rights standards for all children in its territories, in cases where they also play a key role as donors and be open to scrutiny by its own national civil society, as well as UN bodies reviewing its performance.¹⁷⁵ More specifically, and perhaps, more relevant to this research is how this relates to Indigenous Peoples. As discussed, the relationship between the right to education and the right to self-determination in the context of Indigenous Peoples is clear. However, this right is not always protected and when it is not, when the right to education is abused, it can disastrous and often sinister effects on Indigenous Peoples particularly. In the following section, the lack of protections of the right to education at a national level and the consequences of that lack of protection will be examined in detail in relation to the rights of Indigenous Peoples and their experiences with various education systems.

¹⁷⁴ ‘United Nations Instruments’ (*Right to Education Initiative*, 2018) <<https://www.right-to-education.org/page/united-nations-instruments>> Last Accessed 13 March 2021

¹⁷⁵ ‘International Human Rights Mechanisms’ (*Right to Education Initiative*, 2018) <<https://www.right-to-education.org/page/international-human-rights-mechanisms>> Last Accessed 13 March 2021

Chapter 5

Education Systems and Indigenous Peoples

5.1 Introduction

The aim of the chapter is to analyse the implementation of the right to education in respect of Indigenous Peoples. This research will highlight how the right has been applied in practice, and, at times, violated especially when ‘Western’ assimilatory policies are implemented, which lack any understanding of Indigenous cultures. These violations of the right to education, by means of implementing assimilationist policies, can trigger and/or invoke an environment of oppression as discussed in Chapter Three, and constitute a violation of the right to self-determination. This chapter will also present some of the foremost concepts in relation to Indigenous-based pedagogical approaches to education and highlight ways in which education and the systems which provide educational settings for Indigenous students can be enhanced so that those Indigenous students in these education systems can feel empowered and enjoy the educational experience which in turn will allow educational systems to become a facilitator of the right to self-determination rather than the historic denier of the right to self-determination.

It is generally accepted that education is a powerful and necessary process and the right to access an adequate education is enshrined in numerous international human rights instruments. “In the modern world, education systems are structured around a number of different roles according to particular circumstances: the transmission of knowledge from one generation to the next; the learning of skills to prepare new generations to cope with the challenges of the world they live in”.¹ In other words, education needs to be tailored in such a way that it maximises the potential of those availing of it, be that for individuals or groups. For this to be effective, cultural appreciation and understanding must be incorporated. For instance, in the

¹ R Stavenhagen. ‘Indigenous Peoples’ Rights to Education’ (2015) 50(3) *European Journal of Education* pp.254-257

context of Indigenous Peoples, one of the most important aspects of educating a child is transmitting knowledge from one generation to the next in order to preserve and ensure the survival of their culture.² This can be difficult when applied to the situation of the provision of education for Indigenous children around the world as their needs and requirements can be, and usually are, very different from that of children from a general population in a mainstream education system.

While this may be the case, it is also true that no child's circumstance should hinder their ability to obtain an education, an education that is built around their existence, their history, and the cultural identity of their community. This is an integral part of Indigenous identity which is supplemented by kin and community members for many Indigenous Children. This chapter explores the ways in which Indigenous identity can be incorporated into education systems by implementing existing Indigenous approaches to teaching and learning.

As was discussed in chapter four, some treaties guarantee the right to education generally, others apply to specific groups or contexts, for instance, the UNESCO Convention against Discrimination in Education and the International Covenant on Economic, Social and Cultural Rights guarantees the right to education for all people. Other treaties apply to specific groups (children, women, persons with disabilities, refugees, and migrant) or in specific contexts (for example, education in armed conflicts and education and child labour),³ specific provisions for the right to an appropriate education for Indigenous children in international human rights law is severely lacking. This is even more concerning as “education is recognised as a key institution – perhaps *the* key institution – in the apparatus of the modern nation-state”.⁴ This is

² 'Education and Intergenerational Transmission | United Nations Educational, Scientific And Cultural Organization' (*Unesco.org*) <<http://www.unesco.org/new/en/Indigenous-peoples/education-and-intergenerational-transmission>> Last Accessed 1 May 2021

³ 'International Law' (*Right to Education Initiative*, 2018) <<https://www.right-to-education.org/page/international-law>> Last Accessed 12 August 2020

⁴ Stephen May, *Language and Minority Rights* 2nd edn (Oxfordshire: Routledge, 2012) p. 175

mirrored in the work of many leading educational sociologists, for example, French sociologist Emile Durkheim once affirmed that

“society as a whole and each particular social milieu that determine the ideal that education realizes. Society can survive only if there exists among its members a sufficient degree of homogeneity; education perpetuates and reinforces this homogeneity by fixing in the child, from the beginning, the essential similarities that collective life demands”.⁵

Lack of respect and resources cause critical education gap. Too often, education systems do not respect Indigenous peoples’ diverse cultures. There are too few teachers who speak their languages, and their schools often lack basic materials. Educational materials that provide accurate and fair information on Indigenous peoples and their ways of life are particularly rare.⁶ Despite the numerous international instruments that proclaim universal rights to education, Indigenous Peoples do not fully enjoy these rights, and an education gap between Indigenous peoples and the rest of the population remains critical, worldwide.

Section two of this chapter will assess indigeneity in education followed by a more general discussion on education and Indigenous Peoples in section three. Section four explores the various learning styles that are the most beneficial to Indigenous students and section five highlights the obstacles to the provision of an appropriate education system for Indigenous children. Section six describes the differences between an assimilationist education versus a culturally appropriate one. Section seven highlights the reasons for Indigenous approaches to education and the benefits they bring to Indigenous students. Section eight explores Indigenous pedagogical approaches to education and teaching and section nine demonstrates ways in which Indigenous identity can be supported through education systems. This chapter concludes with a discussion on the current open call for change supported by various international bodies

⁵ E Durkheim, 'Education and Sociology (Excerpts)' (*The Free Press, 1956*) <<http://www.onlinethinktank.com/documents/education.pdf>> Last Accessed 12 August 2020

⁶ 'Education | United Nations For Indigenous Peoples' (*United Nations For Indigenous Peoples / Indigenous Peoples*) <<https://www.un.org/development/desa/Indigenouspeoples/mandated-areas1/education.html>> Last Accessed 11 March 2021

and how this call, if listened to, can transform education systems for Indigenous Peoples for the better and support them to be systems for the realisation of the right to self-determination.

5.2 Indigeneity and Education

Education should be based on the indigeneity of the community, recognising the specific needs and skills of members, and promoting the use of traditional language and knowledge. Jacob et al have said that “language, identity, and culture all elevate Indigenous Peoples to agents who have sovereignty, voice, and integrity”⁷ through this elevation the right to self-determination can be achieved or supported at the very least. A way in which these elements of self-determination can be facilitated is through an efficient education system for Indigenous children. However, conflicts often arise when dominant education systems favour “prevailing languages, individual perspectives, and principles of competition, neo-liberalism, managerialism, and individual recognition rather than Indigenous languages and arts, principles of collective thought, and practices that are foundational to so many Indigenous societies”⁸ which can disrupt the synergy of, and maintain the history of, mistrust between some Indigenous communities, the States in which they reside and the education systems in operation in these States. Appropriate educational channels must be developed and adopted in order to enhance the facilitation of this right to self-determination.

Promoting indigeneity through education is a means to enhance this process of facilitation. In this context, indigeneity is understood as “the cultural identity politics of the First Peoples who inhabit a geographic location, island, or nation”,⁹ the importance of which is undisputable as indigeneity “unites language, culture and identity as the essential triad undergirding calls for Indigenously-controlled education”.¹⁰ Chapter four has detailed the relevant legal frameworks

⁷ W. James Jacob *et al*, *Indigenous Education* (Netherlands: Springer, 2015) p. 2.

⁸ *Ibid* p. 6.

⁹ *Ibid* p. 2.

¹⁰ *Ibid* p. 3.

in place for the protection of the right to education. In that regard, Thornberry argues that Article 27 seems to “connote a positive obligation on states parties to take necessary measures to assist minorities to preserve their values and that the degree of intervention and support required is in inverse proportion to the level of the minorities own resources”¹¹ and while not specifically in relation to Indigenous Peoples, Article 27 of the UDHR does protect the right to culture and through Indigenous pedagogical approaches, this right can be promoted and protected within education systems allowing them to become facilitators of the right to self-determination in the context of Indigenous Peoples.

Across the globe, Indigenous policy makers, scholars, and educators recognize the need for Indigenous peoples to establish their own curricula and to exercise their voices in education circles to ensure they have “representation, equality, and the ability to preserve their languages, cultures and identities”¹² and a way to promote and sustain this is through open dialogues between Indigenous Peoples and the States in which they reside. Jacob *et al* affirm that “what is needed most in our increasingly interdependent world are bridges to span the gaps of inequality and injustice that have so long prevented Indigenous and non-Indigenous educators from coexisting in synergy”¹³ and protecting and promoting Indigenous approaches to education, providing Indigenous children with culturally appropriate curricula can enhance this coexistence, which, with thanks to emergent technologies, can also allow for Indigenous and Non-Indigenous Peoples to share ideas and knowledges like never before¹⁴ and sustain the harmony between them, in a process of reconciliation that can be cemented through educational provisions.

5.3 Education Within Indigenous Communities

¹¹ Neville S. Harris, *Education, law and diversity*. (Oxford: Hart, 2007) p. 419.

¹² Jacob *et al*, Note 7 p. 29.

¹³ Ibid

¹⁴ Ibid p. 5.

For many Indigenous Peoples, education is understood as a lifelong learning process.¹⁵ Indigenous education involves knowledge that is generated, obtained, and adapted to fit the historical contexts and needs of Indigenous Peoples and is then “transmitted through educative means to others”,¹⁶ highlighting the relevance of the cultural element within the concept of education held by some Indigenous Peoples. Indigenous education can also be defined as “the path and process whereby individuals gain knowledge and meaning from their Indigenous heritages”,¹⁷ again signifying the important role played by cultural heritage in the process of learning. In many traditional Indigenous communities, the learning process follows a cycle that is divided into four stages – childhood, adolescence, adulthood, and maturity.¹⁸ At each stage, a person gains certain skills and teachings. Many Indigenous peoples believe that one of the ways in which knowledge is acquired is through experience and interactions with other humans, animals, and the natural environment.¹⁹ This view is based on the belief that everyone is connected with all living and non-living things.²⁰ This type of Indigenous learning is seen as a continuous process.

Through this belief, humans grown wiser and are obligated to share and pass on their knowledge gained, thus creating a cycle of teaching and learning amongst family and community between Elders and children.²¹ Historically, and continuing today, with many

¹⁵ Magnusson K, 'Indigenous Identity, Lifelong Learning and Democracy' PASCAL International Observatory (*Pascalobservatory.org*, 2021) <<http://pascalobservatory.org/pascalnow/blogentry/news/Indigenous-identity-lifelong-learning-and-democracy>> Last Accessed 29 March 2021

¹⁶ Jacob *et al.*, Note 7 p. 3.

¹⁷ Yvonne Poitras Pratt and others, 'Indigenous education and decolonization' (2018) *Oxford Research Encyclopaedia of Education* accessed at <https://www.researchgate.net/publication/322695370_Indigenous_education_and_decolonization> Last Accessed 01 May 2021

¹⁸ Christiana Profice, Gabriel Moreira Santos and Nathane Almeida dos Anjos, 'Children and Nature in Tukum Village: Indigenous Education And Biophilia' (2016) 4(6) *Journal of Child and Adolescent Behaviour* pp. .2-6

¹⁹ M Bruchac, *Indigenous Knowledge and Traditional Knowledge*. In C. Smith, C. (Ed.), *Encyclopaedia of Global Archaeology*, (New York: Springer, 2014) p. 3815

²⁰ M.A Hart, 1996. “Sharing circles: Utilizing traditional practice methods for teaching, helping, and supporting. *From our eyes: Learning from Indigenous peoples*, pp.59-72.

²¹ 'Experiential Learning' (*First Nations Pedagogy*, 2009) <<https://firstnationspedagogy.ca/experiential.html>> Last Accessed 1 May 2021

contemporary Indigenous Peoples, children are seen as gifts from the Creator,²² who have an integral role to play in the survival of their culture. It is for this reason, that the education received by Indigenous Children is so imperative for the cultural survival of the group. Children are given careful guidance and respect from members of the community. In the community, Elders serve the role of giving guidance, because they carry a large amount of knowledge and wisdom from their years of experience.²³

The Indigenous approach to teaching and learning for children can be very different from the more general institutionalised approach of some western models of education.²⁴ Indigenous Peoples value their children's power of individual thinking by following ethics of non-interference.²⁵ For example, Elders do not give a direct instruction or an answer when asked for advice, but instead tell a story.²⁶ This way it allows the individual to self-reflect in order to discover the answer. Through this practice, it fosters independent thinking. This allows children to become self-reliant by knowing how to survive and coexist with others in their environment.²⁷ These are very important skills to learn and traits to develop as these contribute greatly to the realisation of the right to self-determination.

5.4 Learning Styles for Indigenous Students

²² Jack D. Forbes, "Indigenous Americans: Spirituality and Ecos" (2001) 130(4) *Journal of the American Academy of Arts and Sciences*. pp. 283-300

²³ J Cruikshank, "The outsider: An uneasy role in community development". (1990) 7(2) *Canadian Social Work Review/Revue Canadienne De Service Social* pp.245-259.

²⁴ In this context, the western model refers to a style of learning that emphasizes formal method of classroom education for all and sundry and is based on communication in writing, reading, and numeric skills rather than the historic context alone which was based on a process of assimilation and learning of the customs and practices of western culture. See < <https://www.igi-global.com/dictionary/western-education/55144>> Last Accessed 01/05/2021

²⁵ Clare Brant, 'Native Ethics & Principles' (Mi'kmaw Reserves, Liscombe Lodge, Nova Scotia, 1982) transcript available at < <https://www.cbu.ca/Indigenous-affairs/mikmaq-resource-centre/mikmaq-resource-guide/essays/native-ethics-principles/>> Last Accessed 01 May 2021

²⁶ Jens Korff, 'Ways Of Teaching & Engaging Aboriginal Students' (*Creative Spirits*, 2021) <<https://www.creativespirits.info/aboriginalculture/education/teaching-aboriginal-students>> Last Accessed 11 March 2021

²⁷ D Tzuriel and H.C Haywood, 1992. *The development of interactive-dynamic approaches to assessment of learning potential*. In *Interactive assessment* (New York: Springer, 1992) pp. 3-37

There are various approaches to pedagogy and the provision of education for Indigenous children that both meet the requirements set out by international human rights law and that meet the special cultural sensitivities and requirements unique to various Indigenous groups. As chapter four highlighted, there are weaknesses associated with international frameworks and national implementation. Therefore, in order for education systems to become facilitators of the right to self-determination in the context of Indigenous Peoples, there are different learning styles that can be implemented to support this facilitation. These learning styles can both enhance the educational experience of Indigenous students and the education system itself. These include observational learning, experiential learning, seven generations teaching, reciprocity and teaching location.²⁸

5.4.1 Observational Learning

One such approach is the observational learning approach. This usually begins when a child is at a young age, gaining information from watching the behaviours and actions of others. This watching is also known as role modelling, an important form of teaching by setting an example.²⁹ While elements of this can be seen in some more formal education settings in terms of behaviour, it holds a special place in terms of Indigenous children learning the traditional skills and practices of their kin. Hughes and More have noted that in traditional Aboriginal education approaches, observational learning had a much longer lasting impact on children and that learning was then largely a matter of observation and imitation of the actions of older people and to a much lesser extent by verbal instruction from those who were older.³⁰ This is

²⁸ Online lecture by Dr Tracy Bear, Indigenous Canada, University of Alberta, "Killing the Indian in The Child" (University of Alberta, 2020).

²⁹ B Bastien, "Indigenous pedagogy: A way out of dependence". (2012) *Aboriginal history: A reader*, pp.14-26, K.L Hodgson-Smith, "Issues of pedagogy in Aboriginal education". (2000) *Aboriginal education: Fulfilling the promise* pp.156-169.

³⁰ Paul Hughes and Arthur J. More, 'Aboriginal Ways of Learning and Learning Styles', *Annual Conference of the Australian Association for Research in Education* (1997) <<https://www.aare.edu.au/data/publications/1997/hughp518.pdf>> Last Accessed 01/05/2021

further supported through the findings of Swisher and Deyhle who affirm that qualitative observations of learners in their own cultural setting suggest a strong link between culture and learning style.³¹

5.4.2 Experiential Learning

Elders have years of knowledge gathered from their time on Earth. One foundation for learning is by oral tradition.³² Storytelling is used for the transmission of knowledge, which is a practice of passing down information through generations.³³ Oral transmission is an important way of recording history, preserving, and sharing knowledge. The practice of oral tradition also teaches people the value of listening.³⁴ Teaching and learning is strongly rooted in Indigenous peoples extended kinship systems allowing for teaching and learning to exist beyond the traditional classroom setting.³⁵ In Canada for instance, teaching of Indigenous Students can take place in a group through sharing circles. For example, the Nehiyawak of the Plains³⁶ would gather in a circle to discuss a topic, share their views, and come to a consensus. Everyone and everything can share, teach and in this context teachers can be people, plants, animals, and spirits that offer a lesson to children.³⁷ Indigenous characteristics of teaching are instilled in the appreciation of the value of observation, learning from experience, and listening. The transfer of knowledge is strongly based on reciprocity, the exchange of information. Lastly,

³¹ K Swisher and D Deyhle, D, “The styles of learning are different, but the teaching is just the same: Suggestions for teachers of American Indian youth”. (1989) Special Issue *Journal of American Indian Education*, pp.1-14.

³² ‘Oral Traditions’ (*Indigenousfoundations.arts.ubc.ca*, 2009)

<https://Indigenousfoundations.arts.ubc.ca/oral_traditions/> Last Accessed 1 May 2021

³³ Álvaro Fernández-Llamazares and Mar Cabeza, 'Rediscovering the Potential Of Indigenous Storytelling For Conservation Practice' (2017) 3(11) *Conservation Letters*. Pp. 1-12

³⁴ Cruikshank Note 23, K A King, K and C Benson, “Indigenous language education in Bolivia and Ecuador: Contexts, changes, and challenges”. (2003) *Medium of instruction policies: Which agenda? Whose agenda*, pp.241-261.

³⁵ A Poonwassie and A Charter, “An Aboriginal worldview of helping: Empowering approaches”. (2001) 35(1) *Canadian Journal of Counselling and Psychotherapy* pp.63-73

³⁶ ‘Nehiyawak (Plains Cree) Leadership On The Plains | Our Legacy’ (*Digital.scaa.sk.ca*, 2021)
<http://digital.scaa.sk.ca/ourlegacy/exhibit_nehiyawak_leadership> Last Accessed 30 March 2021

³⁷ Hart Note 20

relationships with other living and non-living entities are important for transferring knowledge. The Mohawk³⁸ belief that “we come to one mind” is an educational concept that many Indigenous Peoples share,³⁹ which further the concept of learning through community and kinship systems as essential to the education of Indigenous children.

5.4.3 Seven Generations Teaching

Seven Generations teaching is another Indigenous approach within the provision of education, this is a reciprocal and holistic process strongly founded in relationships.⁴⁰ Spaces for learning can take place among relatives, in sharing circles, ceremonies, and in everyday living. Within Indigenous communities, the extended family model plays an integral role in the function of children learning.⁴¹ Children are highly valued in the community, because they are seen as the future leaders and caretakers. The common concept of ‘Seven Generations’ is shared among many of the world’s Indigenous peoples.⁴² It acknowledges the importance of having intergenerational relationships to be able to transfer knowledge by looking seven generations into the past and the future.⁴³ This long view perspective is seminal to the cultural survival of many Indigenous Groups, as it allows the community to analyse previous actions and what they can do for the future generations to thrive.

³⁸ ‘Culture And History | Saint Regis Mohawk Tribe’ (*Saint Regis Mohawk Tribe*) <https://www.srmt-nsn.gov/culture_and_history> Last Accessed 30 March 2021

³⁹ Brenda Tsionaon *Aboriginal education: Fulfilling the promise*. (Vancouver: UBC Press, 2000) p. 101

⁴⁰ Bob Joseph, ‘What is the Seventh Generation Principle?’ (*Ictinc.ca*, 2021)

<<https://www.ictinc.ca/blog/seventh-generation-principle#:~:text=The%20Seventh%20Generation%20Principle%20is,seven%20generations%20into%20the%20future.>> accessed 12 April 2021.

⁴¹ Poonwassie, Note 35

⁴² B Joseph, ‘What is the Seventh Generation Principle?’ (*Ictinc.ca*, 2021) <<https://www.ictinc.ca/blog/seventh-generation-principle#:~:text=The%20Seventh%20Generation%20Principle%20is,seven%20generations%20into%20the%20future.>> Last Accessed 12 April 2021

⁴³ J K Mooradian, S L Cross and G R Stutzky, “Across generations: Culture, history, and policy in the social ecology of American Indian grandparents parenting their grandchildren”. (2007) 10(4) *Journal of Family Social Work*, pp.81-101.

Many Indigenous groups have their own childrearing practices, culturally based values, patterns, and languages. Often children are given guidance from their parents, grandparents, extended kin and their community. These relationships are important for the transmission of knowledge because everyone and everything can share a lesson that helps maintain balance or contributes to the community.⁴⁴ Extended kin share the responsibility of teaching by mentorship, role modelling, or providing encouragement. Grandparents represent an important figure for parenting. Often at times grandparents have gained the title of an Elder holding the responsibility to pass on knowledge to the following generations.⁴⁵ The Navajo⁴⁶ follow the fosterage practice when grandchildren are sent to live with their grandparents either temporarily or permanently.⁴⁷ As an act of reciprocity, the grandchild receives care and knowledge, and meanwhile the grandparents benefit from any assistance that may require heavy physical activity. Many Indigenous communities still practice this generational caretaking today.⁴⁸

5.4.4 Relationships and Reciprocity

Relationships have always been a critical component in the learning process of Indigenous peoples.⁴⁹ This includes relationships with all living and non-living things, which have the ability to teach a lesson. From these relationships comes the practice of exchange and

⁴⁴ K P Binda, "Native diaspora and urban education: Intractable problems" (2001) *Aboriginal education in Canada: A study in de-colonization*, pp.179-194, M A Hart, 1996. Sharing circles: Utilizing traditional practice methods for teaching, helping, and supporting. (1996) *From our eyes: Learning from Indigenous peoples*, pp.59-72.

⁴⁵ Chantal Viscogliosi and others, 'Importance Of Indigenous Elders' Contributions To Individual And Community Wellness: Results From A Scoping Review On Social Participation And Intergenerational Solidarity' (2020) 111(5) *Canadian Journal of Public Health*. pp. 667-681

⁴⁶ 'Navajo Nation' (*Navajo-nsn.gov*) <<https://www.navajo-nsn.gov/>> Last Accessed 30 March 2021

⁴⁷ J Mutchler, L Baker and S Lee, "Grandparents responsible for grandchildren in Native-American families". (2007) 88(4) *Social Science Quarterly* pp.990-1009.

⁴⁸ G Rowe, "Prioritizing Indigenous Elders' Knowledge for Intergenerational Well-being". (2020) 39(2) *Canadian Journal on Aging / La Revue Canadienne Du Vieillissement*, pp.156-168

⁴⁹ 'Learning Recognizes The Role Of Indigenous Knowledge' (*First Peoples Principles of Learning*, 2014) <<https://firstpeoplesprinciplesoflearning.wordpress.com/learning-recognizes-the-role-of-Indigenous-knowledge/>> Last Accessed 1 May 2021

reciprocity.⁵⁰ In a sense, this is a form of inductive discipline, which is a parental disciplinary method that involves using reasoning (induction) to explain parents' actions, values, and disciplinary approaches⁵¹. According to Newcomb, the practice of reciprocity teaches children how to receive and give back to their surroundings.⁵² Relationships with animals and the environment help a child's moral development by observing animal's behaviour and cycle of nature. The ethics of non-interference give individuals the freedom to explore and learn through trial and error⁵³ and from this, it allows children to learn by experiencing natural consequences.⁵⁴ Forms of discipline can be understood as inductive discipline, which shows the individual how their actions impact others. As a result of bad behaviour, the child would endure discipline through teasing, laughter, or being ignored.⁵⁵

5.4.5 Teaching Location

Centres for learning can take place by spending time with nature, relatives or in ceremonies. These ways of teaching and learning have built thriving and diverse civilizations.⁵⁶ For many Indigenous groups, centres for learning can take place by attending cultural ceremonies and knowledge is seen as a spirit that grows within a person through the practice of these ceremonies.⁵⁷ Ceremonies also contribute to the child's growth and ensure the balance of spiritual, mental, emotional, and physical aspects of wellbeing. For instance, the naming

⁵⁰ Bastien Note 29

⁵¹ 'Inductive Discipline - Why It Is The Best' (*Parenting For Brain*, 2021)

<<https://www.parentingforbrain.com/inductive-discipline/#:~:text=Inductive%20discipline%20is%20a%20parental,%2C%20values%2C%20and%20disciplinary%20approaches>> Last Accessed 30 March 2021

⁵² T Newcomb, 2005. *Parenting characteristics in Native American families* (Doctoral dissertation, Oklahoma State University). p. 30

⁵³ Ibid

⁵⁴ D Larivière, "Philosophy and Aboriginal Rights: Critical Dialogues". (2014) 34(1) *The Canadian Journal of Native Studies*, pp. 232-234, S Van Dijk and E van Dijk, 2012. Transformative learning: Towards the social imaginary of sustainability: Learning from Indigenous cultures of the American continent. (2012) *Learning for Sustainability in Times of Accelerating Change* pp.225-240.

⁵⁵ Newcomb Note 52

⁵⁶ Watt-Cloutier, "Honouring our past, creating our future: Education in Northern and remote communities". (2000) *Aboriginal education: Fulfilling the promise*, pp.114-128.

⁵⁷ Bastien Note 29

ceremony would help the child find their place in the community and begin to create a sense of identity within. In this way children learn about their roles and responsibilities within the community.⁵⁸ This allows children to have a sense of place and furthermore, understand their connections to place and lands. Nurturing this connection between Indigenous students and their ancestral lands can deepen the cultural appreciation and understanding of students and teachers alike. This appreciation can allow for education systems to be more inclusive and more aware of cultural sensitivities and by doing so, facilitating the right to self-determination through education.

5.4.6 Traditional Approaches Under Attack

While these traditional methods for teaching and learning in Indigenous communities were evident and fit for purpose, in the mid-1800s a new way of learning was introduced, or more accurately enforced, upon Indigenous Peoples as a result of the colonial mentality of superiority. The brutal education system of residential schools changed everything.⁵⁹ This will be explored in detail in the case study on Canada and the Canadian Residential School System later in this work. These residential school systems were a product of the time and were supported by what Durkheim describes as “the nationalist principle of ‘one state, one culture’ saw the state, via its education system, increasingly identified with a specific language and culture – invariably, that of the majority ethnic group”.⁶⁰ This is important to note as there were fully functioning educational approaches being used and implemented by Indigenous groups before the arrival of settlers, traditional approaches that were effective and ignored leading the way for educational systems to become deniers of the right to self-determination.

⁵⁸ A van de Sande and P Menzies, “Native and mainstream parenting: A comparative study”. (2003) 4(1) *Native Social Work Journal* p.127

⁵⁹ E Hanson, ‘The Residential School System’ (*Indigenousfoundations.arts.ubc.ca*, 2009)
<https://Indigenousfoundations.arts.ubc.ca/the_residential_school_system/> Last Accessed 26 June 2021

⁶⁰ May Note 4 p. 176, See Ernest Gellner, *Nations and Nationalism*. (Oxford: Blackwell, 1983)

5.5 Obstacles to the Provision of an Appropriate Education System for Indigenous Children

As a result of various sessions in the United Nations Department of Economic and Social Affairs (UNDESA) between 2013 and 2017, they have identified a series of potential obstacles facing Indigenous children in the pursuit of appropriate education.⁶¹ These obstacles are a force that must be overcome in order to transform educational systems from deniers of the right to self-determination of Indigenous Peoples to facilitators of the right to self-determination. The following are the main threats and obstacles faced by Indigenous children in educational settings.

5.5.1 Lack of Respect and Resources

UNDESA notes that “education systems do not respect Indigenous Peoples’ diverse cultures”.⁶² This can be evident in various forms from lack of traditional languages being used to teachers not being fully familiar with the cultural sensitivities or requirements of Indigenous students that may be in their classroom. Addressing this set of concerns was raised by UNDESA and acknowledged in their series of recommendations on the provision of education for Indigenous children. The committee noted specifically that initiative must be made to accommodate for this via “curricular reform, respect for endogenous teaching, the use of Indigenous languages, teacher education and training, the preparation of culturally acceptable teaching aids, and other topics”.⁶³ By implementing these initiatives in education systems, they can be facilitators in the realising the right to self-determination of Indigenous Peoples by

⁶¹ ‘Recommendations On Education | United Nations for Indigenous Peoples’ (*United Nations for Indigenous Peoples*) <<https://www.un.org/development/desa/Indigenouspeoples/mandated-areas1/education/recs-education.html>> Last Accessed 1 May 2021

⁶² ‘Education | United Nations For Indigenous Peoples’ (*United Nations For Indigenous Peoples | Indigenous Peoples*) <<https://www.un.org/development/desa/Indigenouspeoples/mandated-areas1/education.html>> Last Accessed 11 March 2021

⁶³ UNDESA, Study on how the knowledge, history and contemporary social circumstances of Indigenous peoples are embedded in the curricula of education systems (2013) E/C.19/2013/17 p. 2

incorporating Indigenous expertise and curricula relevant to the Indigenous culture and heritage.

5.5.2 Loss of identity

UNDESA has affirmed that when Indigenous children are only educated through the national discourse, this leaves them vulnerable and in danger of losing a part of their identity.⁶⁴ This loss of cultural identity can be a disconnection from their family and community. This disconnect from home life and Indigenous community can have far reaching consequences in realising the right to self-determination. By losing this connection to their home, family and community, it can impact their sense of belonging and personhood, disconnecting them from their cultural identity.

Indigenous Peoples have their own methods of knowledge transmission, based on oral traditions,⁶⁵ and if this is ignored in the provision of education for Indigenous children, they run the real risk of this form of loss of identity. Chapters seven and eight of this work will build on this and show how throughout history, and indeed in some present situations, States developed education systems in which Indigenous cultures, languages and practices were ignored or their preservation was discouraged.⁶⁶

The education system in operation can easily deny the right to self-determination in this process by engaging in consultation with Indigenous parents and catering to the specific cultural sensitivities of Indigenous Students. This can result in the disruption of the transmission of cultural heritage and identity. Many education systems around the world have contributed to the loss of “both Indigenous languages and traditional bodies of knowledge and lifestyles”.⁶⁷

⁶⁴ UNDESA Note 63

⁶⁵ M Bruchac, *Indigenous Knowledge and Traditional Knowledge*. In C. Smith, C. (Ed.), *Encyclopaedia of Global Archaeology*, (New York: Springer, 2014) p. 3815

⁶⁶ United Nations, *State of The World's Indigenous Peoples Education* (United Nations, 2017) p.4

⁶⁷ *Ibid* p.5

This again represents a lack of respect and understanding of Indigenous culture and heritage and not supporting the inclusion of this into relevant education systems will allow these systems to continue to deny the right to self-determination of Indigenous Peoples.

5.5.3 Irrelevance of Education Provided⁶⁸

UNDESA also acknowledged that “Indigenous students frequently find that the education they are offered by the state promotes individualism and a competitive atmosphere, rather than communal ways of life and cooperation”.⁶⁹ This finding highlights that Indigenous students in many education systems are not taught relevant survival and work skills suitable for Indigenous economies. The case study in Chapter Eight of French Guiana will further address this specific issue where many Indigenous students must return to their communities with a formal education that is irrelevant or unsuitable for their needs.

Even in countries where the general level of schooling among Indigenous Peoples has increased, for instance in several Latin American countries and Canada, the quality gap in schooling persists, resulting in poor education outcomes for Indigenous Peoples.⁷⁰ The conditions of extreme poverty, exclusion and isolation do not bode well for sustainable and multicultural Indigenous education programmes.⁷¹ Furthermore, poor education within Indigenous communities can also lead to the potential of child labour issues. This issue has been highlighted in a report conducted by the International Labour Organisation⁷² in their report ‘Indigenous and Tribal Children: Assessing child labour and education challenges’⁷³

⁶⁸ Note 62, J Korff, ‘Barriers to Aboriginal Education’ (*Creative Spirits*, 2021) <<https://www.creativespirits.info/aboriginalculture/education/barriers-to-aboriginal-education>> Last Accessed 11 March 2021

⁶⁹ UNDESA Note 63

⁷⁰ Ibid

⁷¹ Ibid

⁷² Referred to hereafter as ILO

⁷³ ‘Indigenous and Tribal Children: Assessing Child Labour And Education Challenges’ (*Ilo.org*, 2003) <http://www.ilo.org/ipec/Informationresources/WCMS_IPEC_PUB_1100> Last Accessed 24 July 2021

affirming the concern held and the danger posed by a mal-adapted education system and the impact on not just Indigenous children, but Indigenous communities at large. This supports the hypothesis of this research, the importance of education in the realisation of self-determination through education systems being active facilitators of the right.

5.6 Assimilationist Education versus Culturally Appropriate Curricula

Indigenous Peoples and their allies have long demonstrated that Indigenous Peoples have their own forms of local knowledge, practical expertise, and culturally specific means of transmitting knowledge.⁷⁴ This form of education is usually intergenerational in nature with children learning from adults. Assimilation through education in the past occurred when Indigenous children were forced into an education system that did not recognise the importance of their indigeneity.⁷⁵ However, as this research will show, this is not confined to occurrences in the past and the connection between education and Indigenous identity remains an issue in many education systems today. A way to support indigeneity in education is moving from an assimilationist approach to a culturally appropriate one. This can, in turn, enhance the educational experience of Indigenous children and allow the education systems to become facilitators of the right to self-determination rather than deniers of the right.

5.6.1 Assimilation via Cultural Suppression

As mentioned, formal education has often been associated with language death and those forces undermining Indigenous Peoples' distinctive identities, worldviews, forms of social organization, and cultural practices.⁷⁶ This resulted in educational practices that were designed to assimilate Indigenous Peoples into the mainstream population. This was fuelled by an urban,

⁷⁴ B Dean, 'Indigenous Education And The Prospects For Cultural Survival' (*Culturalsurvival.org*, 2003) <<https://www.culturalsurvival.org/publications/cultural-survival-quarterly/Indigenous-education-and-prospects-cultural-survival>> Last Accessed 30 March 2021

⁷⁵ Lilly Brown, 'Indigenous Young People, Disadvantage and The Violence of Settler Colonial Education Policy And Curriculum' (2018) 55(1) *Journal of Sociology* pp. 54-71

⁷⁶ D Crystal, 'The Future of Language' (2007) *Proceedings of LingO 2007* pp. 1-2

monolingual-based model of pedagogy, and the fact that formal schooling tends to be deeply authoritarian in practice and hierarchical in its organization.⁷⁷

Moreover, imposition of dominant national languages (such as English and Spanish in the Americas for example) through state-sponsored literacy programs has separated Indigenous Peoples from their traditional means of socialization and customary modes of expression.⁷⁸

Unfortunately, this is not confined to history books and as the case study of French Guiana will demonstrate, language of instruction is essential in maintaining cultural links for Indigenous Students. Jones and Warner make the point that if minorities cannot learn their own language through formal schooling or classes in their communities “they lose not only their language but part of their identity... their language transmits their cultural norms and values, and it emphasizes their groups feelings. But it is under threat in an integrated system”.⁷⁹

5.6.2 Culturally Appropriate, Culturally Sustaining and Inclusive Education

More recently there has been a shift to culturally responsive and inclusive curricula, or as it will be referred to in this research, culturally appropriate curricula. To apply a definition to this term would be an incorporation of materials that link traditional or cultural knowledge originating in Native home life and community to the curriculum of the school.⁸⁰ Educational researchers and practitioners have long advocated adopting a culturally appropriate curriculum to strengthen the education of Native youth.⁸¹ Research supports that deeply imbedded cultural values drive curriculum development and support implementation and further help determine which subject matter and skills will receive the most classroom attention,⁸² creating a more

⁷⁷ Dean Note 74

⁷⁸ Ibid

⁷⁹ Neville S. Harris, *Education, law and diversity*. (Oxford: Hart Pub, 2007). p 421

⁸⁰ Brittany Aronson and Judson Laughter, 'The Theory and Practice of Culturally Relevant Education' (2016) 86(1) *Review of Educational Research*. pp.163-206

⁸¹ Angelina E Castagno and Bryan McKinley Jones Brayboy, 'Culturally Responsive Schooling for Indigenous Youth: A Review of The Literature' (2008) 78 *Review of Educational Research*. Pp.914-993

⁸² T Yazzie, 'Culturally Appropriate Curriculum: A Research-Based Rationale.' (*ERIC*, 1999) <<https://eric.ed.gov/?id=ED427906>> Last Accessed 24 July 2021

inclusive and valuable learning experience for Indigenous Children. The issue, value and importance of culturally appropriate education will feature more heavily in the recommendations section of Chapter Nine; however, it is important to draw attention to, and acknowledge the approach here.

5.7 Reasons for Indigenous Approaches to Education

Hamilton-Ekeke, and Dorgu write that Indigenous education specifically focuses on teaching “Indigenous knowledge and content within formal or non-formal educational systems”.⁸³ The recognition and utilisation of Indigenous education methods can be a positive response to the erosion and loss of Indigenous knowledge that has occurred via the various processes of colonialism, globalisation, and modernity.⁸⁴ In many States in which assimilationist educational policies were used as a tool of oppression against Indigenous Peoples, implementing positive changes to the education systems provided for Indigenous Peoples can be a welcome move in the process of reconciliation,⁸⁵ in turn allowing these education systems to become a facilitator for the right to self-determination. What is true in relation to education systems is that omitting Indigenous knowledge can amount to cultural assimilation,⁸⁶ as will be supported by the case study of Canada in Chapter Seven. Forced assimilation through education is a clear example of how inappropriate education systems can deny the right to self-determination.

5.7.1 Decolonising the Curricula

⁸³ JT Hamilton-Ekeke, and Ebiere Theresa Dorgu, “Curriculum and Indigenous Education for Technological Advancement” (2015) 3(11) *British Journal of Education*. p.2, Stephen May and Sheila Aikman, 'Indigenous Education: Addressing Current Issues and Developments' (2003) 39(2) *Comparative Education* pp. 139-145

⁸⁴ S May and S Aikman, S "Indigenous Education: Addressing Current Issues and Developments". (2003) 39(2) *Comparative Education*. pp.139–145.

⁸⁵ OECD Directorate for Education and Skills, 'Supporting Success for Indigenous Students' (OECD 2017) p.6

⁸⁶ Jerry White, “An Overview of Indigenous Educational Attainment in Canada” (2016) 90(2) *Region: Economics & Sociology* pp.253-268

Work is needed on decolonising curricula around the world so that schools for Indigenous children are a safe space for learning and a space that offers an appropriate education and one that recognises both the benefits and importance of incorporating Indigenous knowledge and preserving Indigenous heritage and identity. As the case studies in the following chapters will show, educational institutions are, and have been, places where Indigenous culture and heritage have been stigmatised and as a result, actively deny the right to self-determination. A series of research studies which have been carried out support this, while not alluding to the specifics of education being a process for the realisation of the right to self-determination. In many States, governments both intentionally and un-intentionally stigmatise Indigenous learning, culture, and language and this can be used to assimilate Indigenous Peoples and create a more homogenised country ⁸⁷ and by doing this, deny the right to self-determination from being actualised for Indigenous groups.

5.7.2 Indigenous Empowerment Through Education

Education systems can be a very powerful tool through which Indigenous empowerment can be championed. For instance, a study carried out Primus, Abdullah and Ismail on the impact of education on Indigenous children in Malaysia regarding post-secondary students found that Indigenous children struggled with social and academic adaptation as well as self-esteem.⁸⁸ The same study also found that Indigenous students experienced more difficulty when transitioning to university and other new programmes of education when compared to non-Indigenous students.⁸⁹ These challenges are rooted in the fact that Indigenous students are

⁸⁷ Nicholas Limerick and Nancy H. Hornberger, "Teachers, Textbooks, And Orthographic Choices in Quechua: Comparing Bilingual Intercultural Education in Peru and Ecuador Across Decades" (2019) 51(3) *Journal of Comparative and International Education*. pp. 319-336

⁸⁸ Doreen Primus, Melissa Ng Lee Yen Abdullah and Aziah Ismail, 'Indigenous Students' Challenges, Adaptation and Self-esteem During Post-Secondary Education: A Study on Selected Malaysian Public Universities' (2016) 5(1) *Malaysian Online Journal of Educational Management*. pp.16-28

⁸⁹ Ibid

underrepresented in higher education and face psychological challenges, such as lower self-esteem.⁹⁰

In Chapter nine this issue of representation and esteem building for Indigenous students will be addressed further and offer case studies which highlight positive changes that have been made in higher education systems to empower Indigenous students and support them in the attainment of further education through the provision of supports and culturally appropriate curricula. This is a reflection of the fact that globally, there is a large gap in educational attainment between Indigenous and non-Indigenous people.⁹¹ Again, this is a result of a relationship of mistrust that has developed over time between Indigenous Peoples and the education systems that were designed to subjugate and oppress the cultural heritage and identity. For example, a study in Canada found that this gap is widened by the residential school system and traditionally Eurocentric curriculum and teaching methods,⁹² again this will be explored further in Chapter Seven. However, it is worth noting that this gap is widened by the negative psychological impacts of attending residential schools, which were heavily influenced by “Christian missionaries and European ideals and customs, a feeling of distrust towards Canadian schools has been passed down through generations”.⁹³ As a result of experiencing racism, neglect, and forced assimilation, the cycle of distrust has pervaded generations of Indigenous children.⁹⁴ This was a result of systems of education which denied the right to self-determination in the context of Indigenous Peoples as Indigenous heritage and culture were completely removed from the students in these schools. Parents were given no decision-making control over how their children would be taught and how this could potentially assimilate their children through the education system.

⁹⁰ Ibid

⁹¹ White Note 86

⁹² Ibid

⁹³ Ibid

⁹⁴ Ibid

5.7.3 Implementing Indigenous Approaches to Pedagogy

There is a continued lack of teaching of Indigenous knowledge, perspective, and history in education systems today. This lack of incorporation furthers the oppression faced by Indigenous students which was discussed in the previous chapter and will be highlighted in more detail through the case study chapters relating to Canada and French Guiana in the following chapters. As mentioned above, there has been a modern-day global shift towards recognising the importance of Indigenous education which includes an appreciation for Indigenous culture, language and heritage. One reason for this current awareness is the rapid spread of Western educational models throughout the world. Critics of the western educational model believe that “due to colonial histories and lingering cultural ethnocentrism, the western model cannot substitute for an Indigenous education”.⁹⁵ Throughout history, Indigenous Peoples have experienced, and continue many negative interactions with western society (for example, the Canadian Residential School System), which has led to the oppression and marginalization of Indigenous people,⁹⁶ which has many connections to acts of cultural genocide as discussed in Chapter Three.

5.8 Indigenous Pedagogical Approaches in the Provision of Education

In order to reduce marginalisation of Indigenous Peoples in relation to educational provision, bridging the gap between the western model of education and Indigenous education requires a process of decentralisation of the education system.⁹⁷ This requires a shift in the education system that transitions away from cultural-centrism and inclusion of Indigenous knowledge. In order for this shift to occur, Indigenous pedagogical approaches must be implemented into existing education systems to allow them to cater to the needs of Indigenous students and

⁹⁵ Vanessa W. Simonds and Suzanne Christopher, “Adapting Western Research Methods to Indigenous Ways of Knowing” (2013) 103(12) *American Journal of Public Health* pp. 2185-2192

⁹⁶ Frances Henry *et al*, *The Colour Of Democracy* (Toronto: Harcourt Brace Canada, 2000) pp. 103–114.

⁹⁷ Njoki Nathani Wane, 'Indigenous Education and Cultural Resistance: A Decolonizing Project' (2009) 39(1) *Curriculum Inquiry*. Pp.159-178

enhance the education systems function as a facilitator of the right to education. The following are examples of the main pedagogical approaches aimed at empowering Indigenous students and Indigenous communities through education systems that do not have an overreliance or dependence on western culture and champion for the inclusion of and respect for Indigenous knowledge and expertise in the education system for Indigenous children.⁹⁸ These four pedagogical approaches, as set forth by and supported in the work of various scholars⁹⁹ and experts in the field of culturally appropriate development. These four approaches are: culturally relevant pedagogy, critical Indigenous pedagogy, land-based pedagogy, and community-based pedagogy.

5.8.1 Culturally Relevant Pedagogy

Culturally relevant pedagogy involves curricula tailored to the cultural needs, sensitivities and requirements of students and participants involved. Culture is understandably at the core of this pedagogical approach and teachers and educators aim for all students to achieve “academic success, develop cultural competence, and develop critical consciousness to challenge the current social structures of inequality that affect Indigenous communities in particular”.¹⁰⁰ Culturally relevant pedagogy also extends to culturally sustaining and revitalising pedagogy which actively works to challenge power relations and colonization by reclaiming, through education, what has been displaced by colonisation and recognising the importance of community engagement in such efforts.¹⁰¹ This is particularly important in many states where

⁹⁸ Jay T. Johnson, “Place-Based Learning and Knowing: Critical Pedagogies Grounded In Indigeneity” (2010) 77(6) *GeoJournal* pp.829-836

⁹⁹ See Angelina E. Castagno and Bryan McKinley Jones Brayboy, “Culturally Responsive Schooling for Indigenous Youth: A Review of the Literature” (2008) 78(4) *Review of Educational Research* pp. 941-993, Terry Huffman, “Native American Educators' Perceptions on Cultural Identity and Tribal Cultural Education: An Application of Transculturation Theory” (2013) 52(3) *Journal of American Indian Education* pp. 21-40

¹⁰⁰ Leonel Lim, "Culturally Relevant Pedagogy: Developing Principles of Description and Analysis". (2019) 77(1) *Teaching and Teacher Education*. pp.43–52.

¹⁰¹ Teresa Mccarty, "Critical Culturally Sustaining/Revitalizing Pedagogy and Indigenous Education Sovereignty". (2014) 84(1) *Harvard Educational Review*. pp.101–124.

there has been a history of assimilatory practices through education as this can be a meaningful acknowledgement within a process of reconciliation and re-building trust between Indigenous Peoples and the education systems provided by the States in which they reside.¹⁰² The incorporation of culturally relevant curriculum also offers greater control for Indigenous Peoples to assert over the education received by their children, this reinforces the right to self-determination and allows education systems to be a facilitator in the realisation of the right.

5.8.2 Critical Indigenous Pedagogy

Critical Indigenous pedagogy focuses on resisting colonisation and oppression through education practices that privilege Indigenous knowledge and promote Indigenous sovereignty.¹⁰³ Beyond schooling and general instruction, critical Indigenous pedagogy is rooted in thinking critically about social injustices and challenging those through education systems that empower youth and teachers to create social change.¹⁰⁴ This approach to Indigenous education is perhaps the most appropriate in terms of education systems providing the tools needed for Indigenous students in the facilitation of the right to self-determination through education. Through this approach, “the ultimate goal of teachers and educators is to guide Indigenous students in developing critical consciousness by creating a space for self-reflection and dialogue as opposed to mere instruction”.¹⁰⁵ This form of pedagogy empowers Indigenous youth to take charge and responsibility to transform their own communities, again highlighting how this approach is critical in the facilitation and realisation of the right to self-determination of Indigenous Peoples through education systems.

¹⁰² G Contesino, ‘Indigenous Peoples Have A Right To Quality Education. But So Far, We’ve Failed Them’ (*World Economic Forum*, 2016) <<https://www.weforum.org/agenda/2016/08/Indigenous-people-have-a-right-to-quality-education-but-so-far-we-ve-failed-them/>> Last Accessed 1 May 2021

¹⁰³ J Garcia and V Shirley, “Performing decolonization: Lessons learned from Indigenous youth, teachers and leaders’ engagement with critical Indigenous pedagogy”. (2013) 28(2) *Journal of Curriculum Theorizing*, pp.101-124

¹⁰⁴ Ibid

¹⁰⁵ Ibid

With the implantation of critical Indigenous pedagogy, there is a paradigm shift, in which schools are considered sacred landscapes since they offer a sacred place for growth and engagement.¹⁰⁶ This is in complete opposition to most western-style schooling, and indeed, historic education systems for Indigenous children, as both have been limited in engaging Indigenous knowledge and languages. However, schools that embrace critical Indigenous pedagogy recognise “Indigenous knowledge and epistemologies which is why Indigenous Schools should be considered sacred landscape”.¹⁰⁷ This can also challenge the negative perceptions which can remain in some Indigenous Communities regarding education systems of the State owing to a recognisable mistrust of previous education systems which sought to oppress Indigenous Peoples and deny them the right to self-determination.¹⁰⁸

5.8.3 Land-Based Pedagogy

A somewhat lesser-known pedagogical approach, and an approach that can be rather difficult for non-Indigenous students to understand and appreciate is land-based pedagogy. Through this approach, land as pedagogy recognises colonisation as dispossession and thus aims to achieve decolonisation through education practices that connect Indigenous Peoples to their native land and the social relations that arise from those lands.¹⁰⁹ This draws on the unquestionable connection that many Indigenous Groups have with the lands they occupy, often holding very special place as one of sacred connection to ancestry and heritage.¹¹⁰ It was for this reason that land-based pedagogy encourages Indigenous Peoples to centre love for the

¹⁰⁶ Ibid

¹⁰⁷ Ibid

¹⁰⁸ Jan Gray and Quentin Beresford, *Alienation from School Among Aboriginal Students* (Western Australia: Edith Cowan University, 2001) p. 9

¹⁰⁹ M Wildcat et al, 2014. “Learning from the land: Indigenous land-based pedagogy and decolonization”. (2014) 3(3) *Decolonization: Indigeneity, Education & Society* pp.1-15

¹¹⁰ Gerard Maguire, “*The unacknowledged genocide: The Guatemalan Maya’s quest for justice*”. (2020) 3 *NPPSH Reflections*, pp. 9-32

land and each other as the core of education in order to contest the oppression and colonialism that has been, and is in some instances, aimed at deterring Indigenous people from their land.¹¹¹

Unique to this approach is that it has no specific curriculum because education and knowledge come from what the land gives and is based on the idea of “abstaining from imposing an agenda to another living being”.¹¹² According to Simpson, in this pedagogical approach, intelligence is considered a “consensual engagement where children consent to learning and having a set curriculum is thought to normalise dominance and non-consent within schooling and inevitably extended to societal norms”.¹¹³ In this approach, Western style education is seen as coercive because in order to achieve something, “one must follow the set guidelines and curriculum enforced by educators”.¹¹⁴ Individuals show interest and commitment on their own thus achieving self-actualisation and sharing their knowledge with others through modelling and “wearing their teachings”,¹¹⁵ this caters for the uniqueness of culturally appropriate curricula and further enhances the facilitation of the right to self-determination through an education system by enhancing the Indigenous student experience and attributing value to the cultural values of Indigenous Peoples.

The values of land-based pedagogy are important to Indigenous Peoples who believe that “raising Indigenous children in a context where their consent, physically and intellectually, is not just required but valued, goes a long way to undoing the replication of colonial violence”¹¹⁶ which is an essential part of Indigenous empowerment and again supporting the reconciliation process for many victims and survivors of historically abusive education systems.

¹¹¹ Wildcat Note 109

¹¹² L B Simpson, “Land as pedagogy: Nishnaabeg intelligence and rebellious transformation”. (2014) 3(3) *Decolonization: Indigeneity, Education & Society*. pp.1-24

¹¹³ Ibid

¹¹⁴ ‘Indigenous Education | Owlapps’ (*Owlapps.net*)

<http://www.owlapps.net/owlapps_apps/articles?id=29189764&lang=en> Last Accessed 1 May 2021

¹¹⁵ Simpson Note 112

¹¹⁶ Ibid

5.8.4 Community-Based Pedagogy

Community-based education is central to the revival of Indigenous cultures and diverse languages. As discussed in the previous chapter, language can be a hugely important tool in the facilitation of the right to self-determination of Indigenous Peoples. Through incorporating Indigenous languages and expertise from a local community level, this form of pedagogy allows community members to participate and influence the learning environment in local schools.¹¹⁷

Community-based education embraces the ideas of Paulo Freire,¹¹⁸ who called for individuals to “become active participants in shaping their own education”¹¹⁹ thus allowing for a say in and control over one’s own destiny, a seminal element of the right to self-determination of Indigenous Peoples. May argues that there are a host of benefits of implementing this particular pedagogical approach as it can rebuild trust relationships between Indigenous Peoples and education systems by incorporating parent involvement in decision making encourages children to become closer to their teachers allowing Indigenous parents themselves gain confidence and positively impacts their children's learning.¹²⁰ This teacher-parent collaboration can also support the elimination of stereotypes and prejudices non-Indigenous teachers may have about Indigenous peoples.

