

Report on Recognition, Reparations and Reconciliation

EXPERT MECHANISM ON THE RIGHTS OF INDIGENOUS PEOPLES

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Contributors

Quebec Native Women (QNW) is a non-profit, non-partisan association of Indigenous women founded in 1974 with the aim of defending the rights and interests of Indigenous women, their families and their communities throughout the province of Quebec. QNW supports Indigenous women in their efforts to better their living conditions through the promotion of non-violence, justice, equal rights and health. QNW also supports women in their commitment to their communities. QNW is recognized in Canada as an Indigenous Representative Organization, is a member of the Native Women Association of Canada (NWAC) and holds consultative status with the ECOSOC.

Opening up to the Americas (SOAA) is a research conducted by Professor Bernard Duhaime and his team from the *Université du Québec à Montréal* (UQAM), including Me Éloïse Décoste, PhD candidate and principal drafter of this submission. Launched in 2017, the project aims to strengthen the protection of human rights and reconciliation process in Canada by improving connections between Canadian civil society actors and their counterparts in Latin America so as to better share knowledge, strategies and lessons learned. The initiative is funded by the Pierre Elliott Trudeau Foundation.

Background

The Expert Mechanism on the Rights of Indigenous Peoples (hereinafter EMRIP), created on December 14, 2007 by the UN Human Rights Council's Resolution 6/36, is mandated "to assist the Human Rights Council in the implementation of its mandate [by providing it] with thematic expertise on the rights of Indigenous peoples [...]." On October 5, 2016 (HRC Resolution 33/25), the EMRIP was given the mandate to "identify, disseminate and promote good practices and lessons learned regarding the efforts to achieve the ends of the [United Nations] Declaration [on the Rights of Indigenous Peoples] including through reports to the Human Rights Council on this matter". For this purpose, the EMRIP is preparing a report on Recognition, Reparations and Reconciliation and has requested contributions from stakeholders on these themes. In accordance with this process, Quebec Native Women in collaboration with the "Opening Up to the Americas" research project respectfully submit the present report.

Introduction: “Reconciliation” in Canada

Canada, like other settler colonial states, has an unresolved history of violations of Indigenous peoples’ rights. Over the past decades, a dominant paradigm has emerged in which to address this troubled past and its ongoing legacy: Reconciliation. In 1996, the final report of the *Royal Commission on Aboriginal Peoples* (henceforth RCAP) called for a “National Policy of Reconciliation and Regeneration”.¹ Nearly two decades later, the *Truth and Reconciliation Commission of Canada* (henceforth TRC) catalyzed dialogue and debate about the importance of reconciliation in Canada.²

The notion of reconciliation is now firmly embedded on the national agenda as the state’s response to the grievances of Indigenous peoples. However, the exact meaning of the concept, and its scope remains both ambiguous and controversial. For one thing, the definitions different bodies have adopted diverge. The TRC, for example, emphasized reconciliation as a multifaceted process oriented toward redefining the relationship between Indigenous and non-Indigenous peoples in Canada.³ In contrast, the *Supreme Court of Canada* refers to “reconciliation of the pre-existence of distinctive aboriginal societies occupying the land with Crown sovereignty”.⁴

Critics consider the model of reconciliation adopted by the Canadian government in its policies to be at odds with truly recognizing and dismantling of the basic colonial structures that dominate the relationship between Indigenous peoples and the state.⁵ As Paulette Regan writes, “at present, when non-Native Canadians talk about reconciliation in other than a strictly legal sense, the tendency is to speak solely of the need for Native people to heal themselves and reconcile with us, so that the country can put this history behind it and move forward”.⁶ In other words, while reconciliation is now a buzzword in Canada, what it entails remains largely unclear.

