From Legislated Discrimination to Systemic Racism: Indigenous Women and Settler Colonialism in Canada

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On 28 September 2020, 37-year-old Joyce Echaquan, an Atikamekw woman from Manawan, died in a hospital in Joliette. Admitted two days earlier for stomach pains, Echaquan had travelled almost 200 kilometers to access healthcare. Like many Indigenous communities in Canada, Manawan only has a nursing station. Moments before her death, she livestreamed herself pleading for help in her mother tongue, Atikamekw Nehiromowin. In the video, which went viral, Echaquan, who suffered from a pre-existing heart condition, complains about being over-medicated. In the background, the taunts and racial slurs hurled by the healthcare workers on duty are loud and clear.[2] Less than an hour later, her heart stopped beating.[3] Echaquan's brave gesture to record the circumstances of her death, despite the excruciating pain she is visibly in, provides first-hand evidence of the degrading treatment she endured while in care. Her death sparked nationwide outrage about discrimination and systemic racism in Canada's healthcare system.[4]

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[2] A. Riopel, 'Les dernières heures de Joyce Echaquan', *Le Devoir*, 2 October 2020, https://www.ledevoir.com/societe/587114/les-dernieres-heures.

[3] On 6 October 2020, the Office of the Chief Coroner of Quebec ordered an inquest into her death. Public hearings were held from 13 May to 2 June 2021 in the Trois-Rivière Courthouse. The testimonies gathered during the inquest clearly point to patterns of mistreatment of Indigenous peoples in the province's healthcare system: L. Perreaux, 'Quebec Coroner Finishes Joyce Echaquan Inquest', *The Globe and Mail* updated 3 June 2021, https://www.theglobeandmail.com/canada/article-quebec-coroner-finishes-echaquan-inquest/. On 1 October 2021, coroner Géhane Kamel released her final report. It concludes that Joyce Echaquan died of a shock-induced pulmonary oedema cardiogenic in the context of a diseased heart, associated with potentially deleterious maneuvers and racial prejudice.: Me Géhane Kamel, *Rapport d'enquête concernant le décès de Joyce Echaquan,* Bureau du Coroner du Québec, 2021, https://www.coroner.gouv.qc.ca/fileadmin/Enquetes_publiques/2020-EP00275-9.pdf (last accessed 5 April 2023).

[4] While Joyce Echaquan's death brought the issue into the spotlight, systemic racism in Canada has been documented for years. Notably, in 2015, a report showed that racism contributes to poorer health outcomes for Indigenous peoples compared to other Canadians. B. Allan and J. Smylie, *First Peoples, Second Class Treatment: The Role of Racism in the Health and Well-Being of Indigenous Peoples in Canada*, Wellesley Institute, 2015, https://www.wellesleyinstitute.com/wp-content/uploads/2015/02/Summary-First-Peoples-Second-Class-Treatment-Final.pdf (last accessed 2 March 2023). Moreover, nearly a year before Echaquan's troubling death, a provincial inquiry had concluded that Indigenous peoples living in Quebec are subject to violence and systemic discrimination in the delivery of public services, including healthcare. Public Inquiry Commission on relations between Indigenous peoples and certain public services in Québec: listening, reconciliation and progress, *Final Report*, Commission

For Indigenous[5] women,[6] the tragic sight was all but too familiar. Although the Canadian Government likes to boast about the country being a benevolent peacekeeper, systemic racism against Indigenous peoples[7] is still rampant in Canada. The root causes of today's racial injustices are deeply entangled in the country's colonial history and the ongoing legacy of the state's policies aimed at assimilating Indigenous peoples into the dominant Euro-Canadian society. Indigenous women have been the prime targets of the state's onslaught on Indigenous peoples, as their very existence as givers of life and mothers as well as heads of families in matrilineal nations poses a symbolic and physical threat to the settler colonial project.[8]

This paper will examine why, while non-discrimination is well entrenched in international law, Canada is persistently failing to protect Indigenous women's human rights. It will start by

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d'enquête sur les relations entre les autochtones et certains services publics, 2019, https://www.cerp.gouv.qc.ca/fileadmin/Fichiers_clients/Rapport/Final_report.pdf (last accessed 2 March 2023).