The school system, or perhaps, the school environment, under a community-based education system is one which requires open channels of both communication and collaboration between the school and the wider community. The community must share leadership within the schools and must be “involved in decision-making, planning, and implementation”.¹²¹ This model also

¹¹⁷ Stephen May, *Indigenous Community-Based Education* (Clevedon: Multilingual Matters 1999). pp. 46-67

¹¹⁸ Paulo Reglus Neves Freire was a Brazilian educator and philosopher who was a leading advocate of critical pedagogy. He is best known for his influential work *Pedagogy of the Oppressed*.

¹¹⁹ May Note 117

¹²⁰ Ibid

¹²¹ Ibid

challenges the western model of education systems as children learn through the guidance rather than determinants of their teachers or elders and are taught skills of active participation.¹²² A further unique result of community-based education has been noted by Ford, Rasmus and Allen who have written on community-based participatory research, an approach to research that facilitates co-learning co-partnership between researchers and community members to promote community-capacity building.¹²³ This form of participatory research requires having youth-researcher partnerships, youth action-groups, and local committees made up of youth, tribal leaders, and elders.¹²⁴ This approach to research builds strength and empowers community members. This offers a way in which empowerment can be facilitated through education through a system outside of the classroom. This form empowerment is central to the realisation of the right to self-determination. This approach highlights a way in which systems of education and the institutions which provide it can support the facilitation to the right to self-determination in the context of Indigenous Peoples in an effective and meaningful way.

5.9 Supporting Indigenous Identity through Education

Incorporating Indigenous approaches to pedagogy within education systems that provide for Indigenous students is an important aspect of decolonising the school environment. This allows for an enhanced educational experience for Indigenous students, this can be supported by proactive measure to preserve, revitalise, and sustain Indigenous identity within the education system. Through this process, education can be valuable engines for the facilitation of the right to self-determination of Indigenous Peoples.

¹²² Michael McNally, "Indigenous Pedagogy in the Classroom: A Service-Learning Model for Discussion". (2004) 28(3) *American Indian Quarterly* pp. 604–617

¹²³ Tara Ford, Stacy Rasmus and James Allen, 'Being Useful: Achieving Indigenous Youth Involvement in a Community-Based Participatory Research Project in Alaska' (2012) 71(1) *International Journal of Circumpolar Health*. (online)

¹²⁴ Ibid

5.9.1 Preserving Indigenous Identity

Research carried out by Carol Black in her film "Schooling the World: The White Man's Last Burden",¹²⁵ addresses this issue of modern education and its destruction of unique, Indigenous cultures and individuals' identities. This film offers a unique insight into the relationship between traditional and westernised education systems and the impact forced ideals can have on a vulnerable generation of children. It reveals the effects of trying to institute a global education system or central learning authority, which can ultimately demolish "traditional sustainable agricultural and ecological knowledge, in the breakup of extended families and communities, and in the devaluation of ancient spiritual traditions."¹²⁶

The film offers a deeper understanding of the necessary dialogue between cultures, suggesting that there is no single way to learn. If it is accepted that no two human beings are alike because they develop under different circumstances, learning, and education, then no two cultures are alike,¹²⁷ this is where a point of contention establishes in the context of education systems being utilised to maximum capacity to be a facilitator of the right to self-determination. The lack of control is evident, control over how children of the group should be educated in the eyes of the State and in the eyes of their community. The director and editor of the film, Carol Black, writes "[o]ne of the most profound changes that occurs when modern schooling is introduced into traditional societies around the world is a radical shift in the locus of power and control over learning from children, families, and communities to ever more centralized systems of authority."¹²⁸ This is evident in the context of Indigenous Children and education systems

¹²⁵ Carol Black, *Schooling The World; The White Man's Last Burden* (2010)

¹²⁶ K Mitchell, 'Schooling The World Movie Review' (*CULTURS — lifestyle media for cross-cultural identity*, 2020) <<https://www.culturismag.com/schooling-the-world-movie-review-01152020/>> Last Accessed 11 March 2021

¹²⁷ P. Christopher Earley and Elaine Mosakowski, 'Cultural Intelligence' [2004] *Harvard Business Review* <<https://hbr.org/2004/10/cultural-intelligence>> Last Accessed 27 April 2021

¹²⁸ 'Occupy Your Brain With Carol Black' (*Library Professional Development*, 2013) <<https://libprofdev.wordpress.com/2013/01/31/occupy-your-brain-with-carol-black-febr-5/>> Last Accessed 11 March 2021

throughout history, when westernised educational design was enforced on Indigenous Children, it caused a deep disconnect between children, families and communities, thus hindering and denying an appropriate means to the right to self-determination by way of having control over one's own destiny. Black continues by explaining that in many "non-modernized societies, children learn in a variety of ways, including free play or interaction with multiple children, immersion in nature, and directly helping adults with work and communal activities".¹²⁹ Education and learning holds a very different meaning in this style of learning environment, in this style students learn by "experience, experimentation, trial and error, by independent observation of nature and human behaviour, and through voluntary community sharing of information, story, song, and ritual".¹³⁰ Perhaps most importantly, in this particular way of learning, local elders and traditional knowledge systems are autonomous in comparison to a strict Western education model. Adults have little control over children's "moment-to-moment movements and choices."¹³¹

This is a powerful engine of learning for children, offering culturally sensitive and appropriate engagement and further strengthening the bonds that tie the group together, the shared cultural experience of both past and present.¹³² Once learning is institutionalized, both the freedom of the individual and his/her respect for the elder's wisdom are ruined. In this context, it removes family and community from the learning process and allows the teacher "control over the child, the school district has control over the teacher, the state has control over the district, and increasingly, systems of national standards and funding create national control over states."¹³³

¹²⁹ Ibid

¹³⁰ Ibid

¹³¹ Ibid

¹³² 'Enhancing Cultural Competence | Community Toolbox' (*Ctb.ku.edu*) <<https://ctb.ku.edu/en/enhancing-cultural-competence>> Last Accessed 11 March 2021

¹³³ Black Note 128

From a Western perspective, centralized control over learning is natural and consistent with the principles of freedom and democracy,¹³⁴ and yet, it is this same centralized system or method of discipline that does not take into account the individual, which in the end stamps out local cultures. However, it must be acknowledged that, if schools operate under a mostly European style of teaching, there is a risk that non-European students may believe that their cultures have no relevance or contribution to society. Often, Indigenous students resist learning because they do not want to be oppressed or “labelled as ‘incapable of learning’ due to neo-colonial knowledge and teaching”.¹³⁵ When Indigenous knowledge is seen as inferior to a standard school curriculum, an emphasis is placed on an individual's success in a broader consumer culture instead of on an ability to survive in his/her own environment. Black concludes with a comment, “[w]e assume that this central authority, because it is associated with something that seems like an unequivocal good – ‘education’ – must itself be fundamentally good, a sort of benevolent dictatorship of the intellect,”¹³⁶ which has proven to not be the case in numerous case studies.

5.9.2 Revitalising and Sustaining Indigenous Identity

One approach that offers a beacon of hope for the relationship between Indigenous Peoples and educational systems to be reconciled in a way that meets the cultural needs for the group and satisfying educational requirements is through culturally sustaining and revitalizing pedagogy put forward by McCarty and Lee in which they purport incorporating and implementing Indigenous expertise and actively promoting and using Indigenous languages in educational settings. This also furthers the understanding of the connection that must be established between education and the right to self-determination in the context of Indigenous Peoples by

¹³⁴ Munroe *et al.*, "Decolonizing Aboriginal education in the 21st century". (2013) 48(2) *McGill Journal of Education/Revue des Sciences de l'Éducation de McGill* pp. 317–333

¹³⁵ *Ibid*

¹³⁶ Black Note 128

acknowledging the need for this recognition. McCarty and Lee comment that “tribal sovereignty (Indigenous Peoples as peoples, not populations or national minorities), must include education sovereignty”.¹³⁷ A way in which this can be achieved, as reported by the authors, is through culturally sustaining and revitalizing pedagogy, which they affirm is “based on three items; (1) asymmetrical power relations and the goal of transforming legacies of colonization, (2) reclaim and revitalize what has been disrupted and displaced by colonization, and (3) the need for community-based accountability”.¹³⁸ In one sense, this is an opportunity to offset the balance of policy dialogue and implementation which was discussed earlier in this chapter in relation to national implementation of international human rights norms in relation to the provision of education. Culturally sustaining and revitalising pedagogy is meant to off-balance dominant policy dialogue. This is supported in the research of McCarty and Lee, which offers two comparison case studies at schools in Arizona and New Mexico.¹³⁹

Lee reports for the Native American Community Academy (NACA) in Albuquerque, New Mexico and asserts that the core values for the school include “respect, responsibility, community service, culture, perseverance, and reflection”.¹⁴⁰ These core values reflect tribal communities as well. NACA offers three languages; “Navajo, Lakota, and Tiwa, and the school also seeks outside resources to teach local languages”.¹⁴¹ This study emphasises that teaching language is culturally sustaining and revitalizing and they make a difference in “revitalizing Native languages through culturally sustaining practices”.¹⁴² The importance of language in the realisation of the right to self-determination of Indigenous Peoples has long been accepted by prominent researchers and experts in the field.

¹³⁷ TL McCarty and TS Lee, "Critical culturally sustaining/revitalizing pedagogy and Indigenous education sovereignty". (2014) 84(1) *Harvard Educational Review* pp.101–124

¹³⁸ Ibid

¹³⁹ Ibid

¹⁴⁰ Ibid

¹⁴¹ Ibid

¹⁴² Ibid

Former United Nations Special Rapporteur for Indigenous Peoples, S. James Anaya has demonstrated how some Indigenous peoples have manifested their right to internal self-determination by advocating for their right to use their Indigenous language in legal proceedings and other official contexts. While some states have accepted this trend, and some demonstrate “support for the use of Indigenous languages in legal proceedings and other official contexts,” others “have appeared reluctant to accede to a strict requirement to that effect.”¹⁴³ Still other states, however, have acknowledged that decision-making over language issues, among other things, can be an effective way for Indigenous peoples to implement the right to self-determination. In order to maintain this process and to further the facilitation of the right to self-determination through use of language, education systems need to engage in these dialogues.

The second case study was reported by Teresa McCarty at Puente de Hozho and described that language has a different role for members of various cultural communities. At Puente de Hozho, the educators reflect parents’ influence for culturally sustaining and revitalising education. The goal is to heal “forced linguistic wounds and convey important cultural and linguistic knowledge that connects to the school's curriculum and pedagogy”.¹⁴⁴ This is an attempt to strike a balance between cultural, academic and linguistic interests. McCarty and Lee describe the need for appropriate instruction through language as a “fight for plurilingual and pluricultural education.”¹⁴⁵ As noted by McCarty, educators can attempt to balance state and federal requirements with local communities and Indigenous nations,¹⁴⁶ but what is apparent now is that attempts are no longer enough.

¹⁴³ S. James Anaya, *Indigenous Peoples in International Law*, 2nd ed. (Oxford: Oxford University Press, 2004) p.139

¹⁴⁴ McCarty and Lee Note 137

¹⁴⁵ Ibid

¹⁴⁶ Ibid

States creating educational policies for Indigenous Peoples without appropriate dialogues with Indigenous community members is dangerous and can perpetuate the shortcomings of appropriate educational policy implementation and further the denial of the right to self-determination through educational attainment for Indigenous children. By not actively incorporating Indigenous approaches to pedagogy it devalues the cultural heritage of Indigenous students. This can have a detrimental effect on students and the wider Indigenous community. By actively incorporating Indigenous pedagogical approaches into the education systems in operation this attributes more value to the cultural sensitivities of Indigenous students. This enhances the education system and allows for appreciation of culture. By doing this the education system can ensure that assimilative practice is not occurring and further facilitates the right to self-determination.

5.10 Systems of Best Practice

While the following examples pertain to Higher Education Institutions, they offer a clear example of how the education system and the educational institutions which provide it can adapt to the specific needs of Indigenous students.

5.10.1 University of North Carolina

This section draws on the existence and operation of Historically Native American Fraternities and Sororities (HNAFS). While it must be acknowledged that numerous universities in the USA have many courses on offer in Indigenous studies and have multiple factions of Indigenous fraternity societies and sorority societies, the reason for choosing the University of North Carolina (UNC) is that it is located in an area that has a large Indigenous population and has utilised Indigenous knowledge and expertise in the creation of Indigenous programmes and educational systems that are used to empower Indigenous students which in turn helps facilitate the right to self-determination. Greek Letter Organisations for Indigenous Students, while not

unique to the campuses of UNC, these organisations have historical ties with the university having been founded at UNC. They are popular and vibrant systems within the remit of higher education and UNC, and the University of North Carolina Pembroke (UNCP) has two very active Greek Letter Organisations specifically founded for the support of Indigenous students, one Sorority Society and one Fraternity Society. The HNAFS movement was self-driven by Indigenous students and Indigenous educators and was done so “to create a retention tool to combat forces that were keeping the majority of Native American students from being successful at institutions of higher education”¹⁴⁷ and while now a part of the larger university system of UNCP now, it must be acknowledged that these organisations were created via an exercise of self-determination by educated Indigenous Peoples in an attempt to tackle the education system that was not meeting their needs and a realisation on the part of Indigenous students that there existed “a need for support and representation of Native students attending non-Native colleges and universities”.¹⁴⁸ This empowerment illustrates the very questions posed in the thesis. HNAFS, while operating in a similar system of the traditional Greek Letter organisations, they differ in one major way in that their “acts commonly referred to as rituals or ceremonies for HNAFS revolve around Native American traditions and culture”.¹⁴⁹ This is a very significant aspect of the mission of many HNAFS as it allows for a deeper connection for Indigenous students with their culture and communities. This is supported by research carried out by Larimore and Astin which is framed by the assumption that “engaging Native

¹⁴⁷ Derek Oxendine and Symphony Oxendine, ‘From the Margins with No Reservations’ (2012) *From the Margins* p. 1

¹⁴⁸ Robin “Zape-tah-hol-ah” Minthorn and Natalie Youngbull, ‘Reclaiming and Asserting our Nations through the Growth of Historically Native American Fraternities and Sororities (HNAFS)’ in Pietro A Sasso, J. Patrick Biddix and Mónica Lee Miranda (eds), *Supporting Fraternities and Sororities in the Contemporary Era* (Myers Education Press 2019) p. 189

¹⁴⁹ Sara L. Jahansouz and Symphony D. Oxendine, ‘The Native American Fraternal Values Movement: Past, Present, & Future’ (2008) *Perspectives* p. 14

American students within fraternal membership that celebrates their culture might have a positive influence on their college experience and academic performance”.¹⁵⁰

The HNAFS were established to reflect the need of Indigenous students and were meant to reflect the traditional Greek Letter organisations that were already in existence, the HNAFS were supposed to be “unapologetically Indigenous”.¹⁵¹ The mission statement of one such Sorority group, Gamma Delta Pi, Inc asserts that the organisation was founded for women who “are committed to creating a life-long bond among sisters while instilling character, an appreciation of the Native culture, unity, respect, scholarship, and most importantly, the sisterhood of American Indian women and all other interested”,¹⁵² thus providing a connection between Indigeneity, appreciation and respect of and for Indigenous culture and scholarship for which a university campus can provide a setting for. Minthorn and Youngbull further point out that each HNAFS has a responsibility to maintain and uphold the tribal nations and regions that are represented from that organization and the HNAFS can be honoured for the cultures they reflect,¹⁵³ thus showing how Indigenous traditions and culture can be brought into the education system, to a place beyond the classroom.

These societies work to enhance the experience of Indigenous Students, to offer support and work to promote empowerment and cultural appreciation of the native experience, histories, and communities. This is not accidental, “the founders of HNAFS were intent on creating organizations rooted in tribal values, customs, and traits, as a way to decolonize the experience of Native students within higher education”.¹⁵⁴ Both of these societies can trace their beginnings to UNC, Alpha Pi Omega was founded at UNC Chapel Hill and Phi Sigma Nu was

¹⁵⁰ Ibid

¹⁵¹ Minthorn and Youngbull, Note 2 p. 191

¹⁵² Ibid

¹⁵³ Ibid p. 192

¹⁵⁴ Symphony D. Oxendine, ‘A Call to Action: Disrupting Assimilation and Colonization in Fraternity and Sorority Life’ (2017) Association of Fraternity & Sorority Advisors. p. 2

founded at UNC Pembroke. Alpha Pi Omega Sorority is the oldest Native American Greek letter organization in the United States of America. Founded at the University of North Carolina-Chapel Hill in 1994, the sorority has more than 700 sisters representing more than 100 tribes nationwide and 20 chartered chapters. The sorority defines themselves as a support system for empowerment of “Indigenous women who are committed to each other, our communities, tribes, families, academic excellence and self-empowerment”.¹⁵⁵ The sorority currently has 14 undergraduate chapters and nine professional chapters and commits itself to work to preserve Native American traditions and bring to bear the vision of their founders, and a commitment and dedication to four fundamental principles, “respecting Native American traditions, supporting self-renewal through continuous education, honouring the Creator, and addressing critical issues facing Native communities and society at large”.¹⁵⁶ Phi Sigma Nu is the oldest and largest American Indian fraternity in the United States and was founded in 1996 at the University of North Carolina at Pembroke.¹⁵⁷ The Fraternity has eleven undergraduate chapters and two professional chapters with over 400 brothers representing more than 55 tribal nations.¹⁵⁸ The fraternity operate under a mission to empower “Native Men to collectively engage in academic, social, cultural and physical realms to promote and inspire growth in tribal families, tribal communities, the United States of America and the world at large”.¹⁵⁹ These organisations offer Indigenous Students a closeness and a cultural bond and appreciation that many education systems through history did not.

Displaying appreciation for Indigenous heritage and actively operating within a higher education system shows how these settings can be a valuable tool in the facilitation of the right

¹⁵⁵ ‘Alpha Pi Omega Sorority’ (*alphapiomega.org*, 2016) <<https://www.alphapiomega.org/>> Last Accessed 26 February 2021

¹⁵⁶ Ibid

¹⁵⁷ ‘Phi Sigma Nu is the oldest and largest American Indian fraternity’ (*phisigmanu.com*) <<https://phisigmanu.com/>> Last Accessed 26 February 2021

¹⁵⁸ Ibid

¹⁵⁹ Ibid

to self-determination in the context of Indigenous Peoples. Demonstrates a remarkable resilience of Indigenous students who, have championed appreciation and inclusion of tribal diversity and inclusion, stemming from a dark historical relationship with assimilative educational policies and practices of colonisers.¹⁶⁰ These initiatives in higher education institutions exemplify how the system of education can provide for Indigenous culture and heritage and support Indigenous students with a sense of importance and contribute to the self-actualisation of students and further facilitate the right to self-determination. However, according to Oxendine, there is a responsibility on the shoulders of the universities themselves, she notes that “in order to decolonize the system, institutions and practitioners must closely examine their infrastructure and confront the policies, processes, practices, procedures, and their own beliefs that are based in colonizing systems”¹⁶¹ meaning that just because HNAFS exist, doesn’t not mean the system is fixed or without flaw.

5.10.2 HNAFS Supporting Native Nation Building

Native nation building can be defined as is the process by which a Native nation strengthens its own capacity for effective and culturally relevant self-government and for self-determined and sustainable community development.¹⁶² Utilising Indigenous nation building within university campuses can support a growing community of Indigenous students. This idea is supported by the work and mission of HNAFS, thus by “incorporating and practicing components of tribal culture, HNAFS can provide a cultural anchor to members who seek a greater knowledge of culture and tradition and continued ties to their home community and traditional ways of life to help establish and grow personal; identity”.¹⁶³ An example of how

¹⁶⁰ Oxendine and Oxendine Note 1, p. 1

¹⁶¹ Note 8 Oxendine, p. 3

¹⁶² 'What Is Native Nation Building?' (Native Nations Institute, 2022) <<https://nni.arizona.edu/programs-projects/what-native-nation-building>> Last Accessed 26/02/2022

¹⁶³ Derek Oxendine, Symphony Oxendine and Robin Minthorn, ‘The Historically Native American Fraternity and Sorority Movement’ in Heather Shotton, Shelly Lowe and Stephanie J. Waterman (eds), *Beyond the Asterisk: Understanding Native Students in Higher Education* (Virginia: Stylus, 2013) p.71

many HNFAS incorporate both traditional and local Indigenous knowledge within the societies is by recognising the importance of including elders and family members of Native students within the organisations is vital to their success, it can keep kinship ties strong while away from home and increase the rate of success for students through supporting positive engagement. By including these elements and their recognition of the value and importance of these elements for Native students, it can ensure Native American student success and further engagement on college campuses.¹⁶⁴ HNAFS can support this nation building process by offering the “communal and family type support, as well as the structure on campus that many Native American students seek out”.¹⁶⁵ HNAFS can serve a very important purpose for their members and provide an opportunity to engage with Native nation building because have an “impact on campuses and in the communities where they are located. It is important to understand that these organizations were founded to fill a gap within the Native American student community on college campuses”.¹⁶⁶ This can be supported by HNAFS because they infuse the universities with the ability to provide for “preservation of language and traditions while balancing change with cultural continuity”¹⁶⁷ and furthermore they provide “an opportunity to expand and promote the Native community on their respective campuses... and to also educate the larger student body about the Native American community on campus”.¹⁶⁸ Regarding a support system, “many native students attending institutions of higher learning struggle with the transition from close knit community home environments to the larger campus community at colleges and universities”.¹⁶⁹

5.10.3 Sámi University

¹⁶⁴ Ibid p.70

¹⁶⁵ Minthorn and Youngbull, Note 2 p. 196

¹⁶⁶ Oxendine, Oxendine and Minthorn, Note 17 p.78

¹⁶⁷ Note 16

¹⁶⁸ Minthorn and Youngbull, Note 2, p. 190

¹⁶⁹ Oxendine, Oxendine and Minthorn, Note 17,p. 70

Another example of a university system that is supporting the facilitation of the right to self-determination for Indigenous students is the Sámi University of Applied Sciences (SUAS). The reason for choosing the Sámi University of Applied Sciences (SUAS) as an example of best practice is because it offers an insight from the European perspective on how an education system can provide for the cultural needs of Indigenous students, as the case studies focused on the Americas, this allows for a different regional approach to be appreciated. It is one of the only universities designed specifically for the needs of an Indigenous student body in attendance¹⁷⁰ SUAS offers courses in Indigenous studies and cultural appreciation and is at the forefront of a movement calling for the Sámi language to be utilised and accepted as a language of academic study. SUAS is located in the village of Kautokeino in Norway. It was established in 1989 and has about 200 students and 110 faculty, technical and administrative staff.¹⁷¹ It is one of 25 Norwegian State university colleges. Since 2009 it has been located at the campus complex of Diehtosiida. SUAS has a national responsibility for Sámi higher education, including education within teaching and journalism.¹⁷² The college attempts to develop its syllabi on the basis of Sámi needs, and attempts to develop Sámi as an academic language. The college has students from all four countries covered by Sámi.¹⁷³

5.11 An Open Call for Change for the Provision of Education

There has been an open call upon States to ensure discrimination-free and culturally sensitive education systems for Indigenous peoples, taking into account their languages, cultures and histories.¹⁷⁴ This call has received the support of the United Nations Permanent Forum on

¹⁷⁰ 'Sámi University of Applied Sciences', (*uartic.org*) <<https://www.uartic.org/member-profiles/norway/8710/Sámi-university-of-applied-sciences>> Last Accessed 01 March 2021

¹⁷¹ Ibid

¹⁷² 'Sámi teaching - Sámi research - Sámi institution' (*Samas.no*) <<https://samas.no/en/node/204>> Last Accessed 01 March 2021

¹⁷³ Ibid

¹⁷⁴ The call is supported by the United Nations Permanent Forum on Indigenous Issues (UNPFII), the Special Rapporteur on the rights of Indigenous peoples, the United Nations Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) and the United Nations Voluntary Fund for Indigenous Peoples as delivered in the Message by the Expert Mechanism on the Rights of Indigenous Peoples, the Special Rapporteur on the Rights of

Indigenous Issues,¹⁷⁵ the Special Rapporteur on the rights of Indigenous peoples,¹⁷⁶ the United Nations Expert Mechanism on the Rights of Indigenous Peoples¹⁷⁷ and the United Nations Voluntary Fund for Indigenous Peoples¹⁷⁸ who all have all affirmed their solidarity with the call. While international agreement and co-operation is reassuring, it is like so many elements of international law, that appear strong and succinct in theory and in practice, the weakness shows its prominence. Bantekas and Oette cite a line from the now famous *Brown v Board of Education*¹⁷⁹ where the court asserted that “it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of education”.¹⁸⁰ This line encapsulates the importance of the right to education and how it promotes a successful way of life, connecting it to the right to self-determination, especially within the context of Indigenous Peoples, who have long been denied the right of self-determination through racist laws and a destructive system of education policies.

These education systems, policies and curricula which were and, in some situations, continue to be developed without consultation with Indigenous Peoples, have mostly failed Indigenous children and stripped them from vital life opportunities and cultural security.¹⁸¹ As discussed

Indigenous Peoples, the UN Permanent Forum on Indigenous Issues and the UN Voluntary Fund for Indigenous Peoples to mark the International Day of the World’s Indigenous Peoples, Tuesday 9 August 2016. Available at <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20342&LangID=E>> Last Accessed 01 May 2021

¹⁷⁵ ‘Report on the Seventeenth Session’ Economic and Social Council Supplement No. 23 (United Nations 2018).

¹⁷⁶ ‘Indigenous Peoples’ Right To Education – A Transformative Force For Empowerment’ (*Ohchr.org*) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20342&LangID=E>> Last Accessed 29 March 2021

¹⁷⁷ Message by the Expert Mechanism on the Rights of Indigenous Peoples, the Special Rapporteur on the Rights of Indigenous Peoples, the UN Permanent Forum on Indigenous Issues and the UN Voluntary Fund for Indigenous Peoples to mark the International Day of the World’s Indigenous Peoples, Tuesday 9 August 2016.

¹⁷⁸ ‘On International Day, UN Spotlights Indigenous Peoples’ Right To Education | United Nations’ (*United Nations*) <<https://www.un.org/en/academic-impact/international-day-un-spotlights-Indigenous-peoples-right-education>> Last Accessed 31 March 2021

¹⁷⁹ *Brown v. Board of Education of Topeka*, 347 U.S. 483

¹⁸⁰ Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice* 2nd edn, (Cambridge: Cambridge University Press, 2016). p. 437

¹⁸¹ Gina Cosentino, ‘Indigenous Peoples Have A Right To Quality Education. But So Far, We’ve Failed Them’ [2016] *World economic Forum* <<https://www.weforum.org/agenda/2016/08/Indigenous-people-have-a-right-to-quality-education-but-so-far-we-ve-failed-them/>> accessed 5 May 2021.

in this chapter, and will be explored in more depth in Part Two of this work, in many cases around the world, education available to Indigenous Peoples is not only inappropriate, it also threatens their very existence.¹⁸² The open call for change and progression is further supported by the fact that “while Indigenous peoples make up around 5% of the global population, they account for approximately 15% of the world’s extreme poor, and regularly appear at the bottom of human well-being index ratings”.¹⁸³ Until the systems of education that provide schooling for Indigenous children and are more inclusive and aware of the cultural complexities and needs of Indigenous pupils, these systems will continue to enable the denial of the right to self-determination. The open call to States affirms the need for an education system for Indigenous children that is that is “well-resourced, culturally sensitive, aligned with their learning needs, languages, priorities and aspirations, and delivered through culturally appropriate teaching strategies, and in culturally appropriate settings”.¹⁸⁴ By doing this, education systems can support the realisation of the right to self-determination of Indigenous Peoples, by recognising the importance of cultural heritage and how important that is to the cultural survival of many groups and how this is an essential element in the facilitation of the right to self-determination.

5.12 Conclusion

There remains a disconnect between the provision of an education and the provision of an adequate or appropriate education, for example, Bantekas and Oette state that “the universality of primary education means that states must take appropriate measures to compel all children to attend primary school, despite the misgivings of their parents, whether because children are considered breadwinners of the family or because of gender discrimination, in addition to cultural practices and beliefs”.¹⁸⁵ However, in the context of Indigenous Peoples, the right of

¹⁸² Ibid

¹⁸³ ‘Learn More About Indigenous People’s Rights’ (*Amnesty.org*, 2009) <<https://www.amnesty.org/en/what-we-do/Indigenous-peoples/>> Last Accessed 24 July 2021

¹⁸⁴ Cosentino, Note 154

¹⁸⁵ Bantekas Note 152 p. 437

parents to exert control over their children's education is clear and relevant. Mainstream or general education may not only be futile but also detrimental to the cultural survival of these groups if their specific cultural practices and languages are not maintained. This highlights one of the areas of disconnect between the right to education and the appropriate provision of that right. Meaning that, while some Indigenous groups will be able to keep their traditions alive while living in mainstream societies, "others will experience a decline in the interest and participation as modern cultural values and practices overtake traditional ways of learning and being".¹⁸⁶ Rhona Smith maintains that this can lead to dangerous precedent in the school environment, maintaining that "[t]he promotion of ethnic, racial and religious tolerance within States and between States would go a long way towards reducing tensions and dissipating violence. It would also develop truly pluralistic societies. Education is key to this. Without appropriate education, ignorance can breed contempt".¹⁸⁷ Bantekas and Oette maintain that "it is imperative that minority members receive a broad education equal to that of the majority, unless the difference in treatment is based on objective and reasonable justification",¹⁸⁸ which leads to a question of what would successful practice look like in this arena?

Correct implementation of appropriate educational policies needs to be acknowledged, the importance of open dialogues with Indigenous Communities needs to happen, as the world has seen with previous assimilationist educational policies, policies without dialogues can fail. The idealist might suggest that States should work with Indigenous Peoples in a spirit of partnership to restore forms of education based on Indigenous languages, beliefs, values, and culture and increase efforts to address discrimination in education that has the effect of impeding Indigenous peoples' rights to education. And while it is imperative that educational institutions

¹⁸⁶ Jacob Note 7

¹⁸⁷ Rhona K. M Smith, *Textbook on International Human Rights* (Oxford: Oxford University Press, 2014). p. 345

¹⁸⁸ Bantekas Note 152 p. 438

are built on a human rights framework that is inclusive and respectful of Indigenous Peoples' cultures, worldviews, and languages the gap in practice is between implementation of international law.

As this chapter has laid out there are numerous methods of Indigenous pedagogy that can be employed in the provision of an adequate appropriate and safe education that will encompass international obligations and the cultural complexities of Indigenous Groups. Again, this needs to be supported by open and transparent dialogues between Indigenous communities and the states in which they reside; only then can an equitable relationship exist between national implementation of international human rights provisions and protections. As has been made evident in the previous chapters, there is a relationship of distrust stemming from historical trauma relating to education systems and Indigenous Peoples, relating particularly to assimilationist policies. This mistrust needs to be worked upon, built upon, and reconciled in order for true reconciliation of Indigenous Peoples and the States within which they reside and for stronger protection of the right to education for Indigenous children.

States and Indigenous Peoples must also work together to fulfil Indigenous Peoples' right to establish and control their educational systems and institutions and in order for this to be truly successful, the manner in which international protections are implemented at a national level must be addressed to secure a more efficient, effective and adequate provision of the right to education which is needed to enhance the educational experience of Indigenous children within education systems and to allow the systems themselves to be facilitators in the realisation of the right to self-determination. Part two of this thesis will offer two in depth case studies on how the right to education has failed Indigenous Peoples in the past and how it continues to do so in contemporary situations through lack of awareness and acknowledgement of Indigenous educational approaches.

Part II

Chapter 6

Introduction to Case Studies

6.1 Introduction

The aim of this chapter is to provide an introduction to Part II of this dissertation which contains the case studies, including the educational structures and policies for Indigenous Peoples in Canada and French Guiana. This section will assess how these educational structures and policies have helped or hindered the realisation of the right to self-determination of Indigenous Peoples in these States and provide insights into educational systems and policies in other States from which lesson can be learned / which are examples of best / worst practice. This chapter will thus describe in detail the reasons why Canada and French Guiana were chosen as case studies through which to examine Indigenous education and provide a justification for this choice. In order to fully assess the impact of the educational policies and systems on Indigenous peoples in Canada and French Guiana, the context of these policies and systems must be examined. Therefore, this introductory chapter will outline the legal systems that are in place in these states and examine educational policies in light of the history of the relationship between the state and the Indigenous Peoples that reside within that State. As part of this background analysis, the human rights obligations and track records of those States will be assessed in order to highlight how said States implement and support human rights norms.

This chapter thus offers a comprehensive understanding of the chosen case studies and an insight into the history, peoples, laws and politics of the States in section 6.3, 6.4 and 6.5. Through a detailed study of each of these situations and educational systems this research draws on multiple forms of education provided to Indigenous Peoples and for Indigenous Peoples in those States in section 6.6 and 6.7. It will also offer context for the different systems and how education and the systems of education can be both a facilitator of the right to self-

determination and a denier of the right to self-determination in the context of Indigenous Peoples. The instances and examples of the case studies that will be discussed in relation to the Sámi University in Scandinavia and the different systems that have been put in place for Indigenous empowerment through the University of North Carolina at different campuses will be discussed in this chapter to offer an outline as to the reason why they have been chosen but will be discussed in much greater detail in the conclusions and recommendations section of this research. The importance of the inclusion of both of these case studies is that this also offers a unique insight into the educational provisions for Indigenous Peoples in relation to third level or higher educational systems moving away from the previous research which is predominantly focused on primary and secondary level education and emphasising how educational systems have been deniers of the right to self-determination and offering examples of how these systems can transition into facilitators of the right.

6.2 Justification for Case Studies

6.2.1 Canada

The first case study that will be offered is that of the Canadian residential school system which operated in Canada for over 150 years. This system is now infamous in the narrative of Indigenous experience in Canada. This particular system has been chosen because of the publicity it has received in recent years and the national apology which followed through two different governments. The case study of the residential school system in Canada is being put forward as an example of a historic wrong of Indigenous Peoples at the hands of colonising powers.

6.2.2 French Guiana

The second case study that will be discussed is that of French Guiana. French Guiana is an overseas territory of France and through research a worrying trend has become evident which

is an inordinate increase in suicide rates amongst young adults most of whom are at post leaving school age. This highlighted a concern and connections can be drawn directly to the education that is being provided to these Indigenous and Tribal children in French Guiana. The connection between past and present is essential for the understanding of the treatment of Indigenous Peoples in both Canada historically and in French Guiana presently and how the right to self-determination is being denied through education and has been denied historically through the provision of education to Indigenous Children.

6.2.3 Justification

There is a commonality between these two states, Canada and French Guiana, being that they are both governed by colonising or overseas powers that are not their own. These two States share a regional connection both situated in the Americas.¹ While the population and territories of these States are very different,² they share similarities that transcend the physical. Both States were colonised, and both had Indigenous populations that were, and continue to be, marginalised. Furthermore, the Indigenous Peoples of these countries were, in the case of Canada and continue to be in the situation in French Guiana, victims of an assimilative education system that has had deep and profound effects, including having their right to self-determination denied through an inadequate provision of education. While the Canadian example is based on historic events, the effects of the Residential School System are still seen today. French Guiana is currently operating a similar, although perhaps less volatile system of

¹ 'List Of American Countries - Nations Online Project' (*Nationsonline.org*)

<<https://www.nationsonline.org/oneworld/america.htm>> Last Accessed 26 April 2021

² In Canada, Indigenous Peoples represent approximately 4.9% of the total population making up six hundred recognized First Nations governments or bands, encompassing a total of 1,673,785 people, see <

<https://www12.statcan.gc.ca/census->

recensement/2016/dppd/prof/details/page.cfm?Lang=E&Geo1=PR&Code1=01&Geo2=PR&Code2=01&Data=Count&SearchText=canada&SearchType=Begins&SearchPR=01&B1=All&TABID=1> with a land mass of 9.985 million km², In French Guiana, the Indigenous population is estimated at 10,000 people, see

<<https://www.iwgia.org/en/french->

guiana.html#:~:text=French%20Guiana%20has%20244%2C118%20inhabitants,Saint%20Georges%20de%20'Oyapock> and has a land mass of 83,534 km²

oppression through education and lessons of the past will be applied to this case study. Two further examples will be discussed in relation to educational systems and Indigenous Peoples, which will be the Sámi University in Scandinavia and the University of North Carolina in the United States. These two examples will be discussed further in the recommendations and conclusions section and are offered to highlight examples of innovative educational systems which work to support Indigenous empowerment and through which the right to self-determination can be facilitated.

6.3 State, People, Law and Politics: An Overview

In order to form a comprehensive understanding of the educational systems provided in these States it is necessary to understand the history of these States. To understand how they came to be and understand the historic and present legal order this will highlight the treatment of Indigenous Peoples within these and their legal position. This section will also consider the human rights obligations looking at their successes and the challenges both in history and those that continue to be prevalent amongst Indigenous societies today in these States to form a greater understanding of the role played by the State in educational provision which in turn can deny and or facilitate the right to self-determination of Indigenous Peoples. While in the Canadian context the provision of education to Indigenous children and the denial of the right to self-determination through educational systems is predominantly confined to the past, it still shows the scars of such a brutal regime today. However, in the context of French Guiana, the approach is somewhat different as this is an unacknowledged danger that is happening currently and how through the provision of education via France being the overseas government of French Guiana is denying the right to self-determination through the provision of education for Indigenous and Tribal children.

6.4 Canada: State, People, Law and Politics

In 1867, with the union of three British North American colonies through Confederation, Canada was formed as a federal dominion of four provinces.³ This began an accretion of provinces and territories and a process of increasing autonomy from the United Kingdom. This widening autonomy was highlighted by *the Statute of Westminster 1931*⁴ and culminated in the *Canada Act 1982*,⁵ which severed the vestiges of legal dependence on the British Parliament. It ranks among the highest in international measurements of government transparency, civil liberties, quality of life, economic freedom, and education.⁶ It is one of the world's most ethnically diverse and multicultural nations and the current total population of the country is approximately 37.6 million people.⁷ Various Indigenous Peoples inhabited what is now Canada for thousands of years before European colonization. According to the 2016 Canadian Census, First Nations represent approximately 4.9% of the total population making up six hundred recognized First Nations governments or bands, encompassing a total of 1,673,785 people.⁸

The Constitution of Canada is the supreme law of the country and consists of written text and unwritten conventions.⁹ The previously mentioned *Statute of Westminster 1931* granted full autonomy to Canada and the *Constitution Act of 1982*, ended all legislative ties to Britain, as well as adding a constitutional amending formula and the Canadian Charter of Rights and Freedoms.¹⁰ The Charter guarantees basic rights and freedoms that usually cannot be over-

³ P. Waite, 'Confederation', *The Canadian Encyclopaedia* (2013) Available at <<https://www.thecanadianencyclopedia.ca/en/article/confederation#:~:text=It%20was%20passed%20by%20the,New%20Brunswick%2C%20Quebec%20and%20Ontario.>> Last Accessed 16 February 2021

⁴ The Statute of Westminster 1931

⁵ The Canada Act 1982

⁶ 'Most Transparent Countries' (usnews.com) <<https://www.usnews.com/news/best-countries/best-transparency>> Last Accessed 21 February 2021

⁷ Canadian Census Profile via Statistics Canada available at <<https://www12.statcan.gc.ca/census-recensement/2016/dppd/prof/details/page.cfm?Lang=E&Geo1=PR&Code1=01&Geo2=PR&Code2=01&Data=Count&SearchText=canada&SearchType=Begins&SearchPR=01&B1=All&TABID=1>> Last Accessed 20/02/2021

⁸ Ibid

⁹ Adam Dodek, *The Canadian Constitution* (2nd edn, Dundurn 2013). P.13

¹⁰ Vishnoo Bhagwan and Vidya Bhushan., *World Constitutions* (Kettering: Sterling 2004). Pp. 549/50

ridden by any government—though a notwithstanding clause allows the federal parliament and provincial legislatures to override certain sections of the Charter for a period of five years.¹¹ The Supreme Court of Canada is the highest court and final arbiter and has been led since December 18, 2017 by Richard Wagner, the chief justice of Canada.¹² Common law prevails everywhere except in Québec, where civil law predominates.¹³ Law enforcement, including criminal courts, is officially a provincial responsibility, conducted by provincial and municipal police forces. However, in most rural areas and some urban areas, policing responsibilities are contracted to the federal Royal Canadian Mounted Police.¹⁴ Having a population of Indigenous Peoples who occupied these lands pre-colonisation is, to an extent, incorporated into national legislation. Canadian Aboriginal law provides certain constitutionally recognized rights to land and traditional practices for Indigenous groups in Canada.¹⁵ However, it is clear that the system of colonisation shaped the legal system of the State. This formation displays the lack of participation of Indigenous Peoples within the legal system of the State, further suppressing the right to self-determination and contributing to a historic relationship of mistrust between the Indigenous Peoples of Canada and the State. Various treaties and case laws were established to mediate relations between Europeans and many Indigenous peoples.¹⁶ Most notably, a series of eleven treaties known as the Numbered Treaties were signed between the Indigenous Peoples and the reigning monarch of Canada between 1871 and 1921.¹⁷ These treaties are agreements between the Canadian Crown-in-Council with the duty to consult and

¹¹ Bakan, Joel; Elliot, Robin M (2003). Canadian Constitutional Law. Emond Montgomery Publications. pp. 3–8, 683–687, 699

¹² 'Supreme Court of Canada - Current and Former Chief Justices' (*See-csc.ca*, 2021) <<https://www.scc-csc.ca/judges-juges/cfcju-jucp-eng.aspx>> Last Accessed 18 February 2021

¹³ Where Our Legal System Comes From - About Canadas System of Justice (*Justice.gc.ca*) <<https://www.justice.gc.ca/eng/csjsjc/just/03.html>> Last Accessed 20 February 2021

¹⁴ Richard Yates and others, Introduction to Law in Canada (Prentice Hall Allyn and Bacon Canada 2000). Pp.195-196

¹⁵ James I Reynolds, Aboriginal Peoples and the Law (UBC Press 2015)

¹⁶ Ibid

¹⁷ Ibid

accommodate.¹⁸ These treaties, which is commonly the case regarding treaties between Indigenous populations and the states in which they reside, are often weak in practice and more a symbolic attempt at pacification. However, the role of Aboriginal law and the rights they support were reaffirmed by Section 35 of *the Constitution Act, 1982*.¹⁹ These rights may include provision of services, such as health care through the Indian Health Transfer Policy, and exemption from taxation and also allude to elements of education.²⁰ This will be examined more closely in the following chapter. Canada is a parliamentary democracy and a constitutional monarchy in the Westminster tradition.²¹ The country is a Commonwealth realm and is officially bilingual at the federal level.²² This is important to note as France and England were the two colonising Peoples of Canada, and their languages remain the officially recognised today. Indigenous languages are not official thus further denying the right to self-determination of Indigenous Peoples through language usage.²³ What is important to acknowledge here, and will be also be addressed in greater detail in to following chapter, is that Canada officially removed its objector status to the UNDRIP in 2016 and vowed to implement the UNDRIP in accordance with the Canadian Constitution.²⁴ This is of significance alluding to the recognition of the Canadian Government of the need for specific protections of Indigenous Peoples. Furthermore, UNDRIP makes specific reference to both the right to self-

¹⁸ Ibid

¹⁹ Ibid

²⁰ Gary Brent Madison, Paul Fairfield and Ingrid Harris, *Is There a Canadian Philosophy?* (Ottawa: University of Ottawa Press 2010). P.128

²¹ 'Parliamentary Institutions - The Canadian System of Government' (*Ourcommons.ca*) <<https://www.ourcommons.ca/marleauontpetit/DocumentViewer.aspx?Sec=Ch01&Seq=2>> Last Accessed 20 February 2021

²² 'Canada's Official Languages and You' (*Clo-ocol.gc.ca*, 2020) <https://www.clo-ocol.gc.ca/en/language_rights/index> Last Accessed 26 April 2021

²³ Noelle Higgins and Gerard Maguire, Gerard (2019) "Language, Indigenous Peoples, and the Right to Self-Determination," *New England Journal of Public Policy*: 31(2). Pp. 1-9

²⁴ James Wilt, 'Implementing UNDRIP is a Big Deal for Canada' (2017) *The Narwhal* accessed at <<https://thenarwhal.ca/implementing-undrip-big-deal-canada-here-s-what-you-need-know/#:~:text=In%20May%202016%2C%20Minister%20Carolyn,%2C%20which%20is%20our%20charter.%E2%80%9D>> Last Accessed 04/03/2021

determination and the right to education for Indigenous Peoples and the removal of the objection to the ratification is a symbol of recognition and progress in some ways.²⁵

6.5 Canadian Residential School System and the Denial of the Right to Self-Determination through Educational Systems

The experience of Indigenous Canadian children and families will be explored in greater detail in following chapters, however, in the interest of clarity it is important to draw brief reference to the systems here. The assimilationist educational policy was developed by Richard Pratt, founder of the Carlisle Residential School in Pennsylvania in the USA, considered to be the father of Native American assimilation practice through education and this was the model then used in the Canadian Residential School System.²⁶ There is evidence of assimilative residential schools operating in Canada from the 1600s. However, it was in 1830, when the Canadian “Indian problem”²⁷ moved from military to civilian jurisdiction, that Indigenous Peoples were then seen as barriers for a new nation to flourish. Strong, sovereign Indigenous nations now were the “Indian problem” and a problem for the State and Church to address. To fix this problem, the British government decided to assimilate Indigenous Peoples. This was carried out by intentionally targeting Indigenous children and the the government had a mission to “kill the Indian in the child”.²⁸ Over the course of 125 years more than 150,000 children were forcibly removed from their homes and placed into residential schools.²⁹

The majority of children were held captive and isolated from their families and all their kinship ties for the entire time they attended. Others stayed 10 months of the year. Many children never

²⁵ The right to self-determination is mentioned in the preamble, art 3 and art 4 of UNDRIP and the right to education is referenced in the preamble and in arts 14, 15, 17, 21

²⁶ 'The Ugly, Fascinating History of The Word 'Racism' (*Npr.org*, 2014)
<<https://www.npr.org/sections/codeswitch/2014/01/05/260006815/the-ugly-fascinating-history-of-the-word-racism?t=1614854075458>> Last Accessed 10 February 2021

²⁷ JR Miller 'Residential Schools in Canada' (2020) *The Canadian Encyclopaedia* accessed at
<<https://www.thecanadianencyclopedia.ca/en/article/residential-schools>> Last Accessed 04 March 2021

²⁸ Truth and Reconciliation Commission of Canada 2015

²⁹ Royal Commission on Aboriginal Peoples 1996; Truth and Reconciliation Commission of Canada 2015

returned home at all. Children aged three to seventeen years old attended residential schools. Education was a mechanism to further colonise the Indigenous Peoples of Canada and to assimilate all Indigenous children, to destroy their cultures, beliefs, languages, and sense of pride.³⁰ Residential schools replaced the traditional ways of teaching and learning and were centred on authority, control, and force. Indigenous children who were stripped away from their homes were defenceless against these tactics of forced assimilation at the hands of the Church and State. Aside from the forced removal of children and assimilative educational systems in place, the living standards Indigenous children endured were labelled by the medical community as a “national crime” in 1922.³¹ However, the resilience shown by the Indigenous Peoples of Canada is shown by the continuation of their cultural traditions, practices and teachings.

Generations of Indigenous Peoples have been forced to residential schools by State and Church, which often leads to destruction their families, cultures and languages. Yet, they continue to speak their languages, perform ceremonies, and carrying on their teachings.³² However, there is still a great amount of healing and reconciling that needs to take place for residential school survivors, Indigenous families, and communities.³³ Indigenous Peoples are now reclaiming their traditional ways of educating. In order to gain true reconciliation, there is an effort to gain formal recognition of Indigenous knowledge, ways of knowing, core values, language and cultures. There are initiatives that focus on ways to further reconciliation that will be explored in greater detail in the following chapter.

³⁰ C Haig-Brown, *Resistance and renewal: Surviving the Indian residential school*. (Vancouver: Arsenal Pulp Press, 1988) p. 12

³¹ E, Hanson, 'The Residential School System' (*Indigenousfoundations.arts.ubc.ca*, 2009)

<https://Indigenousfoundations.arts.ubc.ca/the_residential_school_system/> Last Accessed 26 June 2021

³² B Barker, A Goodman and K DeBeck, K. Reclaiming Indigenous identities: Culture as strength against suicide among Indigenous youth in Canada. (2017) *Canadian Journal of Public Health*, 108(2), pp.208-210.

³³ M Luxen, 'Survivors of Canada's 'Cultural Genocide' Still Healing' (2015) *BBC News Magazine* <<https://www.bbc.com/news/magazine-33001425>> Last Accessed 10 February 2021

6.6 French Guiana: State, People, Law and Politics

The first French establishment in French Guiana was recorded in 1503, but France did not establish a durable presence until colonists founded Cayenne in 1643.³⁴ French Guiana was given French Overseas Department status in 1946 and has been administered as an overseas territory of France since.³⁵ The principal language is French,³⁶ and this is of paramount importance when discussing the provision of education to Indigenous children in French Guiana which will form a larger part in the full case study chapter of French Guiana. The country has a population of 294,071³⁷ most of whom live along the coast and is substantially ethnically diverse. It has an unusual population make up as many inhabitants have arrived illegally and many more have been born there through illegal immigration. At the 2014 census, 57.3% of the inhabitants of French Guiana were born in French Guiana, 9.3% were born in Metropolitan France, 3.0% were born in the French Caribbean departments, and 30.2% were born in foreign countries.³⁸ Roughly 14% of the population is of European ancestry, the vast majority of which are of French ancestry.³⁹ The main groups living in the interior are the Maroons who are of African descent, and Amerindians. The main Maroon groups are the Saramaca, Aucan, and Aluku. The main Amerindian groups in French Guiana are the Arawak,

³⁴ 'French Guiana: Territorial Collectivity, France', *Britannica* Available at

<<https://www.britannica.com/place/French-Guiana>> Last Accessed 07 February 2021

³⁵ 'Discover The Fascinating History, Language and Culture of French Guiana' (*WorldTravelGuide.com*)

<<https://www.worldtravelguide.net/guides/caribbean/french-overseas-possessions/french-guiana/history-language-culture/#:~:text=French%20Guiana%20was%20finally%20given,broke%20out%20in%20the%201970s>> Last

Accessed 7 February 2021

³⁶ 'French Guiana Products and Creole, French Languages' (*Worldlanguage.com*)

<<http://www.worldlanguage.com/Countries/FrenchGuiana.htm>> Last Accessed 7 February 2021

³⁷ 'French Statistics' (*insee.fr*) <<https://www.insee.fr/fr/statistiques/fichier/1893198/estim-pop-nreg-sexe-gca-1975-2021.xls>> Last Accessed 7 February 2021

³⁸ *Ibid*

³⁹ 'Population, Total - Guyana Data' (*Data.worldbank.org*)

<<https://data.worldbank.org/indicator/SP.POP.TOTL?locations=GY>> Last Accessed 7 February 2021

Carib, Teko, Galibi, Kaliña, Palikur, Wayampi and Wayana.⁴⁰ As of the late 1990s, there was evidence of an uncontacted group⁴¹ of Wayampi.⁴²

As an overseas territory of France, French Guiana is governed by the provisions of the French constitution as a territorial zone of France and, as such, forms an integral part of the French Republic. French Guiana sends two elected representatives to the National Assembly and two to the Senate.⁴³ Local government is headed by a prefect and by a 51-member Assembly whose members are elected by universal adult suffrage and there is a local court of appeal.⁴⁴ The principal political parties are the Guianese Socialist Party and the Union for a Popular Movement. Other political parties include the Movement for Decolonization and Social Emancipation, the Guiana Democratic Forces, and Walwari, a leftist party whose founder Christiane Taubira served as minister of justice in the administration of French President François Hollande.⁴⁵

French Guiana, as part of France, forms part of the European Union and is the largest landmass for an area outside of Europe since Greenland left the European Community in 1985.⁴⁶ It is one of only three European Union territories outside Europe that is not an island the others being

⁴⁰ 'Indigenous Peoples in French Guiana' (*iwgia.org*) <<https://www.iwgia.org/en/french-guiana.html#:~:text=French%20Guiana%20has%20244%2C118%20inhabitants,Saint%20Georges%20de%20Oyapock>> Last Accessed 20 July 2021

⁴¹ While the term used in this citation is “uncontacted group” it is important to acknowledge that this is a controversial term. By using the term “uncontacted” it attributes a level of ignorance to the outside world. These groups are aware of the world and advancements and choose to live in isolation. It is recommended that these groups are referred to as “Tribes in Voluntary Isolation”. See

<<http://www.oas.org/en/iachr/Indigenous/docs/pdf/Report-Indigenous-Peoples-Voluntary-Isolation.pdf>>

⁴² M, Jiménez, 'Indigene: French Guiana' (*Indigene.de*, 2010) <<http://www.indigene.de/30.html>> Last Accessed 7 February 2021

⁴³ 'Conseil Général De La Guyane' (*Web.archive.org*)

<<https://web.archive.org/web/20151007143603/http://www.cg973.fr/la-collectivite-territoriale-de>> Last Accessed 7 February 2021

⁴⁴ *Ibid*

⁴⁵ l'Intérieur M, 'Résultats Des Élections Régionales 2015' (2015) <[https://www.interieur.gouv.fr/Elections/Les-resultats/Regionales/elecresult__regionales-2015/\(path\)/regionales-2015/03/index.html](https://www.interieur.gouv.fr/Elections/Les-resultats/Regionales/elecresult__regionales-2015/(path)/regionales-2015/03/index.html)> Last Accessed 20 July 2021

⁴⁶ L, Witschg, 'This Is What Happened to The Last Country That Left the EU' (*Slow-journalism.com*, 2016) <<https://www.slow-journalism.com/from-the-archive/this-is-what-happened-to-the-last-country-that-left-the-eu>> Last Accessed 7 February 2021

the Spanish Autonomous Cities in Africa, Ceuta and Melilla. As a part of France, its head of state is the President of the French Republic, and its head of government is the Prime Minister of France.⁴⁷ The French Government and its agencies have responsibility for a wide range of issues that are reserved to the national executive power, such as defence and external relations.⁴⁸ The President of France appoints a prefect (resident at the prefecture building in Cayenne) as his representative to head the local government of French Guiana. There is one elected, local executive body, the Assemblée de Guyane.⁴⁹

6.7 French Guiana and the Denial of the Right to Self-Determination through Educational Systems

Chapter eight of this thesis will focus on the education system in operation for Indigenous children in French Guiana. While the educational systems in place will be analysed comprehensively, chapter eight will also identify the dangers that are posed to Indigenous children via the education system in French Guiana. While assessing the facilitation of the right to self-determination for Indigenous children, it will also offer a cautionary concept of potential cultural genocide through inaction of the French state. The research will examine the syllabus and the ineffectiveness of the design being delivered to Indigenous Children and highlight how no attention is given to the traditional activities many of these children need to know in order to preserve and survive in their cultural lives i.e., learning about fishing, hunting, braiding, tracking and traditional and initiatory activities are not taught in the classrooms, and schedules are not arranged so that children can be trained in these areas. The school follows the instruction of the National Ministry of Education which also means that most teachers do not speak the

⁴⁷ S. Alby, 'Politiques linguistiques en matière d'enseignement des langues en Guyane française. Séminaire Didactique des langues et des cultures étrangères - coopération Guyane (France) / Brésioli' (2008) *Britannica* accessed at <<https://www.britannica.com/place/French-Guiana>> Last Accessed 26/04/2021

⁴⁸ 'The Outermost Regions European Lands in The World' (*Ec.europa.eu*, 2017) <https://ec.europa.eu/regional_policy/sources/policy/themes/outermostregions/pdf/rup_2017/rup_partner_guyan_a_en.pdf> Last Accessed 2 July 2021

⁴⁹ World Travel Guide Note 35

Indigenous languages and therefore, develop their curriculum in French. The Indigenous children of French Guiana run the real and serious risk of being alienated from their cultural heritage due to the lack of education provided in their native language. This exemplifies the dangers posed to the preservation of tribal custom in French Guiana, if these children are constantly and consistently assimilated, be that intentional or not, the Tribal and Indigenous customs, heritage, knowledge, and culture are being lost. French Guiana was originally inhabited by Indigenous Peoples, the Kalina, Arawak, Galibi, Palikur, Teko, Wayampi and Wayana.⁵⁰ Before European contact, the territory was originally inhabited by Native Amerindians, most speaking the Arawak language, of the Arawakan language family, these peoples identified as Lokono.⁵¹

6.8 Human Rights Records and Indigenous Peoples

In order to have an overall appreciation for how these States meet their human rights obligations under international human rights law and how they have integrated human rights frameworks at a national level for the protection of vulnerable groups, this section briefly identifies the human rights records of Canada and French Guiana in general before providing more depth and detail in the case study chapters. This is achieved through the premise that States have an obligation to protect, promote and ensure the enjoyment of human rights for their citizens and this is a prime responsibility of States. Many human rights are owed by States to all people within their territories, while certain human rights are owed by a State to particular groups of people, i.e., Indigenous Peoples and their access to fundamental rights and freedoms and achieving, actualising and realising their right to self-determination.