Drawing on decades of grassroots experience working with Indigenous women throughout the province of Quebec, and complemented by SOAA’s expertise on transitional justice and international human rights law, the present submission identifies three critical considerations that should inform any process of “reconciliation”:

- 1) Reconciliation should always be grounded in the firm recognition of the wide-ranging prejudice against Indigenous peoples on which colonization was and continues to be based and in a genuine desire to provide reparation for the harms caused;
- 2) Ongoing violations of Indigenous peoples’ human rights are at odds with true reconciliation and, so long as Indigenous peoples, particularly women, have to struggle to survive, any reconciliation efforts will be futile;
- 3) The only path to reconciliation is a rights-based approach, based on the full respect and integrated implementation of the *United Nations Declaration for the Rights of Indigenous Peoples* in an inclusive, non-discriminatory and decolonized manner.

I. Recognizing and Repairing Colonization

a) Recognizing Canada as a settler colonial state

Canada, like many other states, has an unresolved history of violations of and disregard for the rights of Indigenous peoples. These violations were permitted and facilitated by settler colonialism, a specific social formation characterized by the permanent occupation and assertion of sovereignty by foreign powers over colonized territories.⁷ The core function of settler colonialism, as a distinct type of colonization, is to replace Indigenous populations and eliminate the challenge they pose to settler sovereignty and dominant identity. In other words, settler colonialism is an enduring social structure that strives for the dissolution of Indigenous societies through the ongoing process of disconnecting Indigenous peoples from their histories, territories, languages, cultures, social relations and worldviews.⁸

Thus, the modern Canadian nation-state, as a settler colonial state, was built upon the dispossession of Indigenous peoples and the denial of their sovereignty.⁹ As the dramatic rupture of decolonization has not yet transformed Canada's settler colonial state, foundational violence, as well as its enduring legacy and oppressive structures, remain.¹⁰ Indeed, an unbroken thread links the past to the present: historical harms have created a heritage of injustices that are today profoundly embedded in Canadian institutions, legislations and processes. Consequently, reconciliation first requires a deep process of decolonizing the Canadian state's structures, policies and practices.

b) Reconciliation cannot be divorced from transitional justice

The notion of "reconciliation" is intimately tied to the conceptual and methodological framework of transitional justice. In the late 1980s and early 1990s, transitional justice emerged as a field of intervention in response to the appearance of new practical dilemmas in the context of political changes in Latin America and Eastern Europe: How could justice be ensured for victims of human rights violations committed by the prior regime while also ensuring political stability?¹¹ Three decades after the inception of the field, transitional justice has become the dominant framework used to address and provide redress for gross human rights violations in a wide range of countries, including in deeply conflicted societies that are not experiencing political transitions.¹² Hence, the purview of transitional justice is expanding and its mechanisms are being employed in the pursuit of justice in varying contexts.

In settler colonial states, there has been a trend, in recent years, to employ political-legal processes inspired by the field of transitional justice in response to Indigenous grievances. The *Truth and Reconciliation Commission of Canada* (TRC) is a prime example of this trend. Established following a judicially-mediated agreement between the Canadian government and the survivors of the *Indian Residential School System*, the TRC was among the first of such commissions to take place in a so-called "established democracy" and it exclusively focused on Indigenous peoples.

Paradoxically, while using transitional justice mechanisms in settler colonial states attracts international attention and is widely celebrated, “established democracies” like Canada, Australia, New Zealand and the United States continue to be perceived as standing beyond the purview of transitional justice.¹³ Nonetheless, reconciliation cannot be divorced from its roots in transitional justice. Simply put, any attempt at reconciliation taking place without a real, comprehensive, multifaceted transitional justice process will be nothing more than rhetoric and will be doomed to fail to foster any kind of societal transformation. The task of transitional justice in settler colonial states can be nothing less than the decolonization of the state’s institutions, laws, policies and practices with the end goal of developing legal cultures and institutions that respect rather than seek to extinguish Indigenous societies.¹⁴