[5] In this article, the term 'Indigenous' is used, as it is the term chosen by the Indigenous representatives who participated in the negotiation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), 2007, https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf (last accessed 2 March 2023). In Canada, the Constitution uses the term 'Aboriginal'. However, 'Indigenous' has become, in recent years, the preferred umbrella term in the Canadian context as well.

[6] The term 'women' is used in an inclusive fashion and encompasses all Indigenous persons who identify and/or navigate the world being gendered as such. For the sake of conciseness, the term 'women' is used to refer to women of all ages, instead of the commonly used expression 'Indigenous women and girls'. The choice to limit the discussion to Indigenous women is in no way intended to minimize the consequences of colonialism on other Indigenous persons, but rather to highlight the particular ways in which colonialism has targeted and impacted Indigenous women.

[7] There is no authoritative definition of 'Indigenous peoples' under international law. The relevant international instruments, namely UNDRIP, supra fn 5, and the Indigenous and Tribal Peoples Convention, 1989, adopted by the General Conference of the International Labour Organisation on 7 June 1989 and entered into force on 5 September 1991, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169 (last accessed 2 March 2023), rather insist on the importance of self-determination. Nonetheless, the following definition put forward in the 1982 UN study on discrimination against Indigenous populations remains insightful: 'Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems'. J. R. Martinez Cobo, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Study of the Problem of Discrimination Against Indigenous Populations: Volume V - Conclusions, Proposals and Recommendations, UN Doc E/CN.4/Sub.2/1986/7/Add.4, 1987, §379.

[8] D. M. Lavell-Harvard and J. Brant, 'Introduction', in D. M. Lavell-Harvard and J. Brant (eds), *Forever Loved: Exposing the Hidden Crisis of Missing and Murdered Indigenous Women and Girls in Canada,* Demeter Press, 2016, p 3.

demonstrating that the marginalization of Indigenous women has been a prime tool of colonialism in Canada. It will then examine how the legacy of colonialism has dramatic and ongoing impacts on the lives and wellbeing of Indigenous women in Canada today. Finally, the paper will posit that, given how integral the marginalization of Indigenous women has been to the making of the settler state, a better implementation of human rights protections is and will always be insufficient to address the epidemic levels of violations of Indigenous women's human rights in Canada.

1. Legislated Discrimination: Settler Colonialism and the Marginalization of Indigenous Women

For 150 years, the Canadian state maintained a system of legislated inequalities that discriminated against Indigenous women. While Indigenous men who married non-Indigenous women remained 'Indians'[9] under Canadian law and could transmit that status to their wife and children, Indigenous women who married non-Indigenous men were forced to leave their communities. This exclusion contributed to the economic marginalization, social isolation and devaluing of the lives of Indigenous women.[10] This discriminatory treatment was certainly a product of the state's own patriarchal values, but there was more to it. Indigenous women's role as givers of life and their 'ability to produce future generations and ensure the continuance of [their] people … threaten[ed] the entire colonial project'.[11] Thus, to adequately apprehend the pervasive consequences of a century and a half of legislated inequalities and Canada's persistent failure to protect Indigenous women's human rights, one must first examine how gender-based discrimination constitutes an integral part of Canada's colonial fabric.

[9] The term 'Indian' is used strictly to refer to the legal category enshrined in the Indian Act, RSC 1985, c I-5. The author however acknowledges that it is an archaic, colonial term that ought not to be used or understood as a synonymous for Indigenous.

[10] S. D. McIvor, 'Aboriginal Women Unmasked: Using Equality Litigation to Advance Women's Rights', 16 *Canadian Journal of Women and the Law* (2004).

[11] Lavell-Harvard and Brant, 'Introduction', supra fn 8, p 4. See also A. Smith, *Conquest: Sexual Violence and American Indian Genocide*, Duke University Press, 2015; W. Stevenson, 'Colonialism and First Nations Women in Canada', in M. J. Cannon and L. Sunseri (eds), *Racism, Colonialism and Indigeneity in Canada: A Reader*, Oxford University Press, 2011; M. Eberts, 'Victoria's Secret: How to Make a Population of Prey', in J. Green (ed), *Indivisible: Indigenous Human Rights*, Fernwood Publishing, 2014.