⁵⁰ 'Organisation Des Nations Autochtones De Guyane Onag' (*Tbinternet.ohchr.org*, 2015) <https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/FRA/INT_CERD_NGO_FRA_20079_E.pdf> Last Accessed 24 July 2021

⁵¹ James Stuart Olson, *The Indians of Central and South America* (Greenwood Press 1991). P. 211

6.8.1 Canada

Looking first to Canada, it is a somewhat different approach being taken and offered here as it is drawing on the historic system of oppression and not necessarily the current, however in an effort to appreciate the evolution in understanding and appreciation of respect for human rights and protections for the Indigenous Peoples of Canada, it is important to acknowledge these changes and implementations. The Trudeau government has made notable efforts to advance human rights in Canada, however, despite these efforts, Canada continues to struggle to address longstanding human rights challenges, including wide-ranging abuses against Indigenous Peoples. These governmental efforts in relation to reconciliation will be discussed in more detail in the following chapter as it still appears to present considerable challenges to undoing decades of structural and systemic discrimination against Indigenous Peoples in Canada. Human rights abuses of Indigenous Peoples in Canada remains one the most prominent challenges to Canada's otherwise well-received human rights record. In respect to the Indigenous Peoples of Canada, some of the main human rights violations are in respect of access to clean, safe drinking water. This poses a major health concern in many Indigenous communities—and continues to impede efforts to advance Indigenous rights in Canada, which is absurd considering that Canada is one of the world's most water-rich countries. The government has committed to end all drinking water advisories on First Nations reserves by 2021.⁵² In September 2019, the Canadian Human Rights Tribunal found that the federal government wilfully and recklessly discriminated against Indigenous children living on reserves by failing to provide funding for child and family services. The Trudeau government filed an application seeking a judicial review of the ruling in October.⁵³ Indigenous Women in

⁵² 'Canada 2019' (*hrw.org 2019*) <<https://www.hrw.org/world-report/2020/country-chapters/canada#>> Last Accessed 7 February 2021

⁵³ 'Trudeau Government Appeals Ruling on Compensation to First Nations Children' (*globalnews.ca, 2019*) <<https://globalnews.ca/news/5991248/appeal-Indigenous-children-welfare/>> Last Access 07 February 2021

Canada face further threats to their human rights in relation to violence and marriage. In June 2019, the National Inquiry into ‘Missing and Murdered Indigenous Women and Girls’⁵⁴ released its final report. The inquiry made 231 recommendations and concluded that acts of violence against Indigenous women and girls amount to genocide⁵⁵ and Prime Minister Trudeau announced that the government would develop a national action plan to “turn the inquiry’s calls to justice into real, meaningful, Indigenous-led action”.⁵⁶ In January 2019, the United Nations Human Rights Committee found that Canada, through the long-controversial Indian Act, was still discriminating against First Nations women and their descendants⁵⁷. In August 2019, the Trudeau government announced that First Nations women would be treated equally under the Indian Act, enabling them to retain their Indigenous status if they marry non-Indigenous men.⁵⁸

6.8.2 French Guiana

As previously mentioned, French Guiana is an overseas territory of France,⁵⁹ by that nature it follows the rules and laws of the French State. So, it is important to note that when looking at the human rights records of French Guiana it is through analysing the human rights records of France that a fully comprehensive understanding will begin to emerge. When discussing human rights protections and obligations in relation to France, it is essential to note that as a State,

⁵⁴ M Buller, M Audette and Q Robinson, *Reclaiming Power and Place* National Inquiry into Missing and Murdered Indigenous Women and Girls MMIWG (2019)

⁵⁵ Ibid

⁵⁶ 'Prime Minister Welcomes Final Report from The National Inquiry into Missing and Murdered Indigenous Women and Girls' (*Prime Minister of Canada, 2019*) <<https://pm.gc.ca/en/news/statements/2019/06/03/prime-minister-welcomes-final-report-national-inquiry-missing-and>> Last Accessed 26 February 2021

⁵⁷ UN Human Rights Report Shows That Canada Is Failing Indigenous Peoples (*UBCIC.ca*) <<https://www.ubcic.bc.ca/canadafailingIndigenouspeoples>> Last Accessed 7 February 2021

⁵⁸ Justin Brake, 'First Nations Women Finally to Be Treated Equally Under Indian Act: Bennett' *APTN News* (2019) <<https://www.aptnnews.ca/national-news/first-nations-women-finally-to-be-treated-equally-under-indian-act-bennett/>> Last Accessed 5 March 2021

⁵⁹ France includes 11 overseas administrative divisions. Five overseas territories, in French Guiana, Guadeloupe, Martinique, Mayotte, and La Reunion, have the same political status as the 13 regions and 96 departments on the mainland. For more information on administration of French Overseas Territories see European Parliament Briefing ‘Economic, social and territorial situation of France - La Réunion’ available at <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/617483/IPOL_BRI\(2018\)617483_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/617483/IPOL_BRI(2018)617483_EN.pdf)> Last Accessed 20 February 2021

France does not recognise official minority groups within the State. The French State's policy rejects any references to national, racial, ethnic, religious or linguistic minorities. This is based on the concept that the state "should interact with the individual only, not communities or groups, in order to give equal treatment to everyone".⁶⁰ From the French perspective this is seen as the best way to ensure the integration of all citizens, to the benefit of both the state and the citizens themselves. However, it is interesting to note in numerous human rights reports, minority groups are referenced and human rights issues in the 2018 Human Rights Report on France included reports of societal acts of violence against "Jews; lesbian, gay, bisexual, transgender and intersex persons; and migrants and minorities, including Muslims and Roma."⁶¹ It is interesting to know that these areas were picked up on in the French human rights report considering as a nation France does not recognise any minorities or minority groups in need of extra protections within the state. It is nevertheless interesting to see that these groups in which the human rights issues are related to are all minority groups. It is apparent that France has stringent protections and laws that are in place to prevent cruelty, abuse and exploitation of children. In an effort to educate young women and girls the government offered educational programs to inform young women of their rights.⁶² There are also numerous protections for persons with disabilities to access education and employment. A 2005 law provides every child the right to education in a mainstream school, but the Council of Europe condemned the country's authorities for not respecting it.⁶³ According to the most recent data available, the State received 3,758 discrimination claims in 2017, 17.6 percent of which concerned discrimination based on ethnic origin. The government attempted to combat racism and discrimination through programs that promoted public awareness and brought

⁶⁰ 'How French Law Makes Minorities Invisible' (*The Conversation*, 2016) <<https://theconversation.com/how-french-law-makes-minorities-invisible-66723>> Last Accessed 7 February 2021

⁶¹ Executive Summary of Human Rights Report for France (2018) accessed < <https://www.state.gov/wp-content/uploads/2019/03/France-2018-Human-Rights-Report.pdf>> Last Accessed 20/02/2021

⁶² Ibid

⁶³ Ibid

together local officials, police, and citizens. Some public-school systems also managed antidiscrimination education programs.⁶⁴ Yet, there are no protections or supports offered in relation to appropriate curricula and culturally sensitive educational systems. The 2018 Human Rights Report stated that “there were no government restrictions on academic freedom or cultural events”⁶⁵ however, this is not indicative of governmental inaction in the provision of supports for academic freedom and cultural events within the overseas territory of French Guiana. The same report acknowledged an increase of violent attacks of those who identify as a national or ethnic minority, again, this does not take into consideration the population of French Guiana, which consists of numerous ethnic groups and a sizeable Indigenous population. As an overseas territory, French Guiana is deemed its own region in terms of administration which means that the people and State are responsible for their own regional development... e.g., education (high schools and some universities), vocational training, culture and health”.⁶⁶ However, without the appropriate supports and cultural considerations this leaves the educational systems in place lacking in both provision of education to Indigenous Children and supports to do so.

6.9 Education Systems and Indigenous Peoples

While the right to education has been discussed in detail in the previous chapter it is nevertheless important to discuss it here in specific relation to the provision of education to Indigenous Children in the context of the states in which they currently reside. This section will look at why educational systems provided for Indigenous Children are so crucial to the survival of Indigenous groups and societies. First, it is important to explain what is understood by the term of an education system. This research refers to systems put in place by the State

⁶⁴ Ibid

⁶⁵ Ibid

⁶⁶ 'Economic, Social and Territorial Situation of France - La Réunion' (*europa.eu*, 2018)

<[https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/617483/IPOL_BRI\(2018\)617483_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/617483/IPOL_BRI(2018)617483_EN.pdf)> Last Accessed 20 February 2021

and or Church for the provision of education, but this understanding does not consider the education a child receives at home from parents or kin as part of the State or Church systems of education that have been put in place.⁶⁷

Indigenous education was not always marginalized, pre-colonisation Indigenous communities have rich histories of educational processes for their children and have always maintained and developed complex education systems. However, colonial invasion and exploitation have shattered Indigenous knowledges and ways of knowing, and as a result, “the pieces have become scattered – destroyed, hidden, and other parts just waiting to be reconstructed”.⁶⁸ Indigenous Peoples tend to have less access to and poorer quality of education than other groups. Often it is the case that educational systems designed to provide education to Indigenous Youth do not incorporate curricula and teaching methods that recognize their communities’ histories, cultures, pedagogies, traditional languages and traditional knowledge.⁶⁹ As noted by the World Bank in 2019, quality education for Indigenous Peoples means “education that is well resourced, culturally sensitive, respectful of heritage and that takes into account history, cultural security and integrity, encompasses human rights, community and individual development.”⁷⁰ This has rarely been the case, both throughout history and in some contemporary situations, examples of which will be offered in the following case studies. Education systems have long been used as a tool of assimilation of Indigenous Peoples. Traditionally, these systems pose the very real risk of destroying

⁶⁷ 'Education System Definition and Meaning' (*TopHat.com*) <<https://tophat.com/glossary/e/education-system/>> Last Accessed 26 April 2021

⁶⁸ Elizabeth Ann McKinley and Linda Tuhiwai Smith, 'Towards Self-Determination in Indigenous Education Research: An Introduction' (2019) *Handbook of Indigenous Education* pp. 1-15

⁶⁹ Q Wodon and G Cosentino, Education, Language, and Indigenous Peoples (*World Bank Blogs*, 2019) <<https://blogs.worldbank.org/education/education-language-and-Indigenous-peoples#:~:text=Indigenous%20Peoples%20tend%20to%20have,traditional%20languages%20and%20traditiona1%20knowledge.>> Last Accessed 21 February 2021

⁷⁰ World Bank Projects 'Persons with Disabilities, Indigenous Peoples, and Sexual and Gender Minorities' (2019) *World Bank* accessed at <<http://documents1.worldbank.org/curated/pt/590781562905434693/text/Equity-and-Inclusion-in-Education-in-World-Bank-Projects-Persons-with-Disabilities-Indigenous-Peoples-and-Sexual-and-Gender-Minorities.txt>> Last Accessed 21/02/2021

Indigenous Culture, Languages, Identity and in many situations, human rights, specifically a denial of the right to self-determination. Policies and curricula were rarely developed with Indigenous Peoples' participation and/or consent, thus highlighting how these systems were, and are, aiding in the denial of the right to self-determination for Indigenous Peoples.

Indigenous Peoples often do not have access to schooling in their traditional languages. This will be analysed further in the case studies relating to both Canada and French Guiana as in both instances the curriculum and teaching methods did not in the case of Canada and do not in the case of French Guiana, incorporate or recognise the Indigenous communities' histories, cultures, ways of learning, and traditional knowledge, again highlighting how educational institutions are and have been instrumental in the denial of the right to self-determination. The case studies will highlight how lack of Indigenous education continues to set Indigenous youth apart from their own cultures, stressing that education is the key to self-determination and how with the correct incorporation of Indigenous expertise and open and on-going dialogues between Indigenous Peoples and policymakers, educational systems can be a tool of empowerment and move from denial of the right to self-determination to a facilitator of the right. This is in light of the fact that more recently, Indigenous education and the systems that provide the education have received more attention in the field of international human rights law and in some instances has become a collaborative process which highlights the need for inclusion of Indigenous expertise. The case studies of the Sámi University and the University of North Carolina display these ideas and methods as shining examples of the supports being drawn upon from diverse Indigenous situations that contribute to the facilitation of the right to self-determination in the context of Indigenous Peoples.

6.10 Conclusion

In the following chapters, detailed case studies of the above educational systems will be analysed and will address how the right to self-determination in the context of Indigenous Peoples has in the past, and present in some instances, been denied through educational systems, and will offer a comprehensive discussion on some of the current forms of empowerment supported by educational systems in the facilitation of the right to self-determination. While the right to education has been discussed in greater detail in the previous chapter the idea behind the following chapters and case studies is to offer a further and more comprehensive analysis of particular educational systems in relation to Indigenous Peoples to analyse the lived experience and outcomes and to assess exactly how these education systems both denied the right to self-determination through the provision of education and how in some contemporary contexts educational systems can be a tool of empowerment for the facilitation of the right to education.

Chapter 7

Case Study 1 – Canada

7.1 Introduction

The aim of this chapter is to further explore the relationship between education systems and the right to self-determination in the context of Indigenous Peoples. This chapter provides a case study of the Canadian residential school system to highlight how, in the past, a system education has been used to deny the right to self-determination. This chapter will draw on details from previous chapters in this thesis to support the arguments set out and reflect on the negative experiences of Indigenous children in the residential school system. This chapter will highlight how a destructive and aggressively assimilative education system denied the right to self-determination for Indigenous Peoples in Canada.

In order to allow for a comparison between the old and new in the operation of the Canadian education systems, it is important to highlight how the education system in Canada operates today. This is to highlight the stark difference between the past and present systems in operation and to emphasise the maltreatment of Indigenous Children via the Canadian Residential school System. Canada is a diverse, multi-cultural democracy that enjoys a global reputation as a defender of human rights and a strong record on core civil and political rights protections guaranteed by the Canadian Charter of Rights and Freedoms. Today, Canada is a highly developed country and has the seventeenth-highest nominal per-capita income globally and the thirteenth-highest ranking in the Human Development Index.¹ Canada's advanced economy is the tenth largest in the world, relying chiefly upon its abundant natural resources and well-developed international trade networks.² This has allowed Canada to become a powerful State

¹ 'The Next Frontier: Human Development and The Anthropocene' (United Nations Development Programme 2020) <http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/CAN.pdf> Last Accessed 15 April 2021

² 'The Top 25 Economies in The World' (*Investopedia*, 2021) <<https://www.investopedia.com/insights/worlds-top-economies/>> Last Accessed 15 April 2021

and is currently part of several major international and intergovernmental institutions or groupings including the United Nations, NATO, the G7, the Group of Ten, the G20, the United States–Mexico–Canada Agreement, the Commonwealth of Nations, *the Organisation internationale de la Francophonie*, the Asia-Pacific Economic Cooperation forum, and the Organization of American States.³

Section two of this chapter presents a discussion on the contemporary education system in operation in Canada to allow for comparison to the historical example of the residential school system. This is followed by section three which analyses the inception and design of the residential school system and section four which discusses in depth the function and organisation of the system. Section five of this chapter highlights the lived experience of the Indigenous children who attended these schools followed by section six which delves deeper into the long-term trauma experienced by victims and survivors of the residential school system. Section seven explores how the State and Indigenous Peoples began the process of healing and reconciliation. Section eight assesses one of the most important aspects of the reconciliation process, the Truth and Reconciliation Commission (TRC) of Canada, established to investigate the residential school system. This chapter concludes with a deeper discussion of the aftermath of the finding of cultural genocide by the TRC and assesses the possibility of classifying the residential school system of Canada as an act of Genocide and question if the Canadian government and church committed an act of genocide through the forced assimilation of Indigenous children through the residential school system. This line of enquiry further addresses the question of how an oppressive system of education can deny the right to self-determination of Indigenous Peoples and how with relevant input and appropriate dialogues,

³ 'Partnerships And Organizations' (GAC, 2020) <https://www.international.gc.ca/world-monde/international_relations-relations_internationales/partnerships_organizations-partenariats_organisations.aspx?lang=eng> Last Accessed 15 April 2021

they can transition to a proactive education system which can become a facilitator of the right to self-determination.

7.2 The Contemporary Canadian Education System

While the subject matter of this chapter is the case duty of the residential school systems and the historical trauma faced by many of the victims and survivors of those schools, it is also important to include some information about modern day Canada and the education system in practice that exists. This section will identify some of the important and key statistics in relation to the contemporary Canadian education system.

Today in Canada, education provided through a public system and is, for the most part, provided, funded, and overseen by federal, provincial, and local governments.⁴ The governance of the education system is within provincial jurisdiction and the curriculum is overseen by the province,⁵ not that this allows for vastly differing approaches to education, rather a delegation of responsibility. Education in Canada is generally divided into primary education, followed by secondary education and post-secondary. Education in both English and French is available in most places across Canada.⁶ As mentioned, Canadian provinces and territories are responsible for education provision,⁷ this extends to Quebec where provision of education through French is heavily supported. There is a compulsory element to educational provision and attainment in Canada, the mandatory education age ranges between 5–7 to 16–18 years,

⁴ 'Mirror, Mirror 2017: International Comparison' (*Commonwealthfund.org*, 2021)
<<https://www.commonwealthfund.org/publications/fund-reports/2017/jul/mirror-mirror-2017-international-comparison-reflects-flaws-and>> Last Accessed 15 April 2021

⁵ '2015 Federal Budget 'Disappointing' For Post-Secondary Students: CFS' (*Metro*, 2021)
<<https://web.archive.org/web/20150603103455/http://metronews.ca/news/canada/1347155/2015-federal-budget-disappointing-for-post-secondary-students-cfs/>> Last Accessed 15 April 2021

⁶ 'Canada Official Handbook Present Conditions Recent Progress' (*Abebooks.com*, 2021)
<<https://www.abebooks.com/book-search/title/canada-official-handbook-present-conditions-recent-progress/>> Last Accessed 15 April 2021

⁷ I Epstein, *The Greenwood Encyclopaedia of Children's Issues Worldwide* (Vol. 1). (California: Greenwood Publishing Group, 2008) P. 73

contributing to an adult literacy rate of 99 percent,⁸ this also takes into consideration the just over 60,000 children in the State who are home-schooled as of 2016.⁹

Regarding third level education, Canada has many universities, 97 in total,¹⁰ almost all of which are publicly funded.¹¹ Four universities are regularly ranked among the top 100 world-wide, namely University of Toronto, University of British Columbia, McGill University and McMaster University, with a total of 18 universities ranked in the top 500 worldwide.¹² As a nation, Canada has an incredibly high educational attainment level. According to a 2019 report by the OECD, Canada is one of the most educated countries in the world¹³ and Canada in fact, ranks first worldwide in the number of adults having tertiary education, with over 56 percent of Canadian adults having attained at least an undergraduate college or university degree.¹⁴

Canada spends about 5.3 percent of its GDP on education,¹⁵ which is substantially higher than the global average which sits firmly at 4%,¹⁶ and the country invests heavily in tertiary education (more than US\$20,000 per student).¹⁷ However, even with this high rate of investment in education, there is still a large gap between Indigenous and non-Indigenous

⁸ '2006 Census: Portrait of The Canadian Population In 2006, By Age and Sex' (*Www12.statcan.gc.ca*, 2021) <<https://www12.statcan.gc.ca/census-recensement/2006/as-sa/97-551/index-eng.cfm?CFID=3347169&CFTOKEN=19485112>> Last Accessed 15 April 2021

⁹ 'CCHE Research on Home Education in Canada' (*Cche.ca*, 2020) <<https://cche.ca/research-on-home-education-in-canada/>> Last Accessed 23 March 2021

¹⁰ 'A Complete List of Canadian Universities and Colleges - The Greenest Workforce' (*The Greenest Workforce*, 2021) <<https://thegreenestworkforce.ca/index.php/en/schools/>> Last Accessed 23 March 2021

¹¹ V Montesinos and JM Vela, *Innovations in governmental accounting*. (New York: Springer Science & Business Media, 2013) P. 305

¹² LW Richards, *University of Toronto: An Architectural Tour (The Campus Guide)*. (San Francisco: Chronicle Books, 2019) P. 11

¹³ 'World University Rankings - 2019 | Canada Universities in Top 1000 Universities | Academic Ranking of World Universities - 2019 | Shanghai Ranking - 2019' (*Shanghairanking.com*, 2021)

<<http://www.shanghairanking.com/World-University-Rankings-2019/Canada.html>> Last Accessed 15 April 2021

¹⁴ Ibid

¹⁵ 'Most Educated Countries 2021' (*Worldpopulationreview.com*, 2021)

<<https://worldpopulationreview.com/country-rankings/most-educated-countries>> Last Accessed 15 April 2021

¹⁶ <[https://gem-report-](https://gem-report-2019.unesco.org/chapter/finance/#:~:text=Globally%2C%20median%20public%20education%20expenditure,Latin%20America%20and%20the%20Caribbean.)

2019.unesco.org/chapter/finance/#:~:text=Globally%2C%20median%20public%20education%20expenditure,Latin%20America%20and%20the%20Caribbean.> Last Accessed 23 March 2021

¹⁷ 'Government Expenditure on Education, Total (% Of GDP) | Data' (*Data.worldbank.org*, 2021)

<<https://data.worldbank.org/indicator/SE.XPD.TOTL.GD.ZS>> Last Accessed 15 April 2021

students in third level education. Universities Canada, which is an organization that represents Canada's colleges and universities, recognises this gap and states that “Indigenous Peoples face significant barriers to postsecondary education. As a result, far fewer First Nations, Métis, and Inuit in Canada have a university degree than non-Indigenous Canadians”.¹⁸ This disparity is not always reflected in the statistics, as the OECD affirms that of 2014, 89 percent of adults aged 25 to 64 have earned the equivalent of a high-school degree, compared to an OECD average of 75 percent.¹⁹

The success of the contemporary education system in Canada is clear in many ways. The Programme for International Student Assessment indicates Canadian students perform well above the OECD average, particularly in mathematics, science, and reading,²⁰ ranking the overall knowledge and skills of Canadian 15-year-olds as the sixth best in the world. However, there needs to be further recognition of the disparity in educational attainment among Indigenous and non-Indigenous Peoples. University enrolment for Indigenous Peoples in Canada needs to be championed on a greater scale, Universities Canada has commented on how this can help heal wounds of the past noting that “Universities help advance reconciliation by revitalizing Indigenous languages, ensuring Indigenous representation in governance and leadership structures, and bringing Indigenous knowledge and culture to campus”.²¹ Canada is a well-performing OECD country in reading literacy, mathematics, and science with the average student scoring 523.7, compared with the OECD average of 493 in 2015.²² However,

¹⁸ 'Indigenous Student Education' (*univcan.ca, 2021*) <<https://www.univcan.ca/priorities/Indigenous-education/>> Last Accessed 23 May 2021

¹⁹ 'Financial And Human Resources Invested in Education' (*OECD, 2011*) <<https://www.oecd.org/education/skills-beyond-school/48630868.pdf>> Last Accessed 15 April /2021

²⁰ 'A Plan for Growth and Prosperity: Chapter 4 - Creating Opportunities for All Canadians' (*Web.archive.org, 2021*) <<https://web.archive.org/web/20100423192244/http://www.fin.gc.ca/ec2005/agenda/agc4-eng.asp>> accessed 15 April 2021, (*Oecd.org, 2021*) <<https://www.oecd.org/pisa/46643496.pdf>> Last Accessed 15 April 2021

²¹ 'Indigenous Student Education' Note 18

²² 'PISA - Results in Focus' (*OECD, 2018*) <<https://www.oecd.org/pisa/pisa-2015-results-in-focus.pdf>> accessed 15 April 2021, 'Canadian Education Among Best in The World: OECD' (*CTVNews, 2021*) <<https://www.ctvnews.ca/canadian-education-among-best-in-the-world-oecd-1.583143>> Last Accessed 15 April 2021

as mentioned this gap in the attainment levels is not truly represented. While the current results, trends and statistics point to a somewhat successful and well organised education system, it is not how the education system in Canada has always been. At one point in time, the Canadian State operated one of the most destructive assimilative residential school systems in history. As will be highlighted in the following section and further on in this chapter, the scars of Canadian Residential School System are still visible through the veil of success of the mainstream education system. The Canadian Residential School System remains a scar on the history of Canada and is one of the reasons there exists a mistrust between Indigenous Peoples and the education system in Canada.

7.3 The Inception and Design of the Residential School System

To provide some insight into the cruel reality and harsh existence faced by the Indigenous Peoples of Canada at a time when the assimilative policies of the State came into full force, the following statement was the first official statement made by then Deputy Superintendent General of Indian Affairs in Canada, Duncan Campbell Scott, came in 1920 when he stated to a Special Committee in the House of Commons

“I want to get rid of the Indian problem. I do not think as a matter of fact, that the country ought to continuously protect a class of people who are unable to stand alone... Our object is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic and there is no Indian question, and no Indian Department”²³

This statement made in 1920 does not signal the start of the residential school system in Canada, as the first missionary-operated schools for Indigenous children were established in the early 1600s in Québec,²⁴ but it was not until the end of the War of 1812²⁵ when the

²³ Canada. Department of Indian Affairs and Northern Development, Maguire, R., Leslie, J. and Moore, R.G., 1978. *The Historical Development of the Indian Act*. P.115

²⁴ 'History Of Residential Schools' (*Indigenouspeoplesatlasofcanada.ca*) <<https://Indigenouspeoplesatlasofcanada.ca/article/history-of-residential-schools/>> Last Accessed 23 March 2021

²⁵ The War of 1812 was a conflict fought between the United States and its allies, and the United Kingdom of Great Britain and Ireland and its dependent colonies in North America and Native American allies.

establishment of residential schools became a priority.²⁶ With the end of the War in 1812, British Colonisers no longer saw the value of the Indigenous Canadians in the fur trade or the need of their military alliances, before this the Indigenous Peoples were valued trading partners and military supporters.²⁷ The status of Indigenous Peoples in society began to decline as they were transformed from valued allies that aided in battle and added value to trade, to now being ‘burdens’ on the State. This is when the Indigenous Peoples of Canada became a ‘problem’ in the eyes of the colonisers. In 1830, when the “Indian problem” moved from military to civilian jurisdiction, Indigenous Peoples were then seen as barriers for a new nation to flourish. Strong, sovereign Indigenous Nations now were the “Indian problem”.²⁸

The solution to the problem, and a product of its time, was to assimilate Indigenous Peoples. The easiest way to do this was by targeting Indigenous children, who were easier to coerce and manipulate. The government sponsored, church run school system ran with the official motto of “don’t kill the child, kill the Indian in the child”.²⁹ Over the course of 125 years more than 150,000 children were forcibly removed from their homes and placed into residential schools.³⁰ These schools were designed by the State and Church to be oppressive in nature, designed to assimilate Indigenous Children into the mainstream population. The goal was to disjoint children from the families and communities, to suppress indigeneity and cultural identity and disrupt and impede the transmission of intergenerational knowledge among the Indigenous Peoples of Canada. This is a prime example of how an educational system was designed and

²⁶ JR Miller, *Shingwauk's vision: A history of Native residential schools*. (Toronto: University of Toronto Press, 1996) P.32

²⁷ WJ Eccles, “The Fur Trade and Eighteenth-Century Imperialism” (1983) 40(3) *The William and Mary Quarterly: A Magazine of Early American History*, pp.342-362.

²⁸ Miller Note 26,p.63

²⁹ 'Killing The Indian in The Child' (*Facing History and Ourselves*, 2021)

<<https://www.facinghistory.org/stolen-lives-Indigenous-peoples-canada-and-indian-residential-schools/chapter-3/killing-indian-child>> Last Accessed 23 March 2021

³⁰ 'The Report of The Royal Commission on Aboriginal Peoples' (RCAP 1996) <<https://www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/royal-commission-aboriginal-peoples/Pages/final-report.aspx>> Last Accessed 23/03/2021, 'The Final Report of The Truth and Reconciliation Commission Of Canada' (McGill-Queen's University Press 2015).

implemented with the intent to deny the right to self-determination of Indigenous Peoples, by using the education system as a tool of oppression.

7.4 The Canadian Residential School System

7.4.1 Political Support for Assimilative Policies

The Canadian Residential School System was based on the clearly stated goals of assimilating Indigenous Peoples through the manipulative indoctrination of their children in the schools. The Indian Act in 1876, and the education policy within the legislative framework, solidified the goal of assimilation in federal legislation.³¹ The system, designed by the Canadian government's Department of Indian Affairs began in the early 1800s,³² and operated approximately one hundred and fifty residential schools throughout Canada.³³ This assimilative approach became more volatile with the release of the Davin Report³⁴ in 1879 which changed the pace of assimilation and standards of boarding schools. The system became even more aggressive in its desire for cultural destruction with Nicholas Flood Davin's recommendations which included the segregation and isolation of Indigenous children from any and every influence of their cultural traditions.³⁵ Residential schools reached a pinnacle in 1920, when it became mandatory for all Indian children from the age of seven to fifteen to attend residential schools.³⁶

³¹ Z Parrott, 'Indian Act', *The Canadian Encyclopaedia* (2006) Available at <<https://www.thecanadianencyclopedia.ca/en/article/indian-act>> Last Accessed 23 March 2021

³² Catherine E. Gordon and Jerry P. White, 'Indigenous Educational Attainment in Canada' (2014) 5(3) *International Indigenous Policy Journal*. Pp 1 - 28

³³ Ian Austen and Dan Bilefsky, 'Hundreds More Unmarked Graves Found at Former Residential School in Canada' *The New York Times* (2021) <<https://www.nytimes.com/2021/06/24/world/canada/Indigenous-children-graves-saskatchewan-canada.html>> Last Accessed 24/06/2021.

³⁴ Nicholas Flood Davin, 'Report on Industrial Schools for Indians and Half-Breeds' (1879) <http://www.canadianshakespeares.ca/multimedia/pdf/davin_report.pdf> Last Accessed 20 March 2021

³⁵ Ibid

³⁶ E. Hanson, 'The Residential School System' (*Indigenousfoundations.arts.ubc.ca*, 2009) <https://Indigenousfoundations.arts.ubc.ca/the_residential_school_system/> Last Accessed 26 June 2021

Further political support for the residential school system came in 1883 when Prime Minister John A. MacDonald acted on recommendations of government officials like Nicholas Davin and Duncan Scott Campbell who were proponents of the idea of using schools to speed up the process of assimilation.³⁷ It was deemed to be the most effective way to “civilize” the Indigenous Peoples of Canada. The following quote from the Davin report summarises this blatant objective, “...[I]f anything is to be done with the Indian, we must catch him very young. The children must be kept constantly within the circle of civilized conditions.”³⁸ The blatant disregard for cultural heritage, rights and expression is a painful reminder of how these schools worked to oppress Indigenous Peoples of Canada and using the disguise of educational provision to oppress and repress Indigenous cultural identity. The schools were designed to be a disruption in the intergenerational transmission of cultural knowledge and practice, further showing how these education systems enabled the denial of the right to self-determination for the Indigenous Peoples of Canada.

This idea of using assimilative tactics through the provision of education was shared among many of the prominent politicians at the time. For instance, Duncan Campbell Scott, who was the Deputy Minister of Indian Affairs in Canada in 1920, has been quoted on the record saying,

“I want to get rid of the Indian problem. I do not think as a matter of fact, that the country ought to continuously protect a class of people who are able to stand alone... Our objective is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic and there is no Indian question, and no Indian Department.”³⁹

The Canadian government did not operate alone in the creation and running of the residential schools, they were supported in this endeavour by solid partnership with the Anglican, Catholic, Methodist, and Presbyterian churches, among others.⁴⁰ That being said, the Canadian

³⁷ Vic Satzewich and Linda Mahood, “Indian Agents and The Residential School System in Canada, 1946-1970” (1995) 7(1) *Historical Studies in Education / Revue d'histoire de l'éducation*. Pp. 45-69

³⁸ Davin Note 34

³⁹ Statement made by Duncan Campbell Scott – Deputy Superintendent for Indian Affairs 1920

⁴⁰ ‘Killing the Indian in the Child’ Note 29

government was financially responsible for these residential schools,⁴¹ the cost of which was often offset by using students as a cheap form of labour. Again, what is evident here, is that not only were cultural practice, language and traditions repressed in these schools, Indigenous children also had to part take in activities that were foreign to them. This was another form of subjugation and a blatant attempt at oppressing indigeneity amongst Indigenous students.

There was no geographical preference for the locations of these schools, and they appeared all over the country, the residential schools operated in all Canadian provinces and territories with the exception of Prince Edward Island, New Brunswick, and Newfoundland, also known as the Maritimes in North-East Canada.⁴² There is no research to suggest why this region was excluded, however, it was most likely due to the rural and isolated location of the region and not having the financial or labour capabilities to build these institutions there. Indian residential schools operated in Canada between the 1870s and the 1990s,⁴³ with the last residential school only closing in 1996.⁴⁴ During this period, it is estimated that over 150,000 Indian, Inuit, and Métis children attended Indian residential schools,⁴⁵ most of whom were between the ages of four and sixteen years old.⁴⁶

When discussing the Canadian residential school system an essential point to make note of is the fact that this system was state sponsored, and church run. This shows the power behind this system and the governance of the system. The Indigenous Peoples of Canada were faced with

⁴¹ T Marshall and D Gallant, 'Residential Schools in Canada', *The Canadian Encyclopaedia* (2012) Available at <<https://www.thecanadianencyclopedia.ca/en/article/residential-schools#:~:text=Funding%20was%20a%20pressing%20concern,contributed%20financially%20to%20the%20schools.>> Last Accessed 23 March 2021

⁴² B Joseph, 'The Residential Schools Apology' (*Ictinc.ca*, 2015) <<https://www.ictinc.ca/blog/the-residential-schools-apology>> Last Accessed 23 March 2021

⁴³ AS Dawson, "Histories and memories of the Indian boarding schools in Mexico, Canada, and the United States". (2012) 39(5) *Latin American Perspectives*. pp.80-99.

⁴⁴ Ibid

⁴⁵ 'Your questions answered about Canada's residential school system' (*cbc.ca*, 2021) <<https://www.cbc.ca/news/canada/a-history-of-residential-schools-in-canada-1.702280>> Last Accessed 23 March 2021

⁴⁶ Dawson Note 43

an aggressive system of oppression at the hands of the State with the support of the Church. From the mid-1800s, the Canadian residential school system took on a life of its own and became more volatile and more destructive with more and more support from government and the general population of Canada. Through this volatile system over 150,000 Indigenous Children were taken from their homes and communities and placed in these institution-like educational facilities.⁴⁷

7.4.2 Disruption of Family, Community and Lifestyle

The majority of these stolen children were held captive and isolated from their families and all their kinship ties for the entire time they attended, others stayed 10 months of the year and many children never returned home at all.⁴⁸ Children aged three to seventeen years old attended residential schools. Education was a mechanism to colonize and assimilate all Indigenous children, to destroy their cultures, beliefs, languages, and sense of pride,⁴⁹ in other words, through oppressing the societal and cultural structures of these groups, it further denied their right to self-determination. This forced removal of children took away from the rights of both parent and child and completely disrupted traditional ways of knowledge sharing and removed the power parents had of decisions regarding their children. Through family and kin disruption, this had an effect of the entire Indigenous community, children being stolen and no longer being a part of the community system.

7.4.3 The Schools

Early European-style schools run by Catholic missionaries during the 1600s were established by New France near Quebec City. Even if successful in the recruitment of children, oftentimes,

⁴⁷ 'History of Residential Schools' Note 24

⁴⁸ Ibid

⁴⁹ C Haig-Brown, *Resistance and renewal: Surviving the Indian residential school*. (Vancouver: Arsenal Pulp Press, 1988) p. 64

when they did, the children would run back to their families and communities.⁵⁰ However, they had a difficult time recruiting children to these boarding schools from their reluctant parents.⁵¹ Prior to 1883 these boarding schools were church-led initiatives, which received federal government grants but were not organized or run as a government-structured school system. However, in 1883 the government became much more involved when they built and funded three schools.⁵² This boarding school system failed and was not re-enacted again until the 1830s when the New England Company founded the Mohawk Institute, which boarded First Nations students in Brantford, Ontario. This resulted in several other boarding schools being opened.⁵³

The model for these schools used the design of industrial schools in the United States based on the idea previously discussed designed by Richard Henry Pratt and the Carlisle Residential School. These industrial schools were more like manual labour camps than educational institutions and had aggressive assimilation tactics.⁵⁴ Again these schools and the majority of the people that worked in them targeted Indigenous children because of their perceived vulnerability, because of their young age, they would be less likely to resist the forced changes. As a result, “physical, emotional and sexual abuse were rampant within these institutions, as was forced labour”.⁵⁵ The Indigenous students were not only victims of oppression and physical, emotional, and sexual abuse, their forced labour also contributed financially to the schools and those who ran them.⁵⁶

⁵⁰ 'The Final Report of The Truth and Reconciliation Commission of Canada' (McGill-Queen's University Press 2015).

⁵¹ Miller Note 26 P.49

⁵² 'History of Residential Schools' Note 24

⁵³ R Carney, “Aboriginal residential schools before confederation: The early experience”. (1995) 61(1) *Historical Studies* pp.13-40.

⁵⁴ Miller Note 26 P. 157; Haig-Brown Note 49 Pp. 70-75

⁵⁵ Tracey Lindeman, 'Canada: Remains of 215 Children Found at Indigenous Residential School' *The Irish Times* (2021) <<https://www.irishtimes.com/news/world/canada-remains-of-215-children-found-at-Indigenous-residential-school-1.4579065>> Last Accessed 29 June 2021

⁵⁶ Marshall and Gallant Note 41

There was a powerful force behind the Residential School System, as mentioned previously, it had the support of both State and Church. In 1892, the federal government entered into a legal agreement with the Roman Catholic Church, the Church of England, Methodist Church, and Presbyterian Church to run these Indian residential schools, which extended into the western prairies from Cross Lake in Manitoba, Prince Albert in Saskatchewan, and Blue Quills in Edmonton, Alberta.⁵⁷

7.4.4 Oppression through Education

There was a sinister goal behind the residential school system, it was to prey on the vulnerability of the children and by forcibly assimilating them through the education system, it would interrupt and disjoint the transfer of intergenerational knowledge among Indigenous Communities. The Residential School is the principal feature of the policy known as that of “aggressive civilization [...] Indian culture is a contradiction in terms [...] they are uncivilized [...] the aim of education is to destroy the Indian”.⁵⁸ Nicholas Flood Davin stated in the 1879 Report on Industrial Schools for Indians and Half-Breeds “if anything is to be done with the Indian, we must catch him very young. The children must be kept constantly within the circle of civilized conditions”.⁵⁹ As mentioned, these residential schools were based on a church-operated and state-financed system. From the government’s perspective, it wanted to guide children out of their current savage state to become more civilized.⁶⁰ While the mission of the State was to ‘civilise’, the mission of the churches involved was not purely assimilation into the mainstream, it was to Christianize the children. In this volatile system of assimilation veiled by educational provision, the church educated the children, and the government covered the

⁵⁷ Residential School System in Canada: Understanding the Past – Seeking Reconciliation – Building Hope for Tomorrow. Department of Education, Culture and Employment (GWNT), Department of Education (GN), Legacy of Hope Foundation, 2013.

⁵⁸ Davin Note 34 p. 1

⁵⁹ Davin Note 34 p. 12

⁶⁰ Hanson Note 36

costs.⁶¹ This relationship of mutual gain between the State and Churches became one that was based on the regulation, administration, and control of Indigenous people's lives through the education system.⁶²

The residential schools were purposefully built far from Indigenous communities to prevent all interactions and traces children had of their former lives. This of course, disintegrated the parenting process, it taught children foreign values and customs, and shamed them into rejecting their own culture, traditions, spirituality, and language. Residential school pedagogy was based on authority, control, and force similar to the colonisers system of education.⁶³ Authority and power were in the hands of the schools and their teachers who instructed children through harsh discipline. As discussed in chapter four of this thesis, this approach to learning would have been drastically different to that of the communities the children were from where children were valued members of the community. Being suddenly faced with the dark and authoritarian form of educational provision offered by the residential schools was another form of oppression and furthered the denial of the right to self-determination of both Indigenous children within the schools, and also their parents, who no longer had any input or control over how their children were being educated.

The Residential Schools were primarily established for all First Nations and Inuit children (and later Métis attended as well) who were transported far away from their communities.⁶⁴ Again, with the support of both Church and State and the force of the government agencies, Indigenous Communities stood little chance standing in opposition to these forces. It was made even more difficult for parents to refuse to allow their children to attend as those who did refuse to send

⁶¹ Eric Taylor Woods, "A Cultural Approach to a Canadian Tragedy: The Indian Residential Schools as a Sacred Enterprise" (2013) 26(2) *International Journal of Politics, Culture, and Society* Pp. 173-187

⁶² Ibid

⁶³ Andrea Smith, *Indigenous Peoples and Boarding Schools: A Comparative Study*. Report for Secretariat of The United Nations Permanent Forum on Indigenous Issues. p. 7

⁶⁴ LN Chartrand, TE Logan and JD Daniels 2006. *Métis history and experience and residential schools in Canada*. (Ottawa: Aboriginal Healing Foundation, 2006)

their children to residential school were prosecuted under the Truancy Provisions of the Indian Act which included severe punishments such as fines and, in some instances, even imprisonment.⁶⁵ In order to survive this harsh environment in which the Indigenous children found themselves, they learned to depend on themselves, act in an individualistic manner, and be competitive. These values were in opposition of their parents' and grandparents' cultural pedagogies of discovery and interdependency.⁶⁶ Unbeknownst to them at the time, trying to keep a grip on their identity as previously taught by their parents and grandparents was evidence of them trying to exercise their right to self-determination.

As discussed in chapter two, the protection of the right to self-determination is vital for Indigenous Communities as it enables them to prosper as a people, to protect and transmit their culture and language, and to have full autonomy over the political, economic, and social processes of the territory in which they live. These schools aimed to deny that right through complete oppression of Indigenous heritage, culture and custom. As much as the Indigenous children in these schools tried to safeguard this right, even though they may have been somewhat unaware of the right, displayed their desire to develop and preserve their culture. However, as will become apparent in the next section, this was not as easily achieved. The lived experience of the children in these schools was violent, oppressive, and traumatic. The right therefore protects people from oppression by domination, exploitation, or subjugation, or rather it is designed to. This right was completely denied to Indigenous Peoples of Canadas through the State-sponsored, Church run education system in operation at the time.

7.5 The Lived Experience of Indigenous Children in Residential Schools

7.5.1 The Bryce Report and Public Attention

⁶⁵ 'Killing the Indian in the Child' Note 29

⁶⁶ Haig-Brown Note 49, Agnes Grant, *No End of Grief* (Winnipeg: Pemmican Publishing, 1996). P. 25

In these schools, Indigenous children lived in fear and isolation. Stories from those who survived describe the effects of the psychological trauma of the residential school experience, which was often permanently damaging. This is reflected in the report findings of Dr Peter Bryce. In 1907 Bryce, who was the Medical Inspector for the Department of Indian Affairs,⁶⁷ visited thirty-five western Canadian residential schools to investigate their sanitary conditions. The horrific conditions Bryce discovered made national headlines. Bryce was a public health physician for the Ontario provincial and Canadian federal governments and as a public official he compiled reports that highlighted the mistreatment of Indigenous students in the Canadian Indian residential school system and advocated for the improvement of environmental conditions at the schools.⁶⁸ Bryce found unsanitary conditions, including the lack of ventilation, and overcrowding that encouraged the spread and contamination of tuberculosis. Bryce also sent out surveys to the thirty-five schools, and the fifteen surveys he received back revealed grave statistics.⁶⁹ Bryce's conclusive results from the investigation garnered support from local officials but did not compel the government to launch a full investigation.⁷⁰ However, horrified by the conditions he witnessed and the maltreatment of the Indigenous children in these schools, Bryce sought to publicise his findings. When the Department of Indian Affairs ignored his report, he published his own book, *The Story of a National Crime*, and described how the churches, with government approval, deliberately ignored the health issues stemming from unsanitary conditions.

In 1922, the living standards Indigenous children endured were labelled by the medical community as a “national crime”.⁷¹ Still not having the public outcry that was needed for

⁶⁷ JG FitzGerald, "Doctor Peter H. Bryce". (1932) 23(2) *Canadian Public Health Journal*. Pp. 88–91

⁶⁸ M Smith, 'Peter Henderson Bryce', *The Canadian Encyclopaedia* (2007) Available at <<https://www.thecanadianencyclopedia.ca/en/article/peter-henderson-bryce>> Last Accessed 23 March 2021

⁶⁹ Megan Sproule-Jones, "Crusading for the Forgotten: Dr. Peter Bryce, Public Health, and Prairie Native Residential Schools" (1996) 13 (2) *Canadian Bulletin of Medical History* pp. 199–224

⁷⁰ John Sheridan Milloy, *A National Crime* (Manitoba: University of Manitoba Press, 1999). P. 92

⁷¹ *Ibid* p. 75

change, findings from the Bryce Report were sent for newspaper publication. The article published in the newspaper *Saturday Night* November 23, 1907, described how Indian residential schools should “compel the attention of Parliament... Indian boys and girls are dying like flies in these situations or shortly after leaving them... Even war seldom shows as large a percentage of fatalities as does the education system we have imposed on our Indian wards”.⁷² The published article included statistics from the Bryce Report which included surveys showing that of the 1537 children in the fifteen schools, 368 (24%) died of tuberculosis. However, when Bryce analysed the data further, he found in most circumstances that the death rate increased the longer the school was open.⁷³ For instance, Old Sun Residential School opened in 1890, and 75% of students died during or shortly after being discharged. By analysing the data this way, Bryce projected that the death rates stemming from residential schools were closer to 42%, which was much higher than originally thought. The frightening reality of his findings and these statistics was that for every 100 children that attended residential schools, only 58 would live to see their families again.⁷⁴

It was not simply a result of racial superiority that allowed this assimilationist approach to be used and to facilitate the abuse, the entire operation was part of a broken system that perpetuated the cycle. Overall, the lack of federal funding for housing, food, and clothing, the assimilationist policies along with the unregulated and unchecked behaviour of the religious organizations in charge, created a system of severe abuse.⁷⁵ Survivor accounts are chilling and

⁷² ‘Truth and Reconciliation Commission: By the Numbers’ (*Huffingtonpost.ca*, 2015) <https://www.huffingtonpost.ca/2015/06/02/truth-and-reconciliation-_n_7491120.html> Last Accessed 06 June 2021, Milloy Note 70 P. 91

⁷³ Sproule-Jones Note 69

⁷⁴ Z Tenant, ‘Pushed out and silenced: How one doctor was punished for speaking out about residential schools’ (*cbc.ca*, 2020) <[⁷⁵ ‘The Report of The Royal Commission on Aboriginal Peoples’ \(RCAP 1996\) <<https://www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/royal-commission-aboriginal-peoples/Pages/final-report.aspx>> Last](https://www.cbc.ca/radio/unreserved/exploring-the-past-finding-connections-in-little-known-Indigenous-history-1.5531914/pushed-out-and-silenced-how-one-doctor-was-punished-for-speaking-out-about-residential-schools-1.5534953#:~:text=Statistics%20showed%20that%20students%20in,to%20the%20high%20death%20rates.>> Last Accessed 23 March 2021</p></div><div data-bbox=)

difficult to even comprehend. These narratives recite experiences of sexual assault, beatings, poisonings, electric shock, starvation, freezing, and medical experimentation. Survivors have verified that at least one school used an electric chair to punish students. St. Anne's Catholic Residential School, open from 1904 to 1973, had an electric chair in the basement until the school was closed.⁷⁶ It is important to note that, very few spoke out to question the morality of the assimilationist policies of this school system. The rare few non-Indigenous people who did speak out, like Dr. Peter Bryce, were silenced or terminated from their positions.⁷⁷ The plight of the Indigenous children in these schools went on, unacknowledged. The following sections discuss in more detail the experience of Indigenous children within this education system, and how through systemic abuse and oppression, this education denied the right to self-determination for both the children in these schools, their families, and wider communities. This experience of these children in these residential schools highlight how a volatile and completely inappropriate education system can deny the right to self-determination in the context of Indigenous children and by extension, their families and wider communities.

7.5.2 Assimilationist and Oppressive Curriculum

As previously mentioned, the schools operated a volatile system of oppression, an oppression of all aspects of Indigenous identity and the curriculum was designed to support this oppression through assimilation into the colonial system of education. The school curriculum was set up in a half-day system. For one half of the day, half the children were in the classroom learning how to read and write while the remaining half performed labour activities. They later switched around. Girls were given domestic duties to sew, knit, cook, and clean. Boys would engage in

Accessed 23/03/2021, 'The Final Report of The Truth and Reconciliation Commission of Canada' (McGill-Queen's University Press 2015).