c) Engaging in decolonization through transitional justice

Due to the scale, nature and duration of the settler state’s abuses, the injustices suffered by Indigenous peoples involve far-reaching intergenerational and collective harm. Traditional models of justice and legal responsibility are often ineffective in providing adequate responses in this respect.¹⁵ Justice for Indigenous peoples should be achieved by simultaneously eroding the norms that enable mass wrongdoing and transforming the social, political, economic and legal frameworks that underlie and perpetuate settler colonialism.¹⁶ Transitional justice offers a programme of legal-based responses that can enable political and social change. Indeed, “in addition to being a form of justice defined by its temporality (a *transitional* justice), transitional justice is a *justice* model”¹⁷ concerned with addressing and redressing widespread, state-sanctioned harm.

The field of transitional justice is in constant evolution, transformed by past precedents and new political realities. First and foremost, it is rooted in a distinctive kind of justice, which is neither fully retributive, distributive nor restorative, but, rather, seeks to respond to the particular challenges presented by the need/desire to reckon with a past of large-scale abuses.¹⁸ In the words of former Secretary General of the UN, Kofi Annan, transitional justice consists of “the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation”.¹⁹ While the four pillars of transitional justice are generally considered to be criminal justice, truth telling, reparation and guarantees of non-repetition, the key contribution of transitional justice is to push for these mechanisms to be understood as complementary and to be implemented simultaneously as part of an integrated policy.²⁰

Thus, transitional justice provides a comprehensive framework and a set of tools to facilitate the positioning of Indigenous grievances within the “justice agenda”.²¹ Moreover, transitional justice’s inherent flexibility and ability to adapt to a wide range of contexts signifies that it is also well suited for settler colonial states where the “transition” can and ought to be understood in terms of decolonization. In other words, the end goal of the transition in settler colonial states like Canada should be decolonization, a process through which power is redistributed and the foundations are set for the establishment of renewed,

just relationships with Indigenous peoples.²² Hence, reconnecting the notion of reconciliation with its roots in transitional justice facilitates its redefinition in terms of the decolonization of the state.

d) Reparations are a sine qua non to reconciliation

Defining reconciliation as the end goal of a process of transitional justice highlights the need to implement, in a concerted manner, a wide-range of measures intended to facilitate the requisite transition, namely decolonization. Settler colonialism dispossessed Indigenous peoples of their land, sovereignty, culture, language, worldviews and children. Consequently, transitional justice processes will fail to decolonize the state unless they seek to repair this multifaceted dispossession through a variety of measures aimed at Indigenous individuals, communities and nations.

Within the transitional justice framework, a very broad understanding of the notion of “reparation” prevails. The *UN Basic Principles on the Right to Remedy and Reparation* sets out five forms of reparation: restitution, compensation, rehabilitation (including healing), satisfaction and guarantees of non-repetition.²³ The transitional justice framework also stresses that the design and implementation of reparation programmes must include participatory processes involving survivors, both individually and collectively. Furthermore, measures of reparation must be accompanied by guarantees of non-repetition, namely a wide-range of deep reforms intended to guarantee that previous harm will not be repeated.

Therefore, settler colonial states cannot base reconciliation processes exclusively on piecemeal measures that only engage with one of the pillars of transitional justice. In other words, a truth measure like the TRC will not lead to decolonization unless it is implemented in an integrated manner with related measures of justice, reparation and non-repetition. Additionally, reparation measures must be in line with international standards both in terms of integrating the UN’s five forms of reparation and assuring participatory design and implementation. In sum, if reconciliation is articulated in term of transitional justice, understood as a process of decolonization, then it become evident that redressing past harm and its ongoing legacy is crucial.

Recommendation

We recommend that the EMRIP clearly state in its report that reconciliation can be nothing less than the end goal of an integrated, comprehensive and multifaceted process of transitional justice designed to address and redress widespread, state-sanctioned harm perpetrated against Indigenous people throughout history as well as the legacy of these violations.

We further recommend that the EMRIP adopt the position that the only legitimate driving force of a reconciliation process in settler colonial states should be a true commitment to a deep decolonization of the state's institutions, laws, policies and practices.