A. Creating the 'Indian': Settler Colonialism and Racist Ideologies

During the initial period of contact, the relationship between Indigenous societies and European colonizers was primarily commercial and marked by patterns of cooperation, with Indigenous nations enjoying the upper hand in populations and knowledge of the land, essential for survival.[12] Nonetheless, European colonizers and their imperial ambitions profoundly perturbed all aspects of life across what is known today as North America and provoked dramatic decline in Indigenous populations through imported disease, war, massacres and famines.[13] By the mid-nineteenth century, the balance of power had drastically shifted. As the fur trade – which was dependent on cooperation with Indigenous nations – was replaced by agriculture and resources exploitation, colonizers wanted land for permanent settlement. Meanwhile, loss of land, the scarcity of game and the continuing ravages of disease gravely undermined Indigenous economies, which were now perceived as incompatible with the colonizers' imperial ambitions.[14] Colonial governments adopted laws based on racist ideologies in order to justify the subjugation of Indigenous peoples and the adoption of its assimilationist policies.[15]

In 1857, the British Crown adopted the *Gradual Civilization Act*, which sought the 'gradual removal of all legal distinctions between [Indian Tribes] and Her Majesty's other Canadian subjects, and to facilitate the acquisition of property and of the rights accompanying it'[16] through a process it called enfranchisement.[17] 'The enfranchisement policy was a direct attack on the

[12] See *Report of the Royal Commission on Aboriginal Peoples: Looking Forward, Looking Back*, vol 1 (RCAP vol 1), 1996, pp 95, https://data2.archives.ca/e/e448/e011188230-01.pdf (last accessed 2 March 2023).
[13] Ibid, p 97.
[14] Ibid, p 130–131
[15] Ibid, 8.
[16] Act to Encourage the Gradual Civilization of the Indian Tribes in this Province, and to Amend the Laws Respecting Indians, SC 1857, c 26, Preamble, http://caid.ca/GraCivAct1857.pdf (last accessed 2 March 2023).
[17] Any Indigenous man between 21 and 40 years old could ask to be enfranchised, by means of which he would cease to be considered a member of his band in exchange for up to 50 acres of land within the reserve and his per capita share in the principal of the treaty annuities and other band moneys. To qualify, they had to show they were 'civilized', which was defined around the matrix of a Christian education, permanent settlement and agriculture. His wife and children were automatically enfranchised with him, regardless of their wishes and without receiving a share of reserve lands like him. The criteria used by the colonial authorities were: ability to read and write English or French; be reasonably well educated (by colonial standards); be free of debt; and considered of good moral character (as determined by a commission of settler examiners),*Ibid,* § VII, VIII, IV. See also: K. Jamieson, *Indian Women and the Law in Canada: Citizens Minus,* Canadian Advisory Council on the Status of Women and Indian Rights for Indian Women, 1978, 20.

social cohesion of [Indigenous] nations.'[18] It sought to reduce the numbers of 'Indians' and to gradually extinguish 'reserve lands'.[19] However, the first iteration of enfranchisement, which was voluntary, proved to be a failure. During the period between 1857 and 1876, only one Indigenous man chose to enfranchise.[20]

B. The Indian Act: Legally 'Making' and 'Unmaking' Indians

The 1867 Confederation of Canada drastically changed the constitutional relationship between Indigenous peoples and the state. This new relationship was decided unilaterally, without discussion or consultation with Indigenous peoples on their future position within the federation.[21] According to the Constitution of the Dominion of Canada, 'Indians and Lands reserved for the Indians' fell under the exclusive legislative authority of parliament.[22] From then on, the state sought to define the term 'Indian' as narrowly as possible.[23]

In 1869, the new parliament adopted *An Act for the Gradual Enfranchisement of Indians*,[24] which marked the formal incorporation of the ethos of assimilation into Canadian law.[25] Then, the first iteration of the *Indian Act* was adopted in 1876.[26] A product of the consolidation of separate pieces of colonial legislation aimed at Indigenous peoples, the goal of this new law was to bring all Indigenous nations (with whom the Crown had distinct relationships) under a single relationship with the settler state, one that was both homogenizing and deeply paternalistic.[27] The