⁷⁶ J Barrera, 'The Horrors of St. Anne's Residential School Revealed by Police Files' (*Newsinteractives.cbc.ca*, 2018) <<https://newsinteractives.cbc.ca/longform/st-anne-residential-school-opp-documents>> Last Accessed 24 July 2021

⁷⁷ Tenant Note 74

sports, agricultural duties, and chores.⁷⁸ Teachers in the schools were also in the metaphorical firing line if they did not use the strict assimilative approach in educating the Indigenous children at the schools. In one of the curricular guidelines for teachers in residential schools in Nova Scotia, it was stated that “it will be considered a proof of the incompetency of a teacher if pupils are found to read “parrot fashion”, i.e., without an understanding of what they read”.⁷⁹

As mentioned in the previous section, all aspects of Indigenous identity were suppressed in the schools. The aforementioned curricular guideline also included harsh instruction regarding the language used in tuition but also during “playtime”. The document stated that “every effort must be made to induce pupils to speak English and to teach them to understand it. Insist on English during even the supervised play. Failure in this means wasted efforts”.⁸⁰ This is especially troubling as any of the children did not speak English and only spoke in their Indigenous mother tongue, so they were confused and harshly punished for misunderstanding staff directions. It was noted that often, students found to be speaking an Indigenous language led to severe physical punishment, isolation, and humiliation.⁸¹ Former students of one particular residential school, St. Annes, reported having a needle pushed through their tongues and receiving electric shocks as punishment for being found to be communicating through their mother tongue.⁸²

Indigenous children in these schools were also faced with oppression of their religious custom and forcibly assimilated into the teachings of Christianity. Religious Instruction was to include “scriptural reading, the Ten Commandments, The Lord’s Prayer, The Life of Christ”,⁸³ amongst other teachings of Christian values. Religious instruction was considered to be a high

⁷⁸ 'The Report of The Royal Commission on Aboriginal Peoples' Note 75

⁷⁹ 'Killing the Indian in the Child' Note 29

⁸⁰ Ibid

⁸¹ 'These Schools Are Our Schools' (*The Economist*, 2013) <<https://www.economist.com/the-americas/2013/10/19/these-schools-are-our-schools>> Last Accessed 24 July 2021

⁸² Ibid

⁸³ 'Killing the Indian in the Child' Note 29

priority, and this was enforced vigorously. The goal for many of the religious orders that ran the schools was to convert the children to Christianity and remove any association Indigenous children had with their cultural heritage and identity through religion, spearheaded by the belief that this would replace Indigenous values and spiritualism.⁸⁴ Fear was used to frighten Indigenous children into embracing Christianity and the Christian God. A survivor of the Kalamak Residential School, named Seepeetza recalls Christian terminology being used to scare students into submission, stating:

“That night, just before she turned the lights off, Sister Maura taught us how to pray on our knees with our hands folded. Then she told us about devils. She said they were waiting with chains under our beds to drag us into the fires of hell if we got up and left our beds during the night. When she turned the lights off, I was scared to move, even to breathe. I knew those devils would come and get me if I made a sound. I kept really still. . . . Someone was crying. A long time later, I was still afraid to get up and use the bathroom. In the morning, my bed was wet, and Sister Superior strapped me. I had to wear a sign . . . saying, I was a dirty wetbed.”⁸⁵

This recounting of her experience at the Kalamak School exemplifies how not only was the curriculum oppressive in many ways, but religion was also used as a tool of both oppression and a way to exert cruelty over the Indigenous children. Other cultural aspects were attacked when Indigenous students entered these schools such as a complete ban on Indigenous dress. Upon entering these schools, Indigenous children were to dress in a “European civilized fashion” and have their hair cut short in order to eliminate any trace of their Indigenous identity.⁸⁶ These forms of attacks on indigeneity and the forcible assimilative tactics were employed to remove all traces of the children’s Indigenous heritage and identity. This furthered the denial to the right to self-determination by completely disconnecting children from the families and wider communities through the guise of education. Rather, this oppressive

⁸⁴ Hanson Note 36

⁸⁵ Shirley Sterling, *My Name Is Seepeetza* (Toronto: Groundwood, 2008) p.19

⁸⁶ Haig-Brown Note 49 P. 58

education system and curriculum was instrumental in the denial of Indigenous self-determination in Canada at the time.

7.5.3 From Assimilation to Segregation

Beginning in the early twentieth century, concerns began to surface regarding the associated with educating Indigenous youth and the “failure of educational institutions to transform students into successful members of the dominant society”⁸⁷ the government again shifted its educational policy. The government policy changed by abandoning the prior focus on preparing Indigenous students for life in White society and replacing it with the new objective to prepare students for life on the reserve, marking a policy shift from integration to segregation.⁸⁸ This displays the lack of respect for Indigenous self-determination at the time and the refusal to grant control to Indigenous communities to have involvement over decisions that impact and affect them most, this denial of the right to self-determination was once again facilitated by mis-guided education system which now sought to segregate rather than assimilate. By the end of the 1920s, the industrial school model was completely abandoned, and all former industrial and boarding establishments came to be known as residential schools.⁸⁹ The number of residential schools in operation reached the high point of 80 in 1931 which shows the speed at which these schools developed replacing the traditional industrial school title.⁹⁰ With the exception of Prince Edward Island, New Brunswick, and Newfoundland and Labrador, residential schools had expanded into the provinces and territories.⁹¹ While the education system changed in a small ways, the experience of Indigenous children at these schools was just as cruel and equally despairing. However, the experience of different groups in these

⁸⁷ J P White and J Peters, “A short history of Aboriginal education in Canada” (2009) *Aboriginal Policy Research Consortium International* p. 18

⁸⁸ Miller Note 26

⁸⁹ Ibid

⁹⁰ Note 75

⁹¹ Ibid

schools also varied slightly. The following section identifies these small differences in experience.

7.5.4 Indigenous Groups in Canada

While discussing the lived experience of the victims and survivors of the oppressive education system of the Canadian residential schools, it is important to note that there are three groups in Canada that fall under the category of Indigenous Peoples. While members of all three groups were subjected to the maltreatment under the residential school system, there were small differences. The majority of this chapter focuses on the experiences of all three groups. However, the largest group and the one most referred to is that of the First Nations Peoples of Canada. That is not to omit or lessen the experience of those victims and survivors from the other two categories which are the Métis and the Inuit. The Constitution of Canada recognises these three distinct groups who each have unique histories, cultures, languages, beliefs, and practices.⁹² As already alluded to, various Indigenous Peoples inhabit what is now Canada and have done so for thousands of years before European colonization. According to the 2016 Canadian Census, First Nations represent approximately 4.9% of the total population making up six hundred recognized First Nations governments or bands, encompassing a total of 1,673,785 people.⁹³ There are more than 630 First Nation communities in Canada, which represent more than 50 Nations and 50 Indigenous languages.⁹⁴ First Nation is the contemporary term for "Indian" and used to describe Aboriginal peoples of Canada who are ethnically neither Métis nor Inuit.⁹⁵ The term Métis refers to a collective of cultures and ethnic

⁹² 'Indigenous Peoples and Communities' (*Canada.ca*) <<https://www.rcaanc-cirnac.gc.ca/eng/1100100013785/1529102490303>> Last Accessed 06 June 2021

⁹³ Canadian Census Profile via Statistics Canada available at < <https://www12.statcan.gc.ca/census-recensement/2016/dppd/prof/details/page.cfm?Lang=E&Geo1=PR&Code1=01&Geo2=PR&Code2=01&Data=Count&SearchText=canada&SearchType=Begins&SearchPR=01&B1=All&TABID=1>> Last Accessed 20 February 2021

⁹⁴ 'Indigenous Peoples and Communities' Note 92

⁹⁵ 'Terminology' (*Indigenousfoundations.arts.ubc.ca, 2021*) <<https://Indigenousfoundations.arts.ubc.ca/terminology/>> Last Accessed 6 June 2021

identities that resulted from unions between Aboriginal and European people in what is now Canada. This term has general and specific uses, and the differences between them are often contentious. It is sometimes used as a general term to refer to people of mixed ancestry.⁹⁶ Inuit is the contemporary term for "Eskimo" and are "Aboriginal" or "First Peoples", but are not "First Nations", because "First Nations" are Indians. Inuit are not Indians. This term refers to specific groups of people generally living in the far north who are not considered "Indians" under Canadian law.⁹⁷ As stated, the reason for this clarification is to include the experiences of Indigenous children in these schools and to acknowledge the different communities from which they were taken.

7.5.5 Métis Experience

Although most survivors that attended residential schools were First Nations, Métis children did attend and survive residential schools as well. Often Métis survivor stories and experiences are not prominent in the body of residential school narratives. For Métis people, residential school attendance resulted from the complicated relationship with the Canadian government.⁹⁸ The Canadian government did not acknowledge Métis as being within the jurisdiction of Indian Affairs and did not accept any responsibility – legal or otherwise – for the Métis people, including their education. However, Métis children were sent to residential schools as much as they were excluded from it, often used as filler to fulfil residential schools' pupil quota in order to receive funds from Indian Affairs.⁹⁹ For those in the more remote areas, residential schools were the only one in the locality. In addition, Métis children attended schools, because they

⁹⁶ Ibid

⁹⁷ 'A Note on Terminology: Inuit, Métis, First Nations, And Aboriginal | Rotary Club of Bowmanville' (*Bowmanvillerotaryclub.org*, 2021) <<https://www.bowmanvillerotaryclub.org/sitepage/a-note-on-terminology-for-Indigenous-peoples>> Last Accessed 6 June 2021

⁹⁸ The Truth and Reconciliation Commission of Canada, 'The Métis Experience' (2015) p. 24

⁹⁹ Larry N Chartrand, Tricia E Logan and Judy D Daniels, *Métis History and Experience and Residential Schools in Canada* (Aboriginal Healing Foundation 2006) p. 3- 19

were seen as poor or living the “Indian way of life”.¹⁰⁰ A considerable number of Métis children attended residential schools, and these survivors’ experiences reveal cultural abuses different from Indian survivors.¹⁰¹ As Métis, you were not white enough to fit into the dominant society, and you were not seen as Indian and therefore not eligible for Aboriginal rights.¹⁰² For the most part, children do not recall positive experiences while attending Indian residential school. They were forced to “abandon their language, cultural beliefs, and way of life, and mandated to adopt the European languages of English or French, foreign religious denominations, and new habits”.¹⁰³ Strict rules were developed, implemented, and strictly enforced at Indian residential schools to ensure children accepted and adapted the languages, religious beliefs, and ways of life.

7.5.6 The Inuit Experience

The Inuit Peoples were autonomous well into the first few decades of the twentieth century and for many years, Inuit families interacted with explorers, fur traders and whalers contributing to an essential trade relationship that was beneficial to both parties at the time.¹⁰⁴ After the arrival of non-Indigenous missionaries in the mid-nineteenth century, particularly in Red River in 1845 and the Mackenzie River delta in 1858, a shift in education occurred in northern Canada.¹⁰⁵ Indian residential schools in the southern half of the Northwest Territories were operated by Christian churches beginning in 1867 and financed by the federal government after

¹⁰⁰ The Truth and Reconciliation Commission of Canada, 'The Métis Note 98 p. 49

¹⁰¹ Ibid p. 49

¹⁰² Miller Note 26 pp. 101 – 102, Chartrand et al Note 64 P. 22, LL Kearns, “The Ontario First Nation, Métis, and Inuit Education Policy Framework” (2013) 19(2) *A Case Study on its Impact. in Education* p. 61

¹⁰³ 'Indian Residential Schools - Union of Ontario Indians' (*Union of Ontario Indians*)
<<https://www.anishinabek.ca/irs/>> Last Accessed 24 July 2021

¹⁰⁴ 'Impact Of Non-Indigenous Activities on The Inuit' (*Heritage.nf.ca, 2008*)

<<https://www.heritage.nf.ca/articles/aboriginal/inuit-impacts.php>> Last Accessed 30 March 2021

¹⁰⁵ The Truth and Reconciliation Commission of Canada, 'The Survivors Speak' (2015). P.82

1899.¹⁰⁶ However, few Inuit children were institutionalized during those early years.¹⁰⁷ As the years went on, the vast geographic distances in the North meant that some Inuit children had to stay at school for months or years at a time.¹⁰⁸ One of the regions with the earliest schools was Aklavik. However, Inuit parents became increasingly vocal about wanting their children to remain close to their homelands and families¹⁰⁹ and they were clear in their demands, they wanted access to Euro-Christian education for their children, and for them to return home to their families every night.¹¹⁰ As a result of these demands, the Missionary Society of the Church of England in Canada lobbied for the construction of residential schools in Aklavik.¹¹¹ However, it was not long before the Christian ethos of the residential schools took hold in these locations also. In 1926, the Roman Catholic Immaculate Conception Residential School was opened and with it came the same oppressive and assimilative tactics used in all of the other residential schools in Canada, further the reach of the Church and State and furthering the goal of eliminating Indigenous culture from Canada.¹¹² While the demands for local schools in Aklavik had been heard, Indigenous families in the region were unsatisfied.¹¹³ They did not consent to their children's institutionalization, the content being taught or the poor treatment of students at schools.¹¹⁴ The treatment of Inuit children in northern residential schools varied, some Indigenous children found Anglican-managed Stringer Hall in Inuvik and government-managed Akaitcho Hall in Yellowknife , NWT to be more relaxed and comfortable.¹¹⁵ On the other hand, Turquetil Hall in Chesterfield Inlet and Inuvik's Grollier Hall proved to be among

¹⁰⁶ C Fraser, 'Inuit Experiences at Residential School', *The Canadian Encyclopaedia* (2021) Available at <<https://www.thecanadianencyclopedia.ca/en/article/inuit-experiences-at-residential-school>> Last Accessed 30 March 2021

¹⁰⁷ Ibid

¹⁰⁸ The Truth and Reconciliation Commission of Canada, 'The Survivors Speak' (2015). P. 176

¹⁰⁹ Ibid p. 18

¹¹⁰ Fraser Note 106

¹¹¹ TRC Report Note 108 p. 53

¹¹² Ibid P. 17

¹¹³ Fraser Note 106

¹¹⁴ TRC Report Note 108 p. 139

¹¹⁵ Ibid p. 51

the most notorious and damaging institutions for Indigenous children, with substantial allegations of sexual assaults, child runaways and deaths by suicide.¹¹⁶ They were also among those that remained open the latest. Turquetil Hall closed in 1969, and Grollier Hall was handed over to Aurora College in 1997.¹¹⁷

7.5.7 Overall Experience of Indigenous Students in the Residential Schools

Drawing on the victim impact statements and stories from victims and survivors of the residential school system, it is apparent that regardless of the origins of the children, children do not recall positive experiences while attending Indian residential school. Regardless of what Indigenous community or group they were taken from, they were forced to abandon their language, cultural beliefs, and way of life, and mandated to adopt the European languages, foreign religious denominations, and new habits, and punished severely if they disobeyed these forced changes. The following is a list of some of the forced changes and unpleasant traumatic experiences lived by former students that have been documented. All students in the residential school system were forbidden to speak their aboriginal languages, required to speak English or French, required to adopt religious denomination of the school, forced style of prayer consistent with school denomination, forced haircut, or shaved head, use of toxic chemical to clean children's hair and skin, forced to wear uniform as designed by the school, forced to shower, no access to bath tubs, lack of nutritious diet, insufficient quantities of food, served spoiled food, segregation based on gender: brothers and sisters were not allowed contact, sexual assault, forced abortions, electrical shock, force-feeding of own vomit when sick, exposure to freezing outside temperatures with improper clothing, withholding of medical attention, exposure to contagious illness: students with tuberculosis were not isolated, forced labour in

¹¹⁶ Ibid, p. 4

¹¹⁷ Ibid

unsafe work environments, vilification of cultural traditions, use of racist language to address students, withholding presents and letters from family.¹¹⁸

As made clear through this chapter, strict rules were developed, implemented, and strictly enforced at Indian residential schools to ensure children accepted and adapted the languages, religious beliefs, and ways of life. Through this oppressive system of education, Indigenous Peoples' right to self-determination was being attacked at its core. If any students disregarded the rules of the school system, they faced a barrage of harsh punishments. These included needles inserted into tongues for speaking their language, leather strap used to hit on various areas of body, beating with fists, burning and scalding hands, inflicting beatings until unconscious, starvation, shaming, public beatings of naked children, public strip search, genital search, sexual abuse, locking in closets, cages, and basements.¹¹⁹ The victims and survivors of these schools faced and lived through intolerable cruelty, and in fact, many did not live through it, losing their lives as a result of being subjected to the deplorable conditions of an aggressively oppressive education system that had the full support of the government and church.

7.6 Victims and Survivors

The last residential school in Canada only closed its doors in 1996.¹²⁰ Without a childhood spent with their families, speaking their language, and practicing their cultures, many Indigenous children faced harsh realities. The residential schools had raised these individuals, and as a result, these students, they did not know how to parent their own children. The legacy of Indian residential schools created an ongoing impact of what was described in chapter three as intergenerational trauma.¹²¹ It resulted in a long-lasting impact on Indigenous Peoples in

¹¹⁸ 'Indian Residential Schools - Union of Ontario Indians' Note 103

¹¹⁹ Karen Restoule, *An Overview of The Indian Residential School System* (Ontario: Union of Ontario Indians, 2013),p.6

¹²⁰ J Jeganathan and C Lucchetta, 'Felt Throughout Generations': A Timeline of Residential Schools in Canada | TVO.Org' (*TVO.org*, 2021) <<https://www.tvo.org/article/felt-throughout-generations-a-timeline-of-residential-schools-in-canada>> Last Accessed 24 July 2021

¹²¹ Hanson Note 36

Canada. Residential schools and creation of the Indian education policy resulted in communities without children and targeted the most vital part of Indigenous peoples' lives.¹²² The trauma of which is still being realised, uncovered, and experienced today. This will be discussed in greater detail in the following section of this chapter where the legacy of trauma of the residential schools in Canada will be elaborated upon.¹²³ It is also important to note that during the Summer of 2021, specifically in June 2021, an Indigenous nation in Canada says it has found 751 unmarked graves at the site of a former residential school in Saskatchewan. The Cowessess First Nation said the discovery was "the most significantly substantial to date in Canada".¹²⁴ This discovery came only weeks after the remains of 215 children were found at a similar residential school in British Columbia.¹²⁵ These discoveries speak to two very sad truths, one that the true number of victims of the Canadian Residential School System may take many more years to discover, and second that, with the deaths of so many students, the line between cultural and physical genocide within these schools is becoming increasingly blurred and the international legal community will need to react.

7.6.1 Segregation to Integration

Residential schools replaced the traditional ways of teaching and learning and were centred on authority, control, and force. Indigenous children who were stripped away from their homes were defenceless and incredibly vulnerable. As discussed in chapter five, this was in complete conflict with the traditional Indigenous ways of educating children. Recalling the statement made by Deputy Superintendent General of Indian Affairs Duncan Campbell Scott who

¹²² B Lawrence, " *Real*" Indians and others: mixed-blood urban Native peoples and Indigenous nationhood. (Lincoln: University of Nebraska Press, 2004) P. 105

¹²³ Between March 2021 and the time of completion over 1100 unidentified graves of residential school students have been uncovered in Canada.

¹²⁴ 'Canada: 751 Unmarked Graves Found At Residential School' (*BBC News*, 2021) <<https://www.bbc.co.uk/news/world-us-canada-57592243>> Last Accessed 26/02/22

¹²⁵ 'Remains Of 215 Children Found At Indigenous School Site In Canada' (*Aljazeera.com*, 2021) <<https://www.aljazeera.com/news/2021/5/28/remains-of-215-children-found-at-indigenous-school-site-in-canada>> accessed 17 March 2022.

described the goal of this education system as one that worked toward the full assimilation of Indians until there was no 'Indian question',¹²⁶ it is not surprising that the trauma that was experienced through this system of education is felt today. However, it was noted at the time, that Indigenous cultures were still surviving, and, in some areas, Indigenous cultures were thriving. This led to the department of Indian Affairs to question the efficiency of the residential school system and design a new plan. In 1951, the federal government revised the Indian Act, and although many residential schools still remained open, the State began to integrate Indigenous children into the public schools.¹²⁷ This brought new issues to the experience of Indigenous children in the Canadian education system as the public-school system was not welcoming, and many Indigenous students faced discrimination within a very Euro-centric system. Once more placing Indigenous students in a vulnerable position and at the mercy of an ill-equipped education system that neither respected or understood their heritage or culture and systematically denied the right to self-determination of Indigenous Peoples through these channels.

7.6.2 Student Trauma

To begin to reclaim decision making power over the education of Indigenous children, parents and Indigenous communities started to resist and raise concern over sending their children to residential schools.¹²⁸ In the 1973, the National Indian Brotherhood called to put an end to all residential schools, in a document called Indian Control of Indian Education. The legacy of Indian residential schools would hold a long-lasting impact impairing Indigenous peoples' traditional ways of raising and teaching their children.¹²⁹ Through years of subjugation, stolen

¹²⁶ RCAP Report Note 75

¹²⁷ J P White and J Peters, "A short history of Aboriginal education in Canada" (2009) *Aboriginal Policy Research Consortium International* p. 20

¹²⁸ 'Killing The Indian in The Child' Note 29

¹²⁹ VJ Kirkness, *Creating space: My life and work in Indigenous education*. (Manitoba: University of Manitoba Press, 2013) pp. 74 - 84

children, and denial of rights, Indigenous children were forbidden to speak their native languages and forced to speak English, the cultural and language loss often eroded the ability for parents to communicate with their children. Residential schools indoctrinated Indigenous children to believe their traditional ways of life and worldviews were primitive and meaningless. Instead of building up children's self-esteem, residential schools left a legacy of shame, humiliation, and pain¹³⁰ and attacked the foundations of the right to self-determination of Indigenous Peoples at its core, via the social and cultural connections that bound a people. The lack of exposure to a loving family life and nurturing community disrupted the way residential school survivors raised their children. In isolation from every influence of their families and communities, residential schools had produced the dislocation of culture.¹³¹

7.6.3 Trauma Beyond the Schools

Residential schools had a long-lasting traumatic impact on the students that attended them. For many of the Indigenous children, these schools introduced dysfunctional family settings and destructive behaviours. After years of maltreatment, Indian residential school survivors only knew how to raise children based on how they were raised.¹³² This resulted in a complete disconnect from traditional ways of Indigenous parenting, previously, the relationship between parents and children was embedded in love and nurture. Some survivor accounts speak of their inability to show affection for their own children, although they still loved them.¹³³ Lawrence has gone on to comment that the experiences at these schools left psychological scars on survivors and owing to their experience in residential schools, many survivors were unable to

¹³⁰ Castellano, M.B., Davis, L. and Lahache, L. eds., . *Aboriginal education: Fulfilling the promise*. (UBC Press, 2000), pp 26 – 26

¹³¹ C Haig-Brown, “Decolonizing diaspora: Whose Traditional Land are We on?” (2009) 1(1) *Decolonizing philosophies of education* pp. 4 – 21

¹³² The Aboriginal Justice Inquiry of Manitoba. ‘Report of the Justice System and Aboriginal People’ (Manitoba, 1999) accessed at <<http://www.ajic.mb.ca/volume1/chapter14.html>> Last Accessed 06 June 2021

¹³³ Jean Lafrance, and Don Collins, 'Residential Schools and Aboriginal Parenting: Voice of Parents' (2003) 4(1) *Native Social Work Journal*. Pp. 104-125

create intimate bonds with their children. Raised in fear and shame, they simply did not know how. Survivors only knew the strict and cold environment of residential schools, not love and affection.¹³⁴

Often times, the harmful actions that took place in residential schools were repeated. This has created a ripple effect of intergenerational trauma that has continued to impact survivors, their children, and grandchildren.¹³⁵ This further displays that the effects of the residential schools have been passed on through the generations. Over the years, all the resulting issues of domestic violence and abuse, alcohol and drug addiction, unemployment, and more stem back to colonialism. Indian residential schools were one of the main tools of colonialism.¹³⁶ This further supports the claim that these schools actively participated in a denial of the right to self-determination of these Indigenous children and their families by implementing colonial ideology and completely decimating Indigenous culture, heritage, and practice. Many survivors of the residential schools had to deal with feelings of shame and resorted to unhealthy ways to cope with their pain. In many cases, residential schools created lack of self-confidence and feelings of self-hate.¹³⁷

Phil Fontaine, former Grand Chief of the Assembly of First Nations, was one of the first to speak about his experiences, including sexual abuse that caused insecurity and loss of identity¹³⁸ and made the following harrowing statement “in my grade three class... if there were 20 boys, every single one of them... would have experienced what I experienced. They would

¹³⁴ Lawrence Note 122, p. 109

¹³⁵ A Bombay, K Matheson and H Anisman, 2014. “The intergenerational effects of Indian Residential Schools: Implications for the concept of historical trauma”. (2014) 51(3) *Transcultural psychiatry*, pp.320-338; Lawrence Note 122, p. 126

¹³⁶ Rosemary Nagy and Robinder Kaur Sehdev, 'Introduction: Residential Schools and Decolonization' (2012) 27(1) *Canadian journal of law and society*. pp. 67 - 73

¹³⁷ Dan Eshet, *Stolen Lives* (Facing History and Ourselves, 2015). P. 183 available at <<https://www.worldcat.org/title/stolen-lives-the-Indigenous-peoples-of-canada-and-the-indian-residential-schools/oclc/1000257200>> Last Accessed 21/06/2021

¹³⁸ 'Interview With Phil Fontaine' (2018).

have experienced some aspect of sexual abuse”.¹³⁹ After Indigenous children had undergone years of schooling with the mission to get rid of their culture, certain experiences and feelings were burned into their memory¹⁴⁰ and left many unable to deal with the shame and pain, survivors found unhealthy methods to deal with the emotional distress, sometimes through the use of alcohol or drugs.¹⁴¹ The trauma caused by the residential school system also had negative impacts on survivors in how they adjusted to life and society as they grew older which is evident by the low levels of education and high levels of incarceration, unemployment, and children in the child welfare system.¹⁴²

There is a plethora of research, statistical data, and personal stories to make an undeniable connection between the intergenerational trauma of residential schools and the dysfunction and trauma that occurs in many Indigenous communities today. Many survivors, their children, and their grandchildren suffer from the psychological trauma caused by the conditions and abuses in residential schools. Although the federal government policies did their best to “kill the Indian in the child,” it was through the resiliency and strength of the people that Indigenous cultures continue to survive and thrive in Canada today. The families of victims and survivors of the Canadian Residential School System have shown great courage by carrying out acts of resistance and demonstrating survival skills. Despite the scars and battle wounds, Indigenous people continue to fight for their right to self-determination and continue to remember, share, revitalize, and reclaim their cultures and identity.¹⁴³ Beginning to overcome the wrongs inflicted on Indigenous Peoples of Canada through the education system that sought to destroy their culture and heritage was not an easy task. The healing process promised to be long and

¹³⁹ 'Phil Fontaine's Shocking Testimony of Sexual Abuse - CBC Archives' (*Cbc.ca, 1990*)
<<https://www.cbc.ca/archives/entry/phil-fontaines-shocking-testimony-of-sexual-abuse>> Last Accessed 6 June 2021

¹⁴⁰ Eshet Note 135 p. 51

¹⁴¹ Ibid P. 163

¹⁴² Agnes Grant, *No End of Grief* (Pemmican Pub 1996), pp. 245 - 265

¹⁴³ Miller Note 26 p. 343

difficult, but essential for the process of reconciliation, to rebuild the relationship between the Indigenous Peoples of Canada and the government of the State in which they reside. This process includes appropriate education systems and greater autonomy and inclusion in decision making powers on issues that affect Indigenous communities in Canada and can support and facilitate the right to self-determination of Indigenous Peoples.

7.7 Healing and Reconciliation

Residential schools created a loss of identity, as many survivors and generations afterwards lived and continue to live with uncertainty about their cultures and heritage¹⁴⁴ and this was supported by the findings in the Royal Commission on Aboriginal Peoples (RCAP). The report documenting the historical injustices and recommendations for Indigenous peoples' restoration was finalized in 1996, which was the same year that the last residential school closed.¹⁴⁵ This five-volume, 4,000-page report provides in-depth research derived from extensive interviews with Indigenous Peoples and relevant stakeholders. The RCAP report revealed historical facts about Indian residential schools and the damage they had caused to Indigenous students, families, and communities. The report held the truth about the injustices, which made it possible for survivors to file a civil lawsuit against the federal government¹⁴⁶ and also lay the foundations for an official investigation into the residential school system and called upon the government to devise a settlement plan.¹⁴⁷

7.7.1 The Indian Residential School Settlement Agreement

¹⁴⁴Grant, Note 66 pp. 189 – 195, Bill Mussell, “Cultural Pathways For Decolonization” (2008) 5(1) *Aboriginal People issue of Visions Journal*. Pp. 331

¹⁴⁵ RCAP Report Note 75 p. 6

¹⁴⁶ ‘Indigenous Peoples and Communities’ Note 92

¹⁴⁷ Ibid

In order to initiate the process of reconciliation and healing the Canadian government in 2006 devised what is now called the Indian Residential School Settlement Agreement (IRSSA).¹⁴⁸ The agreement was between the government of Canada and approximately 86,000 Indigenous peoples in Canada who at some point in time attended one of the many the residential schools in Canada between 1879 and 1996.¹⁴⁹ The IRSSA remains the largest class action settlement in Canadian legal history resulting in 1.9 billion Canadian dollars being pledged to various causes and individual compensation claims.¹⁵⁰ The agreement was negotiated by several different parties representing Aboriginal organizations, religious orders, Indian residential school survivors, and the federal government.¹⁵¹ While a complicated agreement in parts, it included five main components that would begin the process of reconciliation between the Indigenous Peoples of Canada and the State. The five areas agreed upon under the IRSSA are as follows: The common experience payment, an independent assessment process, commemoration efforts, health and healing services and the establishment of the truth and reconciliation commission.

7.7.2 The Common Experience Payment

The common experience payment is a form of monetary compensation which includes an amount of money to be paid to all former students who attended a recognized residential school. The payments under this component are ten thousand Canadian dollars for each eligible survivor who resided at an IRS for one, or part thereof, a school year with a further three

¹⁴⁸ 'The Indian residential schools' settlement has been approved' (*Residentialschoolsettlement.ca, 2007*)
<http://www.residentialschoolsettlement.ca/detailed_notice.pdf> Last Accessed 6 June 2021

¹⁴⁹ 'The Indian Residential School Settlement Agreement is in The Final Stages.' (*Afn.ca*)
<http://www.afn.ca/uploads/files/residential_schools/personal_credits_presentation.pdf> Last Accessed 6 June 2021

¹⁵⁰ 'The Indian residential schools' settlement has been approved' Note 146

¹⁵¹ Ibid

thousand Canadian dollars to each eligible survivor who resided at a residential school for each school year, or part thereof, after the first school year.¹⁵²

7.7.3 An Independent Assessment Process

This involves an extra-judicial process to resolve claims of abuse that occurred by victims and survivors of the residential schools. These include sexual assault, physical assaults, serious psychological abuse, and any other wrongful acts, committed by an employee of the government, church personnel, or by another student, experienced by a former student of a recognized residential schools.¹⁵³

7.7.4 Commemoration

A commemoration committee and commemoration fund were established to assist in honouring, educating, remembering, memorializing, and paying tribute to former students, their families, and communities, by acknowledging their experiences and the impacts of the residential school system. The Commemoration process may include the creation of, or improvements to existing, permanent memorials and commemorative structures, or ceremonies or other projects.¹⁵⁴ This is particularly important for the process of healing and reconciling with both the past and the State. It shows acknowledgement of the experiences of the Indigenous children who attended these schools and acknowledges the sinister experiences and impact on both students and their extended families.

In ways, this could be viewed as an attempt at the facilitation of the right to self-determination of Indigenous Peoples. Recalling that “self-determination is an ‘ongoing process of choice’ to

¹⁵² ‘Indigenous Peoples and Communities’ Note 92

¹⁵³ ‘Independent Assessment Process (IAP)’ (*Web.archive.org*)

<<https://web.archive.org/web/20150604222656/http://www.fsin.com/index.php/independent-assessment-process-iap>> Last Accessed 6 June 2021

¹⁵⁴ ‘Indian Residential Schools Assembly of First Nations’ (*Assembly of First Nations*)

<<https://www.afn.ca/policy-sectors/indian-residential-schools>> Last Accessed 6 June 2021

ensure that Indigenous communities are able to meet their social, cultural, and economic needs”,¹⁵⁵ this process of acknowledgement was a milestone in the on-going process of hearing Indigenous voices in Canada and recognising the shared history of abuse suffered by the Indigenous Peoples of Canada.

7.7.5 Health and Healing Services

The Aboriginal Healing Foundation was established in 1998 to create, reinforce and sustain conditions that promote healing, reconciliation, and self-determination. The Foundation encouraged and supported Indigenous Peoples and Indigenous communities in building and reinforcing sustainable healing processes that address the legacy of the residential school system, including physical, sexual, mental, cultural, and spiritual abuses and intergenerational impacts.¹⁵⁶

7.7.6 The Truth and Reconciliation Commission

One of the most important components was, and still is, the Truth and Reconciliation Commission (TRC), which was established through the IRSSA to contribute to truth, healing, and reconciliation. The Commission had a five-year timeframe to carry out all investigations and return its findings.¹⁵⁷ Under the mandate of the formation of the TRC, there was a requirement to establish a National Research Centre to allow access to former students, their families and communities, the general public, researchers, and educators to historical materials.¹⁵⁸ Funding numerous events were also part of the TRC mandate including various national events in different regions across Canada and several community events designed by

¹⁵⁵ 'Aboriginal Self-Determination - Aboriginal Cultural Capability Toolkit - VPSC' (VPSC, 2019) <<https://vpsc.vic.gov.au/html-resources/aboriginal-cultural-capability-toolkit/aboriginal-self-determination/#:~:text=Self%2Ddetermination%20is%20an%20ongoing,a%20separate%20Indigenous%20state>> Last Accessed 6 June 2021

¹⁵⁶ 'Faqs Aboriginal Healing Foundation' (Ahf.ca, 2021) <<https://www.ahf.ca/faqs>> Last Accessed 6 June 2021

¹⁵⁷ Truth And Reconciliation Commission of Canada (TRC) - Our Mandate (Trc.ca) <<http://www.trc.ca/about-us/our-mandate.html>> Last Accessed 6 June 2021

¹⁵⁸ Ibid

communities who are affected by the IRS system and to co-ordinate the collection of individual statements by written, electronic or other appropriate means and finally to hold a closing ceremony at the end of its mandate to recognize the significance of all events over the five year mandate of the TRC.¹⁵⁹ The following section will explore the TRC in greater detail and analyse if in fact the TRC was successful or indeed, the best option for Canada and how the TRC worked to support enhancing and facilitating the right to self-determination for Indigenous Peoples in Canada.

7.8 The Truth and Reconciliation Commission

7.8.1 Why a Truth Commission?

As mentioned above, one of the most important results of the IRSSA was the establishment of the TRC. Before analysing and discussing the outputs and impact of the TRC in Canada it is first important to understand the purpose behind the formation of such a commission and the value such a commission of inquiry holds under international law. According to the UN, a “truth commission reaches out to thousands of victims in an attempt to understand the extent and the patterns of past violations, as well as their causes and consequences”.¹⁶⁰ In the process of reconciliation this is essential as it recognises the right for individuals to know the truth about historic injustices and past abuses. This has been affirmed by treaty bodies, regional courts, and international and domestic tribunals.¹⁶¹ The UN has also affirmed that “questions of why certain events were allowed to happen can be as important as explaining precisely what happened”.¹⁶² In the context of the residential school system in Canada, the TRC aimed to help a society understand and acknowledge the dark moment in their shared history, and in doing

¹⁵⁹ 'The Indian Residential Schools Settlement Has Been Approved. The Healing Continues.' (*Residentialschoolsettlement.ca*) <http://www.residentialschoolsettlement.ca/summary_notice.pdf> Last Accessed 6 June 2021

¹⁶⁰ United Nations, 'Truth Commissions' (United Nations 2006). p.2

¹⁶¹ See “Independent study on best practices, including recommendations, to assist States in strengthening their domestic capacity to combat all aspects of impunity,” by Professor Diane Orentlicher (E/CN.4/2004/88)

¹⁶² 'Truth Commissions' Note 158 p.1

so bring the voices and stories of Indigenous victims and survivors into the public sphere. Of particular importance for the TRC in Canada was that it contained specific recommendations for institutional and policy reforms that, if implemented correctly, could assist in the process of reconciliation, and support the rebuilding of a trusting relationship between Indigenous Peoples and the State that failed them in the past. This process was essential to re-establishing trust between all parties and to support Indigenous claims to self-determination by allowing Indigenous voices to be heard, to recognise the abuses and violations suffered by Indigenous Peoples in the past in Canada.

7.8.2 Understanding Reconciliation

In the Canadian context, the process of reconciliation is “tied to the federal government’s relationship with Indigenous peoples”.¹⁶³ The term refers to efforts made to address the harms caused by various policies and programs of colonization, such as residential schools.¹⁶⁴ In a romanticised light, reconciliation can provide an opportunity to reflect on the past, to heal and to make right. However, true reconciliation between the State and Indigenous Peoples in Canada should provide meaningful action to address the harms done by colonization.¹⁶⁵ Reconciliation can be further understood as attending relationships, rebuilding trust, and working out our differences. It allows us to come to terms with the past and draw attention to the future.¹⁶⁶ Reconciliation begins with acknowledging all of the effects of colonialism and includes gathering a relational truth and part of the mission of the TRC was to uncover the truth

¹⁶³ A Sterritt, 'Reconciliation in Canada', *The Canadian Encyclopaedia* (2020) Available at <<https://www.thecanadianencyclopedia.ca/en/article/reconciliation-in-canada#:~:text=In%20Canada%2C%20the%20process%20of,ongoing%20effects%20on%20Indigenous%20peoples.>> Last Accessed 06 June 2021

¹⁶⁴ Ibid

¹⁶⁵ 'What Reconciliation Is and What It Is Not' (*ictinc.ca*, 2018) <<https://www.ictinc.ca/blog/what-reconciliation-is-and-what-it-is-not>> Last Accessed 06 June 2021

¹⁶⁶ 'Indigenous Peoples and Communities' Note 92

and bring to light the injustices, abuses and denial of rights suffered by victims and survivors of the residential school system.

7.8.3 Why is Reconciliation Important?

Reconciliation is an incredibly important process in rebuilding the relationship between Indigenous Peoples of Canada and State. The TRC process highlighted the cultural invasion of colonisers and demonstrated how the residential schools were built on control that disempowered and exploited Indigenous children and their families. Some victim and survivor support groups argue that full reconciliation would involve the process of decolonization, which is to entirely reconfigure colonial systems, institutions, and ways of understanding¹⁶⁷ and that true reconciliation would also involve the removal of forces that keep colonial practices intact that work against Indigenous Peoples.¹⁶⁸

Recognition and reconciliation must happen on every level for people to know the truth about residential schools and the past relationship between Indigenous peoples and their colonisers.¹⁶⁹ In addition, it must allow for others to see how the effects of residential schools continue to exist in the present. This mission to reconcile involves Indigenous peoples reclaiming their traditional teaching and learning processes. It combines the efforts to incorporate into school curriculums for Indigenous peoples their cultural teachings and provide languages courses.¹⁷⁰ Also, it contains the retelling of history that incorporates stories and facts about Indian residential schools. It is a mission to have an education that values Indigenous peoples' knowledge and ways of knowing.

¹⁶⁷ Rosemary Nagy and Robinder Kaur Sehdev, 'Introduction: Residential Schools and Decolonization' (2012) 27(1) *Canadian journal of law and society*. pp. 67 - 73

¹⁶⁸ Mussell Note 142 p. 324

¹⁶⁹ Truth and Reconciliation Commission of Canada, 'Executive Summary of Findings' (2015) p.4

¹⁷⁰ J Kabatay and R Johnson, 'Charting progress on Indigenous content in school curricula' (*cbc.ca*, 2019) <<https://www.cbc.ca/news/Indigenous/Indigenous-content-school-curriculums-trc-1.5300580>> Last Accessed 06 June 2021

An individual and collective reconciliation with Indigenous peoples can lead to healthy family settings, economic self-sufficiency, governance, health, and education through the changes of colonial institutions and policies. There have been many initiatives, such as the Project of Heart,¹⁷¹ that focus on education, healing and reclaiming strength and dignity of Indigenous Peoples in Canada. Only when residential school survivors began to reveal the truth about their abuses did the federal government address the need for a national reconciliation for Canada's past actions.¹⁷² As discussed earlier in this chapter, many residential school survivors deal with post-traumatic stress disorder from their experiences in school. Residential schools traumatized students and created enormous imbalance that affected their physical, emotional, intellectual, and spiritual wellbeing and reconciliation is a way to move forward.

It is important to acknowledge the past, present, and future. The phrase 'forgive and forget' is often used as a form of reconciliation.¹⁷³ However, this could imply forgetting and never looking back and this not something Indigenous Peoples of Canada want to see happen. Residential schools are an important part of Canada's history, and Prime minister Justin Trudeau has claimed that "in order to understand our present state, we must look at our past".¹⁷⁴ To support with this process, the State looks to Prominent Indigenous personalities, such as Wab Kinew,¹⁷⁵ who has said of the reconciliation process in Canada, "the truth about reconciliation is that is not a second chance at assimilation. It should not be a kinder, gentler evangelism, free from the horrors of the residential school era",¹⁷⁶ suggesting and promoting

¹⁷¹ 'Project of the Heart' (*projectoftheheart.ca*, 2021) <<https://projectofheart.ca/>> Last Accessed 23 March 2021

¹⁷² Hanson Note 36

¹⁷³ C Henning, 'I will never forget': trauma survivors share survival stories' (*cbc.ca*, 2018) <<https://www.cbc.ca/news/canada/british-columbia/holocaust-residential-school-survivors-overcome-trauma-1.4807131>> Last Accessed 06 June 2021

¹⁷⁴ A France-Presse, 'Canada's Trudeau Says We Must "Learn from our Past" After School Graves Found' (*NDTV.com*, 2021) <<https://www.ndtv.com/world-news/canada-justin-trudeau-says-we-must-learn-from-our-past-after-school-graves-found-2471827>> Last Accessed 6 June 2021

¹⁷⁵ Wabanakwut Kinew MLA, better known as Wab Kinew, is the Leader of the Manitoba New Democratic Party and Leader of the Opposition in the Legislative Assembly of Manitoba.

¹⁷⁶ <<https://www.cbc.ca/radio/unreserved/buffy-sainte-marie-wab-kinew-and-how-dna-remembers-trauma-1.3242375/wab-kinew-reveals-joy-and-pain-of-reconciliation-in-the-reason-you-walk-1.3243687>> Last Accessed 23/03/2021

that fact that true reconciliation is a second chance at building a mutually respectful relationship.

Since the government implemented the Indian Residential School Settlement, it focused on ways to address the impact of the residential school system and led to the creation of the TRC which was essential for revealing the truth about the legacy of Indian residential schools and to promote healing and renewal for survivors and spearheading change. Reconciling without changing the deeply seated social and political conditions would create little or no improvements for Indigenous peoples and would not allow for full reconciliation.

7.8.4 Findings and Recommendations of the Truth and Reconciliation Commission

The report acknowledged the estimated one hundred and fifty thousand children that were forced to attend residential schools¹⁷⁷ and included ninety-four calls to action.¹⁷⁸ This subsection will discuss these recommendations and how, if enacted appropriately will recognise how an appropriate education system can facilitate the right to self-determination in the context of Indigenous Peoples. One of the most important findings of the TRC report was that it concluded that removal of children from the influence of their own culture with the intent of assimilating them into the dominant Canadian culture amounted to cultural genocide.¹⁷⁹ As discussed in chapter three, this word carries a significant meaning in international law and is considered the crime of crimes. It was Mr Justice Murray Sinclair who delivered the finding of cultural genocide.¹⁸⁰ This was a bold move made by the TRC and truly reflected the system of

¹⁷⁷ D Schwartz, 'Truth and Reconciliation Commission: By the numbers' (*cbc.ca*, 2015) <<https://www.cbc.ca/news/Indigenous/truth-and-reconciliation-commission-by-the-numbers-1.3096185>> Last Accessed 06 June 2021

¹⁷⁸ Truth and Reconciliation Commission of Canada, 'Reconciliation' (2015).

¹⁷⁹ Truth and Reconciliation Commission of Canada, 'Executive Summary of Findings' (2015). P.3

¹⁸⁰ 'Residential schools amounted to 'cultural genocide' (*youtube.com*, 2015) <<https://www.youtube.com/watch?v=MVIpgBKH07U>> Last Accessed 06 June 2021

oppression that the residential schools operated under, and the trauma inflicted upon victims and survivors.

States that engage in cultural genocide set out to destroy the political and social institutions of the targeted group.¹⁸¹ While the definition of physical genocide may not apply to the situation of the residential school system, the ambiguity of the TRC's phrasing allowed for the interpretation of aspects of cultural genocide. The TRC could not conclude that physical genocide took place, as "such a finding would imply a legal responsibility of the Canadian government that would be difficult to prove".¹⁸² As a result, the debate about whether the Canadian government also committed physical and biological genocide against Indigenous populations remains open and is often contested as seen in the discussion in chapter three.¹⁸³ However, this finding aside, what was incredibly important and long awaited was what the TRC would conclude in regards to education and the provision of education moving forward.

7.8.5 TRC Recommendations Regarding Education

Considering the role played by education in the past, it was of course going to feature prominently in the recommendations coming from the TRC report. There were seven recommendations in total specifically relating to education in the outcome document. The TRC placed a call upon the Government of Canada to repeal Section 43 of the Criminal Code of Canada,¹⁸⁴ and to develop with Aboriginal groups, a joint strategy to eliminate educational and employment gaps between Aboriginal and non-Aboriginal Canadians.¹⁸⁵ There was further calls upon the federal government to eliminate the discrepancy in federal education funding for

¹⁸¹ TRC Report Note 177 p. 8

¹⁸² David B MacDonald, "Canada's history wars: Indigenous genocide and public memory in the United States, Australia and Canada". (2015) 17(4) *Journal of Genocide Research*. pp. 411–431

¹⁸³ A Woolford and J Benvenuto, (October 2, 2015). "Canada and colonial genocide" (2015) 14(4) *Journal of Genocide Research*. pp. 373–390.

¹⁸⁴ Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstance. See, Canadian Criminal Code Criminal Code (R.S.C., 1985, c. C-46)

¹⁸⁵ Truth and Reconciliation Commission of Canada, 'Calls to Action' (2015), pp.1-2

First Nations children being educated on reserves and those First Nations children being educated off reserves and to prepare and publish annual reports comparing funding for the education of First Nations children on and off reserves, as well as educational and income attainments of Aboriginal peoples in Canada compared with non-Aboriginal people.¹⁸⁶

Most significant of all the calls to action regarding education was the call on the federal government to draft new Indigenous education legislation and this was to include the full participation and informed consent of Indigenous Peoples.¹⁸⁷ The new legislation would include a commitment to sufficient funding and would incorporate the following principles at its core, funding, attainment levels, developing culturally appropriate curricula and protecting the right to Indigenous languages, including the teaching of Indigenous languages.¹⁸⁸ As discussed in chapter three, language rights and the provision of education through mother tongue is an incredibly important aspect of achieving the right to self-determination for Indigenous Peoples. This inclusion and recognition in the outcome report signified the desire to have education systems operate as a facilitator of the right to self-determination. This was further reinforced through the inclusion of the call to enable parental and community responsibility, control, and accountability, similar to what parents enjoy in public school systems and enabling parents to fully participate in the education of their children.¹⁸⁹ This was a very significant demand and call for action because allowing this level of control over the structure and system of education for their children supports Indigenous self-determination and provides a way of moving forward and allowing education, and the system of education, to be a proactive facilitator of the right to self-determination for Indigenous Peoples in Canada and

¹⁸⁶ Ibid

¹⁸⁷ Ibid

¹⁸⁸ Ibid

¹⁸⁹ Ibid

opening up a dialogue between Indigenous Peoples of Canada and State, which resulted in official apologies being issued by the government.

7.8.6 Apologies

Since 1998 there have been numerous official apologies issued by the government of Canada to the Indigenous Peoples of Canada for the oppressive education system that was in operation. In January 1998, Jane Stewart, Minister of the Department of Indian Affairs and Northern Development, released a “Statement of Reconciliation” in the Gathering Strength report.¹⁹⁰ This was the first official apology issued by the government and while the apology fell a little flat, it was from this report that the Aboriginal Healing Foundation was established.¹⁹¹ The foundation involved Indigenous community-based healing initiatives that held a mandate of eleven years ending in 2010.¹⁹² While it addressed the more sinister aspects of abuse that occurred in the residential schools, it focused on the physical and sexual abuses within residential schools but served as a temporary remedy.

While the Statement of Reconciliation of 1998 acknowledged the students that suffered abuse, the Statement of Apology of 2008¹⁹³ was more inclusive of all students who attended residential schools. Some argue the limitation of the apology was that it suggested the residential school system was the only form of assimilation without looking at the other assimilationist ideologies within government policies. In addition, many have criticized the sincerity of the apology and failure to acknowledge the ongoing impact by the legacy of residential schools. As a result, many survivors have continued to suffer from nightmarish flashbacks and are unable to deal with the pain. The Indian Residential School Settlement

¹⁹⁰ 'Killing The Indian in The Child' Note 29

¹⁹¹ 'Vision, Mission, Values' (*ahs.ca*, 2021) <<https://www.ahf.ca/about-us/mission>> Last Accessed 06 June 2021

¹⁹² Ibid

¹⁹³ 'Indigenous Peoples and Communities' Note 92

Agreement was implemented in 2007 and was followed by then Prime Minister Stephen Harper's national apology in 2008¹⁹⁴ that directly acknowledged the role the government had in the residential school system.

In 2017, Canadian Prime Minister Justin Trudeau apologised for 'deep harm' of residential schools¹⁹⁵ he stated, "for every Innu, Inuit, and NunatuKavut child in Newfoundland and Labrador who suffered discrimination, mistreatment, abuse, and neglect in residential schools - we are sorry".¹⁹⁶ The issue with the apology issued by Trudeau was that it had not advanced in content or acceptance of responsibility for the oppressive system of education, rather for the lived experiences of some of those who attended. He went on to say that "while this long overdue apology will not undo the harm done, we offer it as a sign that we as a government and as a country accept responsibility for our failings,"¹⁹⁷ which offers a slight improvement on the acceptance of State responsibility for the volatile system. The government in Canada remained quiet on the issue for almost five years, until this year. In 2021, as mass gravesites and these historic residential schools were being uncovered it brought the horrific experience and reality of many of those students to the forefront of collective conscience in Canada. Trudeau issued a reinvigorated statement of apology, this time recognising that the apologies issued by the government now need to acknowledge "the harms, the impacts, the inter-generational trauma, the cycles of challenges that far too many Indigenous peoples face in this country because of actions that the federal government and other partners deliberately and willingly undertook."¹⁹⁸ While the apology was not a complete success, it has reignited the fire of Indigenous rights in Canada and has exemplified incredible resilience amongst the

¹⁹⁴ Ibid

¹⁹⁵ 'Trudeau Apologises for Deep Harm of Residential Schools' (*BBC News*, 2017) <<https://www.bbc.com/news/world-us-canada-42101457>> Last Accessed 6 June 2021

¹⁹⁶ Ibid

¹⁹⁷ Ibid

¹⁹⁸ R Gilmore, 'Trudeau Sorry for 'Incredibly Harmful' Residential Schools as Advocates Call for Accountability' (*Global News.ca*, 2021) <<https://globalnews.ca/news/7980719/residential-schools-trudeau-apology-cowessess-751-unmarked-graves/>> Last Accessed 6 June 2021

Indigenous communities within the State who are still awaiting true reconciliation with the State.

7.8.7 Moving Forward

The TRC was meant to examine the past to lay down a foundation that would allow for reconciliation in future and by doing this it allowed survivors and families of victims a sense of justice by promoting reconciliation with society as a whole. The TRC mandate was to acknowledge and clarify past abuses, respond to the needs of survivors, contribute to accountability, and address institutional responsibilities and recommendations.¹⁹⁹ Lastly, it encouraged reconciliation by informing the public in the hopes of reducing conflict. The TRC highlighted the importance of sharing the truth about the nature and extent of the suffering and abuses of residential school on the students who attended. It was an integral part of the reconciliation process which needed to be an inclusive and participatory process that involves all peoples, the survivors and their families, communities, religious groups, former employees, the federal government, and the rest of the Canadian society. It paved the way for official apologies to be issued to victims and survivors of the residential school system and opened the pathway for encouraging and supporting education systems to be facilitators of the right to self-determination in the context of Indigenous peoples.