We also recommend that the EMRIP explicitly mention in its report that, in these circumstances, reparation (including healing) is a *sine qua non* condition to reconciliation.

II. Protecting Human Rights

a) Respect for human rights: A prerequisite to reconciliation

Framing reconciliation in terms of transitional justice helps highlight the central role that the protection of human rights must play in reconciliation processes. Indeed, transitional justice is a framework designed to address and redress gross human rights violations. As such, reconciliation cannot occur without ensuring respect for Indigenous peoples' human rights.

However, as things stand right now, Canada, like most if not all settler colonial states, is still responsible for serious violations of the human rights of Indigenous peoples, particularly Indigenous women and children. It is hard to see how reconciliation can be achieved when Indigenous women have to fight daily to defend their rights to equality, life, dignity and integrity, as well as the socio-economic and cultural rights of their families and communities. Considering that historical injustices rooted in colonialism are reproduced through a persistent legacy of harm, addressing past injustices absolutely requires a sincere recognition of how this past manifests itself today, namely in blatant (and often normalized) violations of human rights.

Therefore, reconciliation processes must be founded on a clear recognition that the ongoing legacy of historical injustices persists and cannot be ignored. In other words, a prerequisite for achieving reconciliation necessarily means acknowledging that the human rights of Indigenous peoples are still being violated today. Consequently, before engaging in any process of reconciliation, all necessary measures must be taken to immediately stop all human rights violations, provide effective remedy and redress to survivors and set up sustainable mechanisms to guarantee Indigenous peoples' human rights once and for all. Without an adequate protection of Indigenous peoples' human rights in Canada, the process of reconciliation will remain superficial.

b) Inclusive reconciliation: Fully guaranteeing the right to equality

Historically, highly patriarchal colonial logics have left Indigenous nations deeply wounded. Indigenous women have been the primary victims of these insidious logics. It is therefore essential that the right to equality of all Indigenous peoples, particularly women, be

guaranteed before any process of reconciliation is initiated. Otherwise, the process of reconciliation will be artificial and reproduce colonial forms of exclusion. In short, to be effective, reconciliation must be inclusive.

To this day, Canada provides a prime example of the continued existence of these logics in how the country legislates the identity of Indigenous peoples in a law shamefully still called the *Indian Act*.²⁴ Initially adopted in 1876, this act was designed to regulate every aspect of the life of Indigenous peoples and to promote the colonial project of assimilation. A central part of this legal regime is the creation of “Indian Status” which determines who qualifies as Indigenous in the eyes of the government. Until 1985, the *Indian Act* stipulated that any Indigenous woman who married non-Indigenous man lost her “Indian status” and could not transfer that status to her children. Conversely, an Indigenous man who married a non-Indigenous woman kept his status and was able to transfer it to his non-Indigenous wife and their children.²⁵

In the 1981 Lovelace case, the UN Human Rights Committee concluded that this double standard violated the *International Covenant on Civil and Political Rights*.²⁶ In response, in 1985, Canada adopted a number of amendments to the *Indian Act* purportedly to eliminate discrimination. Yet new forms of discrimination were created and the underlying assimilationist paradigm was maintained.²⁷ In 2010 and 2015, Canadian courts ruled that the *Indian Act* was still discriminatory.²⁸ With the 2017 adoption of Bill S-3, the Canadian government has once again amended the *Indian Act*.²⁹ However, on 14 January 2019, the UN Human Rights Committee concluded that, despite this latest modification of the law, Canada is still violating Indigenous women and their descendant’s right to equality.³⁰