[18] RCAP vol 1, supra fn 12, p 138.
[19] 'Importantly, [enfranchisement] was a threat to the integrity and land base of communities, an attempt to "break them to pieces" one leader charged.' Ibid.
[20] RCAP vol 1, supra fn 12, p 138.
[21] Ibid, p 165.
[22] Constitution Act, 1867 (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, App II, no 5, §91(24).
[23] "a narrow definition of "Indian" furthers Canada's own land ambitions in several ways: the fewer Indians it recognizes, the less land must be allocated as reserves in the first place; and the more people who are excluded from bands, the more quickly the Indian population will shrink": Eberts, 'Victoria's Secret', supra fn 11, p 148.
[24] An Act for the Gradual Enfranchisement of Indians, the Better Management of Indian Affairs, and to Extend the Provisions of the Act 31st Victoria, 42 (Gradual Enfranchisement Act), SC 1869, c 6, https://dev.nctr.ca/wp-content/uploads/2021/01/1869-Gradual-Enfranchisement-Act.pdf (last accessed 2 March 2023).
[25] RCAP vol 1, supra fn 12, p 166.
[26] An Act to Amend and Consolidate the Laws Respecting Indians, SC 1876, c 18, https://www.tidridge.com/uploads/3/8/4/1/3841927/1876indianact.pdf (last accessed 2 March 2023).
[27] 'Our Indian legislation generally rests on the principle, that the aborigines are to be kept in a condition of tutelage and treated as wards or children of the State … [T]he true interests of the aborigines and of the State alike require that every effort should be made to aide the Red man in lifting himself out of his condition of tutelage and

Act gave sweeping powers to the state with regards to the political structures, governance, cultural practices and education of Indigenous nations to achieve the settler colonial project.[28] 'The *Indian Act* further facilitated the imposition of the government's assimilative will by insisting on conformity with Canadian social mores and providing penalties for non-compliance.'[29]

One central component of the Act, which is still in force today, is the unilateral determination of who is considered 'Indian' under the law, namely who is entitled to 'Indian status'.[30] The 1876 Act defined the term 'Indian' as any man with status, his children or 'any woman lawfully married to him', with the obvious effect of continuing the policy of excluding the women who married 'non-Indians'.[31] Through this policy, the settler state imposed a Victorian model of gender relations, positioning the male as the patriarch and the female as his dependent and obedient spouse.[32] Such a model of gender relations was foreign to Indigenous family and governance structures. The construction of perfect Victorian wives intended to accelerate the assimilation of Indians into the dominant settler society.[33]

Under the guise of 'civilization', Indigenous nations were to be fragmented into small government-dependent polities of 'Indians' that replicated Victorian villages. This scheme rested

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dependence, and that is clearly our wisdom and our duty, through education and every other means, to prepare him for a higher civilization by encouraging him to assume the privileges and responsibilities of full citizenship'. Canada, Department of Interior, Annual Report for the Year Ended 30th June, 1876, in Sessional Papers*,* vol 7, no 11 (1877), p xiv.

[28] As stated before parliament in 1887 by then Prime Minister Sir John A. Macdonald, "the great aim of our legislation has been to do away with the tribal system and assimilate the Indian people in all respects with the inhabitants of the Dominion.": Sessional Papers, vol 20b, Session of the 6th Parliament of the Dominion of Canada, 1887, p 37.

[29] RCAP vol 1, supra fn 12, p171.

[30] Ibid, p 167.

[31] The Act defined the term 'Indian' as follows: '*First.* Any male person of Indian blood reputed to belong to a particular band*; Secondly.* Any child of such person; *Thirdly.* Any woman who is or was lawfully married to such person: … (c) Provided that any Indian woman marrying any other than an Indian or a non-treaty Indian shall cease to be an Indian in any respect within the meaning of this Act … (d) Provided that any Indian woman marrying an Indian of any other band or a non-treaty Indian shall cease to be a member of the band to which she formerly belonged, and become a member of the band or irregular band of which her husband is a member. An Act to Amend and Consolidate the Laws Respecting Indians*,* supra fn 26, §3(3).

[32] Eberts, 'Victoria's Secret', supra fn 11, p 149.