7.8.8 Implementation of Recommendations of the TRC

To redress the legacy of residential schools and advance reconciliation, in its final report the Truth and Reconciliation Commission of Canada called on governments, educational and religious institutions, civil society groups and all Canadians to take action on the 94 Calls to Action it identified.²⁰⁰ On December 15, 2015, the Prime Minister reiterated the Government

¹⁹⁹ Konstantin Petoukhov, 'An Evaluation Of Canada's Truth And Reconciliation Commission (TRC) Through The Lens Of Restorative Justice And The Theory Of Recognition' (Masters, University of Manitoba 2011) p. 62

²⁰⁰ 'Delivering On Truth And Reconciliation Commission Calls To Action' (*Rcaanc-cirnac.gc.ca*, 2021) <<https://www.rcaanc-cirnac.gc.ca/eng/1524494530110/1557511412801>> Last Accessed 17/02/22

of Canada's commitment to implement the recommendations of the commission. Members of the TRC presented 94 Calls to Action that would help “redress the legacy of residential schools and advance the process of Canadian reconciliation” with Indigenous peoples.²⁰¹ Canadian Prime Minister Justin Trudeau confirmed his government’s commitment to implement every single one, yet the question remains, how many, if any, of the recommendations of the TRC have been actioned and have been seen on the ground and within Indigenous communities in Canada. With each passing year, Canada opts to perform reconciliation in an effort to shape a benevolent reputation rather than enact the substantial and structural changes that would rectify ongoing harms and change the course of the collective relationship between the State and the Indigenous Peoples of Canada. This speaks to a larger concern that other recommendations are becoming unlikely to ever come to fruition. For example, the Vatican has already stated that the Pope would not formally apologize for the Catholic church’s role in the residential school system.²⁰² Two researchers at the Yellowhead Institute of Ryerson University, Eva Jewell and Ian Mosby, noted a concerning trend in their latest status updates to the TRC’s report, noting that progress had halted on many Calls to Action that were on track to be completed years ago. They have commented that they “expected, for instance, there would be an Indigenous Language Commissioner by now or that the National Council for Reconciliation would already be in place. That they are not speaks to the limits of measuring progress by promises and exploratory committees struck rather than by real, meaningful action”²⁰³ For Jewell and Mosby as well as a host of other prominent Indigenous leaders and activists, the fact that so

²⁰¹ 'Much Work Remains On The Truth And Reconciliation Commission's 94 Calls To Action | National Post' (*Nationalpost.com*, 2021) <<https://nationalpost.com/news/much-work-remains-on-the-truth-and-reconciliation-commissions-94-calls-to-action>> Last Accessed 17/02/22

²⁰² Ibid

²⁰³ Eva Jewell and Ian Mosby, 'Calls To Action Accountability: A 2021 Status Update On Reconciliation' (Yellowhead Institute 2021) <<https://yellowheadinstitute.org/trc/#:~:text=By%20Eva%20Jewell%20and%20Ian%20Mosby&text=It%20has%20now%20been%20six,to%20advance%20reconciliation%20in%20Canada.>> Last Accessed 17/02/22

many Calls to Action remain incomplete years after they were made is unacceptable and highlights the government's reluctance to their commitment to reconciliation.

7.9 The Aftermath

7.9.1 Cultural Genocide

When discussing what happened to these generations of children in Canada, what they suffered, what their parents suffered and the painful burden felt by the wider Indigenous communities, the declaration of the finding of cultural genocide by the TRC was of paramount importance due to the fact that “terms like cultural genocide... convey the essence of what the [Indian Residential School] system was about: the attempted destruction of Aboriginal languages, religions and cultures in Canada”²⁰⁴ and with the official acknowledgment of the crime, it allows the long journey to reconciliation of the peoples involved to begin. Instrumental in findings of genocide are Truth Commissions or sometimes known as fact finding missions. However, there are instances of confusion when it comes to the authority these bodies have. For instance, the Truth and Reconciliation Commission for Canada, whose purpose was to investigate the treatment of Indigenous peoples under the state sponsored residential school system, delivered a finding of cultural genocide. This finding of cultural genocide was announced by Justice Murray Sinclair to a room of applause. However, the lack of recognition of the legitimacy of cultural genocide as a crime leaves victims and survivors in a state of limbo. How far can the reconciliation process go without this recognition? “they (truth commissions) functioned on three levels: personal catharsis, moral reconstruction, and political action to bring trauma to an end”²⁰⁵ so it would be expected that their findings would have not only moral weight but legal implications, and thus a new wave of problem has been born. If a

²⁰⁴DB MacDonald and G Hudson “The Genocide Question and Indian Residential Schools in Canada. (2012) 45(2) *Can J Political Science* p.427

²⁰⁵ DE Lorey and WH Beezley, *Genocide, collective violence, and popular memory: the politics of remembrance in the twentieth century* (Wilmington: SR Books, 2002. Pp xiii

truth commission makes a finding of cultural genocide but the crime is not internationally acknowledged as such, what does this mean for the victims and survivors? “One of the most troubling realities of the aftermath of genocide and collective violence was the attempt to use history in the service of forgetting; historical memory was sometimes abused to provide perpetrators with impunity for their earlier actions. Thus, the past became key to interpreting the present and to shaping the future”²⁰⁶ and this can only truly be achieved if all international legal organs and bodies are of the same understanding and acceptance of the crimes that truth commissions can find. Only then can these commissions achieve what it is they were set up to do to cut “through myths, rumours and false pictures about the past, confirming what some had suspected and what others had refused to believe”.²⁰⁷ What is more curious is that a finding of physical genocide did not come from the truth and reconciliation report for Canada as the forced sterilisation of Indigenous women was widespread practice and paired with the forced removal of children from their groups to residential schools both fit the definition of genocide as understood by the UN²⁰⁸.

This section addresses some of the most important socio-legal and political questions that arose from the Truth and Reconciliation Report and to assess what the meaning of cultural genocide is in the context of the Residential School System and furthermore if a cultural genocide did in fact take place? The main question in this instance is simple, ‘Did the Canadian government and church commit an act of genocide through the forced assimilation of Indigenous children through the residential school system?’ In instances of cultural genocide, can the Convention on the Prevention and Punishment of the crime of Genocide be interpreted to include cultural genocide and to corroborate the plight suffered by the victims of the Canadian Residential School System? At the time in question, the late nineteenth and first half of the twentieth

²⁰⁶ Ibid

²⁰⁷ Ibid

²⁰⁸ UNGA Resolution on the Crime of Genocide (11 December 1946) A/RES/96

centuries, Canada operated quite an aggressive campaign against the livelihoods of its Indigenous populations. Over the course of more than one hundred years “the central goals of Canada’s Aboriginal policy were to eliminate aboriginal governments; ignore aboriginal rights; terminate the treaties and, through a process of assimilation, cause aboriginal peoples to cease to exist as distinct legal, social, cultural, religious and racial entities in Canada”.²⁰⁹ Some opinions of the system have drastically changed over the years resulting in acknowledgment of the crimes and injustices committed against the first peoples of Canada. In some respects, the country of Canada and the institutions that represent it have changed their views quite dramatically. For instance, in a statement issued by Duncan Campbell Scott, then Deputy Superintendent for Indian Affairs made the startling claim that “Indian children... in the residential schools... die at a much higher rate than in their villages. But this does not justify a change in the policy of this department, which is geared towards a final solution for our Indian problem”²¹⁰ a sentiment echoed by a fellow cabinet member of the time who somewhat proudly maintained “[t]he great aim of our legislation has been to do away with the tribal system... and to assimilate the Indian people in all respects”.²¹¹ Contrasted heavily by the likes of current Canadian Prime Minister Justin Trudeau who publicly acknowledged the harm caused by the residential school system and mirrored by Chief Justice Beverly McLachlin of the Supreme Court of Canada who declared in a public lecture that “the Indigenous peoples of Canada were victims of cultural genocide”.²¹² Under this system “the establishment and operation of residential schools were a central element of this policy, which can be best described as “cultural genocide””.²¹³ With this in mind, this section aims to open up and further the

²⁰⁹ Akhavan P. Cultural Genocide: Legal Label or Mourning Metaphor? (2016) 62(1) *McGill Law Journal* pp. 243-70.

²¹⁰ Statement made by Duncan Campbell Scott accessed at < <https://www.youtube.com/watch?v=vdR9HcmiXLA>> Last Accessed 02 December 2020

²¹¹ Sir John A. MacDonald, 1887 accessed at < <https://www.youtube.com/watch?v=vdR9HcmiXLA>> Last Accessed 02 December 2020

²¹² S Fine, “Chief Justice Says Canada Attempted ‘Cultural Genocide’ on Aboriginals”. *The Globe and Mail* (28 May 2015) see <www.theglobeandmail.com> Last Accessed 24 July 2021

²¹³ Akhavan Note 203

conversation and insight into whether a finding of cultural genocide is a criminal charge or a powerful symbol of historic injustices faced by the Indigenous peoples of Canada.

7.9.2 Was it Genocide?

Holding the above argument in mind, if it is applied to the residential school system in Canada, could and possibly more importantly, should this be considered an act of cultural genocide? If some of the statements from government and religious officials at the time are to be taken at face value, then yes indeed there is a case to be made for the term to be used. There was clear intent that lay behind this system of forced assimilation, and this intent was public knowledge both endorsed and promoted by the Canadian state. In a public statement, a Canadian cabinet minister made the following claim “in order to educate the children properly we must separate them from their families. Some people may say that this is hard but if we want to civilize them, we must do that”,²¹⁴ which would now be in direct violation of article 2(e) of the Genocide Convention. The goal of the residential school system was never to merely educate these children, it was a blatant mission to eradicate Indian heritage, culture and lineage, “their education must consist not merely training of the mind, but of a weaning from the habits and feelings of their ancestors, and the acquirements of the language, art and customs of civilized life”.²¹⁵ The time period this happened and the widespread lack of understanding and appreciation for multiculturalism was an aggressive factor behind this residential school programme. Many harmful and callous statements which mirrored the warped mentality were issued publicly across the nation. Nicholas Flood was cited as saying “Indian culture is a contradiction in terms... they are uncivilized... the aim of education is to destroy the Indian”²¹⁶

²¹⁴ Statement from a Federal Cabinet Minister 1883. Accessed at <<https://www.youtube.com/watch?v=vdR9HcmiXLA>> Last Accessed 02 December 2020

²¹⁵ Egerton Ryerson, 1847 Report for Indian Affairs accessed at <<http://rschools.nan.on.ca/article/the-ryerson-experiment-1119.asp>> Last Accessed 21 June 2021

²¹⁶ Nicholas Flood David Report 1879 transcript accessed at <<https://www.youtube.com/watch?v=vdR9HcmiXLA>> Last Accessed 02 December 2020

in the 1879 David Report and Duncan Campbell, who at the time was the Deputy superintendent for the Department of Indian Affairs made the following statement of the intent within said department “our objective is to continue until there is not a single Indian in Canada... that has not been absorbed into the body politic...and there is no Indian question and no Indian department”.²¹⁷

7.9.3 Intent Behind the Crime

The intent behind the system was and remains transparent. It was to disrupt the passage of cultural knowledge and heritage from one generation to the next. The end goal being to have no surviving Indian population in the Canadian State. In ‘The Genocide Question’ the hypothesis was put forward, “What would constitute proof of a *dolens specialis* for the UNGC to apply?” Evidence would need to be adduced of specific intent to eradicate Aboriginal people as a group, not just culture and traditions but the very lives of group members qua members and their ability to perpetuate the group's physical existence. For example, a very high death rate in the IRS system that could be proven to be intentional, such as the deliberate spread of disease with the intention of killing large numbers of Aboriginal children, would qualify. Proof of an intentional policy of forced sterilization targeting Aboriginal women would also qualify, coupled with evidence of the widespread use of this practice. Forced removal as a means of intentionally destroying the group would also be convincing”.²¹⁸ It is a fair observation to make that what occurred through the residential school system was in fact an act of genocide, under certain interpretations of the crime in international legal instruments. However, it is also important to assess the legal understanding of the crime in Canadian domestic law, a complex issue which will be addressed further on in this chapter.

²¹⁷ Statement made by Duncan Campbell Scott – Deputy Superintendent for Indian Affairs 1920

²¹⁸ MacDonald and Hudson Note 199

Justice Sinclair who was the chair of the Canadian Truth and Reconciliation Commission concluded, “[w]hat took place in the residential schools amounted to nothing short of Cultural Genocide”.²¹⁹ The inclusion of the word ‘Genocide’ caused much debate among political, legal, civilian and survivor groups, the term holding a different meaning and interpretation for each group. The purpose of this section is to analyse and understand why there exists such a differing opinion on this finding and what exactly the term ‘genocide’ means for those directly impacted. The Canadian TRC clarified its interpretation and understanding of genocide in both its physical and cultural form. This is somewhat expected given the nature of the crimes committed against the Indigenous Peoples of Canada. It is interesting to see that the TRC included cultural genocide in its understanding of the crime of genocide considering there remains such conflicting views of the crime, not to mention the lack of international agreement of a definition of the crime itself. The Commission declared, “Physical genocide is the mass killing of the members of a targeted group, and biological genocide is the destruction of the groups reproductive capacity. Cultural genocide is the destruction of those structures and practices that allow a group to continue as a group. States that engage in cultural genocide set out to destroy the political and social institutions of the targeted group. Land is seized, populations are forcibly transferred, and their movement is restricted. Spiritual leaders are persecuted, spiritual practices are forbidden, and objects of spiritual value are confiscated and destroyed. Most significantly, and the issue at hand, families are disrupted to prevent the transmission of cultural values and identity from one generation to the next”.²²⁰

While it is notable that the commission declared a finding of cultural genocide, it is important to note, “the truth and reconciliation commission did not invoke any legal sources in using the

²¹⁹ ‘Canada’s Cultural Genocide’ (*youtube.com*, 2015) <<https://www.youtube.com/watch?v=ZpvMwbWSTBw>>
Last Accessed 29 October 2020

²²⁰ Akhavan Note 203

term ‘cultural genocide’ and did not purport to make a legal conclusion”²²¹. However, in this instance, it is essential to delve into the far-reaching results outside of the legal meaning. In other words, it can be assumed that the use of this word by the Commission is due to the moral and political weight it holds. The reason for the finding to be more symbolic is due to the fact that within Canadian domestic law, there is an extremely narrow definition of genocide, much less comprehensive than under international law. Under the Canadian criminal justice system “prosecutions may not be initiated against persons for allegedly committing genocidal acts within Canada prior to July 17, 1998. In the private law context, judges have ruled that genocidal acts are unlikely to sustain a cause of action even though common law doctrine may well permit claims of this nature”.²²² One reason for the importance of the finding of cultural genocide is due to what exactly is defined as genocide under Canadian law. Canada ratified the Genocide Convention in 1952 under the Pearson government. However, with the acceptance of the convention, there were, unsurprisingly some exclusions “(a) killing members of the group; or (b) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction”.²²³ This calls into question the reasoning and logic behind these exclusions, MacDonald and Hudson have offered some insight into these reasons and explain that “[t]he official reasons given to Parliament by the Report of the Special Committee on Hate Crimes in Canada was that portions of the UNGC were “intended to cover certain historical incidents in Europe that have little essential relevance to Canada” and so could safely be omitted. They even asserted that “mass transfers of children to another group are unknown ... in Canada”.²²⁴ The then Head of State Pearson made a bizarre blanket statement claiming, “that “mental harm” should only mean “physical injury to the mental faculties” of group

²²¹Ibid

²²² MacDonald and Hudson Note 199 p.427

²²³ Canadian Criminal Code, 1985: s. 318

²²⁴ MacDonald and Hudson Note 199 p.427

members”.²²⁵ Schabas went on to describe this warped understanding “as unsupported by the UNGC, and “excessively narrow”.²²⁶

It is due to these incredibly important omissions, made by the Canadian government at the time, that there are extensive ramifications for what the Indigenous Peoples in Canada can claim as acts of genocide within the Canadian justice system. It is for this reason that international law plays a crucial role, and the international legal community need to acknowledge the abuses and crimes commit against the Indigenous Peoples of Canada as acts of cultural genocide. With this in mind, it would be incredibly difficult to have a legal finding of the crime, however the political and moral blame to come from such a declaration as that of cultural genocide is nonetheless powerful. It was not a finding that was born on a whim, deep investigation was undertaken by the commission and thousands of witness testimonies were taken. There was little evidence to counter argue that it did not take place, and the actions of the Church and State at the time were not limited to the forcible removal of native children, there was also “clear evidence of intention to commit cultural genocide through the outlawing of traditional customs, like the Potlatch and Sundance, through the pass system which kept First Nations people on reserves, and through strict policies promoting forcible assimilation, including denigration of traditional languages and religious practices, using the IRS as an expedient.”²²⁷ The wishes to eradicate the native way of life ran deep through many facets of Canadian political and religious institutions.

7.9.4 Genocide Finding

When discussing what happened to these generations of children in Canada, what they suffered, what their parents suffered and the painful burden felt by the wider Indigenous communities,

²²⁵ Ibid

²²⁶ W Schabas, *Genocide in international law: the crime of crimes*, 2nd ed (Cambridge: Cambridge University Press, 2009) pp. 161

²²⁷ MacDonald and Hudson, Note 199 p.427

the declaration of the finding of cultural genocide by the TRC was of paramount importance due to the fact that “terms like cultural genocide... convey the essence of what the [Indian Residential School] system was about: the attempted destruction of Aboriginal languages, religions and cultures in Canada”²²⁸ and with the official acknowledgment of the crime, it allows the long journey to reconciliation of the peoples involved to begin. Andrew Woolford argues that, particularly in the case of cultural genocide in Canada “this sort of “hybridic assault” on Indigenous populations is no less severe than other social strategies of elimination, such as physical destruction of a group, and that current understandings of genocide allow colonizing states to avoid responsibility for cultural destruction”.²²⁹

If changes to the definition of genocide under the Genocide Convention occurred, what would this mean for Canada and the victims and survivors of the Residential School System? One possibility would be “reducing the impact of *dolens specialis* would have a marked impact on how Aboriginal history in Canada would be reinterpreted, both legally and morally. These changes would provide wider legal scope for reassessing the IRS system and the nature of truth and reconciliation”.²³⁰ Even if this argument was set aside, in the case of Canada and the residential school system, could physical genocide be prosecuted based on the serious mental harm caused to the children placed in the care of the residential schools? It is somewhat sad but unsurprising that Canada was one of four States who rejected the United Nations Declaration on the Rights of Indigenous Peoples. This lack of unity and recognition of the right of Indigenous peoples in Canada is a hurdle along the road to reconciliation, Justice Sinclair

²²⁸ Ibid

²²⁹ A Woolford, “Ontological Destruction: Genocide and Canadian Aboriginal Peoples” (2009) 4(1) *Genocide Studies and Prevention*. pp. 81-97

²³⁰ MacDonald and Hudson, Note 199 p.427

affirmed that “survivors need to know, before they leave this earth, that people understand what happened, and what the schools did to them”.²³¹

In relation to Canada, and particularly the residential school system, “[t]he idea of cultural genocide is particularly important... because few mass killings or instances of direct physical destruction occurred in Canadian history. There are many cases of policies whose indirect intent was to destroy culture at the very least, and First Nations would argue the upshot was the same—the end of them as a people. Tacking on the word “culture” somehow signals something was less than real genocide. Instead, scholars are arguing that destroying a group’s culture amounts to genocide plain and simple, with no need for a qualifier that softens the blow”.²³² Welch made a fitting argument in a nuanced interpretation of the definition of genocide and argued “If genocide should be understood as the “destruction of group life rather than lives within a group,” then in the case of Canada’s Indigenous peoples, that means understanding what makes them a group, what defines their cultural cohesion, such as a profound attachment to the land and nature. So, in Canada’s colonial past, systematically depriving First Nations of access to their land so European pioneers could settle and railways could be built, is genocidal”.²³³ If this is the case, as put forward, then “the federal government of Canada bears primary responsibility for adopting and implementing an explicitly genocidal policy”.²³⁴ As MacDonald and Hudson have argued, “the parallels between IRS survivors and genocide survivors in other contexts are often striking.”²³⁵ MacDonald and Hudson have argued extensively of the possible benefits for Indigenous Canadians, should an official finding of genocide be reached “[i]t would make a stronger moral and legal case for treaty rights to be

²³¹ Justice Sinclair at TRC findings hearing accessed at < <https://www.youtube.com/watch?v=MVIpgBKH07U>> Last Accessed 02 December 2020

²³² MA Welch, “The Genocide Test,” *Winnipeg Free Press*, July 12, 2014, accessed at <<https://www.winnipegfreepress.com/breakingnews/the-genocide-test-266849891.html>> Last Accessed 06 December 2020

²³³ Ibid

²³⁴ MacDonald and Hudson, Note 199 p.427

²³⁵ Ibid

upheld, for forms of Aboriginal self-determination and for better political representation as suggested by the Royal Commission on Aboriginal People”.²³⁶

Furthermore, “[i]t might promote a second apology, greater reparations and a stronger sense of national responsibility. It might promote real attempts at conciliation on the part of many Canadians”.²³⁷ However, there are concerns that claims of genocide might be dismissed by Canada's mainstream population who may view the claims as an exaggeration or a problem for the churches and the government to deal with and this mentality is a dangerous obstacle facing the reconciliation process. As discussed in the previous section, a finding of genocide holds a different meaning among those closest to it, victims and survivors of the crime, those held accountable for the crime, academics researching and analysing the crime, for the different institutions hearing cases about said crimes, be they domestic courts or international tribunals.

While the concern for righting historic wrongs remains a primary concern for many stakeholders affected and involved with the Residential School System, it also opens a new channel of investigation, one that is hugely topical at this very moment in time and that is the education of Indigenous children around the world. The pressing issue is that the mentality needs to be to educate and not eradicate and this is a new and worrying phenomenon.

7.10 Conclusion

This chapter has shown how the right to self-determination, in the context of Indigenous Peoples in Canada was violated through the provision of education and how that system was used as a tool of oppression. It is interesting to note that a lot of the change in recognition of the past injustices faced by the Indigenous Peoples of Canada came to the forefront of public realisation around the time of the drafting of the UNDRIP. While not adopted by Canada in the

²³⁶ Ibid

²³⁷ Ibid

first instance, it allowed greater visibility of Indigenous issues. In a sense, UNDRIP allowed, or at the very least, supported in the transition of Indigenous Peoples from objects to subjects of law, further bringing Indigenous Peoples and the violations of their rights into State's consciousness that Indigenous peoples are rights holders. As positive as that may be, there is still work to be done to continue efforts to reconcile and establish a better standing relationship with the government and the Canadian society. Many issues of intergenerational trauma persist, and the impacts of residential schools are still present in Indigenous Peoples lives and communities. There have been initiatives that focus on promoting education and healing.

A powerful example of one campaign called "Be a Witness!" is a collaboration of the Assembly of First Nations and the First Nations Child and Family Caring Society of Canada, which is a non-profit organization. This campaign presented their work to the Human Rights Commission and held Canada accountable for the treatment of First Nations children.²³⁸ They addressed the federal government's underfunding for child welfare services for First Nations children. Some of these other campaigns address the need to improve the growth and development of Indigenous children, include the Touchstones of Hope, Our Dreams Matter Too, and Have a Heart.²³⁹ All of these carry similar goals to improve the lives of Indigenous children at home and school as well as promote reconciliation.²⁴⁰ Indigenous people's resiliency is shown by the continuation of their cultural traditions, practices and teachings. Generations of Indigenous peoples have been forced to residential schools in order to destroy their families, cultures and languages. Yet, they continue to speak their languages, perform ceremonies, and carrying on their teachings. However, there is still a great amount of healing and reconciling that needs to take place for residential school survivors, Indigenous families, and communities.

²³⁸ 'I Am a Witness' (*The Caring Society*, 2021) <<https://fncaringsociety.com/i-am-witness>> Last Accessed 23 March 2021

²³⁹ Ibid

²⁴⁰ Ibid

One way they can support this is by developing a culturally sensitive and appropriate education system. Systems of supporting the education system in becoming a more proactive facilitator of the right to self-determination have become increasingly utilised in Canada. As discussed, there have been many projects, programs, and campaigns that promote healing and reconciliation for Indigenous peoples. For example, the Project of Heart has received support and grants from the Anglican Church of Canada and United Church of Canada to educate the public and create awareness about the history of Aboriginal peoples in Canada.²⁴¹ Not only is this an examination of the history and legacy of residential schools, but it also serves as a commemoration and an honouring of the lives of Indigenous children who lost their lives in residential schools. Furthermore, the Aboriginal Healing Foundation has distributed highly successful programs and services for healing. These projects are important because the reconciliation of Canada's history of assimilation through education is a continuous process. In order to gain true reconciliation, there is an effort to gain formal recognition of Indigenous knowledge, ways of knowing, core values, language, and cultures. There are initiatives that focus on ways to further reconciliation. Indigenous Peoples are now reclaiming their traditional ways of educating²⁴² exemplifying how systems of education can and have transitioned from being a denier to a facilitator of the right to self-determination in the context of Indigenous Peoples.

²⁴¹ 'Project of the Heart' Note 169

²⁴² VJ Kirkness, *Creating space: My life and work in Indigenous education*. (Manitoba: University of Manitoba Press, 2013) P. 82, Sonia V Morris, Keith A McLeod and Marcel Danesi, *Aboriginal Languages And Education* (Ontario: Mosaic Press, 1993) P.5

Chapter 8

Case Study: French Guiana

8.1 Introduction

This chapter presents the case study of French Guiana and sheds light on the educational policies in operation in the State. Through a detailed examination of the education system in operation in the country, this chapter will further investigate the relationship between the right to education and the right to self-determination and will highlight how an ineffective and inappropriate education system can deny the right to self-determination of Indigenous Peoples. There is a growing concern that not all education is a good education, and increasingly in the context of tribal peoples the emerging concept of a bad or dangerous education is becoming more prevalent.¹ What is meant by a bad or dangerous education in the context of tribal peoples is relating to the fact that many schools only offer education through the national language and therefore Indigenous children immediately fall behind.² The danger is twofold, the Indigenous children struggle academically because the national language is foreign to them, or the children are forcibly assimilated, meaning they have no choice but to shed their Indigenous languages, heritage and customs in place of speaking the national vernacular and integrating into the cultural life of the national majority. While this is a growing concern for many tribal communities around the globe, there is a worrying situation which has been gradually emerging among the Amerindian population of French Guiana. The education system and policies regarding education in French Guiana are having a negative impact on the Tribal and

¹ 'Factory Schools Destroying Indigenous People in the Name of Education' (*survivalinternational.org*) <<https://survivalinternational.org/factoryschools>> Last Accessed 26 April 2021

² A. Archimbaud & M. Chapdelaine, 'Suicides des jeunes Amérindiens en Guyane française: 37 propositions pour enrayer ces drames et créer les conditions d'un mieux-être' (2015) *GIPTA* accessed at <<http://gitpa.org/web/>> Last Accessed 26/04/2021, P. Carlier, 'Les jeunes Amérindiens, plus nombreux à se suicider' (2013) *France Guyane* accessed at <<http://www.franceguyane.fr/actualite/education-sante-environnement/les-jeunes-amerindiens-plus-nombreux-a-se-suicider-179713.php>> Last Accessed 26/04/2021 Chin, K 'Cultural Destruction: A Crime Against Humanity' (2016) *Brown Political Review* accessed at <<http://www.brownpoliticalreview.org/2016/10/cultural-destruction-crime-humanity/>> Last Accessed 06 December 2020

Indigenous population, resulting in the groups being denied the right to self-determination through the inadequacies of the education system. In French Guiana, this colonial schooling is geared towards making Amerindians “citizens” of France. For Indigenous children, the experience of school can be deeply disturbing, as it is totally divorced from the reality of their home lives. They must communicate in French and learn in a manner that is poles apart from the way their tribe teaches its children.³

In this chapter, section two explores the history and State administration of French Guiana followed by section three which investigates the main claims and concerns of Indigenous Peoples in French Guiana. Section four of this chapter assesses the education system in French Guiana as it is currently operated while section five further analyses the schools within the State and how they function. Section six demonstrates the relationship between the right to education and the right to self-determination with a focus on the role played by native languages in the education system. Section seven discusses the applicable legal frameworks in French Guiana at both a national and international level. Section eight identifies educational policies in practice in French Guiana and section nine offers further analysis of the role of the education system in French Guiana in the realisation of self-determination of Indigenous Peoples. This chapter concludes with recommendations of actions needed to be implemented in order to ensure that the role of education is a supportive one for Indigenous Peoples and enhances the facilitation of the right to self-determination.

³ Survival International, ‘Factory Schools: Destroying Indigenous Peoples in the Name of Education’ (2017) *Survival International* accessed at <<https://assets.survivalinternational.org/documents/1810/factory-schools-full-report.pdf>> Last Accessed 26 April 2021

8.2 The History and Administration of French Guiana

As an overseas department of France, French Guiana is represented in both houses of the French National Assembly. Locally it is administered by a prefect, who is assisted by a 19-member general council and a 31-member regional council, each elected by universal adult suffrage.⁴ The territory of Inini consisted of most of the interior of French Guiana when it was created in 1930. It was abolished in 1946, the year that French Guiana as a whole was formally established as an overseas department of France. In a referendum that same year, French Guiana voted against autonomy.⁵ French Guiana sends two deputies to the French National Assembly, one representing the commune (municipality) of Cayenne and the commune of Macouria, and the other representing the rest of French Guiana. This latter constituency is the largest in the French Republic by land area. French Guiana also sends two senators to the French Senate. The Guianese Socialist Party dominated politics in French Guiana until 2010. The main problem with this form of rule is that “[t]he notion of a minority as group is ignored in French law”⁶ thus making the position of the Amerindian population in French Guiana, within the legal system, incredibly worrisome with no specific legal protection or entitlement. It would appear the legal protections of this particular group are in place, on paper, as the 1946 preamble to the French Constitution article 16 affirms “France shall form with its overseas peoples a Union founded upon equal rights and duties, without distinction of race or religion”.⁷ The French overseas’ department of French Guiana boasts a remarkable ethnic and linguistic diversity. This is not reflected in the day-to-day reality in French Guiana, especially in the public sector where European French and French culture continue to dominate. This dominance

⁴ ‘French Guiana’ (*minorityrights.org*) <<http://minorityrights.org/country/french-guiana/>> Last Accessed 27 January 2021

⁵ ‘French Guiana and Martinique Reject Increased Autonomy’ (*bbcnews.com*, 2010) <<http://news.bbc.co.uk/2/hi/americas/8451095.stm>> Last Accessed 02 February 2021

⁶ G Palayret. ‘Overseas France and Minority and Indigenous Rights: Dream or Reality?’ (2004)10(3) *International Journal on Minority and Group Rights*. pp. 221-52.

⁷ Preamble to the French Constitution 1946

is particularly strong in formal education where to date only a few programs have been initiated that specifically aim to validate local languages and cultures. In practice, the picture painted by those most affected is very different. Education in the context of Indigenous and tribal populations is a contentious topic with many campaigners, scholars and activists holding different views and opinions however “[t]he majority of Indigenous populations of South America have put forth formal education as one of their principal political claims against the state”⁸ and the Amerindian community in French Guiana are no different in their seeking of a just and appropriate education for their children, an education that combines the needs and requirements that are vital to tribal longevity and existence while equipping the children with knowledge and understanding of the contemporary world. The aim of this piece is to draw attention to the precarious position of the Amerindian children in French Guiana when it comes to the education they receive and to highlight the dangers this system has created and indeed imposes on future generations as a result.

The major discussion point in this case study is the denial of the right to self-determination through an educational system for Indigenous children which will be exemplified through language rights and how Indigenous Language not being incorporated into the curriculum of the schools is leading to a disconnect between Indigenous children and their communities, culture and heritage. Irene Watson discusses the right to self-determination in the context of Indigenous peoples, as enshrined in UNDRIP, highlighting the importance of language in determining the lives of Indigenous peoples. She writes: “On the one hand [UNDRIP] recognizes the right to self-determination and, on the other hand it limits self-determination to being exercised in accord with state power.”⁹ She further attests that “the language and

⁸ Silvia Lopes da Silva Macedo, ‘Indigenous School Policies and Politics: The Socio-political Relationship of Wayãpi Amerindians to Brazilian and French Guianan Schooling’. (2009) 40(2) *Anthropology and Education Quarterly*. pp. 170-186.

⁹ Irene Watson, *Indigenous Peoples as Subjects of International Law* (Oxfordshire: Routledge, 2018) pp. 98, 104

philosophies of empires have been and continue to be applied to dominate and subjugate First Nations Peoples, but at the same time the languages and philosophies of our old people continue to live and to centre First Nations' futures."¹⁰ It is for this very reason the argument put forward is that the denial of the provision of an appropriate education through the use of native languages and mother tongue for Indigenous children is a denial of the right to self-determination through the provision of the education system in French Guiana.

8.3 The Claims and the Concerns of Indigenous Peoples in French Guiana

The claims of poor treatment of the Indigenous population in French Guiana are manifold. For the purpose of this piece the focus and main body of this chapter addresses the issue of the education system in place in the country and aims to address the psychological implications of a poor education system and address how the legal framework does not support Indigenous culture or identity. Further to this, the Indigenous population are victims of an extremely high suicide rate compared to that of their European counterparts and there are claims that this is enabled by the existence of a completely undifferentiated and unsuitable school system.¹¹

One of the major concerns facing Indigenous and tribal children in mainstream education is that often in cases, education is only delivered through the national language. This creates two serious problems; first being, many of these children do not have a working knowledge of this language growing up in small rural and tribal settings and thus, when entering mainstream education which is not provided in their native or mother tongue, they are at an immediate disadvantage. Secondly, being forced to part take in this form of education slowly erodes at the Indigenous identity, as inconsistent use of their mother tongue runs the risk of disconnecting with their families, kin, heritage and cultural identity. Indigenous children have long been

¹⁰ Ibid

¹¹ Rémi Pacotet *al*, 'The Problem of Suicide Among Amerindians in Camopi-Trois Sauts, French Guiana 2008–2015' (2018) 18(1) *BMC Psychiatry*.

victims of this type of assimilation through an education system, especially in the instances of boarding or residential schools which have been described as “relentless in their efforts to separate whole generations of Indigenous students from their cultural roots and, very often, their families, doing irreparable harm to the survival of Indigenous cultures and societies”.¹² The concern regarding the level of suicide among the Indigenous population of French Guiana is absolutely warranted and investigation into the high levels and the reasons behind the high rates has been carried out in the area and many have been attributed to the poor education system in place. The non-governmental organisation Action for Development, Education and Research revealed harrowing statistics which were based on figures collected between 2009-2013 regarding rates of suicide and attempted suicide among the Indigenous populations of the upper Maroni. The findings were:

“2.6 suicides and 8.6 attempted suicides among a population of 1,200 inhabitants, in other words a rate 13 times higher than the French national average. Suicide was found to be more prevalent among men, and attempted suicide among women. Another epidemiological feature was the rate of suicide among young people under the age of 25, who accounted for more than half of all cases... Factors such as insecurity (resulting from the illegal gold washing), river contamination (with mercury), sedentarisation, an inappropriate education system, addiction, the generation gap and difficulties in accessing the health system are all reasons underlying this suicide rate, which is a problem not only for the people of the upper Maroni but many other Indigenous peoples too.”¹³

This is an alarming rate and deeply concerning statements have been made by Indigenous children in French Guiana regarding this. The following statement is from a 23-year-old Wayapi youth who described the suicidal thoughts he experienced resulting from cultural disconnection from his family and community as a result of his schooling:

¹² R Stavenhagen. ‘Indigenous Peoples’ Rights to Education’. (2015) 50(3) *European Journal of Education*. pp. 254-257

¹³ ‘Indigenous Peoples in French Guiana’ (*iwgia.org*) <<https://www.iwgia.org/en/french-guiana.html#:~:text=French%20Guiana%20has%20244%2C118%20inhabitants,Saint%20Georges%20de%20Oyapock>> Last Accessed 20 July 2021, R Pacot and others, ‘The Problem of Suicide Among Amerindians in Camopi-Trois Sauts, French Guiana 2008–2015’ (2018) 18(1) *BMC Psychiatry*

“I already attempted suicide when I was young. I hanged myself but my brother-in-law and my older brother came and got me out of the rope. That was just after I left middle school and the boarding school I had been sent to. That was when I came back to live here in the village again. Here, when you try to commit suicide, [if] you don’t manage, they directly send us to Cayenne by helicopter. [They keep us] in a sort of very closed house, like a jail. They give us loads of medicine and they force us to do physical exercise to calm us down. All of this because I didn’t manage to commit suicide”.¹⁴

These statements highlight the dangers posed by an inefficient and ineffective education system. Again, for the purpose of this section, the focus will be placed on the use of language within the education system of French Guiana and how this can be implemented to deny the right to self-determination among Indigenous Peoples. In the following section, this system will be analysed and assessed, however, before that, it is important to note that over the last ten years there has been efforts to implement changes in relation to Indigenous language usage in schools in French Guiana.

The French Guianese project *Intervenants en Langues Maternelles*, is a grass-roots project that emerged in 1998 due to a unique collaborative effort between French linguists and members of the local branch of the ministry of education. After having been in existence for 10 years, it is still struggling to survive.¹⁵ Work has been underway to develop training modules and teaching materials that aim to raise awareness among teachers and students about French Guiana’s multilingual context.¹⁶ France affords minor recognition to regional languages, however, French remains the obligatory language of the education system. As in other parts of France, French is thus also the uncontested official language of French Guiana.¹⁷

¹⁴ Survival International, 'Factory Schools: Destroying Indigenous Peoples in the Name of Education' (2017) <<https://assets.survivalinternational.org/documents/1810/factory-schools-full-report.pdf>> Last Accessed 26 April 2021

¹⁵ M Candelier M. Awakening to Languages and Educational Language Policy. In: Cenoz J., Gorter D., May S. (eds) *Language Awareness and Multilingualism. Encyclopaedia of Language and Education* (3rd ed.) (New York: Springer, 2017)

¹⁶ S Alby, 'Politiques linguistiques en matière d’enseignement des langues en Guyane française. Séminaire Didactique des langues et des cultures étrangères - coopération Guyane (France) / Brésol' (2008) *Britannica* accessed at <<https://www.britannica.com/place/French-Guiana>> Last Accessed 26/04/2021

¹⁷ Ibid

8.4 The Education System in French Guiana

In French Guiana, the educational policies appear reasonably adequate on paper. The general application is that “[e]ducation in French Guiana is compulsory for all children between ages 6 and 16, and the medium of tuition is French because the country is an overseas department of France. Enrolment at primary school which lasts for 5 years is almost 100%, except for in remoter rural areas where facilities are sometimes sparse”,¹⁸ which is a strange statistic considering that more than 90 percent of French Guiana is forested,¹⁹ meaning essentially the entire tribal population of the country. However, in relation to the education provided for tribal and Indigenous children three issues arise. First is the issue of the children being educated in a language that is not their mother tongue. This is a huge issue in terms of education for tribal children in French Guiana,

“other neighbouring countries in Latin America, such as Colombia or Brazil, have adopted bilingual education in schools in Indigenous territories, this is not the case in France for the approximately 10,000 natives living in Guyana. The tricolor authorities deliberately ignore Convention 169 of the International Labor Organization on Indigenous Peoples, which they have not ratified.”²⁰

France does not recognize the collective rights of any groups in its territories or on the mainland.²¹ Furthermore, by not allowing teaching in any language other than French effectively denies the Amerindian peoples of French Guiana any autonomy over the education of their children and by way, denying the group’s right to self-determination.

Second is the distance to which many of these children have to travel to attend school, this issue will be explored further in this chapter with statements from Indigenous Peoples from

¹⁸ ‘Education System in French Guiana’ (*classbase.com*) <<http://www.classbase.com/countries/french-guiana/education-system>> Last Accessed 02 February 2020

¹⁹ ‘French Guiana’ (*rainforests.mongabay.com*, 2006) <<http://rainforests.mongabay.com/20frenchg.htm>> Last Accessed 15 March 2020

²⁰ ‘The Abandoned Republic’ (*gipita.org*) <<http://gipita.org/Qui%20sommes%20nous%20GITPA%20100/ACTUlettreGuyaneAbandonnesGERY.htm>> Last Accessed 15 February 2020

²¹ Jeremie Gilbert and David Keane, ‘Equality Versus Fraternity? Rethinking France and Its Minorities’ (2016) 14 *International Journal of Constitutional Law*. Pp. 883-905

these rural locations, and the hindrance this distance can cause when trying to obtain an adequate education for tribal children. Families in remote rainforest areas are compelled to send their children to school under French law from the ages of 6 to 16.²² For secondary school, they can either send them to stay with host families in towns, or to Catholic missionary schools. Both options deny the children the chance to learn with and from their communities and impose an alien worldview. This option is completely inappropriate as these children are made live with people who do not share the same cultural values as they do, and they do not speak in the same mother tongue. It is reminiscent of residential school systems as a means of education and truthfully, a means of eradication of Indigenous custom in generation past and it is an accepted fact that this form of education is counterproductive in the struggle to maintain native and tribal identity

“boarding schools were generally a failure at improving the lives of Indigenous peoples. The reason is that their purpose was not to benefit Indigenous peoples; rather it was to forcibly assimilate Indigenous children into the larger society. Consequently, the dictates of the larger society took precedence over the needs of Indigenous peoples. In addition, the fact that boarding school attendance was often mandatory deprived Indigenous peoples of their right to self-determination.”²³

Many children return to their communities confused and lost between worlds. If they decide to return to their families, they have missed out on the opportunity to learn the skills needed to live on their land. They have often absorbed a message from their schooling that their ways of life are primitive and likely to die out.²⁴ The total impact of this schooling is endangering the very survival of these tribes.

²² 'French Guiana Education System' (*Scholaro.com, 2021*) <<https://www.scholaro.com/pro/Countries/French-Guiana/Education-System#:~:text=Education%20in%20French%20Guiana%20is,where%20facilities%20are%20sometimes%20sp>> Last Accessed 26 April 2021

²³ Andrea Smith. Indigenous Peoples and Boarding Schools; A comparative Study. From the United Nations Permanent Forum on Indigenous issues. Accessed at <http://www.un.org/esa/socdev/unpfii/documents/IPS_Boarding_Schools.pdf> Last Accessed 23 January 2020

²⁴ 'Indigenous Peoples in French Guiana' Note 13

Third is the syllabus and the ineffectiveness through which, no attention is given to the traditional activities. Activities which many of these children need to know in order to preserve and survive in their cultural lives, “learning about fishing, hunting, braiding, tracking and traditional and initiatory activities is not taught in the classrooms, and schedules are not arranged so that children can be trained in these areas”²⁵. Further highlighting one of the many ways in which the education infrastructure in place in French Guiana is not adequate. During a colloquium in Paris an Amerindian man echoed this frustration, Teko Tiwan Couchili explained that “the school is not at all adapted to our way of life, we lose its identity.”²⁶ The Indigenous children of French Guiana run the real and serious risk of being alienated from the cultural heritage due to the lack of education provided in their native language. In the majority of schools

“the teachers are mostly “metropolitan” French, who live in the villages during the school year and leave during school holidays. The school follows the calendar and program stipulated by the National Ministry of Education. The pedagogic material has been mostly developed in France, whereas local production is rare. The books and instruction are in French, although some teachers speak the Wayãpi language and use it to communicate with their students. However, most do not speak the Indigenous languages and therefore, develop their curriculum in French.”²⁷

Meaning the schools in French Guiana operate under the same calendar, curriculum, and philosophy as mainland France, meaning all teachers must have the same qualifications, whether they are teaching Wayapi children in Amazonia or children in the centre of Paris.²⁸

This exemplifies the dangers posed to the preservation of tribal custom in French Guiana, if these children are constantly and consistently assimilated, be that intentional or not, the tribal and Indigenous customs, heritage, knowledge and culture are being lost between the generations. This is aided by the fact that if a child was to continue education past a primary

²⁵ Smith Note 22

²⁶ ‘Education System in French Guiana’ Note 18

²⁷ Lopes da Silva Macedo Note 8

²⁸ ‘The Abandoned Republic’ Note 20

level of schooling they would have to do so quite far apart from their family and kin. The distance and accessibility of schools for these children make it even more difficult to obtain a fair education. In the instances where children want to continue their schooling it is usually at a sizable distance from their homes, which further severs communal and cultural ties. For example, “in the Trois Sauts village, the students can go to school until the age of 14, the continuity of schooling after primary school is only possible in Camopi village by means of a distance education program, from the secondary school of Saint-Georges (Saint-Georges town, south French Guyana), or in Cayenne (the capital of French Guyana)”.²⁹ Except for the inhabitants of Camopi who have the choice to continue in secondary school in Camopi, the Wayãpi are forced to move from their villages and live in other places to continue schooling either in Camopi, where they don't necessarily have family or anywhere to stay, or in the larger towns of Saint-Georges and Cayenne”.³⁰ In the even rarer cases of children wanting to pursue an education past secondary level their options become even more limited. “Once secondary instruction is completed, the students can continue their studies in Cayenne—where the only university in French Guyana is located—or in a university in any other French department. To do this, they must apply to the universities, which will then select them according to their student record. Only an infinitesimal percentage of Indigenous students’ complete secondary school and fewer still go on to university.”³¹

8.5 Schools in French Guiana

Schools were first established in French Guiana after the abolition of slavery in 1848, the first of which were established in Cayenne in the east of French Guiana. By 1852 only 1200 students

²⁹ Lopes da Silva Macedo Note 8

³⁰ Ibid

³¹ Ibid

attended school and schools were run by Christian religious orders.³² In 1888, there was a separation between the education systems in place in French Guiana and the aforementioned religious orders that once held sole control over their administration. This had a small but noticeable impact on the attendance rates for the school system as at the turn of the century about 2500 children attended school. However, Amerindian and Maroon populations living in the interior of the country were not subject to school attendance until the 1960s.³³ In 1946, the educational policies of French Guiana changed to an aggressive policy of francisation. Its main objective was to assimilate the populations of the so-called interior, namely Amerindians and Maroons, to the preferable Franco/European culture³⁴. According to Migge and Léglise, two strategies were implemented to facilitate this process and they were; resettlement including geographical fixation of different groups in state-run communes and obligatory school attendance.³⁵ Similar to the experience of the Indigenous Children in Canada discussed in the previous chapter, many children from Amerindian and Maroon communities were forcefully removed from their communities and placed in church-run boarding schools with disastrous long-term effects, notably alienation from their home communities and cultures.³⁶ Research carried out by Migge and Léglise in 2010 into the then current position of the cultural integration of the Indigenous Children showed that “only a handful of children emerged as truly bicultural. Some currently act as leaders for their communities, actively defending their communities’ rights vis-à-vis the local, national and international administration and actively engage in the regional politics”.³⁷ The first schools in the interior of the country only opened

³² Bettina Migge and Isabelle Léglise. "Integrating local languages and cultures into the education system of French Guiana" (2010) *Creoles in education: An appraisal of current programs and projects* pp. 107-132.

³³ Ibid

³⁴ Isabelle Hidair and Rodica Ailincăi, 'Migration And Identities of “Indigenous Socio-Cultural Groups in French Guiana: A Case Study of Students Along The Oyapock And Maroni Rivers' (2015) 174 *Procedia - Social and Behavioural Sciences*.

³⁵ Lopes da Silva Macedo Note 8

³⁶ Ibid

³⁷ Ibid

during the 1970s. They continued to be squarely based on metropolitan models,³⁸ this remains the situation today.

8.6 Relationship between Language and the Right to Self-Determination

Language acts as a repository for a person's cultural history and traditional knowledge, two vital components of the identity of a people. Tamara Starblanket maintains that an attack on the language of an Indigenous group can go beyond assimilation tactics, pointing out that "spiritual laws are encoded into Indigenous peoples' languages."³⁹ She adds: "The dominating society forces another language (for example, English) onto scores of children, and the result is those children were never taught or do not remember why they have a relationship with their land. It becomes a deliberate process to isolate children from their land."⁴⁰ This statement reinforces the idea that language can go beyond the cultural element of Indigenous life and highlights that the curbing or loss of Indigenous languages can have a direct effect on their territorial lands. In the case of French Guiana, it is the indirect attack on native language that needs to be recognised. Through lack of supports and appropriate educational systems to provide appropriate education for Indigenous youth, it becomes a systematic block in the advancement of the right to self-determination for the native communities from which these Indigenous children are from. With dominant societies hindering or preventing the transmission of cultural knowledge and traditional land values, younger generations are being spiritually dislocated because they are not being taught the value that their communities and ancestors have attributed to traditional lands.

As a reminder, France voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007. This document recognizes the right of Indigenous Peoples to free, prior and

³⁸ Ibid

³⁹ Tamara Starblanket, "'Kill the Indian in the Child': Genocide in International Law," in *Indigenous Peoples as Subjects of International Law*, ed. Irene Watson (Oxfordshire: Routledge, 2018) p. 190

⁴⁰ Ibid

informed consent, but is not binding for the States parties. Consequently, treaty bodies, that are based on binding treaties, present a clear advantage for the Indigenous peoples of the French territory. Stephen May sees a “clear desire of Indigenous peoples for greater linguistic and educational control”⁴¹ that “is, in turn, a product of colonial histories of cultural and linguistic proscription, particularly within education, that must be regarded as being at the most extreme end of such practices.”⁴² The reclamation of linguistic and cultural practice is a powerful and symbolic move in the quest for greater self-governance and self-determination. We have seen a shift in recent years from the traditional approach of language protection to a more efficient process of language reclamation and revitalization with respect to Indigenous languages. It is important to highlight that the right to self-determination, which can be realized through secession, can also be realized internally and can be manifested in a variety of ways.⁴³ The right to self-determination concerns the ability of a people to control their destiny, to freely determine their political status, and to freely pursue their economic, social, and cultural development.

Anaya demonstrates how some Indigenous peoples have manifested their right to internal self-determination by advocating for their right to use their Indigenous language in legal proceedings and other official contexts.⁴⁴ While some States have accepted this trend, and some demonstrate support for the use of Indigenous languages in legal proceedings and other official contexts, in Colombia for example the Law prohibits all discrimination based on the use of any native language; utilization of these languages is allowed in parallel with the official Castilian

⁴¹ Stephen May, *Language and Minority Rights; Ethnicity, Nationalism and the Politics of Language*, 2nd ed. (New York: Routledge, 2012) p.302

⁴² Ibid

⁴³ Some scholars do not agree with the internal versus external concept of self-determination. They view it as a more intrinsic concept. For more, see Anaya, S. James, *Indigenous Peoples in International Law*, 2nd ed. (Oxford: Oxford University Press, 2004) p.105

⁴⁴ S. James Anaya, *Indigenous Peoples in International Law*, 2nd ed. (Oxford: Oxford University Press, 2000), 139.

language throughout the national territory.⁴⁵ The Law states that native peoples have a right to use their own tongues while conducting businesses with government authorities at all levels.⁴⁶ Likewise, official documents concerning native peoples also must be made available to them in their vernaculars.⁴⁷ Other States “have appeared reluctant to accede to a strict requirement to that effect.”⁴⁸ Still other States, however, have acknowledged that decision making over language issues, among other things, can be an effective way for Indigenous Peoples to implement the right to self-determination. Chile, for example, has asserted that the concept of internal self-determination can allow for a “space within which Indigenous peoples can freely determine their forms of development, [including] the preservation of their cultures, languages, customs and traditions, in a manner that reinforces their identity and characteristics, in the context and framework of the States in which Indigenous Peoples live.”⁴⁹

8.7 Applicable Legal Frameworks in French Guiana

There is an unusual history when it comes to the laws in place in French Guiana, under which the Indigenous population can seek protections. With the passage of time, these protections have become exceedingly limited rather than growing with the needs of the community. For example, “[u]nder the Inini Statute Indigenous people could live as they liked, but in 1969 the statute was abolished, bringing them abruptly under French socio-cultural rule”.⁵⁰ France has not ratified the Indigenous and Tribal Peoples’ Convention 169 of the ILO, however, “voted in

⁴⁵ ‘Colombia: Recognition of Aboriginal Languages’ (*The Library of Congress, 2010*) <<https://www.loc.gov/law/foreign-news/article/colombia-recognition-of-aboriginal-languages/>> Last Accessed 26 April 2021

⁴⁶ Enrique Uribe-Jongbloed and Carl Edlund Anderson, ‘Indigenous and Minority Languages in Colombia: The Current Situation’ (2014) 48 *Researchgate*. pp. 217- 242

⁴⁷ CH Guerrero, ‘Language Policies in Colombia: The Inherited Disdain for our Native Languages.’ (2009) 16(1) *HOW* pp.11-24

⁴⁸ Starblanket Note 39

⁴⁹ Russel Lawrence Barsh, “Indigenous Peoples and the UN Commission on Human Rights: A Case of the Immovable Object and the Irresistible Force” (1996) 8(4) *Human Rights Quarterly* pp.782–813

⁵⁰ ‘French Guiana’ (*minorityrights.org*) <<http://minorityrights.org/country/french-guiana/>> Last Accessed 27 January 2021

favour of the UN Declaration on the Rights of Indigenous Peoples in 2007”.⁵¹ This means that not only is their right to be educated as they see and deem fit not recognized, but there are also more troubling abuses occurring in the context of land rights as “[t]raditional Indigenous land claims are not recognised, and the Indigenous population is under threat due to the increasing invasion of French colonists and Brazilian gold mining prospectors”.⁵² The metaphor of a double-edged sword comes to mind when the following is considered; “France does not recognise collective rights for any groups within its territory in French Guiana, but in 1987 it recognized areas of special use rights (*Zones de Droits d’Usage*) for the Amerindian population, and in 2010, an advisory council for the Amerindian and Bushinenges population (*Conseil consultatif des populations amérindiennes et bushinenges de Guyane*) was established to take on a consultative role with regards to projects that may impact on their culture.”⁵³ Yet there has been no advancement within the area of Indigenous rights in French Guiana. While “[o]verseas departments are subject to French law but in some circumstances, justified by its specific situation, can be exempted from it. Each overseas department can have its own statute adapted to the specific social and geographical situation. The new statute of the French Guiana was approved in 2011.”⁵⁴

France has a long history of compliance with international human rights instruments and was an original signatory in favour of the UDHR in 1948.⁵⁵ This is significant as article 26 confirms the right to education it states;

⁵¹ Stavenhagen Note 12

⁵² 'Colombia: Recognition of Aboriginal Languages' Note 45

⁵³ Jongbloed and Anderson Note 46

⁵⁴ Directorate General for Internal Policies Policy Department B: Structural and Cohesion Policies Regional Development Economic, Social and Territorial Situation of French Guiana. 2011. Accessed at <[http://www.europarl.europa.eu/RegData/etudes/note/join/2011/460068/IPOL-REGI_NT\(2011\)460068_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2011/460068/IPOL-REGI_NT(2011)460068_EN.pdf)> Last Accessed 02 February 2020

⁵⁵ 'Conseil Général De La Guyane' (*Web.archive.org*)

<<https://web.archive.org/web/20151007143603/http://www.cg973.fr/la-collectivite-territoriale-de>> Last Accessed 7 February 2021

“(1) [e]veryone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.”⁵⁶

If this is to be the case, it is clear that this right is not afforded to tribal children in French Guiana, an overseas territory governed by the laws of France, including international legal instruments the State has adopted. In a similar fashion, France ratified the ICCPR in 1980 and under article 18(4) states “the States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions”⁵⁷ and as has been made evident by testimonials in the previous section of this piece, the parents’ wishes are not being granted in relation to the educational processes available to Amerindian children in French Guiana. The most important set of rights applicable to the tribal and Indigenous peoples of French Guiana are enshrined in the ICESCR which entered into force in 1981⁵⁸ including the optional protocol in 2013, which then entered into force 2015. The most important article of which is article 13 which expresses, in depth, the importance of education as a right and the particular obligations of the State to provide this right.⁵⁹

⁵⁶ Universal Declaration of Human Rights (adopted 10 December) 1948 UNGA Res 217 A(III)

⁵⁷ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171

⁵⁸ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3

⁵⁹ Ibid

The CRC adopted in 1990⁶⁰ and under article 28 the State recognizes their responsibility to provide accessible education to all children in their domain. More importantly is the rights to education laid out under article 29 (c) and 29(d) of said convention which affirms “States Parties agree that the education of the child shall be directed to the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own”⁶¹ and “[t]he preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of Indigenous origin”⁶² respectively and Article 30 of CRC reaffirms the right of a child to use their own language.⁶³ Silvia Lopes da Silva Macedo, who has written extensively on the topic has perfectly surmised the dichotomy that exists between French national law and the application of such laws to the Indigenous population of their overseas territories, she claims “the constitutional principles of the rights of the French state clash with the Amerindian claims for specific rights”⁶⁴ which in turn impedes progress in the acquisition of these rights.