The consequences of this ongoing discrimination are numerous and have tangible impacts. Firstly, by deliberately excluding Indigenous women while simultaneously pursuing a policy centred on the integration of non-Indigenous women into Indigenous communities, Canada has intentionally undermined the transmission of identity and culture from one generation to the next as a means to achieve the end goal of assimilation. Moreover, the exclusion of Indigenous women has disrupted their ability to participate in the civic and political life of their communities. This has marginalized Indigenous women and created fertile ground for violence. Today’s epidemic of violence against Indigenous women and girls is, in many regards, a product of this discrimination. Lastly, gender-based discrimination has made for a state of affairs where the exclusion of Indigenous women from decision-making has been normalized. An illustrative example is the repeated exclusion of Indigenous women’s organizations from discussions on self-determination and what Canada has named “reconciliation tables”.³¹

c) Safe reconciliation: Adequately protecting the right to life, dignity and integrity

In Canada, Indigenous women and girls are at least 3 times more likely to experience violence than any other women or girls, and at least 12 times more likely to be murdered.³² Similarly alarming statistics can be found in other settler colonial states. As mentioned

above, colonial logics, policies and practices have normalized racism and sexism, making Indigenous women particularly vulnerable to human rights violations. Additionally, the failure of states to respond adequately to the crisis of missing and murdered Indigenous women and girls has exacerbated gender-based violence by fuelling impunity and sending the implicit message that the life, dignity and integrity of Indigenous women is worth less. Despite the establishment of a *National Inquiry into Missing and Murdered Indigenous Women and Girls* in 2016, the list of missing and murdered Indigenous women and girls continues to grow: over 125 new cases of Indigenous women or girls who have been murdered or have gone missing have been reported in the last 3 years.³³

When addressing Indigenous women's right to life, it is impossible not to tackle the issue of policing. In recent years, police services across Canada have been strongly criticized for their intervention practices in cases involving Indigenous women and their families.³⁴ Police services consistently fail to take complaints from or threats against Indigenous women seriously and diligently, are slow to react when Indigenous women are reported missing and communicate inadequately with the families of Indigenous women during the investigations.³⁵ These systemic forms of racial discrimination are illustrative of the state's failure to fulfill its positive duty to protect the right to life of Indigenous women.

Moreover, various testimonies have reported incidents where police officers have used their power to mistreat, abuse and assault Indigenous women.³⁶ Such abuses, coupled with the lack of police accountability have generated great fear and a lack of trust among Indigenous women, further exacerbating their existing vulnerability and lack of state protection. Moreover, other forms of violence against Indigenous women committed by public institutions have been reported, without proper state response. Namely, the systemic and forced sterilization of Indigenous women constitutes a blatant violation of Indigenous women's right to dignity and integrity; yet no serious reforms of the responsible institutions have been undertaken and the perpetrators have not been held responsible.

International bodies, including CEDAW³⁷ and the Inter-American Commission on Human Rights³⁸, have repeatedly concluded that Canada's failure to take effective measures to protect Indigenous women from all forms of violence constitutes a grave violation of human rights. Important shortcomings in the organization, planning and mandate of the *National Inquiry into Missing and Murdered Indigenous Women and Girls*, called into question the ability of its final report to pave the way towards creating a safer Canada for Indigenous women. Notably, the failure of the inquiry to examine the systemic causes of violence against Indigenous women and girls, particularly with regards to policing policies and practices, indicates that Canada is not fully and diligently implementing its positive obligations, under the umbrella of the right to life, to protect Indigenous women against all forms of violence seriously. In a context where Indigenous women are fighting to stay alive and to live a dignified life while not benefiting from adequate state protection, it is difficult to foresee how reconciliation genuinely can take place.

d) Equitable reconciliation: Real safeguards for socio-economic and cultural rights

Engaging in reconciliation is difficult, if not impossible, so long as Indigenous communities remain impoverished. On all counts, the socio-economic statistics of Indigenous communities in Canada (and other settler colonial states) are alarming. This reality is a product of colonial violence and injustices, and provides fertile ground for reproducing the legacy of historical abuses. Intergenerational harm thus impedes any efforts to build healthy communities, foster cultural revival and ensure healing. Indigenous children are the primary victims of this sad reality as they witness their rights to education, family life, health, care and culture, among others, blatantly violated by the failure of governments to effectively and equitably address the chronic underfunding of services and programs in Indigenous communities.

In 2016, the *Canadian Human Rights Tribunal* concluded that the federal government discriminates against Indigenous children by systematically underfunding child and family services in First Nations communities, both in comparison to the funding available in predominantly non-Indigenous communities and relative to the real needs of Indigenous families who have to cope with the ongoing legacy of colonial violence.³⁹ In particular, the *Tribunal* concluded that protections against discrimination in Canadian law mean that the government has an obligation to ensure “substantive equality” in the delivery of services to Indigenous and non-Indigenous peoples, regardless of what level of government funds those services. As the *Tribunal* indicated, substantive equality does not mean identical services. It rather means providing services that meet the particular needs of the communities being served.

The legacy of colonialism, notably the detrimental impacts of the *Indian Residential School System*⁴⁰ and of the *Sixties Scoop*⁴¹, has left individuals, families and communities deeply wounded.⁴² The abuses experienced in residential schools and the tragedy of being forcibly removed from one’s family during childhood have severely affected the parenting abilities of many Indigenous parents who have to cope with trauma while simultaneously having to learn how to care for children. Additionally, child protection services are notorious for following evaluation criteria that are maladapted for the reality of Indigenous communities.⁴³ The result is disproportionately high rates of removal of Indigenous children from their families and communities and placement in protection services or with non-Indigenous families. In the province of Quebec, Indigenous children represent 10% of youth in care, while they constitute only 2% of the population.⁴⁴ In other provinces of Canada, the statistics are even more alarming, meaning that more children are under the care of child protection services than the number of children in Residential Schools at the peak of this state policy.⁴⁵ This is a product of colonial harm and ongoing poverty as well as biased state institutions that uphold an invisible, but profoundly harmful assimilationist logic inherited from the past.

Hence, as long as Indigenous communities have to fight for their survival and so long as Indigenous children grow up in communities unable to fulfill their basic needs, the legacy of historical injustices will translate into the intergenerational transmission of human rights

violations. Consequently, any talk of reconciliation must be accompanied by concrete measures to address the pervasive poverty afflicting Indigenous communities in a manner that is equitable, culturally sensitive and designed to promote intergenerational healing in a decolonized manner.

Recommendation

We recommend that the EMRIP reaffirm in its report that reconciliation cannot be achieved unless the right to equality and non-discrimination of all Indigenous peoples, particularly Indigenous women and children, is upheld and guaranteed.

We further recommend that the EMRIP insist in its report on the urgency of protecting the life and the dignity of Indigenous women and on the responsibility of states to adequately uphold Indigenous women's right to life, including the positive obligation of states to protect Indigenous women against violence from non-state actors.

We recommend that the EMRIP assert that equitably funding services and programs in Indigenous communities, particularly those services and programs destined to children and families, is essential for safeguarding Indigenous peoples' socio-economic rights and for enabling healing, without which reconciliation will be impossible.

We lastly recommend that the EMRIP adopt the position that reconciliation cannot occur without clear policies and practices designed to protect the cultural and family rights of Indigenous children, notably through the implementation and adequate funding and monitoring of culturally sensitive and non-discriminatory child care and protection services.

III. Implementing UNDRIP

(a) More than rhetoric

In Canada, the notion of reconciliation has emerged over the past decades as the dominant paradigm guiding the state's efforts to reckon with the past and to respond to the grievances of Indigenous peoples. However, Indigenous peoples are reluctant to embrace the term absent of concrete measures and, more importantly, tangible improvements with regards to their living conditions and the respect for their rights. This has resulted in a heightened sense among Indigenous peoples that reconciliation is simply political rhetoric, used to avoid the real debates.