The principles of equality and human rights in some ways have become insurmountable obstacles where the issue of specific rights for the Amerindians is concerned.⁶⁵ Action needs to be taken to highlight the plight experienced by this population, living in an environment that acknowledges them, acknowledges the cultural importance they have, and vulnerability with which they exist, yet France, as a state somehow still refuses to acknowledge the collective rights of groups. To reiterate the opening sentence of this section, it truly is an unusual

⁶⁰ 'OHCHR Dashboard' (*Indicators.ohchr.org*) <<http://indicators.ohchr.org/>> Last Accessed 25 February 2021

⁶¹ ICESCR Note 58

⁶² Ibid

⁶³ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3

⁶⁴ Lopes da Silva Macedo Note 8

⁶⁵ Ibid

circumstance, that is incomprehensible in this era of human rights. The right to self-determination is a right that can be enhanced and realised through the right to education. However, the provision of said education needs to be adequate and effective. This requires support from State level and recognition of not only the vulnerabilities faced by the Indigenous Peoples of French Guiana, but also the value in sustaining and ensuring the survival of these groups and cultural entities.

8.8 Educational Policies in Practice

The following are testimonials from Amerindians in French Guiana highlighting the trials, tribulations and dangers of the educational options available to them by the State.

- (I) “As early as 10 years old, (children are) separated from their families” says Aikumale Alemin, an Amerindian wayana health worker. He is championing a petition for the opening of a College in the heart of Haut Maroni, in the village of Taluen / Twenke. Understanding the importance and significance of Indigenous children being educated in a way that reflects their own societal needs, he maintains that this college is needed “to prevent our children from leaving, cutting off their family, culture and roots, because that in our culture our little one’s feed on the history of their people to grow; We do not entrust our children outside in the Amerindian culture”. These young people leave Cocoon for the college and “find themselves in boarding school in Maripasoula, several hours of pirogue from their village”, isolated and unsupervised on the weekend”. He maintains a college has been promised to the Amerindians for years but remains undeveloped.⁶⁶

- (II) Amerindian Teko Tiwan Couchili maintains “[t]he inadequate provision of native Amerindian (speaking teachers) makes one lose his Amerindian identity”. The primary schools in Amerindian villages are delivered through French. She continues “[t]he school is not at all adapted to our way of life, it ensures that one loses their Amerindienne, identity”. The request, as she sees it, is simple “we are asking for a French / Amerindian bilingual school as Countries in Latin America such as Brazil or Colombia, have native teachers. How is it that in French Guiana, are not there yet? After college and high school, young Amerindians come back to the village, but they are aggressive because they do not know how to position themselves in the community”. Further to the societal implications of being gone

⁶⁶ Extract from the Report of Yves Gery of the Colloquy in the Senate 30/11/2016 Translated from French. Available at <<http://www.sorosoro.org/en/2016/12/november-29th-and-30th-2016-official-delegation-of-french-guianian-amerindians-in-paris/>>

for a long period of time, many of the students, according to Teko Tiwan Couchili, “often return without a diploma, and very often without job Perspectives.”⁶⁷

Alain Mindjouk, who has set up an association for the reception of young people Amerindians on the coast, has said their children are uprooted in order to attend high school and when they get there, many are “placed in foster family when they arrive on the coast, some children run away, others return to the village”⁶⁸ and as a direct result of this separation these children “no longer learn the ancestral knowledge” of the communities and kin.⁶⁹ He recalled that in 2003 as a member of Brigitte Wyngaarde’s activist group, they were the first Amerindians to alert the public authorities about the suicide epidemic that already existed in Amerindian communities in Guyana. He deplored that “the State took 12 years, until 2015, to understand Phenomenon”.⁷⁰ For him, these populations are more than ever abandoned, with the State doing very little to bring about change. The phrase he used is “too many reports, too many reports,” and yet “nothing has changed”.⁷¹ He concluded with the sad question of “I am wondering whether we are still Amerindians, considered as sub-men?”.⁷² These concerning words highlight a stark issue, that of mental health and of self-worth. Minority groups have campaigned for decades for recognition and protection both under and before the law and as a result, have become stronger, self-actualizing and self-mobilizing groups who demand to be heard. This is what is missing in French Guiana and the key to this change happening is education, the tool with which these Indigenous, tribal and rural communities can use to strengthen their position and ensure their survival and perseverance.

⁶⁷ Ibid

⁶⁸ Stavenhagen Note 12

⁶⁹ Ibid

⁷⁰ Ibid

⁷¹ Ibid

⁷² Ibid

The issue remains, the legal framework is loose in the context of Indigenous and tribal people on territories of France. There are laws in place indeed, but the obligation to uphold these laws and afford the specific and necessary protections is what is missing. The next section will address the specific legal framework which is in place and assess why this has not managed to actively protect the vulnerability it was created to protect.

8.9 Analysis and Findings

8.9.1 How Does the Right to Education Impact the Right to Self-Determination?

There has been a sad and long history of the assimilation of Indigenous and tribal peoples, some of the most severe aspects of forced assimilation has been through the medium of education. France has a responsibility to protect its citizens in French Guiana and this onus of protection is not in any shape or form limited to the general population only. In the instance of French Guiana, the Indigenous population are the most vulnerable and face the very real threat of their cultural heritage and identity being eradicated without the necessary protection measures. The education system in place is not an all-encompassing one and fails to protect the Indigenous and Tribal way of life, customs, and traditions. The following statement sums up the situation of the tribal communities in French Guiana, “France offered them a nationality and a flag, resources (RSA and family allowances) without giving them access to rights, education and health”⁷³ thus showing France merely allows these peoples to exist but fails to offer the appropriate means and resources to sustain and maintain their existence.

As mentioned throughout this chapter, the right to self-determination can be implemented in a variety of ways. One of which is ensuring that Indigenous peoples have decision-making power over language policies. Having this power facilitates the development of the culture of the

⁷³ ‘Education System in French Guiana’ Note 18

Indigenous group and works to facilitate the right to self-determination of Indigenous communities. It is vital that states recognize the central role that languages play in the lives of Indigenous Peoples and work with Indigenous groups to ensure that they have a say in language programs and policies, especially educational policies.

8.9.2 What is Being Done Versus What Can/Should Be Done

In recent years there has been international acknowledgements of the plight of Indigenous peoples in French Guiana. For example, in 2018, the UN Committee on the Elimination of Racial Discrimination reprimanded France for its human rights violations against the Indigenous peoples of French Guiana related to the controversial mining project ‘the Mountain of Gold’.⁷⁴ This is the first instance of a UN treaty body, dealing specifically with Indigenous Peoples’ issues, adopting an early warning procedure against France.⁷⁵ However, even though numerous international human rights instruments were referenced in relation to the countries human rights obligations there was no specific reference to educational systems or the provision of education for Indigenous peoples. At a local level, there have been some efforts made to incorporate Indigenous knowledge and native languages, for example, public services such as local administration, hospitals and GPs are adapting to the multicultural context to varying degrees by employing members from the local population (administration, hospitals) and by encouraging staff to learn locally.⁷⁶ However promising it may sound, Léglise’s analysis of communication patterns in the hospital of St. Laurent du Maroni whose patients are

⁷⁴ Alexandre Sommer-Schaechtele, 'How A UN Committee Contributed To End A Controversial Mining Project In French Guiana' <<https://www.openglobalrights.org/UN-committee-contributed-to-end-mining-project-french-guiana/>> accessed 6 March 2021. Note: Alexandre Sommer-Schaechtele is a member of the Kali’na Teleuyu nation, one of six Indigenous nations in French Guiana. He is a representative for the Organization of the Native Nations of Guiana (ONAG) that lodged an early warning petition with the CERD related to the controversial mining project called “Montagne d’or”.

⁷⁵ Ibid

⁷⁶ Lopes da Silva Macedo Note 8

in the majority non-francophone population suggests that these institutions mostly engage in stop-gap measures.⁷⁷

France must honour the commitment it made in the preamble of the constitution and offer equal rights and opportunities to the people they are responsible to protect, without distinction. Tribal customs are on the verge of eradication and the international community has an obligation to ensure their survival. The situation in French Guiana continues to worsen with France offering no recognition of the deadly concerns and the imminent threats they pose.

By doing this, the State but more importantly, the education systems of the State, can successfully transition from deniers of the right to self-determination to facilitators of the right to self-determination. This will encourage France to play a more supportive and meaningful role in the empowerment of the Indigenous Peoples that have a far more superior connection to the lands which the State now occupies. As mentioned in an earlier section, only a handful of teachers speak any of the other languages (natively) and only relatively little is known about these languages, particularly Amerindian languages.⁷⁸ This poses a difficulty in facilitating the right to self-determination for the Indigenous Peoples in French Guiana. However, some educators are being inspired by the demands of the local Amerindian movement of cultural and linguistic self-determination and they initiated the unique educational project, Cultural and Bilingual Mediators (*Médiateurs Culturels et Bilingues*).⁷⁹ Apart from agreeing to train native speakers of local languages to become teachers of their native language, the *Centre d'Études des Langues Indigènes d'Amérique*, the Centre for the Study of American Indigenous

⁷⁷ Isabelle Léglise and Bettina Migge, 'Language-Naming Practices, Ideologies, And Linguistic Practices: Toward a Comprehensive Description of Language Varieties' (2006) 35 *Language in Society*. Pp. 313-339

⁷⁸ Isabelle Léglise and Bettina Migge, 'Language and Identity Construction On The French Guiana-Suriname Border' (2019) 18 *International Journal of Multilingualism* pp. 90-104

⁷⁹ Lopes da Silva Macedo Note 8

Languages, has pledged to focus their research on obtaining linguistic knowledge about the region's least documented languages and about their sociolinguistic situation.⁸⁰

8.10 Conclusion

The case study of French Guiana shows that assimilative educational policies are not designated to the past and are currently in operation. The dangers of such educational policies as discussed are manifold and can have sinister outcomes for the students and extended family and community members of those Indigenous students within said education system. The case study and experience of Indigenous students in French Guyana demonstrates further the complexity of the relationship between the right to education and the right to self-determination and further enshrines the concept that the right to self-determination can be dependent in many ways on the right to education. At the moment in French Guiana, the education system in operation acts as a denier to the right to self-determination, specifically through the denial of instruction through Indigenous languages. The present experience of Indigenous students in French Guiana bears a remarkable resemblance to the experience of Indigenous children within the Canadian residential school system. The case study on Canada highlighted the dangers of assimilative educational policies and systems and how the impact of those systems can be lifelong on the students, victims, and survivors of these schools. In French Guiana, the danger is evident at the moment in the high suicide rates and the statements from students within the current education system. While there is a larger issue regarding France, which is the non-recognition of group rights and recognition of minorities within their territories, positive steps can be taken to resolve the concerning effects of the education system. Through the previously discussed proactive initiatives the education systems of French Guiana can actively enhance the experience of education for Indigenous children. This shows an appreciation and their

⁸⁰ 'Institut Des Amériques Higher Education, Research and International Cooperation Network' (*Institutdesameriques.fr*, 2021) <<https://www.institutdesameriques.fr/en>> Last Accessed 1 March 2021

respect for the Indigenous and native languages and allows Indigenous students to have more of a connection to the education systems in which they find themselves thus allowing for further empowerment and facilitation for the right to self-determination for current and future generations. At the moment there is a very real danger facing the survival of the Indigenous Peoples of French Guiana and without the support of the French State and the implementation of an appropriate education system, these Peoples will continue to face such a risk.

Chapter 9

Conclusion

The thesis concludes with an analysis of the successes and ongoing challenges of the implementation of the right to education and the connection between this right and the realisation of the right to self-determination. A number of recommendations regarding the need for amendment of the current legal regime are also proffered in this chapter, along with a summary of the thesis and proposals for future research.

9.1 Summary of Thesis

Chapter Two introduced the various definitions used in relation to Indigenous Peoples in numerous areas of the relevant literature and demonstrated the transition of Indigenous Peoples from objects to subjects and rights holders within the international legal sphere. It made reference to the history of abuses of Indigenous Peoples at the hands of States, a sad history of both oppression and forced assimilation though one of the key pillars of Indigenous communities and the education system. It focused on the right to self-determination and how it connects to the empowerment of Indigenous Peoples through supporting an advancement of representation, furthering the Indigenous voice regarding laws, and policies that help progress and sustain Indigenous identity and cultural survival for many Indigenous groups. This chapter highlighted how the doctrine of self-determination has expanded as a legal concept over time and how it remains a challenging right to attain for many including Indigenous Peoples.

Chapter Three assessed the understanding of the term oppression, within the context of Indigenous Peoples and how oppressive acts at the hands of a State can result in harmful effects. The chapter drew on this consideration and reconsidered the definition of genocide as it is currently understood within international law. It analysed the lack of flexibility within international human rights jurisprudence addressing the issue of cultural genocide in relation

to Indigenous Peoples and demonstrated how the narrow legal definitions of genocide fails to “address the intentional and systematic eradication of a group's cultural existence”.¹ This chapter concluded with a discussion regarding the survivance of Indigenous identity through predominantly self-preservation which focused on the importance of survival, both physical and cultural, and furthered the discussion on how self-survivance alone is not enough. State support and international recognition of the long-standing dangers of historically oppressed peoples must be recognised and acknowledged.

Chapter Four examined the right to education under the international legal framework. It demonstrated how the protection of this right is essential to the survival of all humans, not just those who are marginalised. This chapter emphasised the weakness in the nature of international human rights law and the flaws with how international law is implemented at a regional and national level with a focus on the right to education. States need to work in harmony with international actors to strike a balance between educational freedom and ensuring everyone receives a quality education. More engaged work needs to be done on promoting enabling legislation,² that will enhance the national implantation of international law, especially those in relation to human rights protections. This chapter analysed how and why an appropriate education is of paramount importance, as many other rights can be realised through and appropriate education as education is and should be a tool of empowerment and how this can be especially influential in attaining facilitating the right to self-determination in the context of Indigenous Peoples. It further dissected the relationship between the right to education and the right to self-determination in the context of Indigenous Peoples and discussed

¹ L Kingston, ‘The Destruction of Identity: Cultural Genocide and Indigenous Peoples’ (2015) 14(1) *Journal of Human Rights* pp.63-83

² Enabling Legislation is defined as legislation which authorises government ministers or bodies to create detailed rules to accomplish general principles set out in the legislation. For example, it may allow a minister to create rules or laws for a particular body, such as the police, to follow. For more, see 'Definition of Enabling Legislation' (*Legal Choices*) <<https://www.legalchoices.org.uk/dictionary/enabling-legislation>> Last Accessed 13 March 2021

the dependence of the success of the right to education on political will to institute strong governance systems, including via the judiciary, to uphold and fulfil the right to education.³

Chapter Five analysed the implementation of the right to education in respect of Indigenous Peoples, and further offered a comprehensive analysis of how the right to education is applied and enjoyed and sometimes violated in the context of Indigenous Peoples. It discussed the on-going disconnect between the provision of an education and the provision of an adequate or appropriate education. This chapter identified how, if specific cultural practices and languages are not maintained through correct implementation of appropriate educational policies, implementing culturally appropriate curricula and Indigenous pedagogical approaches, can result in negative consequences. This chapter laid out numerous methods of Indigenous pedagogy which could be employed in the provision of an adequate, appropriate and safe education that will encompass the cultural complexities of Indigenous Groups. It further connected how the right to self-determination, especially within the context of Indigenous Peoples, can be denied via the inconsistencies within educational policies.

Chapter Six provided an in-depth introduction to, and detailed justification for, the chosen case studies in this research. It presented the rationale for each of the chosen case studies and demonstrated how the case studies highlighted the complex relationship between education systems and the right to self-determination in regard to Indigenous Peoples in the chosen States and how this complex relationship both denied and facilitated the right to self-determination via the right to education.

Chapter Seven presented the case study of the Canadian Residential School System and demonstrated how the volatile system was used to deny the right to self-determination of the

³ P Rueckert, '10 Barriers to Education That Children Living in Poverty Face' (*Global Citizen*, 2019) <<https://www.globalcitizen.org/en/content/10-barriers-to-education-around-the-world-2>> Last Accessed 28 February 2021

Indigenous Peoples of Canada through targeting the vulnerability of Indigenous Children and isolating them from their parents in an attempt to assimilate the children and disrupt intergenerational transfer of knowledge. It described in detail the oppressive system of education experienced by Indigenous Peoples in Canada and provided a commentary on the role of said education system and how it contributed to long lasting distrust between Indigenous Peoples and the State. This Chapter analysed the system as it was and how it actively denied the right to self-determination of Indigenous Peoples, and it assessed the work of the Truth and Reconciliation Commission and explored the opportunities provided by the outcomes of this Commission's report.

Chapter Eight explored the concept of a bad or dangerous education in the context of the Amerindian population of French Guiana. It highlighted in detail the vulnerability of the group and the very real threat of their cultural heritage and identity being eradicated due to the inaction of the State. The case studied explored the failures of the current education system in French Guiana as it applies to Amerindians and the lack of respect and protection of their way of life, customs, and traditions. The chapter further discussed how France merely allows these Peoples to exist but fails to offer the appropriate means and resources to sustain and maintain their existence resulting in tribal customs now being on the verge of eradication and how the international community has an obligation to ensure their survival. This chapter further examined the ways in which decision-making power regarding the system of education in respect of Amerindians can facilitate the protection of the culture of the Indigenous group and how this can support in the facilitation of the right to self-determination of Indigenous Communities.

A number of conclusions can be drawn from the above discussion and analysis and will be discussed in the following section.

9.2 Conclusions

This research draws on four specific conclusions based off the hypothesis that education systems can be both deny and facilitate the right to self-determination. Namely, reaffirming the right to self-determination in the context of Indigenous Peoples as provided for in Article 3 of the UNDRIP which states that all Indigenous Peoples have the right to self-determination and “by virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development”.⁴ With this in mind, the following conclusions have been drawn. First, there is a strong connection between the right to education and the right to self-determination in the context of Indigenous Peoples. Second, while the right to education is protected widely in international legal frameworks, there exists a weakness within national implementation of these frameworks. Third, States must implement the 4A scheme of education as designed by Katarina Tomaševski, former UN Special Rapporteur for the Right to Education.⁵ Lastly, States must work to decolonise their curricula and actively work towards creating and delivering culturally appropriate curricula for Indigenous students. Each of these conclusions will be addressed in turn.

9.2.1 The Relationship between the Right to Education and the Right to Self-Determination

This thesis has highlighted the connection between the right to education and the realisation of the right to self-determination of Indigenous Peoples. It has further shown that if an Indigenous group has autonomy over the education system being implemented and this can allow for the cultural survival of many Indigenous Groups and the key to enshrining this right is through the right to education, which is a protected human right, and the provision of appropriate education for Indigenous Children. The right to self-determination is an enabling right and appropriate

⁴ UNGA, ‘United Nations Declaration on the Rights of Indigenous Peoples’ (adopted 2 October 2007) A/RES/61/295

⁵ K Tomasevski, ‘The Right to Education :’ (*United Nations Digital Library System*, 2003) <<https://digitallibrary.un.org/record/508333?ln=en>> Last Accessed 24 July 2021

systems of education feature in this right in two ways, firstly, an appropriate education system can facilitate the right to self-determination and secondly, having a say in the decision-making power of the system of education for Indigenous children also offers a form of self-determination for Indigenous Peoples. Education systems are powerful tools that can empower Indigenous identity and heritage which contributes to the facilitation of the right to self-determination. Furthermore, the relationship between the right to education and the right to self-determination in the context of Indigenous Peoples is clear. However, the right to education is not always protected and when it is not, when the right to education is abused, it can be disastrous and often have sinister effects on Indigenous Peoples particularly.

9.2.2 National Implementation of International Legal Frameworks

While the right to education is protected widely in international legal frameworks, the weakness can be seen via national implementation. In order to combat this, States must work in harmony with international actors to strike a balance between educational freedom and ensuring everyone receives a quality education. More engaged work needs to be accomplished in respect of promoting enabling legislation between States, Indigenous stakeholders and international actors.⁶ By doing this, it will enhance the national implementation of international law, especially those in relation to human rights protections. As discussed in Chapter Four, several States have adopted specific laws in order to facilitate or enable the implementation of international human rights treaties in domestic law and to avoid repetitive cases.⁷ For example, the existence of specific legal provisions that allow for the reception of the judgments of the

⁶ Enabling Legislation is defined as legislation which authorises government ministers or bodies to create detailed rules to accomplish general principles set out in the legislation. For example, it may allow a minister to create rules or laws for a particular body, such as the police, to follow. For more, see 'Definition of Enabling Legislation' (*Legal Choices*) <<https://www.legalchoices.org.uk/dictionary/enabling-legislation>> Last Accessed 13 March 2021

⁷ 'Draft Report on the Implementation of International Human Rights Treaties in Domestic Law and the Role of Courts' (Council of Europe 2012).

European or the Inter-American Court of Human Rights into the domestic legal system.⁸ Adoption of enabling legislation is both a legal factor fostering the implementation of international human rights obligations and an effect of the ratification of international human rights treaties. Many different types of legislation could be considered as part of this “enabling legislation” factor. The importance of the protection of the right to education is unquestionable, however, it requires the support and strength of international co-operation. The UN must continue to hold all governments to account for violations of the right to education which is protected through its legislation.⁹ This should extend to any country or government representative appointed to lead on global education issues and must first abide by international human rights standards for all children in its territories, in cases where they also play a key role as donors and be open to scrutiny by its own national civil society, as well as UN bodies reviewing its performance.¹⁰ This is especially relevant in the context of Indigenous Peoples as enabling legislation can facilitate the right to self-determination.

9.2.3 Implementing the 4 A Scheme

States must seek to implement the right to education via the 4A scheme as proposed by Tomaševski.¹¹ The 4A scheme maintains that education should be available, accessible, acceptable, and adaptable.¹² This is vital in the implementation of all education systems, but especially those that provide education to any vulnerable children. Indigenous children would be especially protected under the principles of accessibility, acceptability, and adaptability. First under the principle of accessibility, it specifically details the importance of parental

⁸ Ibid

⁹ 'United Nations Instruments' (*Right to Education Initiative*, 2018) <<https://www.right-to-education.org/page/united-nations-instruments>> Last Accessed 13 March 2021

¹⁰ 'International Human Rights Mechanisms' (*Right to Education Initiative*, 2018) <<https://www.right-to-education.org/page/international-human-rights-mechanisms>> Last Accessed 13 March 2021

¹¹ Tomaševski K, 'Human Rights Obligations: Making Education Available, Accessible, Acceptable and Adaptable' (*Right-to-education.org*, 2001) <https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Tomasevski_Primer%203.pdf> Last Accessed 24 July 2021

¹² Ibid

freedom of choice in terms of the education provided to their children. Second, through the principle of acceptability there is insurance for respect of diversity and language of instruction, orientation, and contents.¹³ Adaptability through the 4A scheme is significant for all marginalized children and acknowledges how “the historical heritage of education has encompassed many different criteria and methods of exclusion”.¹⁴ The importance and relevance of the 4A approach to the provision of education for children is that there is a visible emergence of the transition of the role played by education in the formation of a child and the life they go on to lead. This recognition of the power of education in achieving other rights is irrevocable and displays, clearly, the relationship between education and self-actualisation for the individual and in facilitating the right to self-determination for the group.

9.2.4 Culturally Appropriate Curricula

Providing culturally appropriate curricula across education systems is essential in ensuring that education systems are facilitators of the right to self-determination for Indigenous Peoples. In this context, culturally appropriate curricula means in relation to Indigenous students, it is an incorporation of materials that link traditional or cultural knowledge originating in Native home life and community to the curriculum of the school.¹⁵ Educational researchers and practitioners have long advocated adopting a culturally appropriate curriculum to strengthen the education of Native youth.¹⁶ Many States have, in the past, and some States continue to put curricula in place that are inappropriate for some groups in the education system. The case study of Canada highlighted how the education system and curriculum delivered was entirely inappropriate and incredibly harmful to the Indigenous students who attended educational

¹³ Ibid

¹⁴ Ibid

¹⁵ Brittany Aronson and Judson Laughter, 'The Theory and Practice of Culturally Relevant Education' (2016) 86(1) *Review of Educational Research*. pp.163-206

¹⁶ Angelina E Castagno and Bryan McKinley Jones Brayboy, 'Culturally Responsive Schooling for Indigenous Youth: A Review of The Literature' (2008) 78 *Review of Educational Research*. Pp.914-993

institutions. This resulted in a long-lasting and significant negative impact on these Peoples' right to culture and self-determination. While in the more contemporary context of French Guiana, it is clear that the curriculum in place is also inappropriate for the Indigenous children who attend the schools. While not a deliberate attempt at assimilating Indigenous students by not utilising culturally appropriate curricula, the government are omitting the cultural sensitivities and protections needed for the Indigenous groups of French Guiana for their cultural survival.

More recently there has been a shift to culturally responsive and inclusive curricula.¹⁷ Research supports that deeply imbedded cultural values drive curriculum development and support implementation and further help to determine which subject matter and skills will receive the most classroom attention,¹⁸ creating a more inclusive and valuable learning experience for Indigenous children which will contribute to self-actualisation and further facilitate the right to self-determination through education.

9.3 Recommendations

The following recommendations are based on the conclusions drawn from this research. This section lays out four recommendations that, if implemented and followed correctly can ensure that systems of education can support the right to self-determination in the context of Indigenous Peoples.

9.3.1 Inclusion of Indigenous Stakeholders in Decision-Making

Truly incorporating Indigenous voices into the discussions that shape educational policy will allow further enhancement of the right to self-determination of Indigenous Peoples. As the case

¹⁷ 'Culturally Responsive & Inclusive Curriculum Resources: What Is Culturally Responsive Curriculum?' (*Guides.library.pdx.edu*) <<https://guides.library.pdx.edu/c.php?g=527355&p=3623937>> Last Accessed 24 July 2021

¹⁸ T Yazzie, 'Culturally Appropriate Curriculum: A Research-Based Rationale.' (*ERIC*, 1999) <<https://eric.ed.gov/?id=ED427906>> Last Accessed 24 July 2021

study in Chapter Seven exemplified, the removal of the right of Indigenous parents' decision making had a long-lasting negative effect on both the parents and children who were victims and survivors of the Canadian Residential School System. Including Indigenous stakeholders in the formation of educational policy will further enhance the education system and support the right to self-determination for Indigenous Peoples.

9.3.2 Decolonising the Curriculum

As discussed in Chapter Five, the United Nations Department of Economic and Social Affairs (UNDESA) have identified a series of potential obstacles facing Indigenous children in the pursuit of appropriate education.¹⁹ These obstacles are a force that must be overcome in order to transform educational systems from deniers of the right to self-determination of Indigenous Peoples to facilitators of the right to self-determination. The main threats identified were: lack of respect and resources, loss of identity and irrelevance of education provided.²⁰ These threats are all a result of what can be described as a colonised curriculum which often includes a syllabus of ineffectiveness that does not represent all of the children within the education system. This is a great concern for all students, but especially for Indigenous students who may have already felt marginalised from the education system in which they found themselves. James Muldoon has commented that it is not just parents and researchers who are concerned about this threat but that “students are also concerned about the narrowness of their curricula”.²¹ Education should not curb the enthusiasm of students, and a curriculum that is unrepresentative

¹⁹ 'Recommendations On Education | United Nations for Indigenous Peoples' (*United Nations for Indigenous Peoples*) <<https://www.un.org/development/desa/Indigenouspeoples/mandated-areas1/education/recs-education.html>> Last Accessed 1 May 2021

²⁰Ibid, J Korff, 'Barriers to Aboriginal Education' (*Creative Spirits*, 2021) <<https://www.creativespirits.info/aboriginalculture/education/barriers-to-aboriginal-education>> Last Accessed 11 March 2021

²¹ J Muldoon, 'Academics: It's Time to Get Behind Decolonising the Curriculum' *The Guardian* (2019) <<https://www.theguardian.com/education/2019/mar/20/academics-its-time-to-get-behind-decolonising-the-curriculum>> Last Accessed 24 July 2021

can have a negative impact on the right to self-determination of Indigenous students. In order to tackle this issue, States must actively pursue the decolonisation of their curricula.

Decolonisation is broadly about confronting how European imperialism, colonialism, and racism have shaped our modern world. However, in the context of education systems and decolonising the curriculum of any particular system, the phrase represents much more. Decolonising the curriculum “seeks to interrogate and tear down the structures that embed racism in our society”²² and the decolonising framework seeks to transform the way education is provided. This includes diversifying the perspectives taught and valuing the perspectives and world views that minorities and non-Westerners bring to education,²³ which can help to form greater inclusivity and appreciation within the education systems.

Incorporating Indigenous knowledge into curricula is a necessary step that must be taken by States who provide education for Indigenous students. This could include more open dialogues with Indigenous stakeholders and allowing voices of concern and Indigenous expertise be included in shaping the curricula. This will not only allow for a more equitable representation within the curricula, but it also ensures that the curriculum being taught is supporting the right to self-determination of Indigenous students. This is not evident in many States or in many educational institutions, McLaughlin *et al* elaborate on the challenge for the recognition of Indigenous knowledge in teaching and learning, commenting that it “is that non-Indigenous academics, who often control the parameters of the embedding processes, cannot ‘see’ Indigenous knowledge outside of the coloniser interface”.²⁴ As Hart notes, the academy can

²² Sheffield University, 'Decolonising the Curriculum: A Guide For APS' (*Sheffield University 2020*) <https://www.sheffield.ac.uk/polopoly_fs/1.894561!/file/Decolonise_Handbook.pdf> Last Accessed 26 April 2021

²³ 'History Matters Project: Second Edition' (*Policy Exchange*) <<https://policyexchange.org.uk/publication/history-matters-project-second-edition>> Last Accessed 24 July 2021

²⁴ Juliana M. McLaughlin and Sue L. Whatman, 'Embedding Indigenous Perspectives in University Teaching and Learning: Lessons Learnt and Possibilities of Reforming / Decolonising Curriculum', *4th International Conference on Indigenous Education* (2007)

only recognise and reward what it knows, making the task of embedding Indigenous knowledge into teaching and learning “highly problematic and deeply personal”.²⁵ More attention must be given to the training and support of educators within these systems in order to truly decolonise the curriculum. It is crucial that there is continuous empowerment of both students and staff to “understand their own positionality (the social and political context that shapes your views, actions and biases) and reflect on their science through a critical decolonial lens”.²⁶ The curriculum must be decolonised and become more representative and inclusive of Indigenous students in order to ensure the right to self-determination is facilitated appropriately through education systems.

9.3.3 Teaching of Indigenous Languages

One recommendation to support the process of the decolonisation of the curriculum would be to have greater emphasis placed on the use of Indigenous languages in education and their protection. This recognises and supports the fact that Indigenous languages are important tools for demonstrating the cultural and historical uniqueness of Indigenous communities as well as Indigenous peoples’ cultural distinctness from non-Indigenous governments. This can support many Indigenous communities in ensuring their survival as Indigenous Peoples have highlighted the importance of their languages. As Maximilian Stefan Viatori and Gloria Ushigua state “Indigenous languages can be a vital component of strengthening communities’ and individuals’ identification with an Indigenous nation. Indigenous language programs can be important for unifying individuals and communities as a coherent Indigenous nation and for gaining recognition from nation-state governments for increased Indigenous sovereignty.”²⁷

²⁵ V Hart, “Best Practice Guidelines for Incorporating Indigenous Perspectives into the Curriculum” (2021) <http://www.talss.qut.edu.au/staff/grants/qut_grants/docs_forms/Best%20practice%20guidelines%20Indigenous%20perspectives.doc> Last Accessed 26 April 2021

²⁶ Note 22

²⁷ Maximilian Viatori and Gloria Ushigua, ‘Speaking Sovereignty: Indigenous Languages and Self-Determination’ (2007) 22(2) *Wicazo Sa Review* pp. 7-8

Teaching Indigenous students in their mother tongue from an early age helps preserve their language and culture and maintain their communities' identities.²⁸ States must also facilitate Indigenous language reclamation and revitalization, recognizing, acknowledging, and attempting to redress the damage done to language and culture by former colonial policies.²⁹ An appropriate education system can facilitate this and by way, facilitate the right to self-determination of Indigenous Peoples.

9.4 Direction of Future Research

This thesis has offered a potential avenue of research that could be explored, which is that of a new manifestation of genocide. The literature has suggested that culture and identity can be attacked and form a part of the controversial crime of cultural genocide. De Varennes explored this theme previously citing Ngugi wa Thiong'o as saying "the physical violence of the battlefield was followed by the psychological violence of the classroom. But where the former was visibly brutal, the latter was visibly gentle".³⁰ Applying this understanding to the case study of French Guiana has the potential of furthering the understanding of manifestations of genocide.

9.4.1 Expanding the Understanding of the Crime of Genocide

This will involve an examination of a conceptual framework regarding both the cultural elements of genocide and the need to prove intent in relation to the crime for the first time. Law is reactionary, but also evolutionary, it evolves as it reacts. This is true of many crimes and should be considered for further study of the crime of genocide. If the crime of genocide can be interpreted to include cultural elements. It questions the necessity and requirement of *mens*

²⁸ N Higgins and G Maguire, 'Language, Indigenous Peoples, and the Right to Self-Determination,' (2019) 31(2) *New England Journal of Public Policy* pp. 1-9

²⁹ Ibid

³⁰ Ngugi wa Thiong'o, *Detained: A Writer's Prison Diary*, (London: Heinemann, 1987) p. 9

rea relating to the crime and determine if, in fact, actions, or inactions, by a State can result in genocidal patterns, even if the goal in the first instance was not the elimination or annihilation of a group. This concept may be applied in many contemporary situations. A prominent example is the case study French Guiana. This is based on the discussion and analysis of chapter three regarding acts of oppression and the ways in which they can manifest. When the finding of Chapter Three is combined with the case study of French Guiana presented in Chapter Seven, there is an emerging concern that the inaction of a State (France) to establish a framework of protection for Amerindian culture, languages and heritage can result in the group no longer existing as a cultural entity.

Intent is a defining factor for the prosecution of the crime of genocide and enshrined in article two of the genocide convention,³¹ it has been questioned previously in the case of *Prosecutor's Office of Bosnia And Herzegovina v. Miloš Stupar, Milenko Trifunović, Brano Džinić, Aleksandar Radovanović, Slobodan Jakovljević, Velibor Maksimović, Dragiša Živanović, Branislav Medan and Milovan Matić*.³² The case was in relation to the The Kravica massacre was one of the mass executions of Bosniaks by the Army of Republika Srpska during the Srebrenica massacre. It was committed on July 13, 1995, after the take-over of Srebrenica. It is estimated that between 1,000 and 1,500 men were killed.³³ The case itself deals with physical genocide, however the means by which a group may be 'destroyed' are not limited to the physical attacks.³⁴ The criteria developed in this decision for ascertaining the existence of genocidal intent, i.e., the specific intent to destroy a protected group in whole or in part i.e.- a)

³¹ Article 2 Convention on the Prevention and Punishment of the Crime of Genocide 1948

³² *Prosecutor's Office of Bosnia and Herzegovina v. Miloš Stupar, Milenko Trifunović, Brano Džinić, Aleksandar Radovanović, Slobodan Jakovljević, Velibor Maksimović, Dragiša Živanović, Branislav Medan and Milovan Matić*. X-KR-05/24 Delivered 29 July 2008

³³ *Prosecutor v. Radislav Krstic International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia* IT-98 33-T 02 August 2001. P.72

³⁴ Note 39 pp. 56-57

context, b) perpetrator's knowledge of context, c) perpetrator' acts.³⁵ While the judgement did not specifically discuss cultural elements to the crime of genocide, it did however begin a conversation in international criminal law regarding the specificity of intent in relation to the crime.

This stream of research is also reliant on the acceptance of the cultural elements of genocide being recognised. For as long as the Genocide Convention has been in place, there have been numerous interpretations of what exactly the definition of the crime is and what acts the convention can protect against. If the understanding Lemkin gave to genocide is applied, that would mean “[g]enocide does not necessarily mean the immediate destruction of a nation... [but] is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves”.³⁶ It would appear that the importance for Lemkin, the man that named the crime, was the intent that lay behind the actions, the intent to destroy the very existence of a group both physically and culturally. Akhavan argues, “it is important to appreciate that genocide is a crime against groups – in particular against a national, ethnical, racial or religious group or as such. The question of its specific expression as physical, biological or cultural is thus secondary to the intent to destroy a group”.³⁷

Future research regarding this is essential to furthering the protection of Indigenous Peoples within the States in which they currently reside and in the international legal system as a whole. The case studies used in this research would be useful in this further inquiry as the Truth and Reconciliation Commission of Canada recognised the existence of cultural genocide and

³⁵ Ibid pp. 58

³⁶R Lemkin, “*Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*” Washington: Carnegie. 1944 pp. 79

³⁷Akhavan P. ‘Cultural Genocide: Legal Label or Mourning Metaphor?’ (2016) 62(1) *McGill Law Journal* pp. 243-270

included it as the first finding of the report.³⁸ Furthermore, the indirect acts oppression can contribute to elements of cultural genocide as seen in the case study of French Guiana.

9.5 Final Observations

The most basic observation that can be drawn is that the right to self-determination, in the context of Indigenous Peoples, can be dependent on the systems of education in operation in the States in which they reside. This research has shown that while the right to education is protected widely in international law, without political will, it cannot evolve and advance. While there is advocacy for and by Indigenous Peoples, decision-makers must take Indigenous voices into consideration during policy formation. It speaks to a wider issue of representation of Indigenous Peoples in decision-making globally, i.e., in international institutions which has seen some advances, mainly UNGA Resolution 71/321³⁹ which seeks to enhance the participation of Indigenous Peoples at an international level on issues affecting them, however, this again, depends on political will.

The right to self-determination should be taken more seriously by governments and should be seen as a right that can be attained and not merely an aspiration and through appropriate systems of education this right can be facilitated to a much greater level. The rights of Indigenous Peoples have been suppressed for years, the vestiges of colonialism can still be seen in the educational frameworks of some states, as was illustrated in this dissertation e.g., French Guiana. In addition to the physical manifestation of the colonial oppression in the Canadian case study, education was used as another form of oppression. However, the transformation of education from an instrument of assimilation and integration into a means of self-determination

³⁸ J Tasker, 'At Least 6,000 Children Died in Residential Schools, TRC Chair Says | CBC News' (*CBC*, 2015) <<https://www.cbc.ca/news/politics/residential-schools-findings-point-to-cultural-genocide-commission-chair-says-1.3093580>> Last Accessed 26 April 2021

³⁹ 'Participation Of Indigenous Peoples at The UN | United Nations for Indigenous Peoples' (*United Nations for Indigenous Peoples*, 2020) <<https://www.un.org/development/desa/Indigenouspeoples/participation-of-Indigenous-peoples-at-the-united-nations.html>> Last Accessed 24 July 2021

is a multidimensional and complex long-term process, which advances at a pace that depends on the conditions of the region and country involved.

In some States, Indigenous Peoples have begun a “re-conceptualization” of what their educational system should include, emphasising languages, beliefs, values, community involvement and connection to land, territories, and resources.⁴⁰ There remains a critical need both for national and international support to ensure that education systems are utilised as an empowerment mechanism, one that facilitates the right to self-determination of Indigenous Peoples and ensures that oppressive systems of education are confined to the past.

⁴⁰ *State Of the World's Indigenous Peoples* (United Nations, 2017) <
<https://www.un.org/development/desa/Indigenouspeoples/publications/state-of-the-worlds-Indigenous-peoples.html>> Last Accessed 24 July 2021 p. 5

Bibliography

Primary Sources

Canadian Legislation

The Indian Act 1876

The Statute of Westminster 1931

The Canada Act 1982

The Canadian Criminal Code (R.S.C., 1985, c. C-46)

Case Law

ICTY

Prosecutor's Office of Bosnia and Herzegovina v. Miloš Stupar, Milenko Trifunović, Brano Džinić, Aleksandar Radovanović, Slobodan Jakovljević, Velibor Maksimović, Dragiša Živanović, Branislav Medan and Milovan Matić. X-KR-05/24 Delivered 29 July 2008

Prosecutor v Radislav Krstic International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia IT-98 33-T 02 August 2001.

Canada

Lubicon Lake Band v. Canada, Communication No. 167/1984 (26 March 1990), U.N. Doc. Supp. No. 40 (A/45/40) at 1 (1990)

Reference re Secession of Quebec, [1998] 2 S.C.R.217

USA

Brown v. Board of Education of Topeka, 347 U.S. 483 (1954)

French Legislation

Preamble to the French Constitution 1946

The French Constitution, adopted by the Referendum of September 28, 1958 and Promulgated on October 4, 1958

League of Nations

The Åland Islands Case (1920) L.N.O.J. Spec. Supp. No. 3.

United Nations Documents

United Nations, Charter of the United Nations (adopted 24 October 1945) 1 UNTS XVI

UN Educational, Scientific and Cultural Organisation (UNESCO), *Constitution of the United Nations Educational, Scientific and Cultural Organisation (UNESCO)* 16 November 1945

UNGA Resolution on the Crime of Genocide (11 December 1946) A/RES/96

Universal Declaration of Human Rights (adopted 10 December) 1948 UNGA Res 217 A(III) (UDHR)

UNGA, 'Prevention and Punishment of The Crime of Genocide, (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277 A/RES/260

UNGA, 'Declaration on the Granting of Independence to Colonial Countries and Peoples' adopted 14 December 1960) A/RES/1514(XVA/RES/1514(XV)

UN Educational, Scientific and Cultural Organisation (UNESCO) *Convention Against Discrimination in Education*, 14 December 1960

International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195 (CERD)

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR)

UN General Assembly, 'Optional Protocol to the International Covenant on Civil and Political Rights' (adopted 19 December 1966, entered into force 23 March 1976) 999 UNTS 171

Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States 1970, UN GA Res. 2625 (XXV)

Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW)

Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC)

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Adopted 18 December 1990, entered into force 1 July 2003) 45 UNTS 158 (CMW)

UNGA Resolution on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security Assembly (20 November 1991) A/RES/46/18

UNGA, Rome Statute of the International Criminal Court (adopted 17 July 1998)

United Nations Permanent Forum on Indigenous Issues, 'Indigenous Peoples, Indigenous Voices' Factsheet

Orentlicher, Diane 'Independent study on best practices, including recommendations, to assist States in strengthening their domestic capacity to combat all aspects of impunity' (2005) UN Doc. E/CN.4/2004/88

UN General Assembly, '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' adopted by the General Assembly, 21 March 2006, A/RES/60/147

UNGA, 'United Nations Declaration on the Rights of Indigenous Peoples' (adopted 2 October 2007) A/RES/61/295

Convention on the Rights of Persons with Disabilities (Adopted 24 January 2007) 61 UNTS 106 (CRPD)

UNGA, 'Optional Protocol to the International Covenant on Economic, Social and Cultural Rights' (adopted 5 March 2009) A/RES/63/117

UNHCR, 'The International Bill of Human Rights' Factsheet No.2/Rev.1 (1948)

UNHCR, 'The Committee on Economic, Social and Cultural Rights' Factsheet No.16/Rev.1 (1993)

UNHCR, 'Indigenous Peoples and the United Nations Human Rights System' Factsheet No.9/Rev.2 (2013)

UNGA Resolution on Enhancing the Participation of Indigenous Peoples' Representatives and Institutions in Meetings of Relevant United Nations Bodies on Issues Affecting Them (8 September 2017) A/RES/71/321

UNGA, 'Report of the Special Rapporteur of the Human Rights Council on the Rights of Indigenous Peoples' (2018) UN Doc. A/73/176

UNESCO, 'New Methodology Shows that 258 Million Children, Adolescents and Youth Are Out of School' Factsheet No.56 UIS/2019/ED/FS/56 (2019)

General Comments

General Comment No. 1: The Aims of Education (article 29) (2001) (Adopted by the Committee on the Rights of the Child at the Twenty-sixth Session, CRC/GC/2001/1, 17 April 2001) available at < [https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/a\)GeneralCommentNo1TheAimsofEducation\(article29\)\(2001\).aspx#:~:text=%5B1%5D%20The%20education%20to%20which,by%20appropriate%20human%20rights%20values](https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/a)GeneralCommentNo1TheAimsofEducation(article29)(2001).aspx#:~:text=%5B1%5D%20The%20education%20to%20which,by%20appropriate%20human%20rights%20values)> Last Accessed 29/03/2021

Office of the High Commissioner for Human Rights CESCR General Comment No. 13: The Right to Education (Art. 13) Adopted at the Twenty-first Session of the Committee on Economic, Social and Cultural Rights, on 8 December 1999 (Contained in Document E/C.12/1999/10) available at < <https://www.refworld.org/pdfid/4538838c22.pdf>> Last Accessed 29/03/2021

Implementation of the International Covenant on Economic, Social and Cultural Rights General Comment No. 13 (Twenty-first session, 1999) The right to education (article 13 of the Covenant) E/C.12/1999/10

International Labor Organisation

International Labour Organization (ILO), Indigenous and Tribal Populations Convention, C107 (adopted 26 June 1957, entered into force 2 June 1959)

International Labour Organization (ILO), Indigenous and Tribal Peoples Convention, C169 (adopted 27 June 1989, entered into force 5 September 1991)

Regional Instruments

The African Charter on Human and Peoples' Rights 1987 (ACHPR)

Reports

United Nations Reports

UN Commission on Human Rights, *Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its 34th session : study of the problem of discrimination against Indigenous populations.*, 10 March 1982, E/CN.4/RES/1982/19

United Nations, 'Report of the Working Group on Indigenous Populations on its First Session' (United Nations, 1982) U.N. Doc. E/GN.4/Sub.2/1982/33

United Nations, 'Report of the Working Group on Indigenous Populations on its Second Session' (United Nations, 1983) U.N. Doc. E/CN.4/Sub.2/1983/22

United Nations, 'Report of the Working Group on Indigenous Populations Fifth Session' (United Nations, 1987) U.N. Doc. E/CN.4/Sub.2/1987/22

United Nations, 'Report of the Working Group on Indigenous Populations on its Sixth Session' (United Nations 1988) U.N. Doc. E/CN.4/Sub.2/1988/24

United Nations, 'Report of the Working Group on Indigenous Populations on its Seventh Session' (United Nations, 1989) U.N. Doc. E/GN.4/Sub.2/1989/36

'Report On The Seventeenth Session (16–27 April 2018)' (United Nations Permanent Forum on Indigenous Issues 2018) E/2018/43 - E/C.19/2018/11

United Nations State of the World's Indigenous Peoples (SOWIP) 2017

'Access to Justice and the Right to Education for Children with Disabilities' A Report Exploring Barriers to Access to Justice in the Context of Inclusive Education in Ten European Countries (OHCHR 2017)

Council of Europe Reports

'Draft Report On The Implementation Of International Human Rights Treaties In Domestic Law And The Role Of Courts' (Council of Europe 2012) 690/2012

'CoE Report on Culture and Cultural Heritage Orientation Paper' (Council of Europe 2019)

Canadian Reports

Ryerson, E 'Report for Indian Affairs' (1847) accessed at <<http://rschools.nan.on.ca/article/the-ryerson-experiment-1119.asp>> Last Accessed 21 June 2021

Davin, NF 'Report on Industrial Schools for Indians and Half-Breeds' (1879) accessed at <http://www.canadianshakespeares.ca/multimedia/pdf/davin_report.pdf> Last Accessed 20 March 2021

RCAP 'The Report of The Royal Commission on Aboriginal Peoples' (1996) accessed at <<https://www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/royal-commission-aboriginal-peoples/Pages/final-report.aspx>> Last Accessed 23 March 2021

The Aboriginal Justice Inquiry of Manitoba. 'Report of the Justice System and Aboriginal People' (Manitoba, 1999) accessed at <<http://www.ajic.mb.ca/volume1/chapter14.html>> Last Accessed 06 June 2021

Truth and Reconciliation Commission of Canada, 'Summary of The Final Report of The Truth and Reconciliation Commission of Canada' (Manitoba, 2015)

Truth and Reconciliation Commission of Canada, 'What We Have Learned Principles of Truth and Reconciliation' (Manitoba, 2015)

Truth and Reconciliation Commission of Canada, 'The Survivors Speak a Report of the Truth and Reconciliation Commission of Canada' (Manitoba, 2015)

Truth and Reconciliation Commission of Canada, 'Truth and Reconciliation Commission of Canada: Calls to Action' (Manitoba, 2015)

Truth and Reconciliation Commission of Canada, 'Canada's Residential Schools: The History, Part 1 Origins to 1939 The Final Report of the Truth and Reconciliation Commission of Canada Volume 1' (Manitoba, 2015)

Truth and Reconciliation Commission of Canada, 'Canada's Residential Schools: The History, Part 1 1939 to 2000 The Final Report of the Truth and Reconciliation Commission of Canada Volume 1' (Manitoba, 2015)

Truth and Reconciliation Commission of Canada, 'Canada's Residential Schools: The Inuit and Northern Experience the Final Report of the Truth and Reconciliation Commission of Canada Volume 2' (Manitoba, 2015)

Truth and Reconciliation Commission of Canada, 'Canada's Residential Schools: The Métis Experience the Final Report of the Truth and Reconciliation Commission of Canada Volume 3' (Manitoba, 2016)

Truth and Reconciliation Commission of Canada, 'Canada's Residential Schools: Missing Children and Unmarked Burials the Final Report of the Truth and Reconciliation Commission of Canada Volume 4' (Manitoba, 2016)

Truth and Reconciliation Commission of Canada, 'Canada's Residential Schools: The Legacy the Final Report of the Truth and Reconciliation Commission of Canada Volume 5' (Manitoba, 2015)

Truth and Reconciliation Commission of Canada, 'Canada's Residential Schools: Reconciliation the Final Report of the Truth and Reconciliation Commission of Canada Volume 6' (Manitoba, 2016)

Buller M, Audette M, and Robinson Q, *Reclaiming Power And Place* National Inquiry into Missing and Murdered Indigenous Women and Girls MMIWG (2019)

French Reports

Directorate General for Internal Policies Policy Department, 'Structural and Cohesion Policies Regional Development Economic, Social and Territorial Situation of French Guiana' (2011) Accessed at

<[http://www.europarl.europa.eu/RegData/etudes/note/join/2011/460068/IPOL-REGI_NT\(2011\)460068_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2011/460068/IPOL-REGI_NT(2011)460068_EN.pdf)> Last Accessed 02/02/2020

Report of Yves Gery of the Colloquy in the Senate 30/11/2016 Translated from French. Available at <<http://www.sorosoro.org/en/2016/12/november-29th-and-30th-2016-official-delegation-of-french-guianian-amerindians-in-paris/>>

Executive Summary of Human Rights Report for France (2018) accessed <<https://www.state.gov/wp-content/uploads/2019/03/France-2018-Human-Rights-Report.pdf>> last accessed 20/02/2021

Other

Advisory Opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) Notwithstanding Security Council Resolution 276 (1970) (*Namibia case*) I.C.J. Rep. 1971, 16

Concluding Observation of the Human Rights Committee on Azerbaijan, adopted on 3 August 1994. CCPR/C/79/Add.38; A/49/40

'Draft Report on the Implementation of International Human Rights Treaties in Domestic Law and the Role of Courts' (Council of Europe 2012)

Indigenous Peoples and the Natural Environment of Brazil: Hearing before the Subcomm. On the Western Hemisphere, House Comm. On Foreign Affairs, 103rd cong., 2nd sess. 69 (1994)

International Court of Justice *advisory opinion on Kosovo's declaration of independence* 2010, Separate Opinion of Judge A. A. Cançado Trindade.