Already in the 1990s, the *Royal Commission on Aboriginal Peoples* concluded: "the main policy direction, pursued for more than 150 years, first by colonial then by Canadian governments, has been wrong".⁴⁶ For over 4,000 pages, RCAP demonstrated that the successive governments' attempt to assimilate Indigenous peoples into the dominant

society was both misguided and profoundly harmful, causing great damage and affecting individuals, families and communities to this day.

Fourteen months later, the government unveiled its response to the report, called *Gathering Strength-Canada's Aboriginal Action Plan*.⁴⁷ In unveiling the Action Plan, then-Minister of Indian Affairs and Northern Development Jane Stewart issued a "Statement of Reconciliation", acknowledging that Canada's "history with respect to the treatment of Aboriginal people is not something in which we can take pride", insisting on the need to "deal with the legacy of the past" and promising a renewed relationship through an ongoing commitment to reconciliation.⁴⁸ Yet the transformational spirit and intent of the RCAP was quickly squandered, the massive amount of work conducted was shelved and Canada's promises of reconciliation were never concretized.

The *Truth and Reconciliation Commission of Canada* revived the notion of reconciliation; however its limited mandate, directed only to one chapter in Canada's long colonial history - the residential school system - has been widely criticized as incomplete, piece-meal and deceptive, in that it painted the residential school system as a misguided policy in an otherwise well-functioning democracy. Consequently, Indigenous peoples have learned to be suspicious of the term reconciliation. Reconciliation should not be divorced from concrete actions and tangible transformational measures intended to dismantle the architecture of settler colonial states. In other words, there needs to be strong positioning against any understanding of reconciliation that is solely rhetorical and divorced from a true process of decolonization.

(b) Rights-based reconciliation

To avoid the trap of a politically contentious, strictly rhetorical reconciliation, it is essential that the process of reconciliation be rights-based. As stated above, the respect for human rights is a non-derogable prerequisite to reconciliation. Likewise, recognition of and reparation for past violations are *sine qua non* conditions to true reconciliation. Additionally, reconciliation will only bear fruits once the underlying norms that previously enabled widespread and systemic state-sanctioned violations of the rights of Indigenous peoples are replaced by norms that uphold and promote respect of Indigenous peoples' rights. Therefore, to avoid to the extent possible politicizing of the process of reconciliation, which risks of limiting reconciliation to a series of empty promises, any process of reconciliation must be rights-based.

In recent years, Canada has developed *The Principles respecting the Government of Canada's relationship with Indigenous peoples*, colloquially named "the Reconciliation Principles".⁴⁹ In the introduction, the document indicates that:

"The Government of Canada is committed to achieving reconciliation with Indigenous peoples through a renewed, nation-to-nation, government-to-government, and Inuit-Crown relationship based on recognition of rights, respect, co-operation, and partnership as the foundation for transformative change."

These principles are far-reaching. They cover, among others: the recognition and implementation of the inherent right to self-government; the importance of consulting and cooperating in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them; the need of renewing fiscal relations; and the adoption of a nation-to-nation relationship based on mutual recognition and respect. While these principles undoubtedly look great on paper, they are strangely similar to the recommendations made by RCAP three decades ago, recommendations that Canada was quick to shelf. Thus, the questions remain: How are these principals going to be upheld and implemented?

Given Canada's long and continuing history of broken promises towards Indigenous peoples, including with regards to reconciliation, such a statement of principles may well be another form of "politics of distraction".⁵⁰ The recent actions of the Royal Canadian Mounted Police (RCMP) in Wet'suwet'en ancestral territory in British Columbia, where the state's coercive forces was deployed against Indigenous peoples for the benefit of private interests illustrate how these principles do not necessarily translate into changes on the ground. As such, to avoid the trap of superficial reconciliation limited to rhetorical strategies, the only way forward is to require all reconciliation processes to be firmly grounded in the protection, respect and promotion of the rights of Indigenous peoples at all levels, starting within government's practices, laws, policies and institutions.

(c) UNDRIP: The only path to reconciliation

The *United Nations Declaration on the Rights of Indigenous Peoples* (henceforth UNDRIP) is the product of 20 years of negotiations and, more importantly, of an extensive, comprehensive and deliberative process involving representatives of Indigenous peoples from around the world, along with states and UN experts. Its adoption by the UN General Assembly on September 13, 2007 was an important milestone for the protection of Indigenous peoples' rights around the world. Taken as a whole, from its preamble to its 46th article, UNDRIP provides a clear framework for justice and reconciliation, applying existing human rights standards to the specific historical, cultural and social circumstances of Indigenous peoples who face historic and ongoing violations rooted in colonialism, and recognizing the distinctive nature of the rights of Indigenous peoples.

In its final report under the sub-heading 'Reconciliation', the *Truth and Reconciliation Commission of Canada* listed Calls for Action 43 and 44:

"43. We call upon federal, provincial, territorial, and municipal governments to fully adopt and implement the *United Nations Declaration on the Rights of Indigenous Peoples* as the framework for reconciliation.

44. We call upon the Government of Canada to develop a national action plan, strategies and other concrete measures to achieve the goals of the *United Nations Declaration on the Rights of Indigenous Peoples*.⁵¹

Thus, as the TRC clearly stated, the only path forward for reconciliation is the implementation of the framework set by the *United Nations Declaration on the Rights of Indigenous peoples* through an integrated and comprehensive action plan focused on concrete measures.

On May 30, 2018, the Canadian Parliament adopted Bill C-262, “An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous peoples”.⁵² The Act is currently being debated in the Senate. This recent development is important since Bill C-262, if passed, will provide a legislative foundation to ensure the domestic implementation of the rights enshrined in the UNDRIP. It nonetheless remains to be seen how Canada will choose to implement UNDRIP and whether it will do so in full respect of its spirit, intent and wording.

However, it is important to remember that the UNDRIP sets minimum standards, absent of which reconciliation would be unattainable. Furthermore, the success of UNDRIP as a framework for reconciliation will depend on two crucial elements. First, as stated in the preamble, implementing of UNDRIP must be done through collaborative efforts between governments and Indigenous peoples. Second, UNDRIP articulates overarching standards that must be interpreted broadly and implemented in an integrated manner. In other words, any piece-meal implementation of UNDRIP will be inadequate as a framework for reconciliation. *In short, the only path to reconciliation is the complete, exhaustive and integrated implementation of UNDRIP.*

Recommendation

We recommend that the EMRIP explicitly assert that the term reconciliation is meaningless if detached from tangible transformational measures intended to dismantle the colonial structures that underline the settler state.

We also recommend that the EMRIP recall that reconciliation can only be based on the protection, respect and promotion of the rights of Indigenous peoples, including both human rights and collective rights.

We lastly recommend that the EMRIP insist that the only adequate and legitimate framework for reconciliation is the full, comprehensive and integrated implementation of the *United Nations Declaration on the Rights of Indigenous Peoples*, in collaboration with Indigenous peoples and in true harmony with the spirit, intent and wording of UNDRIP.

¹ Canada, Royal Commission on Aboriginal Peoples, *Final Report*, volume 1 (Canada Communication Group: Ottawa, 1996) 211.

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- ² Colleen Sheppard, 'Indigenous Peoples in Canada: Understanding Divergent Conceptions of Reconciliation' (2013) ISID Aboriginal Policy Study Papers PB 2013-04, 9.
- ³ Truth and Reconciliation Commission of Canada, *What We Have Learned: Principles of Truth and Reconciliation* (Truth and Reconciliation Commission of Canada: Ottawa, 2015) 121.
- ⁴ *R v Van der Peet* [1996] 2 SCR 507 at para 42, 1996 CanLII 216 (SCC) Lamer CJ.
- ⁵ Arthur Manuel and Grand Chief Ronald Derrickson, *The Reconciliation Manifesto : Recovering the Land, Rebuilding the Economy* (Lorimer : Toronto, 2017).
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