Eva Jewell and Ian Mosby, 'Calls to Action Accountability: A 2021 Status Update on Reconciliation' (Yellowhead Institute 2021)

<<https://yellowheadinstitute.org/trc/#:~:text=By%20Eva%20Jewell%20and%20Ian%20Mosby&text=It%20has%20now%20been%20six,to%20advance%20reconciliation%20in%20Canada.>> Last Accessed 17/02/22

Report of the Commission for Historical Clarification, 'Guatemala; Memory of Silence' (1999) accessed at <<http://www.aaas.org/search/gss/guatemala>> Last Accessed 08/10/2016

Protsyk, 'The Representation of Minorities & Indigenous Peoples in Parliament' Report for the Inter-Parliamentary Union (2010) accessed at <<http://www.ipu.org/splze/chiapas10/overview.pdf>> Last Accessed 10/10/2020

Secondary Sources

Books/E-Books

Åhrén, M, *Indigenous peoples' status in the international legal system*, First edn, (Oxford: Oxford University Press, 2016)

Anaya, SJ, *Indigenous Peoples in International Law*. New ed. (Oxford: Oxford University Press, 2000)

Auerbach, K, *Aftermath: Genocide, Memory and History* (Victoria: Monash University Publishing, 2015)

Bakan, JE and Robin M, *Canadian Constitutional Law* (Ontario: Emond Montgomery Publications, 2003)

Bantekas, I and Oette, L *International Human Rights Law and Practice* 2nd edn, (Cambridge: Cambridge University Press, 2016)

Bhagwan, V and Bhushan V, *World Constitutions* (Kettering: Sterling, 2004)

Carmichael, C, '*Genocide before the Holocaust*' (New Haven: Yale University Press, 2009)

Cassese, A, '*International law*'. 2nd ed. (Oxford: Oxford University Press, 2005)

Cassese, A, *International Law in a Divided World*, (Oxford: Oxford University Press, 1986)

Chartrand, LN, Logan, TE, Daniels, JD, *Métis History and Experience and Residential Schools in Canada* (Ontario: Aboriginal Healing Foundation, 2006)

Churchill, W, *Indians are Us*. (Maine: Common Courage Press, 1994)

Clapham, A, *Human rights: A very short introduction* (Oxford: Oxford University Press, 2015)

Corry, S, *Tribal Peoples for Tomorrow's World* (New York: Freeman Press, 2012)

Crawford, J, *Brownlie's Principles of Public international Law*, 8th ed (Oxford: Oxford University Press, 2012)

De Orbe Novo, T, *The Eight Decades of Peter Martyr D'Anghera*. (South Carolina: BiblioBazaar, 2009)

Desmond, M and Emirbayer, M, *Racial Domination, Racial Progress: The Sociology of Race in America*. (New York: McGraw-Hill, 2010)

- Docker, J, *Origins of Violence: Religion, History and Genocide*. (London: Pluto Press, 2008)
- Dodek, A, *The Canadian Constitution* 2nd ed (Toronto: Dundurn, 2013)
- Epstein, I *The Greenwood Encyclopaedia of Children's Issues Worldwide* (Vol. 1). (California: Greenwood Publishing Group, 2008)
- Freire, P, *Pedagogy of the Oppressed* (New York: Continuum, 2000)
- French, D, *Statehood and Self-Determination: Reconciling Tradition and Modernity in International Law* (Cambridge: Cambridge University Press, 2013)
- Gilbert, J, *Indigenous Peoples' Land Rights under International Law: From Victims to Actors*. (New York: Transnational Publisher, 2006)
- Gragl, P, *Legal Monism: Law, Philosophy, and Politics*. (Oxford: Oxford University Press, 2018)
- Grant, A, *No End of Grief* (Winnipeg: Pemmican Publishing, 1996)
- Gray, J and Beresford, Q, *Alienation from School Among Aboriginal Students* (Western Australia: Edith Cowan University, 2001)
- Gu, Y and Warren, J, *Methods for Descriptive Studies* in Craig Kuziemsky and Francis Yin Yee Lau, *Handbook of Ehealth Evaluation: An Evidence-Based Approach* (Victoria, University of Victoria Press, 2017)
- Haig-Brown, C, *Resistance and renewal: Surviving the Indian residential school*. (Vancouver: Arsenal Pulp Press, 1988)
- Hannum, H, *Autonomy, Sovereignty and Self-Determination: The Accommodation of Conflicting Rights*. (Pennsylvania: University of Pennsylvania Press, 1966)
- Harris, NS, *Education, Law and Diversity*. (Oxford: Hart, 2007)
- Heater, *National Self-Determination: Woodrow Wilson and his Legacy* (London: Macmillan Press, 1994)
- Heller K, *The Nuremberg Military Tribunals And The Origins Of International Criminal Law* (Oxford: Oxford University Press, 2012)
- Henry, F et al, *The Colour Of Democracy* (Toronto: Harcourt Brace, 2000)
- Jacob, WJ and others, *Indigenous Education* (Netherlands: Springer, 2015)
- Jones, A *Genocide: a comprehensive introduction* (New York: Routledge, 2006)
- Karp, DJ, *The Concept of Human Rights Protection and the UN Guiding Principles on Business and Human Rights*. In *Human Rights Protection in Global Politics* (New York: Springer, 2015)

- Kazancigil, A and Dogan, M, *The State in Global Perspective; Comparing Nations: Concepts, Strategies, Substance* (New Jersey: Blackwell, 1986)
- Kirkness, VJ, *Creating space: My life and work in Indigenous education*. (Manitoba: University of Manitoba Press, 2013)
- Lawrence, B, *“Real” Indians and Others: Mixed-Blood Urban Native Peoples and Indigenous Nationhood*. (Lincoln: University of Nebraska Press, 2004)
- Lemkin, R, *Axis rule in occupied Europe: laws of occupation, analysis of government, proposals for redress*. (Washington: Carnegie, 1944)
- Lorey, DE and Beezley, WH, *Genocide, Collective Violence, and Popular Memory: The Politics of Remembrance in the Twentieth Century* (Wilmington: SR Books, 2002)
- Madison, GB, Fairfield, P, and Harris, I, *Is There a Canadian Philosophy?* (Ottawa: University of Ottawa Press, 2010)
- May, S, *Language and Minority Rights; Ethnicity, Nationalism and the Politics of Language*, 2nd ed (New York: Routledge, 2012)
- May, S, *Indigenous Community-Based Education* (Clevedon: Multilingual Matters 1999)
- May, S, *Language and Minority Rights* 2nd edn (Oxfordshire: Routledge, 2012)
- Mayer, AJ, *Political Origins of the New Diplomacy 1917-1918* (New York: Random House, 1970)
- McWhinney, E, *Self-Determination of Peoples and Plural-Ethnic States in Contemporary International Law: Failed States, Nation-Building and the Alternative, Federal Option*. (Leiden: Nijhoff Publishers, 2007)
- Miller, JR, *Shingwauk’s vision: A history of Native residential schools*. (Toronto: University of Toronto Press, 1996)
- Milloy, JS, *A National Crime* (Manitoba: University of Manitoba Press, 1999)
- Montesinos, V and Vela, JM, *Innovations in Governmental Accounting* (New York: Springer Science & Business Media, 2013)
- Minthorn, R and Youngbull, Y, ‘Reclaiming and Asserting our Nations through the Growth of Historically Native American Fraternities and Sororities (HNAFS)’ in Pietro A Sasso, J. Patrick Biddix and Mónica Lee Miranda (eds), *Supporting Fraternities and Sororities in the Contemporary Era* (Maine: Myers Education Press 2019)
- Morris, S, McLeod, K and Danesi, M, *Aboriginal Languages and Education* (Ontario: Mosaic Press, 1993)
- Musgrave, TD, *Self-Determination and National Minorities*. (Oxford: Oxford University Press, 1997)

- Ngugi wa Thiong'o, *Detained: A Writer's Prison Diary*, (London: Heinemann, 1987)
- Osler, A and Starkey, H, *Teacher education and human rights* (Meadville: Fulton, 2003)
- Olson, JS, *The Indians of Central and South America* (California: Greenwood Press, 1991)
- Popkin, JD, *Facing Racial Revolution: Eyewitness Accounts of the Haitian Insurrection* (Chicago: University of Chicago Press, 2010)
- Restoule, K, *An Overview of The Indian Residential School System* (Ontario: Union of Ontario Indians, 2013)
- Reynolds, JI, *Aboriginal Peoples and the Law* (Vancouver: University of British Columbia Press, 2015)
- Richards, LW, *University of Toronto: An Architectural Tour (The Campus Guide)*. (San Francisco: Chronicle Books, 2019)
- Rubinstein, WD, *Genocide: A History*. (New York: Routledge, 2014)
- Schabas, W, *Genocide in International Law: The Crime of Crimes*, 2nd ed (Cambridge: Cambridge University Press, 2009)
- Smith, RKM, *Textbook on International Human Rights* (Oxford: Oxford University Press, 2014)
- Spielvogel, JJ, *Western Civilization* (Belmont: Thomson Wadsworth, 2009)
- Sterling, S, *My Name Is Seepeetza* (Toronto: Groundwood, 2008)
- Taiaiake, A, *Peace, Power and Righteousness: An Indigenous Manifesto* (Oxford: Oxford University Press, 1999)
- Tsionanon, B *Aboriginal education: Fulfilling the promise*. (Vancouver: UBC Press, 2000)
- Tzurriel, D and Haywood, HC, *The development of interactive-dynamic approaches to assessment of learning potential*. In *Interactive assessment* (New York: Springer, 1992)
- United Nations, *Human Rights Education In The School Systems Of Europe, Central Asia And North America* (Strasbourg: Council of Europe, 2009)
- Vizenor, *Survivance: Narratives of native presence*. (Nebraska: University of Nebraska Press, 2008)
- VJ Kirkness, *Creating space: My life and work in Indigenous education*. (Manitoba: University of Manitoba Press, 2013)
- Ward Churchill, *A little matter of genocide: holocaust and denial in the Americas, 1492 to the present*. (San Francisco: City Lights Books, 1997)
- Watson, I, *Indigenous Peoples as Subjects of International Law* (Oxfordshire: Routledge, 2018)

Yates et al, *Introduction to Law in Canada* (New Jersey: Prentice Hall Allyn and Bacon Canada, 2000)

Young, IM, *Five Faces of Oppression: Rethinking Power* (Albany: New York university Press, 2014)

Edited Volumes

Blagg, H, 'Journeys Outside the Comfort Zone: Doing Research in the Aboriginal domain', in Bartels L and Richards K (eds) *Qualitative criminology: stories from the field*. (Sydney: Federation Press, 2011)

Brownlie, 'The Rights of Peoples in Modern International Law' in J. Crawford (ed), *The Rights of Peoples*, (Gloucestershire: Clarendon Press, 1988)

Bruchac, M, 'Indigenous Knowledge and Traditional Knowledge'. In C. Smith Ed *Encyclopaedia of Global Archaeology* (New York: Springer, 2014)

Candelier, M, 'Awakening to Languages and Educational Language Policy' in: Cenoz J., Gorter, D, May, S (eds) *Language Awareness and Multilingualism. Encyclopaedia of Language and Education* (3rd ed.) (New York: Springer, 2017)

Castellano, M.B, Davis, L and Lahache, L (eds) *Aboriginal education: Fulfilling the Promise* (Vancouver: University of British Columbia Press, 2000)

Frye, M, 'Oppression. The politics of reality: Essays in Feminist Theory' in Taylor, Whittier, and Rupp (eds) *Feminist frontiers*.(Maryland: Roman & Littlefield, 1983)

Kuokkanen, R, 'Sámi Higher Education and Research Toward Building a Vision for Future' in Minde H, ed *Indigenous Peoples: Self-Determination Knowledge Indigeneity* (Utrecht: Eburon, 2008)

Lubis, M, 'Asian Cultures and Human Rights' in Berting, J (ed), *Human Rights in a Pluralist World* (London: Meckler, 1990)

Megret, F, 'The Nature of International Human Rights Obligations' in: Daniel Moeckli, Sandesh Sivakumaran, Sangeeta Shah, and David Harris (eds.), *International Human Rights Law*, (Oxford: Oxford University Press, 2010)

Mojekwu, 'Self-Determination: The African Perspective' in Y. Alexander and R. Friedlander (eds), *Self-Determination: National, Regional and Global Dimensions* (New York: Routledge, 1980)

O. Ojo, 'Understanding Human Rights in Africa' in Berting, J (ed), *Human Rights in a Pluralist World*, (London: Meckler, 1990)

Oxendine, D, Oxendine, S and Robin Minthorn, 'The Historically Native American Fraternity and Sorority Movement' in Heather Shotton, Shelly Lowe and Stephanie J.

Waterman (eds), *Beyond the Asterisk: Understanding Native Students in Higher Education* (Virginia: Stylus, 2013)

Potts, K and Brown, L 'Becoming an Anti-Oppressive Researcher' in Leslie Allison Brown and Susan Strega (eds), *Research as Resistance* (Toronto: Canadian Scholars' Press, 2005)

Thomas, R 'Honouring the Oral Traditions of the Ta't Mustimuxw (Ancestors) through Storytelling' in Leslie Allison Brown and Susan Strega (eds), *Research as Resistance* (Toronto: Canadian Scholars' Press, 2005)

Starblanket, T, 'Kill the Indian in the Child: Genocide in International Law', in Watson, I (ed) *Indigenous Peoples as Subjects of International Law* (Oxfordshire: Routledge, 2018)

W Osiatynski, W, 'On the Universality of the Universal Declaration of Human Rights' in Sajó, A (eds) *Human Rights with Modesty: The Problem of Universalism* (Dordrecht: Springer, 2004)

Young, I, 'Five Faces of Oppression' in Heldke, L and O'Connor, P (Eds.) *Oppression, Privilege, & Resistance*. (Boston: McGraw Hill, 2004)

Journal Articles

Agrawal, N, 'Lenin on National and Colonial Questions' (1956) 17(3) *The Indian Journal of Political Science* pp. 207-240

Akhavan, P, 'Cultural Genocide: Legal Label or Mourning Metaphor?' (2016) 62(1) *McGill Law Journal* pp. 243-270

Anaya, S "Report of the special rapporteur on the rights of indigenous peoples in the situation of indigenous peoples in Canada" (2015) 32(1) *Ariz. J. Int'l & Comp. L.*

Aronson B and Laughter J, 'The Theory and Practice of Culturally Relevant Education' (2016) 86(1) *Review of Educational Research*. pp.163-206

Aronson, B and Laughter, J, 'The Theory and Practice of Culturally Relevant Education' (2016) 86(1) *Review of Educational Research* pp. 163-206

Barker, B, Goodman, A and DeBeck, K. Reclaiming Indigenous identities: Culture as strength against suicide among Indigenous youth in Canada. (2017) 108(2) *Canadian Journal of Public Health* pp. 208-210

Barsh, RL, 'Indigenous Peoples and the UN Commission on Human Rights: A Case of the Immovable Object and the Irresistible Force' (1996) 8(4) *Human Rights Quarterly* pp.782–813

Bastien, B, 'Indigenous pedagogy: A way out of dependence' (2012) *Aboriginal history: A reader* pp. 14-26

Bellier, I and Préaud, M, 'Emerging Issues in Indigenous Rights: Transformative Effects of the Recognition of Indigenous Peoples' (2011) 16(3) *International Journal of Human Rights* pp.474-488

Bethlehem, J, 'Cross-Sectional Research' (1999) *Research Methodology in the Social, Behavioural and Life Sciences*. pp. 110 – 142

Binda, KP, 'Native diaspora and urban education: Intractable problems' (2001) *Aboriginal education in Canada: A study in de-colonization* pp. 179-194

Bombay, A, Matheson, K, and Anisman, H, 'The intergenerational effects of Indian Residential Schools: Implications for the concept of historical trauma' (2014) 51(3) *Transcultural psychiatry* pp. 320-338

Brown, L, 'Indigenous Young People, Disadvantage and The Violence of Settler Colonial Education Policy And Curriculum' (2018) 55(1) *Journal of Sociology* pp. 54-71

Bubar, R and Thurman, PJ, 'Violence Against Native Women' (2004) 31(4) *Social Justice*

Burnette, CE and Figley, CR, 'Historical Oppression, Resilience, and Transcendence: Can a Holistic Framework Help Explain Violence Experienced by Indigenous People?' (2016) 62 *Social Work* pp. 37-44

Carney, R, 'Aboriginal residential schools before confederation: The early experience'. (1995) 61(1) *Historical Studies* pp.13-40

Castagno A, McKinley B and Jones Brayboy, 'Culturally Responsive Schooling for Indigenous Youth: A Review of The Literature' (2008) 78 *Review of Educational Research*. pp.914-993

Castagno, AE and Brayboy, BMJ, 'Culturally Responsive Schooling for Indigenous Youth: A Review of the Literature' (2008) 78(4) *Review of Educational Research* pp. 941-993

Castagno, AE and Brayboy, BMJ, 'Culturally Responsive Schooling for Indigenous Youth: A Review of The Literature' (2008) 78 *Review of Educational Research* Pp.914-993

Cirkovic, E, 'Self-Determination and Indigenous Peoples in International Law' 2007 31(2) *American Indian Law Review* pp. 375-399

Cruikshank, J, 'The outsider: An uneasy role in community development' (1990) 7(2) *Canadian Social Work Review/Revue Canadienne De Service Social* pp. 245-259

Crystal, D, 'The Future of Language' (2007) *Proceedings of LingO 2007* pp. 1-2

Daes, EI, 'An Overview of the History of Indigenous Peoples: Self-Determination and the United Nations' 2008 21(1) *Cambridge Review of International Affairs* pp. 7-26

Dawson, AS, 'Histories and memories of the Indian boarding schools in Mexico, Canada, and the United States' (2012) 39(5) *Latin American Perspectives*. pp. 80-99

- Delgado-Pugley, D, 'Contesting the Limits of Consultation in the Amazon Region: On Indigenous Peoples' Demands for Free, Prior and Informed Consent in Bolivia and Peru'. (2013) 43 *Revue Générale de Droit* pp. 151-181
- Deloria Jr, V, 'Higher Education and Self-Determination' (1991) 6(1) *Winds of Change* pp.18-25
- Donnelly, J, 'International Human Rights: A Regime Analysis' (1986) 40(3) *International Organization* pp. 599-604
- Dubé, L and Paré, G, 'Rigor in information systems positivist case research: current practices, trends, and recommendations' (2003) *MIS quarterly* pp. 597-636
- Earl, H. 'Prosecuting genocide before the Genocide Convention: Raphael Lemkin and the Nuremberg Trials, 1945-1949'(2013) 15(3) *Journal of Genocide Research*. pp. 317-337
- Eccles, WJ, 'The Fur Trade and Eighteenth-Century Imperialism' (1983) 40(3) *The William and Mary Quarterly: A Magazine of Early American History* pp.342-362
- Errico, S, 'Indigenous Peoples' (2018) 29 *Yearbook of International Environmental Law* pp. 120 -124
- Evans-Campbell, T, 'Historical trauma in American Indian/Native Alaska communities: A multilevel framework for exploring impacts on individuals, families, and communities' (2008) 23(3) *Journal of interpersonal violence*, pp. 316-338
- Fernández-Llamazares, A and Cabeza, M, 'Rediscovering the Potential Of Indigenous Storytelling For Conservation Practice' (2017) 3(11) *Conservation Letters* pp. 1-12
- FitzGerald, JG, 'Doctor Peter H. Bryce' (1932) 23(2) *Canadian Public Health Journal* pp. 88-91
- Fontana L, and Grugel J, 'The Politics Of Indigenous Participation Through "Free Prior Informed Consent": Reflections From The Bolivian Case' (2016) 77 *World Development* pp. 249-261
- Forbes, JD, 'Indigenous Americans: Spirituality and Ecos' (2001) 130(4) *Journal of the American Academy of Arts and Sciences* pp. 283-300
- Ford, T and Others, 'Being Useful: Achieving Indigenous Youth Involvement in a Community-Based Participatory Research Project in Alaska' (2012) 71(1) *International Journal of Circumpolar Health* (online)
- G Rowe, "Prioritizing Indigenous Elders' Knowledge for Intergenerational Well-being". (2020) 39(2) *Canadian Journal on Aging / La Revue Canadienne Du Vieillissement*, pp.156-168
- Gilbert, J and Keane, D, 'Equality Versus Fraternity? Rethinking France and Its Minorities' (2016) 14 *International Journal of Constitutional Law* pp. 883-905

Gilderhus, MT, 'The Monroe doctrine: meanings and implications.' (2006) 36(1) *Presidential Studies Quarterly* pp. 5-16

Gordon, CE and White, JP, 'Indigenous Educational Attainment in Canada' (2014) 5(3) *International Indigenous Policy Journal*. pp 1 – 28

Guerrero, CH, 'Language Policies in Colombia: The Inherited Disdain for our Native Languages.' (2009) 16(1) *HOW* pp.11-24

Haig-Brown, C, 'Decolonizing diaspora: Whose Traditional Land are We on?' (2009) 1(1) *Decolonizing philosophies of education* pp. 4 – 21

Hajrullai, H and Saliu, B, 'The Application Of 4-A Scheme In The Context Of Higher Education In Macedonia' (2016) 232 *Procedia - Social and Behavioral Sciences* pp. 70-74

Halvorsen, K, 'Notes on the Realization of the Human Right to Education' (1990) 12 *Human Rights Quarterly* pp. 341-364

Hamilton-Ekeke, JT and Dorgu, ET, 'Curriculum and Indigenous Education for Technological Advancement' (2015) 3(11) *British Journal of Education* pp. 33-39

Hart, MA, 'Indigenous knowledge and research: The mikiwáhp as a symbol for reclaiming our knowledge and ways of knowing' *First Peoples Child & Family Review* (2007) 3(1) pp. 83-90

Heart, B and DeBruyn, LM 'The American Indian holocaust: Healing historical unresolved grief' (1998) 8(2) *American Indian and Alaska native mental health research* pp. 56-78

Hidair, I and Ailincal, R 'Migration and Identities of 'Indigenous Socio-Cultural Groups in French Guiana: A Case Study of Students Along the Oyapock and Maroni Rivers' (2015) 174 *Procedia - Social and Behavioural Sciences* pp. 878-885

Higgins, N and Maguire, G 'Language, Indigenous Peoples, and the Right to Self-Determination,' (2019) 31(2) *New England Journal of Public Policy* pp. 1-9

Hodgson-Smith, KL, 'Issues of pedagogy in Aboriginal education' (2000) *Aboriginal education: Fulfilling the promise* pp. 156-169

Holmes, A 'Researcher Positionality - A Consideration of its Influence and Place in Qualitative Research - A New Researcher Guide' (2020) 8(4) *Shanlax International Journal of Education*. pp. 1-10

Hon, K, 'Bringing cultural genocide in by the backdoor: victim participation at the ICC' (2013) 43(1) *Seton Hall Law Review*. pp. 359-409

Huffman, T, 'Native American Educators' Perceptions on Cultural Identity and Tribal Cultural Education: An Application of Transculturation Theory' (2013) 52(3) *Journal of American Indian Education* pp. 21-40

Iorns, CJ, 'Indigenous Peoples and Self Determination: Challenging State Sovereignty' (1992) 24(3) *Case Western Reserve Journal of International Law* pp. 199-348

- Garcia, J and Shirley, V, 'Performing decolonization: Lessons learned from Indigenous youth, teachers and leaders' engagement with critical Indigenous pedagogy' (2013) 28(2) *Journal of Curriculum Theorizing* pp. 101-124
- Jacobs-Huey, L 'The Natives Are Gazing and Talking Back: Reviewing the Problematics of Positionality, Voice, and Accountability Among "Native" Anthropologists' (2002) 3(104) *American Anthropologist*. pp. 791 – 804
- Jahansouz, S and Oxendine, S 'The Native American Fraternal Values Movement: Past, Present, & Future' (2008) *Perspectives*
- Johnson, JT, 'Place-Based Learning and Knowing: Critical Pedagogies Grounded In Indigeneity' (2010) 77(6) *GeoJournal* pp. 829-836
- Kapelner, Z, 'Revolution Against Non-Violent Oppression' (2019) 25(4) *Res Publica*. pp. 445-461
- Kearns, LL, 'The Ontario First Nation, Métis, and Inuit Education Policy Framework' (2013) 19(2) *A Case Study on its Impact in Education* pp. 86-106
- Keitner, C, 'Self-Determination: The Legacy of The French Revolution' (2000) 2(3) *International Studies Association* pp. 3-26
- King, KA and Benson, C, 'Indigenous language education in Bolivia and Ecuador: Contexts, changes, and challenges' (2003) *Medium of instruction policies: Which agenda? Whose agenda* pp. 241-261
- Kingston, L, 'The Destruction of Identity: Cultural Genocide and Indigenous Peoples' (2015) 14(1) *Journal of Human Rights* pp.63-83
- Kress, C. 'The crime of genocide under international law'(2006) 6(4) *International Criminal Law Review*. pp. 461-502
- Kuokkanen, R, 'Survivance' in Sámi and first nations boarding school narratives: reading novels by Kerttu Vuolab and Shirley Sterling' (2003) 27(3) *American Indian Quarterly* pp.697-726
- Lafrance, J and Collins, D, 'Residential Schools and Aboriginal Parenting: Voice of Parents' (2003) 4(1) *Native Social Work Journal* pp. 104-125
- Larivière, D 'Philosophy and Aboriginal Rights: Critical Dialogues' (2014) 34(1) *The Canadian Journal of Native Studies* pp. 232-234
- Larsen, PB and Gilbert, J, 'Indigenous Rights and ILO Convention 169: Learning from The Past And Challenging The Future' (2020) 24(1) *The International Journal of Human Rights* pp.83-93
- Lee, SE, 'Education as a Human Right in the 21st Century' *Democracy and Education* (2013) 21(1) pp. 1-9
- Leebaw, B, 'Scorched Earth: Environmental War Crimes and International Justice' (2014) 12(4) *Perspectives on Politics* pp. 770-788

- Léglise, I and Migge, B, 'Language and Identity Construction on The French Guiana-Suriname Border' (2019) 18 *International Journal of Multilingualism* pp. 90-104
- Léglise, I and Migge, B, 'Language-Naming Practices, Ideologies, And Linguistic Practices: Toward a Comprehensive Description of Language Varieties' (2006) 35 *Language in Society*. pp. 313-339
- Lim, L, 'Culturally Relevant Pedagogy: Developing Principles of Description and Analysis' (2019) 77(1) *Teaching and Teacher Education* pp. 43–52
- Limerick, N and Hornberger, NH, 'Teachers, Textbooks, And Orthographic Choices in Quechua: Comparing Bilingual Intercultural Education in Peru and Ecuador Across Decades' (2019) 51(3) *Journal of Comparative and International Education* pp. 319-336
- Lomawaima, KT and Ostler, J, 'Reconsidering Richard Henry Pratt: Cultural Genocide and Native Liberation in An Era of Racial Oppression' (2018) 57 *Journal of American Indian Education*. Pp.77-100
- Lopes da Silva Macedo, S, 'Indigenous School Policies and Politics: The Socio-political Relationship of Wayãpi Amerindians to Brazilian and French Guianan Schooling'. (2009) 40(2) *Anthropology and Education Quarterly*. pp. 170-186
- MacDonald, DB and Hudson, G, 'The Genocide Question and Indian Residential Schools in Canada. (2012) 45(2) *Canadian Journal of Political Science* pp.427-449
- MacDonald, DB, 'Canada's history wars: Indigenous genocide and public memory in the United States, Australia and Canada'. (2015) 17(4) *Journal of Genocide Research*. pp. 411–431
- Maguire, G, 'A Genocide by Any Other Name: Cultural Genocide in the Context of Indigenous Peoples and the Role of International Law' (2018) 3(1) *Strathclyde Law Review* pp. 1-24
- Maguire, G, 'Human Erosion: Indigenous Peoples and Well-Being in The Anthropocene.' (2020) 31(1) *Irish Studies in International Affairs* pp. 113–130
- Maguire, G, 'The Unacknowledged Genocide: The Guatemalan Maya's quest for justice'(2020) 3(1) *NPPSH Reflections* pp. 9-32
- May, S and Aikman, S, 'Indigenous Education: Addressing Current Issues and Developments' (2003) 39(2) *Comparative Education* pp. 139-145
- McCarty, T, 'Critical Culturally Sustaining/Revitalizing Pedagogy and Indigenous Education Sovereignty' (2014) 84(1) *Harvard Educational Review* pp. 101–124
- McCarty, TL and Lee, TS, 'Critical culturally sustaining/revitalizing pedagogy and Indigenous education sovereignty' (2014) 84(1) *Harvard Educational Review* pp. 101–124
- McCorquodale, R, 'Self-Determination: A Human Rights Approach'(1994) 43(1) *International and Comparative Law Quarterly*, pp. 857 – 885

- McKinley et al, 'The Historical Oppression Scale: Preliminary conceptualization and measurement of historical oppression among Indigenous peoples of the United States' (2020) 57(2). *Transcultural psychiatry* pp.288-303
- McKinley, EA and Smith, LT, 'Towards Self-Determination in Indigenous Education Research: An Introduction' (2019) *Handbook of Indigenous Education* pp. 1-15
- McNally, M, 'Indigenous Pedagogy in the Classroom: A Service-Learning Model for Discussion' (2004) 28(3) *American Indian Quarterly* pp. 604–617
- Migge, B and Léglise I. "Integrating local languages and cultures into the education system of French Guiana" (2010) *Creoles in education: An appraisal of current programs and projects* pp. 107-132
- Mooradian, JK and Others, 'Across generations: Culture, history, and policy in the social ecology of American Indian grandparents parenting their grandchildren' (2007) 10(4) *Journal of Family Social Work* pp. 81-101
- Munroe et al, 'Decolonizing Aboriginal education in the 21st century' (2013) 48(2) *McGill Journal of Education/Revue des Sciences de l'Éducation de McGill* pp. 317–333
- Murphy, MA, 'Representing Indigenous Self-Determination' (2008) 58(2) *University of Toronto Law Journal* pp. 185-216
- Mussell, B, 'Cultural Pathways for Decolonization' (2008) 5(1) *Aboriginal People issue of Visions Journal* pp. 4-5
- Mutchler, J and Others, 'Grandparents responsible for grandchildren in Native-American families' (2007) 88(4) *Social Science Quarterly* pp.990-1009
- Nagy, R and Sehdev, RK 'Introduction: Residential Schools and Decolonization' (2012) 27(1) *Canadian Journal of Law and Society* pp. 67 – 73
- Oxendine, D and Oxendine, S 'From the Margins with No Reservations' (2012) *From the Margins*
- Oxendine, S 'A Call to Action: Disrupting Assimilation and Colonization in Fraternity and Sorority Life' (2017) *Association of Fraternity & Sorority Advisors*.
- Pacot, R and others, 'The Problem of Suicide Among Amerindians in Camopi-Trois Sauts, French Guiana 2008–2015' (2018) 18(1) *BMC Psychiatry*
- Palayret, G, 'Overseas France and Minority and Indigenous Rights: Dream or Reality?' (2004) 10(3) *International Journal on Minority and Group Rights*. pp. 221-252
- Perche, D, 'Recalibrating the machinery of government for Indigenous affairs: Towards a new policy design for self-determination' (2018) 77(1), *Australian journal of public administration* pp. 28-36
- Pickering, H, 'Why do states mostly obey International Law' (2016) 15 *E-International Relations* pp. 1-8

- Poonwassie, A and Charter, A, 'An Aboriginal worldview of helping: Empowering approaches' (2001) 35(1) *Canadian Journal of Counselling and Psychotherapy* pp. 63-73
- Potter, PB, 'Obstacles and Alternatives to International Law' (1959) 53(3) *American Journal of International Law* pp. 647-651
- Poupart, L, 'The Familiar Face of Genocide: Internalized Oppression Among American Indians' (2003) 18(2), *Hypatia*, pp. 86-100
- Primus, D and Others, 'Indigenous Students' Challenges, Adaptation and Self-esteem During Post-Secondary Education: A Study on Selected Malaysian Public Universities' (2016) 5(1) *Malaysian Online Journal of Educational Management* pp. 16-28
- Profice, C and Others, 'Children and Nature in Tukum Village: Indigenous Education And Biophilia' (2016) 4(6) *Journal of Child and Adolescent Behaviour* pp. 2-6
- Robinson, VM, 'Descriptive and normative research on organizational learning: locating the contribution of Argyris and Schön' (2001) *International Journal of Educational Management* pp. 58 – 67
- Sanjay Kalra, Vibha Pathak and Bijayini Jena, 'Qualitative Research' (2013) 4 *Perspectives in Clinical Research*
- Satzewich, V and Mahood, L, 'Indian Agents and The Residential School System in Canada, 1946-1970' (1995) 7(1) *Historical Studies in Education / Revue d'histoire de l'éducation*. pp. 45-69
- Simmons, B.A, 'Compliance with international agreements' (1998) 1(1) *Annual review of political science* pp.75-93.
- Simonds, VW and Christopher, S 'Adapting Western Research Methods to Indigenous Ways of Knowing' (2013) 103(12) *American Journal of Public Health* pp. 2185-2192
- Simpson, LB, 'Land as pedagogy: Nishnaabeg intelligence and rebellious transformation' (2014) 3(3) *Decolonization: Indigeneity, Education & Society* pp. 1-24
- Sproule-Jones, M 'Crusading for the Forgotten: Dr. Peter Bryce, Public Health, and Prairie Native Residential Schools' (1996) 13 (2) *Canadian Bulletin of Medical History* pp. 199–224
- Stavenhagen, R 'Indigenous Peoples' Rights to Education' (2015) 50(3) *European Journal of Education* pp. 254-257
- Stocking Jr, G, 'Franz Boas and the Culture Concept in Historical Perspective' (1996) 68(4) *American Anthropologist*, pp.867-882
- Swisher, K and Deyhle, D, 'The styles of learning are different, but the teaching is just the same: Suggestions for teachers of American Indian youth' (1989) Special Issue *Journal of American Indian Education* pp. 1-14

Taussig, M, 'Culture of Terror--Space of Death. Roger Casement's Putumayo Report and the Explanation of Torture' (1984) 26(3) *Comparative Studies in Society and History* pp. 467-497

Tomasevski, K, 'Has the Right to Education a Future Within the United Nations? A Behind-the-Scenes Account by the Special Rapporteur on the Right to Education 1998-2004' (2005) 5 *Human Rights Law Review* pp. 205-273

Turpel, ME 'Indigenous People's Rights of Political Participation and Self-Determination: Recent International Legal Developments and the Continuing Struggle for Recognition,' (1992) 3(6) *Cornell International Law Journal* pp. 579-602

Uribe-Jongbloed, E and Edlund Anderson, Carl, 'Indigenous and Minority Languages in Colombia: The Current Situation' (2014) 48 *Researchgate*. pp. 217- 242

Van de Sande, A and Menzies, P, 'Native and mainstream parenting: A comparative study' (2003) 4(1) *Native Social Work Journal* pp. 126-139

Van Dijk, S and Van Dijk, E, 'Transformative learning: Towards the social imaginary of sustainability: Learning from Indigenous cultures of the American continent' (2012) *Learning for Sustainability in Times of Accelerating Change* pp. 225-240

Velaers, J, 'Constitutional Versus International Protection of Human Rights: Added Value or Redundancy? The Belgian Case, in the Light of the Advisory Practice of the Venice Commission' (2016) 7792) *Revue interdisciplinaire d'études juridiques* pp. 265-295

Vermillion, SD and others, 'Linking Normative and Descriptive Research with Serious Gaming' (2014) 28 *Procedia Computer Science* pp. 204 – 212

Viatori M and Ushigua G, 'Speaking Sovereignty: Indigenous Languages and Self-Determination' (2007) 22(2) *Wicazo Sa Review* pp. 7-8

Viscogliosi, C and others, 'Importance Of Indigenous Elders' Contributions To Individual And Community Wellness: Results From A Scoping Review On Social Participation And Intergenerational Solidarity' (2020) 111(5) *Canadian Journal of Public Health* pp. 667-681

Wane, NN, 'Indigenous Education and Cultural Resistance: A Decolonizing Project' (2009) 39(1) *Curriculum Inquiry* pp. 159-178

Watt-Cloutier, 'Honouring our past, creating our future: Education in Northern and remote communities' (2000) *Aboriginal education: Fulfilling the promise* pp. 114-128

White, J, 'An Overview of Indigenous Educational Attainment in Canada' (2016) 90(2) *Economics & Sociology* pp. 253-268

White, JP and Peters, J, 'A short history of Aboriginal education in Canada' (2009) *Aboriginal Policy Research Consortium International* pp. 13-31

Wildcat, M et al, 2014. 'Learning from the land: Indigenous land-based pedagogy and decolonization' (2014) 3(3) *Decolonization: Indigeneity, Education & Society* pp. 1-15

Williams, D, 'Managing Sovereignty : The World Bank and Development in Sub-Saharan Africa' (2003) 123(3) *Mondes en développement*. pp. 5-21

Wilner, GM, 'Reflections on regional human rights law' (1995) 25(1) *Georgia Journal of International & Comparative Law* pp. 407-426

Woods, ET 'A Cultural Approach to a Canadian Tragedy: The Indian Residential Schools as a Sacred Enterprise' (2013) 26(2) *International Journal of Politics, Culture, and Society* pp. 173-187

Woolford, A 'Ontological Destruction: Genocide and Canadian Aboriginal Peoples' (2009) 4(1) *Genocide Studies and Prevention*. pp. 81-97

Woolford, A and Benvenuto, J, 'Canada and colonial genocide' (2015) 14(4) *Journal of Genocide Research*. pp. 373–390

Writer, J 'Unmasking, Exposing, and Confronting: Critical Race Theory, Tribal Critical Race Theory and Multicultural Education', (2008) 10(2) *International Journal of Multicultural Education* pp. 1-15

Theses

Ferguson G, 'Including Children With Disabilities In Mainstream Education: An Exploration Of The Challenges And Considerations For Parents And Primary School Teachers' (Master's Thesis, Technological University Dublin, 2014)

Garcia-Olp, M, 'How Colonization Impacts Identity Through the Generations: A Closer Look at Historical Trauma and Education' (Doctoral Thesis, University of Denver, 2018)

Newcomb T, 'Parenting Characteristics In Native American Families' (Doctoral Thesis, Oklahoma State University 2005)

Petoukhov, K 'An Evaluation of Canada's Truth and Reconciliation Commission (TRC) Through the Lens of Restorative Justice and the Theory of Recognition' (Master's Thesis, University of Manitoba, 2011)

Encyclopaedia Articles

Alby, S 'Politiques linguistiques en matière d'enseignement des langues en Guyane française. Séminaire Didactique des langues et des cultures étrangères - coopération Guyane (France) / Brésol' (2008) *Britannica* accessed at <<https://www.britannica.com/place/French-Guiana>> Last Accessed 26/04/2021

Chen, CW 'Indigenous Rights in International Law' (2014) *Oxford Research Encyclopaedia of International Studies* accessed at <<http://internationalstudies.oxfordre.com/view/10.1093/acrefore/9780190846626.001.0001/acrefore-9780190846626-e-77>> Last Accessed 06/11/2020

Fraser C, 'Inuit Experiences at Residential School', *The Canadian Encyclopaedia* (2021) Available at <<https://www.thecanadianencyclopedia.ca/en/article/inuit-experiences-at-residential-school>> Last Accessed 30 March 2021

‘French Guiana: Territorial Collectivity, France’, *Britannica* Available at <<https://www.britannica.com/place/French-Guiana>> Last Accessed 07 February 2021

Hannum H, ‘Legal Aspects Of Self-Determination’, *Princeton Encyclopaedia* (2021) Available at <<https://pesd.princeton.edu/node/511#:~:text=Internal%20self%2Ddetermination%20is%20the,of%20their%20own%20independent%20state.>> Last Accessed 26 April 2021

Jeganathan J, and Lucchetta C, ‘‘Felt Throughout Generations’’: A Timeline Of Residential Schools In Canada | TVO.Org’ (*TVO.org*, 2021) <<https://www.tv.org/article/felt-throughout-generations-a-timeline-of-residential-schools-in-canada>> Last Accessed 24 July 2021

Marshall T, and Gallant D, ‘Residential Schools in Canada’, *The Canadian Encyclopaedia* (2012) Available at <<https://www.thecanadianencyclopedia.ca/en/article/residential-schools#:~:text=Funding%20was%20a%20pressing%20concern,contributed%20financially%20to%20the%20schools.>> Last Accessed 23 March 2021

Miller, JR ‘Residential Schools in Canada’ (2020) *The Canadian Encyclopaedia* accessed at <<https://www.thecanadianencyclopedia.ca/en/article/residential-schools>> Last Accessed 04 March 2021

Mills, AJ, Durepos, G and Elden Wiebe, ‘Before-And-After Case Study Design’ (2010) *Encyclopaedia of Case Study Research*. Available at <https://www.researchgate.net/publication/230557680_15_Mills_A_J_Durepos_G_and_Wiebe_E_Eds_2010_Encyclopedia_of_Case_Study_Research_Volumes_I_and_II_Thousand_Oaks_CA_Sage> Last Accessed 22 July 2021

Parrott Z, ‘Indian Act’, *The Canadian Encyclopaedia* (2006) Available at <<https://www.thecanadianencyclopedia.ca/en/article/indian-act>> Last Accessed 23 March 2021

Pratt, Y.P., Louie, D.W., Hanson, A.J. and Ottmann, J., 2018. ‘Indigenous education and decolonization’ (2018) *Oxford Research Encyclopaedia of Education* accessed at <https://www.researchgate.net/publication/322695370_Indigenous_education_and_decolonization> Last Accessed 01/05/2021

Smith M, ‘Peter Henderson Bryce’, *The Canadian Encyclopaedia* (2007) Available at <<https://www.thecanadianencyclopedia.ca/en/article/peter-henderson-bryce>> Last Accessed 23 March 2021

Sterritt A, ‘Reconciliation in Canada’, *The Canadian Encyclopaedia* (2020) Available at <<https://www.thecanadianencyclopedia.ca/en/article/reconciliation-in-canada#:~:text=In%20Canada%2C%20the%20process%20of,ongoing%20effects%20on%20Indigenous%20peoples.>> Last Accessed 06 June 2021

‘The Independence of Latin America’, *Britannica* Available at <<https://www.britannica.com/place/Latin-America/The-independence-of-Latin-America>> Last Accessed 26 April 2021

Waite P, 'Confederation', *The Canadian Encyclopaedia* (2013) Available at <<https://www.thecanadianencyclopedia.ca/en/article/confederation#:~:text=It%20was%20passed%20by%20the,New%20Brunswick%2C%20Quebec%20and%20Ontario.>> Last Accessed 16 February 2021

Magazine Articles

Earley P, and Mosakowski E, 'Cultural Intelligence' [2004] *Harvard Business Review* <<https://hbr.org/2004/10/cultural-intelligence>> Last Accessed 27 April 2021

Luxen M, 'Survivors of Canada's 'Cultural Genocide' Still Healing' [2015] *BBC News Magazine* <<https://www.bbc.com/news/magazine-33001425>> Last Accessed 10 February 2021

'Processes Of Change and Indigenous Participation' (*Culturalsurvival.org*, 2021) <<https://www.culturalsurvival.org/publications/cultural-survival-quarterly/processes-change-and-Indigenous-participation>> Last Accessed 18 July 2021

Newspaper Articles

Austen, I and Bilefsky, D "Hundreds More Unmarked Graves Found at Former Residential School in Canada" *The New York Times* 24 June 2021 accessed at <<https://www.nytimes.com/2021/06/24/world/canada/Indigenous-children-graves-saskatchewan-canada.html>> Last Accessed 24/06/2021

Brake, J "First Nations Women Finally to Be Treated Equally Under Indian Act" *APTN News* 16 August 2019 accessed at <<https://www.aptnnews.ca/national-news/first-nations-women-finally-to-be-treated-equally-under-indian-act-bennett/>> Last Accessed 05/03/2021

Fine, S "Chief Justice Says Canada Attempted 'Cultural Genocide' on Aboriginals" *The Globe and Mail* 28 May 2015 accessed at <www.theglobeandmail.com> Last Accessed 19/04/2021

Lindeman, T "Canada: Remains of 215 Children Found at Indigenous Residential School" *The Irish Times* 29 May 2021 accessed at <<https://www.irishtimes.com/news/world/canada-remains-of-215-children-found-at-Indigenous-residential-school-1.4579065>> Last Accessed 29/06/2021

Mowforth M, 'Indigenous People and The Crisis Over Land and Resources' *The Guardian* (2014) <<https://www.theguardian.com/global-development/2014/sep/23/Indigenous-people-crisis-land-resources>> Last Accessed 9 October 2019

Muldoon J, 'Academics: It's Time to Get Behind Decolonising the Curriculum' *The Guardian* (2019) <<https://www.theguardian.com/education/2019/mar/20/academics-its-time-to-get-behind-decolonising-the-curriculum>> Last Accessed 24 July 2021

The New York Times, 'Hundreds More Unmarked Graves Found' (2021) <<https://www.nytimes.com/2021/06/24/world/canada/Indigenous-children-graves-saskatchewan-canada.html>> Last Accessed 26 April 2021

Goldrick-Rab S, 'Public Higher Education Should Be Universal And Free' *The New York Times* (2016) <<https://www.nytimes.com/roomfordebate/2016/01/20/should-college-be-free/public-higher-education-should-be-universal-and-free>> Last Accessed 29 March 2021

Welch, MA "The Genocide Test," *Winnipeg Free Press*, 12 July 2014, accessed at <<https://www.winnipegfreepress.com/breakingnews/the-genocide-test-266849891.html>> Last Accessed 06/12/2020

Conference Proceedings

Hughes, P, and More A, 'Aboriginal Ways Of Learning And Learning Styles', *Annual Conference of the Australian Association for Research in Education* (1997) <<https://www.aare.edu.au/data/publications/1997/hughp518.pdf>> Last Accessed 1 May 2021

McLaughlin J, and Whatman S, 'Embedding Indigenous Perspectives in University Teaching and Learning: Lessons Learnt And Possibilities Of Reforming / Decolonising Curriculum', *4th International Conference on Indigenous Education* (2007)

Lectures

Online lecture by Dr Tracy Bear, Indigenous Canada, University of Alberta, "Killing the Indian in The Child" (University of Alberta, 2020)

Films

Black C, *Schooling The World; The White Man's Last Burden* (2010)

Online Resources

Archimbaud, A and Chapdelaine, M 'Suicides des jeunes Amérindiens en Guyane française: 37 propositions pour enrayer ces drames et créer les conditions d'un mieux-être' (2015) *GIPTA* accessed at <<http://gitpa.org/web/>> Last Accessed 26/04/2021

Bates Z, and MacMillan K, 'Ideologies Of Colonization' (*obo*, 2021) <<https://www.oxfordbibliographies.com/view/document/obo-9780199730414/obo-9780199730414-0034.xml>> Last Accessed 28 July 2021

Carlier, P 'Les jeunes Amérindiens, plus nombreux à se suicider' (2013) *France Guyane* accessed at <<http://www.franceguyane.fr/actualite/education-sante-environnement/les-jeunes-amerindiens-plus-nombreux-a-se-suicider-179713.php>> Last Accessed 26/04/2021

Chin, K 'Cultural Destruction: A Crime Against Humanity' (2016) *Brown Political Review* accessed at <<http://www.brownpoliticalreview.org/2016/10/cultural-destruction-crime-humanity/>> Last Accessed 06 December 2020

Eshet, D 'Stolen Lives: Facing History and Ourselves' (2015) *World Cat* accessed at <<https://www.worldcat.org/title/stolen-lives-the-Indigenous-peoples-of-canada-and-the-indian-residential-schools/oclc/1000257200>> Last Accessed 21 June 2021

Keman, M 'The Economics of Exploitation: Indigenous Peoples and the Impact of Resource Extraction' (2015) *Counterpunch* accessed at <<http://www.counterpunch.org/2015/08/20/the-economics-of-exploitation-Indigenous-peoples-and-the-impact-of-resource-extraction>> Last Accessed 09 September 2020

Lebada, AM 'Indigenous Peoples, Member States Express Dissatisfaction with UNGA Decision' (2018) *SDG Knowledge Hub* accessed at <<http://sdg.iisd.org/news/Indigenous-peoples-member-states-express-dissatisfaction-with-unga-decision/>> Last Accessed 08 June 2021

Nersessian, D 'Rethinking Cultural Genocide Under International Law' (2014) *Carnegie Council* accessed at <https://www.carnegiecouncil.org/publications/archive/dialogue/2_12/section_1/5139> Last Accessed 12 December 2020

Putt, J 'Conducting Research with Indigenous People and Communities' (2013) *Indigenous Justice* accessed at <<https://www.Indigenousjustice.gov.au/wp-content/uploads/mp/files/publications/files/brief015.v1.pdf>> Last Accessed 06 May 2021

Smith, A 'Indigenous Peoples and Boarding Schools; A comparative Study' (2007) *United Nations* accessed at <http://www.un.org/esa/socdev/unpfii/documents/IPS_Boarding_Schools.pdf> Last Accessed 23 January 2020

Sommer-Schaechtele, A 'How a UN Committee Contributed to End a Controversial Mining Project in French Guiana' (2019) *Open Global Rights* accessed at <<https://www.openglobalrights.org/UN-committee-contributed-to-end-mining-project-french-guiana/>> Last Accessed 06 March 2021

Survival International, 'Factory Schools: Destroying Indigenous Peoples in the Name of Education' (2017) *Survival International* accessed at <<https://assets.survivalinternational.org/documents/1810/factory-schools-full-report.pdf>> Last Accessed 26 April 2021

Thierer, A 'The Right to Pursue Happiness, Earn a Living, and Innovate' (2018) *The Bridge Expert Commentary* accessed at <<https://www.mercatus.org/bridge/commentary/right-pursue-happiness-earn-living-and-innovate>> Last Accessed 26 April 2021

UNDP 'The Next Frontier: Human Development and The Anthropocene' (2020) *United Nations* accessed at <http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/CAN.pdf> Last Accessed 15 April 2021

Wilt, J 'Implementing UNDRIP is a Big Deal for Canada' (2017) *The Narwhal* accessed at <<https://thenarwhal.ca/implementing-undrip-big-deal-canada-here-s-what-you-need-know/#:~:text=In%20May%202016%2C%20Minister%20Carolyn,%20which%20is%20our%20charter.%E2%80%9D>> Last Accessed 04 March 2021

World Bank Projects 'Persons with Disabilities, Indigenous Peoples, and Sexual and Gender Minorities' (2019) *World Bank* accessed at <<http://documents1.worldbank.org/curated/pt/590781562905434693/text/Equity-and->

Inclusion-in-Education-in-World-Bank-Projects-Persons-with-Disabilities-Indigenous-Peoples-and-Sexual-and-Gender-Minorities.txt> Last Accessed 21 February 2021

Websites

‘10 Benefits of Education That Will Surprise You’ (*University of the People*, 2021) <<https://www.uopeople.edu/blog/benefits-of-education-are-societal-and-personal/#:~:text=Those%20who%20get%20an%20education,overall%20health%2C%20and%20civic%20involvement.&text=Lack%20of%20access%20to%20education%20is%20considered%20the%20root%20of%20poverty>> Last Accessed 26 April 2021

‘175 Million Children Are Not Enrolled In Pre-Primary Education – UNICEF’ (*Unicef.org*, 2019) <<https://www.unicef.org/press-releases/175-million-children-are-not-enrolled-pre-primary-education-unicef>> Last Accessed 29 March 2021

‘2006 Census: Portrait of The Canadian Population In 2006, By Age and Sex’ (*Www12.statcan.gc.ca*, 2021) <<https://www12.statcan.gc.ca/census-recensement/2006/as-sa/97-551/index-eng.cfm?CFID=3347169&CFTOKEN=19485112>> Last Accessed 15 April 2021

‘2015 Federal Budget ‘Disappointing’ For Post-Secondary Students: CFS’ (*Metro*, 2021) <<https://web.archive.org/web/20150603103455/http://metronews.ca/news/canada/1347155/2015-federal-budget-disappointing-for-post-secondary-students-cfs/>> Last Accessed 15 April 2021

‘617 Million Children and Adolescents Not Getting The Minimum In Reading And Math’ (*UNESCO*, 2017) <<https://en.unesco.org/news/617-million-children-and-adolescents-not-getting-minimum-reading-and-math>> Last Accessed 13 March 2021

‘About The Right To Education And Human Rights’ (*Ohchr.org*) <<https://www.ohchr.org/EN/Issues/Education/SREducation/Pages/EducationAndHR.aspx>> Last Accessed 1 May 2021

‘ACNUDH | Indigenous Peoples Should Establish And Control Their Educational Systems And Institutions – UN Experts’ (*Ohchr.org*, 2016) <<https://ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=20346&LangID=E>> Last Accessed 29 March 2021

‘A Complete List of Canadian Universities and Colleges - The Greenest Workforce’ (*The Greenest Workforce*, 2021) <<https://thegreenestworkforce.ca/index.php/en/schools/>> Last Accessed 23 March 2021

‘A Note on Terminology: Inuit, Métis, First Nations, And Aboriginal | Rotary Club of Bowmanville’ (*Bowmanvillerotaryclub.org*, 2021) <<https://www.bowmanvillerotaryclub.org/sitepage/a-note-on-terminology-for-Indigenous-peoples>> Last Accessed 6 June 2021

‘A Plan for Growth and Prosperity: Chapter 4 - Creating Opportunities for All Canadians’ (*Web.archive.org*, 2008)

<<https://web.archive.org/web/20100423192244/http://www.fin.gc.ca/ec2005/agenda/agc4-eng.asp>> Last Accessed 15 April 2021

‘Aboriginal Self-Determination - Aboriginal Cultural Capability Toolkit - VPSC’ (*VPSC*, 2021) <<https://vpsc.vic.gov.au/html-resources/aboriginal-cultural-capability-toolkit/aboriginal-self-determination/>> Last Accessed 31 January 2021

‘About Us’ (*Survivalinternational.org*) <<https://www.survivalinternational.org/info>> Last Accessed 26 April 2021

‘About What Is Quality Education’ (*Unite4education.org*) <<https://www.unite4education.org/about/what-is-quality-education/>> Last Accessed 29 March 2021

‘Agenda of the 74Th Session Of The UN General Assembly (2019-2020)’ (*Un.org*) <<https://www.un.org/en/ga/74/agenda/>> Last Accessed 24 July 2021

‘Alpha Pi Omega Sorority’ (*alphapiomega.org*, 2016) <<https://www.alphapiomega.org/>> Last Accessed 26 February 2021

‘Background - Sametinget’ (*Sametinget*, 2021) <<https://www.sametinget.se/9688>> Last Accessed 10 October 2019

‘Benefits Of Education | Global Partnership For Education’ (*Globalpartnership.org*, 2021) <<https://www.globalpartnership.org/benefits-of-education#:~:text=Education%20is%20a%20powerful%20agent,the%2017%20sustainable%20development%20goals.>> Last Accessed 1 May 2021

‘Canada 2019’ (*hrw.org* 2019) <<https://www.hrw.org/world-report/2020/country-chapters/canada#>> Last Accessed 7 February 2021

‘Canada Official Handbook Present Conditions Recent Progress’ (*Abebooks.com*, 2021) <<https://www.abebooks.com/book-search/title/canada-official-handbook-present-conditions-recent-progress/>> Last Accessed 15 April 2021

‘Canada’s Cultural Genocide’ (*youtube.com*, 2015) <<https://www.youtube.com/watch?v=ZpvMwbWSTBw>> Last Accessed 29 October 2020

‘Canada’s Official Languages and You’ (*Clo-ocol.gc.ca*, 2020) <https://www.clo-ocol.gc.ca/en/language_rights/index> Last Accessed 26 April 2021

‘Canadian Census Profile’ (*statcan.gc.ca*, 2016) <<https://www12.statcan.gc.ca/census-recensement/2016/dppd/prof/details/page.cfm?Lang=E&Geo1=PR&Code1=01&Geo2=PR&Code2=01&Data=Count&SearchText=canada&SearchType=Begins&SearchPR=01&B1=All&TABID=1>> Last Accessed 20 February 2021

‘Canadian Education Among Best in The World: OECD’ (*CTVNews*, 2021) <<https://www.ctvnews.ca/canadian-education-among-best-in-the-world-oecd-1.583143>> Last Accessed 15 April 2021

‘CCHE Research on Home Education in Canada’ (*Cche.ca*, 2020) <<https://cche.ca/research-on-home-education-in-canada/>> Last Accessed 23 March 2021

‘Census Program’ (*statcan.gc.ca*, 2016) <<https://www12.statcan.gc.ca/census-recensement/index-eng.cfm>> Last Accessed 20 July 2021

‘Children’s Rights - UNICEF Ireland’ (*UNICEF Ireland*) <<https://www.unicef.ie/childrens-rights>> Last Accessed 6 June 2021

‘Colombia: Recognition of Aboriginal Languages’ (*The Library of Congress*, 2010) <<https://www.loc.gov/law/foreign-news/article/colombia-recognition-of-aboriginal-languages/>> Last Accessed 26 April 2021

‘Committee On The Rights Of The Child’ (*Ohchr.org*) <<https://www.ohchr.org/en/hrbodies/crc/pages/crcindex.aspx>> Last Accessed 29 March 2021

‘Comparing Countries Economic Performance’ (*Oecd.org*, 2010) <<https://www.oecd.org/pisa/46643496.pdf>> Last Accessed 15 April 2021

‘Compendia of International and National Legal Frameworks’ (*The World Bank*, 2019) <<https://www.worldbank.org/en/about/legal/publication/compendium-of-international-and-national-legal-frameworks>> Last Accessed 26 April 2021

‘Conseil Général De La Guyane’ (*Web.archive.org*) <<https://web.archive.org/web/20151007143603/http://www.cg973.fr/la-collectivite-territoriale-de>> Last Accessed 7 February 2021

‘Culture And History | Saint Regis Mohawk Tribe’ (*Saint Regis Mohawk Tribe*) <https://www.srmt-nsn.gov/culture_and_history> Last Accessed 30 March 2021

‘Culturally Responsive & Inclusive Curriculum Resources: What Is Culturally Responsive Curriculum?’ (*Guides.library.pdx.edu*) <<https://guides.library.pdx.edu/c.php?g=527355&p=3623937>> Last Accessed 24 July 2021

‘Definition Of Enabling Legislation’ (*Legal Choices*) <<https://www.legalchoices.org.uk/dictionary/enabling-legislation>> Last Accessed 13 March 2021

‘Descriptive Research Designs: Types, Examples & Methods’ (*Formpl.us*) <<https://www.formpl.us/blog/descriptive-research#:~:text=There%20are%203%20main%20data,study%20method%2C%20and%20survey%20research.>> Last Accessed 26 April 2021

‘Descriptive, Normative, And Impact Evaluation Designs’ (*Dmeforpeace.org*, 2021) <https://dmeforpeace.org/sites/default/files/M06_PP.pdf> Last Accessed 26 April 2021

‘Discover The Fascinating History, Language and Culture of French Guiana’ (*WorldTravelGuide.com*) <<https://www.worldtravelguide.net/guides/caribbean/french-overseas-possession/french-guiana/history-language->

‘Empowerment: What Does It Mean To You?’ (*Un.org*, 2012)
 <<https://www.un.org/esa/socdev/ngo/outreachmaterials/empowerment-booklet.pdf>> Last Accessed 29 March 2021

‘Enhancing Cultural Competence | Community Toolbox’ (*Ctb.ku.edu*)
 <<https://ctb.ku.edu/en/enhancing-cultural-competence>> Last Accessed 11 March 2021

‘Events | United Nations Indigenous Peoples Day’ (*United Nations*, 2016)
 <https://www.un.org/en/events/Indigenousday/pdf/Backgrounder_Indigenous_Day_2016.pdf> Last Accessed 29 March 2021

‘Experiential Learning’ (*First Nations Pedagogy*, 2009)
 <<https://firstnationspedagogy.ca/experiential.html>> Last Accessed 1 May 2021

‘Expert Mechanism on The Rights of Indigenous Peoples’ (*Ohchr.org*)
 <<https://www.ohchr.org/en/issues/ipeoples/emrip/pages/emripindex.aspx>> Last Accessed 26 April 2021

‘Factory Schools Destroying Indigenous People in the Name of Education’ (*survivalinternational.org*) <<https://survivalinternational.org/factoryschools>> Last Accessed 26 April 2021

‘Faqs Aboriginal Healing Foundation’ (*Ahf.ca*, 2021) <<https://www.ahf.ca/faqs>> Last Accessed 6 June 2021

‘Financial And Human Resources Invested in Education’ (*OECD*, 2011)
 <<https://www.oecd.org/education/skills-beyond-school/48630868.pdf>> Last Accessed 15 April 2021

‘Free, Prior and Informed Consent: Protecting Indigenous Peoples’ Rights to Self-Determination, Participation, And Decision-Making’ (*Culturalsurvival.org*, 2012)
 <<https://www.culturalsurvival.org/publications/cultural-survival-quarterly/free-prior-and-informed-consent-protecting-Indigenous>> Last Accessed 9 November 2020

‘French Guiana and Martinique Reject Increased Autonomy’ (*bbcnews.com*, 2010)
 <<http://news.bbc.co.uk/2/hi/americas/8451095.stm>> Last Accessed 02 February 2021

‘French Guiana Education System’ (*Scholaro.com*, 2021)
 <<https://www.scholaro.com/pro/Countries/French-Guiana/Education-System#:~:text=Education%20in%20French%20Guiana%20is,where%20facilities%20are%20sometimes%20sparse>> Last Accessed 26 April 2021

‘French Guiana Products and Creole, French Languages’ (*Worldlanguage.com*)
 <<http://www.worldlanguage.com/Countries/FrenchGuiana.htm>> Last Accessed 7 February 2021

‘French Guiana’ (*minorityrights.org*) <<http://minorityrights.org/country/french-guiana/>> Last Accessed 27 January 2021

‘French Guiana’ (*rainforests.mongabay.com*, 2006)
 <<http://rainforests.mongabay.com/20frenchg.htm>> Last Accessed 15 March 2020

‘French Statistics’ (*insee.fr*) <<https://www.insee.fr/fr/statistiques/fichier/1893198/estim-pop-nreg-sexe-gca-1975-2021.xls>> Last Accessed 7 February 2021

‘Frequently Asked Questions Declaration on The Rights of Indigenous Peoples’ (*Un.org*) <<https://www.un.org/esa/socdev/unpfii/documents/FAQsIndigenousdeclaration.pdf>> Last Accessed 19 January 2021

‘GA Adopts Resolution on Participation of Indigenous Peoples at the UN United Nations for Indigenous Peoples’ (*United Nations For Indigenous Peoples | Indigenous Peoples, 2017*) <<https://www.un.org/development/desa/Indigenouspeoples/news/2017/08/general-assembly-draft-resolution-on-participation-of-Indigenous-peoples-at-the-un/>> Last Accessed 24 July 2021

‘Government Expenditure on Education, Total (% Of GDP) | Data’ (*Data.worldbank.org, 2021*) <<https://data.worldbank.org/indicator/SE.XPD.TOTL.GD.ZS>> Last Accessed 15 April 2021

‘Have a Heart’ (*The Caring Society, 2021*) <<https://fncaringsociety.com/i-am-witness>> Last Accessed 23 March 2021

‘Health & Safety Guidelines’ (*Department of Education and Skills*) <<https://www.education.ie/en/Schools-Colleges/Information/Health-Safety-Guidelines/>> Last Accessed 24 July 2021

‘History Matters Project: Second Edition’ (*Policy Exchange*) <<https://policyexchange.org.uk/publication/history-matters-project-second-edition>> Last Accessed 24 July 2021

‘History Of Residential Schools’ (*Indigenouspeoplesatlasofcanada.ca*) <<https://Indigenouspeoplesatlasofcanada.ca/article/history-of-residential-schools/>> Last Accessed 23 March 2021

‘How French Law Makes Minorities Invisible’ (*The Conversation, 2016*) <<https://theconversation.com/how-french-law-makes-minorities-invisible-66723>> Last Accessed 7 February 2021

‘Human Rights Bodies’ (*Ohchr.org*) <<https://www.ohchr.org/en/hrbodies/Pages/HumanRightsBodies.aspx>> Last Accessed 30 March 2021

‘Human Rights Obligations: Making Education Available, Accessible, Acceptable And Adaptable’ (*Right-to-education.org, 2001*) <https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Tomasevski_Primer%203.pdf> Last Accessed 13 March 2021

‘I Am a Witness’ (*The Caring Society, 2021*) <<https://fncaringsociety.com/i-am-witness>> Last Accessed 23 March 2021

‘Impact Of Non-Indigenous Activities on The Inuit’ (*Heritage.nf.ca, 2008*) <<https://www.heritage.nf.ca/articles/aboriginal/inuit-impacts.php>> Last Accessed 30 March 2021

‘Inclusive Language’ (*Monash University*)
<<https://www.monash.edu/about/editorialstyle/writing/inclusive-language>> Last Accessed 26 January 2021

‘Independent Assessment Process (IAP)’ (*Web.archive.org*)
<<https://web.archive.org/web/20150604222656/http://www.fsin.com/index.php/independent-assessment-process-iap>> Last Accessed 6 June 2021

‘Indian Residential Schools - Union of Ontario Indians’ (*Union of Ontario Indians*)
<<https://www.anishinabek.ca/irs/>> Last Accessed 24 July 2021

‘Indian Residential Schools Assembly of First Nations’ (*Assembly of First Nations*)
<<https://www.afn.ca/policy-sectors/indian-residential-schools>> Last Accessed 6 June 2021

‘Indigenous and Tribal Children: Assessing Child Labour And Education Challenges’ (*Ilo.org*, 2003) <http://www.ilo.org/ipec/Informationresources/WCMS_IPEC_PUB_1100> Last Accessed 24 July 2021

‘Indigenous and Tribal Peoples (Indigenous and Tribal Peoples)’ (*Ilo.org*)
<<https://www.ilo.org/global/topics/Indigenous-tribal/lang--en/index.htm#:~:text=The%20ILO%20has%20been%20engaged,the%20rights%20of%20the%20peoples>> Last Accessed 24 July 2021

‘Indigenous Canada University of Alberta’ (*Ualberta.ca*)
<<https://www.ualberta.ca/admissions-programs/online-courses/Indigenous-canada/index.html>> Last Accessed 1 May 2021

‘Indigenous Education | Owlapps’ (*Owlapps.net*)
<http://www.owlapps.net/owlapps_apps/articles?id=29189764&lang=en> Last Accessed 1 May 2021

‘Indigenous Peoples and Communities’ (*Canada.ca*) <<https://www.rcaanc-cirnac.gc.ca/eng/1100100013785/1529102490303>> Last Accessed 06 June 2021

‘Indigenous Peoples at The United Nations’ (*Un.org*)
<<https://www.un.org/development/desa/Indigenouspeoples/about-us.html>> Last Accessed 9 November 2019

‘Indigenous Peoples in French Guiana’ (*iwgia.org*) <<https://www.iwgia.org/en/french-guiana.html#:~:text=French%20Guiana%20has%20244%2C118%20inhabitants,Saint%20Georges%20de%20Oyapock>> Last Accessed 20 July 2021

‘Indigenous Peoples Overview’ (*WorldBank.org*, 2021)
<<https://www.worldbank.org/en/topic/Indigenouspeoples#:~:text=There%20are%20between%2037%20and,percent%20of%20the%20extreme%20poor>> Last Accessed 26 April 2021

‘Indigenous Peoples’ Right To Education – A Transformative Force For Empowerment’ (*Ohchr.org*)

<<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20342&LangID=E>> Last Accessed 29 March 2021

‘Indigenous Peoples’ Rights to Land and The Threat of Land Grabbing’ (*iwgia.org*)
<https://www.iwgia.org/images/publications/0693_fact_sheet_land_grabbing-pr.pdf> Last Accessed 23 July 2021

‘Indigenous Student Education’ (*univcan.ca*, 2021)
<<https://www.univcan.ca/priorities/Indigenous-education/>> Last Accessed 23 May 2021

‘Indigenous Terminology Guide Queen’s University’ (*Queensu.ca*)
<[https://www.queensu.ca/Indigenous/terminology-guide#:~:text=%22Indigenous%22%20is%20an%20umbrella%20term,Indigenous%20Peoples%20\(UNDRIP\)>](https://www.queensu.ca/Indigenous/terminology-guide#:~:text=%22Indigenous%22%20is%20an%20umbrella%20term,Indigenous%20Peoples%20(UNDRIP)>)> Last Accessed 19 January 2021

‘Inductive Discipline - Why It Is The Best’ (*Parenting For Brain*, 2021)
<<https://www.parentingforbrain.com/inductive-discipline/#:~:text=Inductive%20discipline%20is%20a%20parental,%2C%20values%2C%20and%20disciplinary%20approaches>> Last Accessed 30 March 2021

‘Institut Des Amériques Higher Education, Research and International Cooperation Network’ (*Institutdesameriques.fr*, 2021) <<https://www.institutdesameriques.fr/en>> Last Accessed 1 March 2021

‘International Day of Commemoration and Dignity of The Victims of The Crime of Genocide and of The Prevention of This Crime | United Nations’ (*Un.org*)
<<https://www.un.org/en/observances/genocide-prevention-day>> Last Accessed 26 April 2021

‘International Human Rights Mechanisms’ (*Right to Education Initiative*, 2018)
<<https://www.right-to-education.org/page/international-human-rights-mechanisms>> Last Accessed 13 March 2021

‘International Judicial Monitor - Justice In Profile’ (*Judicialmonitor.org*, 2014)
<http://www.judicialmonitor.org/archive_winter2014/generalprinciples.html> Last Accessed 1 May 2021

‘International Law’ (*Right to Education Initiative*, 2018) <<https://www.right-to-education.org/page/international-law>> Last Accessed 12 August 2020

‘International Law’ (*Ohchr.org*)
<<https://www.ohchr.org/en/professionalinterest/pages/internationallaw.aspx>> Last Accessed 29 March 2021

‘Introducing the Armenian Genocide’ (*Facinghistory.org*)
<<https://www.facinghistory.org/resource-library/video/introducing-armenian-genocide>> Last Accessed 06 June 2021

‘Issues’ (*Culturalsurvival.org*) <<https://www.culturalsurvival.org/issues>> Last Accessed 3 October 2019

‘Killing The Indian in The Child’ (*Facing History and Ourselves*, 2021)
 <<https://www.facinghistory.org/stolen-lives-Indigenous-peoples-canada-and-indian-residential-schools/chapter-3/killing-indian-child>> Last Accessed 23 March 2021

‘Leading SDG 4 - Education 2030’ (*UNESCO*)
 <<https://en.unesco.org/themes/education2030-sdg4>> Last Accessed 28 February 2021

‘Leaflet No. 8: The ILO and Indigenous and Tribal Peoples’ (*Ohchr.org*)
 <<https://www.ohchr.org/Documents/Publications/GuideIPleaflet8en.pdf>> Last Accessed 24 July 2021

‘Learn More About Indigenous People’s Rights’ (*Amnesty.org*, 2009)
 <<https://www.amnesty.org/en/what-we-do/Indigenous-peoples/>> Last Accessed 24 July 2021

‘Learning Recognizes The Role Of Indigenous Knowledge’ (*First Peoples Principles of Learning*, 2014) <<https://firstpeoplesprinciplesoflearning.wordpress.com/learning-recognizes-the-role-of-Indigenous-knowledge/>> Last Accessed 1 May 2021

‘List Of American Countries - Nations Online Project’ (*Nationsonline.org*)
 <<https://www.nationsonline.org/oneworld/america.htm>> Last Accessed 26 April 2021

‘Lumen Learning – Simple Book Production’ (*Courses.lumenlearning.com*)
 <<https://courses.lumenlearning.com/suny-hccc-worldhistory2/chapter/self-determination-and-new-states/>> Last Accessed 26 April 2021

‘Major Groups: Workers And Trade Unions, Women, Children And Youth And Indigenous People | Department Of Economic And Social Affairs’ (*Sdgs.un.org*)
 <<https://sdgs.un.org/statements/major-groups-workers-and-trade-unions-women-children-and-youth-and-Indigenous-people>> Last Accessed 29 March 2021

‘Metadata For The Global And Thematic Indicators For The Follow-Up And Review Of SDG 4 And Education 2030’ (*unesco.org*) <<http://tcg.uis.unesco.org/wp-content/uploads/sites/4/2019/08/sdg4-global-indicators-4.6.pdf>> Last Accessed 29 March 2021

‘Migration and Inclusive Societies’ (*unesco.org*) <<http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/nation-state/>> Last Accessed 22 October 2019

‘Milestones: 1969–1976 - Office of The Historian’ (*History.state.gov*)
 <<https://history.state.gov/milestones/1969-1976/helsinki#:~:text=The%20Helsinki%20Final%20Act%20was,War%20and%20U.S.%20Soviet%20relations>> Last Accessed 31 January 2021

‘Minorities And Indigenous Peoples’ (*UNHCR*) <<https://www.unhcr.org/en-ie/minorities-and-Indigenous-peoples.>> Last Accessed 24 July 2021

‘Most Educated Countries 2021’ (*Worldpopulationreview.com*, 2021)
 <<https://worldpopulationreview.com/country-rankings/most-educated-countries>> Last Accessed 15 April 2021

‘Most Transparent Countries’ (usnews.com) <<https://www.usnews.com/news/best-countries/best-transparency>> Last Accessed 21 February 2021

‘Observatory On The Right To Education’ (UNESCO) <<https://en.unesco.org/themes/right-to-education/database>> Last Accessed 20 February 2021

‘Native Ethics & Principles’ (cbu.ca) <<https://www.cbu.ca/Indigenous-affairs/mikmaq-resource-centre/mikmaq-resource-guide/essays/native-ethics-principles/>> Last Accessed 1 May 2021

‘Navajo Nation’ (Navajo-nsn.gov) <<https://www.navajo-nsn.gov/>> Last Accessed 30 March 2021

‘Nehiyawak (Plains Cree) Leadership On The Plains | Our Legacy’ (Digital.scaa.sk.ca, 2021) <http://digital.scaa.sk.ca/ourlegacy/exhibit_nehiyawak_leadership> Last Accessed 30 March 2021

‘Occupy Your Brain With Carol Black’ (Library Professional Development, 2013) <<https://libprofdev.wordpress.com/2013/01/31/occupy-your-brain-with-carol-black-febr-5/>> Last Accessed 11 March 2021

‘Office Of The High Commissioner For Human Rights’ (Ioe-emp.org) <<https://www.ioe-emp.org/international-organisations/office-of-the-high-commissioner-for-human-rights#:~:text=The%20Office%20of%20the%20UN,human%20rights%20laws%20and%20tr eaties.>>> Last Accessed 30 March 2021

‘OHCHR Dashboard’ (Indicators.ohchr.org) <<http://indicators.ohchr.org/>> Last Accessed 25 February 2021

‘OHCHR | Indigenous Peoples’ Right To Education – A Transformative Force For Empowerment’ (Ohchr.org) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20342&LangID=E>> Last Accessed 29 March 2021

‘On International Day, UN Spotlights Indigenous Peoples’ Right To Education | United Nations’ (United Nations) <<https://www.un.org/en/academic-impact/international-day-un-spotlights-Indigenous-peoples-right-education>> Last Accessed 31 March 2021

‘Oppress Or Repress?’ (Editingandwritingservices.com, 2015) <<https://editingandwritingservices.com/oppress-repress/#:~:text=Oppress%20means%20to%20persecute%2Ftyrannize%2Fbully.&text=Further%2C%20people%20can%20feel%20oppressed,limit%2C%20subdue%20or%20end%20so mething.>>> Last Accessed 30 July 2021

‘Oral Traditions’ (Indigenousfoundations.arts.ubc.ca, 2009) <https://Indigenousfoundations.arts.ubc.ca/oral_traditions/> Last Accessed 1 May 2021

‘Organisation Des Nations Autochtones De Guyane Onag’ (Tbinternet.ohchr.org, 2015) <https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/FRA/INT_CERD_NGO_FRA_20079_E.pdf> Last Accessed 24 July 2021

‘Parliamentary Institutions - The Canadian System of Government’ (*Ourcommons.ca*) <<https://www.ourcommons.ca/marleaumontpetit/DocumentViewer.aspx?Sec=Ch01&Seq=2>> Last Accessed 20 February 2021

‘Participation Of Indigenous Peoples at The UN | United Nations for Indigenous Peoples’ (*United Nations for Indigenous Peoples*, 2020) <<https://www.un.org/development/desa/Indigenouspeoples/participation-of-Indigenous-peoples-at-the-united-nations.html>> Last Accessed 24 July 2021

‘Partnerships And Organizations’ (*GAC*, 2020) <https://www.international.gc.ca/world-monde/international_relations-relations_internationales/partnerships_organizations-partenariats_organisations.aspx?lang=eng> Last Accessed 15 April 2021

‘Peace, Justice And Strong Institutions’ (*United Nations Sustainable Development*) <<https://www.un.org/sustainabledevelopment/peace-justice/>> Last Accessed 6 June 2021

‘Phi Sigma Nu is the oldest and largest American Indian fraternity’ (*phisigmanu.com*) <<https://phisigmanu.com/>> Last Accessed 26 February 2021

‘Phil Fontaine’s Shocking Testimony of Sexual Abuse - CBC Archives’ (*Cbc.ca*, 1990) <<https://www.cbc.ca/archives/entry/phil-fontaines-shocking-testimony-of-sexual-abuse>> Last Accessed 6 June 2021

‘PISA - Results in Focus’ (*Oecd.org*, 2018) <<https://www.oecd.org/pisa/pisa-2015-results-in-focus.pdf>> Last Accessed 15 April 2021

‘Population, Total - Guyana Data’ (*Data.worldbank.org*) <<https://data.worldbank.org/indicator/SP.POP.TOTL?locations=GY>> Last Accessed 7 February 2021

‘Prime Minister Welcomes Final Report from The National Inquiry into Missing and Murdered Indigenous Women and Girls’ (*Prime Minister of Canada*, 2019) <<https://pm.gc.ca/en/news/statements/2019/06/03/prime-minister-welcomes-final-report-national-inquiry-missing-and>> Last Accessed 26 February 2021

‘Promising Practices in Supporting Success for Indigenous Students’ (*Oecd.org*, 2017) <<https://www.oecd.org/education/promising-practices-in-supporting-success-for-Indigenous-students-9789264279421-en.htm>> Last Accessed 24 July 2021

‘Protect Human Rights | United Nations’ (*United Nations*) <<https://www.un.org/en/our-work/protect-human-rights>> Last Accessed 1 May 2021

‘Project of the Heart’ (*projectoftheheart.ca*, 2021) <<https://projectofheart.ca/>> Last Accessed 23 March 2021

‘Realising Rights’ (*Ihrec.ie*, 2016) <<https://www.ihrec.ie/app/uploads/2016/12/Factsheet-1B-Realising-Rights-Key-principles-002-FNL-151216-1.pdf>> Last Accessed 20 March 2021

‘Recommendations On Education | United Nations for Indigenous Peoples’ (*United Nations for Indigenous Peoples*)

<<https://www.un.org/development/desa/Indigenouspeoples/mandated-areas1/education/recs-education.html>> Last Accessed 1 May 2021

‘Research Guides: UN Documentation: Human Rights: Treaty-Based Bodies’ (*Research.un.org*, 2021) <<https://research.un.org/en/docs/humanrights/treaties>> Last Accessed 30 March 2021

‘Research Guides: UN Documentation: Human Rights: Charter-Based Bodies’ (*Research.un.org*, 2021) <<https://research.un.org/en/docs/humanrights/charter>> Last Accessed 30 March 2021

‘Residential Schools Amounted to ‘Cultural Genocide,’ (*Youtube.com*, 2015) <<https://www.youtube.com/watch?v=MVIpgBKH07U>> Last Accessed 06 June 2021

‘Resisting Marginalization, Exclusion, Hate Speech And Hate Crimes And The Prevention Of Mass Atrocities - Global Centre For The Responsibility To Protect’ (*Global Centre for the Responsibility to Protect*, 2020) <<https://www.globalr2p.org/publications/resisting-marginalization-exclusion-hate-speech-and-hate-crimes-and-the-prevention-of-mass-atrocities/>> Last Accessed 28 July 2021

‘Right To Education’ (*UNESCO*) <<https://en.unesco.org/themes/right-to-education#:~:text=Education%20in%20itself%20is%20an,of%20opportunity%20and%20universal%20access>> Last Accessed 26 April 2021

‘Right To Education Initiative’ (*Right to Education Initiative*, 2021) <<https://www.right-to-education.org/page/about-us>> Last Accessed 29 March 2021

‘Sámi teaching - Sámi research - Sámi institution’ (*Samas.no*) <<https://samas.no/en/node/204>> Last Accessed 01 March 2021

‘Sámi University of Applied Sciences’, (*uartic.org*) <<https://www.uartic.org/member-profiles/norway/8710/Sámi-university-of-applied-sciences>> Last Accessed 01 March 2021

‘Standard 1 Rights of The Child’ (Síolta The National Quality Framework for Early Childhood Education) <<https://siolta.ie/media/pdfs/Research%20Digest%20-%20Rights%20of%20the%20child.pdf>> Last Accessed 13 March 2021

‘Statement given by Robbie Waisman German Holocaust Survivor’ (*Youtube.com*, 2015) <<https://www.youtube.com/watch?v=Q8Lr9wY9p58>> Last accessed 16 May 2019

‘Stepping Up: Refugee Education In Crisis’ (*Unhcr.org*, 2019) <<https://www.unhcr.org/steppingup/wp-content/uploads/sites/76/2019/09/Education-Report-2019-Final-web-9.pdf>> Last Accessed 28 February 2021

‘Stolen Children: Residential School survivors speak out’ (*youtube.com*, 2015) <<https://www.youtube.com/watch?v=vdR9HcmiXLA>> Last Accessed 02 December 2018

‘Strategy | United Nations Educational, Scientific And Cultural Organization’ (*Unesco.org*, 2017) <<http://www.unesco.org/new/en/culture/about-us/how-we-work/strategy/>> Last Accessed 29 March 2021

‘Supreme Court of Canada - Current and Former Chief Justices’ (*Scc-csc.ca*, 2021)
<<https://www.scc-csc.ca/judges-juges/cfcju-jucp-eng.aspx>> Last Accessed 18 February 2021

‘Terminology’ (*Indigenousfoundations.arts.ubc.ca*, 2021)
<<https://Indigenousfoundations.arts.ubc.ca/terminology/>> Last Accessed 6 June 2021

‘The 17 GOALS | Sustainable Development’ (*Sdgs.un.org*) <<https://sdgs.un.org/goals>> Last Accessed 29 March 2021

‘The Abandoned Republic’ (*gipta.org*)
‘The Early Years of The Nazi Party – The Holocaust Explained: Designed for Schools’ (*Theholocaustexplained.org*) <<https://www.theholocaustexplained.org/the-nazi-rise-to-power/the-early-years-of-the-nazi-party/>> Last Accessed 26 April 2021

‘The Campaign For US Ratification Of The CRC - What Is The CRC?’ (*Childrightscampaign.org*, 2018) <<https://www.childrightscampaign.org/what-is-the-crc>> Last Accessed 1 May 2021

‘The Education Deficit’ (*Human Rights Watch*, 2016)
<<https://www.hrw.org/report/2016/06/09/education-deficit/failures-protect-and-fulfill-right-education-through-global>> Last Accessed 29 March 2021

‘The Genocide Convention - Secretariat (1947) And Ad Hoc Committee(1948) Drafts - - Prevent Genocide International’ (*Preventgenocide.org*, 1947)
<<http://www.preventgenocide.org/law/convention/drafts>> Last Accessed 10 December 2019

‘The Indian Residential School Settlement Agreement is in The Final Stages.’ (*Afn.ca*)
<http://www.afn.ca/uploads/files/residential_schools/personal_credits_presentation.pdf> Last Accessed 6 June 2021

‘The Indian Residential Schools Settlement Has Been Approved. The Healing Continues.’ (*Residentialschoolsettlement.ca*)
<http://www.residentialschoolsettlement.ca/summary_notice.pdf> Last Accessed 6 June 2021

‘The Indian residential schools’ settlement has been approved’ (*Residentialschoolsettlement.ca*, 2007)
<http://www.residentialschoolsettlement.ca/detailed_notice.pdf> Last Accessed 6 June 2021

‘The Outermost Regions European Lands in The World’ (*Ec.europa.eu*, 2017)
<https://ec.europa.eu/regional_policy/sources/policy/themes/outermost-regions/pdf/rup_2017/rup_partner_guyana_en.pdf> Last Accessed 2 July 2021

‘The Residential School System’ (*Indigenousfoundations.arts.ubc.ca*, 2009)
<https://Indigenousfoundations.arts.ubc.ca/the_residential_school_system_2009/> Last Accessed 20 January 2021

‘The Right To Education - UNICEF UK’ (*UNICEF*) <<https://www.unicef.org.uk/rights-respecting-schools/the-right-to-education/>> Last Accessed 29 March 2021

‘The Top 25 Economies in The World’ (*Investopedia*, 2021)
<<https://www.investopedia.com/insights/worlds-top-economies/>> Last Accessed 15 April 2021

‘The Ugly, Fascinating History of The Word ‘Racism’ (*Npr.org*, 2014) <<https://www.npr.org/sections/codeswitch/2014/01/05/260006815/the-ugly-fascinating-history-of-the-word-racism?t=1614854075458>> Last Accessed 10 February 2021

‘The World Is Off Track In Achieving The Global Education Goal, SDG 4’ (*Unesdoc.unesco.org*, 2019) <<https://unesdoc.unesco.org/ark:/48223/pf0000368935>> Last Accessed 29 March 2021

‘These Schools Are Our Schools’ (*The Economist*, 2013) <<https://www.economist.com/the-americas/2013/10/19/these-schools-are-our-schools>> Last Accessed 24 July 2021

‘Timeline Of Major International Human Rights Treaties | Australian Human Rights Commission’ (*Humanrights.gov.au*) <<https://humanrights.gov.au/our-work/timeline-major-international-human-rights-treaties>> Last Accessed 29 March 2021

‘Tribes Alive’ (*Tribesalive.org*, 2021) <<https://tribesalive.org/about/tribes-alive/>> Last Accessed 23 July 2021

‘Trudeau Apologises for Deep Harm of Residential Schools (*BBC News*, 2017) <<https://www.bbc.com/news/world-us-canada-42101457>> Last Accessed 6 June 2021

‘Trudeau Government Appeals Ruling on Compensation to First Nations Children’ (*globalnews.ca*, 2019) <<https://globalnews.ca/news/5991248/appeal-Indigenous-children-welfare/>> Last Access 07 February 2021

‘Truth and Reconciliation Commission: By the Numbers’ (*Huffingtonpost.ca*, 2015) <https://www.huffingtonpost.ca/2015/06/02/truth-and-reconciliation-_n_7491120.html> Last Accessed 06 June 2021

‘TST Issues Brief: Education and Culture’ (*Sdgs.un.org*) <<https://sdgs.un.org/sites/default/files/documents/18290406tstisuesedcult.pdf>> Last Accessed 29 March 2021

‘Understanding Education As A Right’ (*Right to Education Initiative*, 2018) <<https://www.right-to-education.org/page/understanding-education-right>> Last Accessed 29 March 2021

‘Understanding the Past – Seeking Reconciliation – Building Hope for Tomorrow’ (*ece.gov.ca*, 2013) <https://www.ece.gov.nt.ca/sites/ece/files/resources/northern_studies_10_teaching_guide.pdf> Last Accessed 21 July 2021

‘UNESCO’ (*UNESCO*) <<https://en.unesco.org/>> Last Accessed 1 May 2021

‘UNESCO Launches Interactive Atlas Of Girls’ And Women’s Right To Education’ (*UNESCO*, 2019) <<https://en.unesco.org/news/unesco-launches-interactive-atlas-girls-and-womens-right-education>> Last Accessed 28 February 2021

‘UNESCO & The UN System’ (*UNESCO*, 2021) <<https://en.unesco.org/strategic-planning/UN>> Last Accessed 29 March 2021

‘UNESCO: United Nations Educational, Scientific And Cultural Organization – Office Of The Secretary-General’s Envoy On Youth’ (*Un.org*) <<https://www.un.org/youthenvoy/2013/08/unesco-united-nations-educational-scientific-and-cultural-organization/#:~:text=UNESCO%3A%20United%20Nations%20Educational%2C%20Scientific%20and%20Cultural%20Organization,-The%20United%20Nations&text=UNESCO’s%20mission%20is%20to%20contribute,%2C%20culture%2C%20communication%20and%20information>> Last Accessed 29 March 2021

UN Human Rights Report Shows That Canada Is Failing Indigenous Peoples (*UBCIC.ca*) <<https://www.ubcic.bc.ca/canadafailingIndigenouspeoples>> Last Accessed 7 February 2021

‘United Nations Adopts Declaration On Rights Of Indigenous Peoples’ (*UN News*, 2007) <<https://news.un.org/en/story/2007/09/231062-united-nations-adopts-declaration-rights-Indigenous-peoples>> Last Accessed 19 January 2021

‘United Nations Instruments’ (*Right to Education Initiative*, 2018) <<https://www.right-to-education.org/page/united-nations-instruments>> Last Accessed 13 March 2021

‘United Nations Millennium Development Goals’ (*Un.org*) <<https://www.un.org/millenniumgoals/bkgd.shtml>> Last Accessed 1 May 2021

‘United Nations Office on Genocide Prevention and The Responsibility to Protect’ (*Un.org*) <<https://www.un.org/en/genocideprevention/genocide.shtml>> Last Accessed 26 April 2021

‘United Nations Treaty Collection’ (*Treaties.un.org*) <<https://treaties.un.org/>> Last Accessed 26 February 2021

‘Universal Declaration Of Human Rights’ (*Ohchr.org*) <<https://www.ohchr.org/en/udhr/Pages/UDHRIndex.aspx>> Last Accessed 29 March 2021

‘Universal Rights Group (URG) | Human Rights Independent Think Tank’ (*Universal Rights Group*) <<https://www.universal-rights.org/>> Last Accessed 30 March 2021

‘UNSDG | UN Human Rights Treaty Bodies’ (*Unsdg.un.org*) <<https://unsdg.un.org/2030-agenda/strengthening-international-human-rights/un-treaty-bodies>> Last Accessed 30 March 2021

‘Vision, Mission, Values’ (*ahs.ca*, 2021) <<https://www.ahf.ca/about-us/mission>> Last Accessed 06 June 2021

‘Vulnerable People: Indigenous Peoples - Let’s Fight Racism!’ (*Un.org*) <<http://www.un.org/en/letsfightracism/Indigenous.shtml>> Last Accessed 8 November 2019

‘What Reconciliation Is and What It Is Not’ (*ictinc.ca*, 2018) <<https://www.ictinc.ca/blog/what-reconciliation-is-and-what-it-is-not>> Last Accessed 06 June 2021

‘What UNESCO Does For The Right To Education’ (*UNESCO*)
<<https://en.unesco.org/themes/right-to-education/action>> Last Accessed 28 February 2021

‘What You Need To Know About The Right To Education’ (*UNESCO, 2020*)
<<https://en.unesco.org/news/what-you-need-know-about-right-education>> Last Accessed 29 March 2021

‘What Is Western Education | IGI Global’ (*Igi-global.com*) <<https://www.igi-global.com/dictionary/western-education/55144>> Last Accessed 1 May 2021

Wab Kinew Reveals Joy and Pain of Reconciliation in The Reason You Walk (*CBC, 2015*)
<<https://www.cbc.ca/radio/unreserved/buffy-sainte-marie-wab-kinew-and-how-dna-remembers-trauma-1.3242375/wab-kinew-reveals-joy-and-pain-of-reconciliation-in-the-reason-you-walk-1.3243687>> Last Accessed 23 March 2021

What Is a Normative Question? (*Learn English or Starve, 2017*)
<[https://learnenglishorstarve.wordpress.com/2017/07/25/what-is-a-normative-question/#:~:text=A%20normative%20question%20is%20one,condition%20\(Yes%2FNo\).>](https://learnenglishorstarve.wordpress.com/2017/07/25/what-is-a-normative-question/#:~:text=A%20normative%20question%20is%20one,condition%20(Yes%2FNo).>)> Last Accessed 26 April 2021

Where Our Legal System Comes From - About Canadas System of Justice (*Justice.gc.ca*)
<<https://www.justice.gc.ca/eng/cs/sjc/just/03.html>> Last Accessed 20 February 2021

‘Where Does The Right To Education Stop?’ (*Human Rights Watch, 2015*)
<<https://www.hrw.org/news/2015/12/11/where-does-right-education-stop>> Last Accessed 29 March 2021

‘Who Are the Indigenous and Tribal Peoples?’ (*Ilo.org*)
<https://www.ilo.org/global/topics/Indigenous-tribal/WCMS_503321/lang--en/index.htm> Last Accessed 24 July 2021

‘World Poverty Could Be Cut In Half If All Adults Completed Secondary Education’ (*UNESCO, 2017*) <<https://en.unesco.org/news/world-poverty-could-be-cut-half-if-all-adults-completed-secondary-education#:~:text=A%20new%20UNESCO%20policy%20paper,all%20adults%20completed%20secondary%20school.&text=It%20shows%20that%20nearly%2060,two%20more%20years%20of%20schooling.>>> Last Accessed 29 March 2021

‘Your questions answered about Canada’s residential school system’ (*cbc.ca, 2021*)
<<https://www.cbc.ca/news/canada/a-history-of-residential-schools-in-canada-1.702280>> Last Accessed 23 March 2021

What Is Native Nation Building? (Native Nations Institute, 2022)
<<https://nni.arizona.edu/programs-projects/what-native-nation-building>> Last Accessed 26/02/2022

Canada: 751 Unmarked Graves Found at Residential School (*BBC News, 2021*)
<<https://www.bbc.co.uk/news/world-us-canada-57592243>> Last Accessed 26/02/22

Remains Of 215 Children Found at Indigenous School Site in Canada (*Aljazeera.com*, 2021) <<https://www.aljazeera.com/news/2021/5/28/remains-of-215-children-found-at-indigenous-school-site-in-canada>> accessed 17 March 2022

Delivering On Truth and Reconciliation Commission Calls to Action (*Rcaanc-cirnac.gc.ca*, 2021) <<https://www.rcaanc-cirnac.gc.ca/eng/1524494530110/1557511412801>> Last Accessed 17/02/22

Much Work Remains on The Truth and Reconciliation Commission's 94 Calls to Action | National Post' (*Nationalpost.com*, 2021) <<https://nationalpost.com/news/much-work-remains-on-the-truth-and-reconciliation-commissions-94-calls-to-action>> Last Accessed 17/02/22

Authored Website Resources

Barrera J, 'The Horrors of St. Anne's Residential School Revealed by Police Files' (*Newsinteractives.cbc.ca*, 2018) <<https://newsinteractives.cbc.ca/longform/st-anne-residential-school-opp-documents>> Last Accessed 24 July 2021

Cheney C, LaFrance J, and Quinteros T, 'Institutionalized Oppression Definitions' (*Pcc.edu*, 2006) <<https://www.pcc.edu/illumination/wp-content/uploads/sites/54/2018/05/institutionalized-oppression-definitions.pdf>> Last Accessed 14 February 2021

Contesino G, 'Indigenous Peoples Have A Right To Quality Education. But So Far, We've Failed Them' (*World Economic Forum*, 2016) <<https://www.weforum.org/agenda/2016/08/Indigenous-people-have-a-right-to-quality-education-but-so-far-we-ve-failed-them/>> Last Accessed 1 May 2021

Dean B, 'Indigenous Education And The Prospects For Cultural Survival' (*Culturalsurvival.org*, 2003) <<https://www.culturalsurvival.org/publications/cultural-survival-quarterly/Indigenous-education-and-prospects-cultural-survival>> Last Accessed 30 March 2021

Durkheim, E 'Education and Sociology (Excerpts)' (*The Free Press*, 1956) <<http://www.onlinethinktank.com/documents/education.pdf>> Last Accessed 12 August 2020

Fellmeth A, 'Wiwa V. Royal Dutch Petroleum Co.: A New Standard for The Enforcement of International Law in U.S. Courts?' (*Digitalcommons.law.yale.edu*, 1997) <<http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1033&context=yhrdlj>> Last Accessed 10 August 2019

France-Presse A, 'Canada's Trudeau Says We Must "Learn from our Past" After School Graves Found' (*NDTV.com*, 2021) <<https://www.ndtv.com/world-news/canada-justin-trudeau-says-we-must-learn-from-our-past-after-school-graves-found-2471827>> Last Accessed 6 June 2021

Friedman, I, 'The Other Victims of the Nazis' (*Socialstudies.org*, 1995) <<https://www.socialstudies.org/sites/default/files/publications/se/5906/590606.html>> Last Accessed 06 June 2021

Giannini S, 'Education Is Not A Privilege, It's A Legal Right' (*World Education Blog*, 2018) <<https://gemreportunesco.wordpress.com/2018/11/05/education-is-not-a-privilege-its-a-legal-right/>> Last Accessed 29 March 2021

Gilmore R, 'Trudeau Sorry for 'Incredibly Harmful' Residential Schools as Advocates Call for Accountability' (*Global News.ca*, 2021) <<https://globalnews.ca/news/7980719/residential-schools-trudeau-apology-cowessess-751-unmarked-graves/>> Last Accessed 6 June 2021

Hanson E, 'The Residential School System' (*Indigenousfoundations.arts.ubc.ca*, 2009) <https://Indigenousfoundations.arts.ubc.ca/the_residential_school_system/> Last Accessed 26 June 2021

Hart, V "Best Practice Guidelines for Incorporating Indigenous Perspectives into the Curriculum" (2201) <http://www.talss.qut.edu.au/staff/grants/qut_grants/docs_forms/Best%20practice%20guidelines%20Indigenous%20perspectives.doc> Last Accessed 26/04/2021

Henning, C "I will never forget': trauma survivors share survival stories' (*cbc.ca*, 2018) <<https://www.cbc.ca/news/canada/british-columbia/holocaust-residential-school-survivors-overcome-trauma-1.4807131>> Last Accessed 06 June 2021

International S, and International S, 'Terminology - Survival International' (*Survivalinternational.org*) <<https://www.survivalinternational.org/info/terminology>> Last Accessed 6 November 2019

Jiménez M, 'Indigene: French Guiana' (*Indigene.de*, 2010) <<http://www.indigene.de/30.html>> Last Accessed 7 February 2021

Joseph B, 'The Residential Schools Apology' (*Ictinc.ca*, 2015) <<https://www.ictinc.ca/blog/the-residential-schools-apology>> Last Accessed 23 March 2021

Joseph, B 'What is the Seventh Generation Principle?' (*Ictinc.ca*, 2021) <<https://www.ictinc.ca/blog/seventh-generation-principle#:~:text=The%20Seventh%20Generation%20Principle%20is,seven%20generations%20into%20the%20future.>> Last Accessed 12 April 2021

Kabatay J and Johnson R 'Charting progress on Indigenous content in school curricula' (*cbc.ca*, 2019) <<https://www.cbc.ca/news/Indigenous/Indigenous-content-school-curriculums-trc-1.5300580>> Last Accessed 06 June 2021

Kernan M, 'The Economics of Exploitation: Indigenous Peoples and The Impact of Resource Extraction - Counterpunch.Org' (*CounterPunch.org*, 2015) <<http://www.counterpunch.org/2015/08/20/the-economics-of-exploitation-Indigenous-peoples-and-the-impact-of-resource-extraction>> Last Accessed 9 October 2019

Korff J, 'Barriers to Aboriginal Education' (*Creative Spirits*, 2021) <<https://www.creativespirits.info/aboriginalculture/education/barriers-to-aboriginal-education>> Last Accessed 11 March 2021

Korff, Jens 'Ways Of Teaching & Engaging Aboriginal Students' (*Creative Spirits*, 2021)
<<https://www.creativespirits.info/aboriginalculture/education/teaching-aboriginal-students>>
Last Accessed 11 March 2021

l'Intérieur M, 'Résultats Des Élections Régionales 2015' (2015)
<[https://www.interieur.gouv.fr/Elections/Les-resultats/Regionales/elecresult__regionales-2015/\(path\)/regionales-2015/03/index.html](https://www.interieur.gouv.fr/Elections/Les-resultats/Regionales/elecresult__regionales-2015/(path)/regionales-2015/03/index.html)> Last Accessed 20 July 2021

Lenin V, 'Lenin: The Discussion on Self-Determination Summed Up' (*Marxists.org*, 1916)
<<https://www.marxists.org/archive/lenin/works/1916/jul/x01.htm>> Last Accessed 31 January 2021

Magnusson K, 'Indigenous Identity, Lifelong Learning and Democracy' PASCAL International Observatory (*Pascalobservatory.org*, 2021)
<<http://pascalobservatory.org/pascalnow/blogentry/news/Indigenous-identity-lifelong-learning-and-democracy>> Last Accessed 29 March 2021

Miller Unterberger B, 'Self-Determination | Encyclopaedia of American Foreign Policy | Find Articles At BNET.Com' (*Web.archive.org*, 2002)
<https://web.archive.org/web/20080220083041/http://findarticles.com/p/articles/mi_gx5215/is_2002/ai_n19132482> Last Accessed 26 April 2021

Mitchell K, 'Schooling The World Movie Review' (*CULTURS — lifestyle media for cross-cultural identity*, 2020) <<https://www.cultursmag.com/schooling-the-world-movie-review-01152020/>> Last Accessed 11 March 2021

Mustafa F, 'An Analysis of The Legal Arguments for Self-Determination of Bangladesh in 1971' (*Academia.edu*)
<http://www.academia.edu/2283742/An_Analysis_of_the_Legal_Arguments_for_Self-Determination_of_Bangladesh_in_1971> Last Accessed 10 October 2018

Rueckert P, '10 Barriers to Education That Children Living in Poverty Face' (*Global Citizen*, 2019) <<https://www.globalcitizen.org/en/content/10-barriers-to-education-around-the-world-2>> Last Accessed 28 February 2021

Schneider E and others, 'Mirror, Mirror 2017: International Comparison Reflects Flaws and Opportunities for Better U.S. Health Care' (*Commonwealthfund.org*, 2017)
<<https://www.commonwealthfund.org/publications/fund-reports/2017/jul/mirror-mirror-2017-international-comparison-reflects-flaws-and>> Last Accessed 15 April 2021

Schwartz, D 'Truth and Reconciliation Commission: By the numbers' (*cbc.ca*, 2015)
<<https://www.cbc.ca/news/Indigenous/truth-and-reconciliation-commission-by-the-numbers-1.3096185>> Last Accessed 06 June 2021

Sheffield University, 'Decolonising the Curriculum: A Guide For APS' (*Sheffield University 2020*) <https://www.sheffield.ac.uk/polopoly_fs/1.894561!/file/Decolonise_Handbook.pdf>
Last Accessed 26 April 2021

Tasker J, 'At Least 6,000 Children Died in Residential Schools, TRC Chair Says | CBC News' (*CBC*, 2015) <<https://www.cbc.ca/news/politics/residential-schools-findings-point-to-cultural-genocide-commission-chair-says-1.3093580>> Last Accessed 26 April 2021

Tenant, Z 'Pushed out and silenced: How one doctor was punished for speaking out about residential schools' (*cbc.ca*, 2020) <<https://www.cbc.ca/radio/unreserved/exploring-the-past-finding-connections-in-little-known-Indigenous-history-1.5531914/pushed-out-and-silenced-how-one-doctor-was-punished-for-speaking-out-about-residential-schools-1.5534953#:~:text=Statistics%20showed%20that%20students%20in,to%20the%20high%20death%20rates.>> Last Accessed 23 March 2021

Tomaševski K, 'Human Rights Obligations: Making Education Available, Accessible, Acceptable and Adaptable' (*Right-to-education.org*, 2001) <https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Tomasevski_Primer%203.pdf> Last Accessed 24 July 2021

Tomaševski K, 'The Right to Education : ' (*United Nations Digital Library System*, 2003) <<https://digitallibrary.un.org/record/508333?ln=en>> Last Accessed 24 July 2021

Truth And Reconciliation Commission of Canada (TRC) - Our Mandate (*Trc.ca*) <<http://www.trc.ca/about-us/our-mandate.html>> Last Accessed 6 June 2021

Witschge L, This Is What Happened to The Last Country That Left the EU... (*Slow-journalism.com*, 2016) <<https://www.slow-journalism.com/from-the-archive/this-is-what-happened-to-the-last-country-that-left-the-eu>> Last Accessed 7 February 2021

Wodon Q, and Cosentino G, Education, Language, and Indigenous Peoples (*World Bank Blogs*, 2019) <<https://blogs.worldbank.org/education/education-language-and-Indigenous-peoples#:~:text=Indigenous%20Peoples%20tend%20to%20have,traditional%20languages%20and%20traditional%20knowledge.>> Last Accessed 21 February 2021

Woodrow Wilson : Fourteen Points Speech (1918) | U.S. Embassy & Consulate in The Republic of Korea (*U.S. Embassy & Consulate in the Republic of Korea*) <<https://kr.usembassy.gov/education-culture/infopedia-usa/living-documents-american-history-democracy/woodrow-wilson-fourteen-points-speech-1918/>> Last Accessed 31 January 2021

World University Rankings - 2019 Canada Universities in Top 1000 Universities Academic Ranking of World Universities – 2019 Shanghai Ranking - 2019 (*ShanghaiRanking.com*, 2021) <<http://www.shanghaiRanking.com/World-University-Rankings-2019/Canada.html>> Last Accessed 15 April 2021

Yazzie T, 'Culturally Appropriate Curriculum: A Research-Based Rationale.' (*ERIC*, 1999) <<https://eric.ed.gov/?id=ED427906>> Last Accessed 24 July 2021