[33] The cultural values underlying the settler colonial project were based primarily on the needs of a society organized around agriculture. Private property and inheritance through the male line were indispensable to establishing this system upon Indigenous communities, which required control and repression of women's sexuality. See: Jamieson, *Indian Women and the Law in Canada*, supra fn 17, p 13.

both on the view that the humanity of Indigenous peoples was less than that of the European and that the only proper place for women was under the dominion of men.[34] Moreover, the reproductive ability of Indigenous women and their role as culture bearers endangered the continued success of the settler colonialism.[35] Attacking the social status of Indigenous women was a way for the settler state to undermine the power of Indigenous societies as a whole.[36] Sexist and racist stereotyping of Indigenous women as hypersexual, lascivious, unfit and needing control served to justify this persistent policy of exclusion and subjugation.[37] Thus, the inscription of gender hierarchy into Indigenous societies was not merely a means of patriarchal control, but also a tool of colonialism.[38]

In 1951, following the Second World War and in the wake of the emergence of the international human rights regime, the Indian Act was significantly reformed. Some of the Act's oppressive restrictions were removed from the law.[39] The main modification with regards to 'status' was the creation of the registration system that enabled a centralized record of those entitled to registration (and to receipt of federal benefits) as 'Indians'.[40] The introduction of the registration system further reinforced the exclusion of women and their descendants.[41] Under the new regime, women would not only lose status upon marriage with a 'non-Indian', they would also be enfranchised.[42] The fact that the exclusion of Indigenous women was consolidated, even though

[34] Ibid.
[35] Smith, *Conquest*, supra fn 11, p 79; E. Rule, 'Seals, Selfies, and the Settler State: Indigenous Motherhood and Gendered Violence in Canada', 70 *American Quarterly* 4 (2018) 741.
[36] B. Lawrence, 'Gender, Race and the Regulation of Native Identity', 18 *Hypatia* 2 (2003) 5; See also: K. M. Labelle in collaboration with the Wendat/Wandat Women's Advisory Council, *Daughters of Aataentsic: Life Stories from Seven Generations*, McGill-Queen's University Press, 2021, p 4.
[37] Eberts, 'Victoria's Secret', supra fn 11, p 150.
[38] R. Kuokkanen, 'Globalization as Racialized, Sexualized Violence: The Case of Indigenous Women', 10 *International Feminist Journal of Politics* 2 (2008) 220; Smith, *Conquest*, supra fn 11, p 23. See also: Rule, 'Seals, Selfies, and the Settler State', supra fn 35, 747; R. Bourgeois, 'Generations of Genocide: The Historical and Sociological Context of Missing and Murdered Indigenous Women and Girls', in K. Anderson, M. Campbell and C. Belcourt (eds), *Keetsahnak: Our Missing and Murdered Indigenous Sisters*, The University of Alberta Press, 2018, pp 68–70.
[39] RCAP vol 1, *supra* note 12, pp 283–285.
[40] Ibid, p 286.
[41] Prior to the 1951 amendments, women who lost status through marriage could still retain their links to their communities through the issuance by some Indian agencies of informal ID cards known as 'red tickets', which enabled some women to continue living on reserve and receive treaty payments, based on band practices.[41] Although the legal status of these women was unclear prior to 1951, they could still in some ways be recognized as members of their communities. See: *Ibid,* p. 277
[42] The Indian Act, SC 1951, c 49, §12(1)(b).

the Indian Act was amended to weaken some of its oppressive policies, further highlights how central gender-based discrimination is to the settler colonial project.[43]

C. Reforming the *Indian Act*, Maintaining the Inequities

The enhanced regime of exclusion of Indigenous women remained in force until 1985 when the Indian Act was finally amended to remove the explicit gender-based discrimination. The legislative modification was a result of concomitant factors, including the ratification by Canada of the United Nations Convention on the Elimination of All Forms of Discrimination against Women[44] in 1981 and the adoption of the Canadian Charter of Rights and Freedoms,[45] which enshrined the right to equality into the Constitution.[46] Most importantly, the changes came after more than two decades of Indigenous women's political and legal activism, both nationally and internationally.[47]

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[43] The 'marry-out' policy affected women and their children in numerous ways. Once married to a 'non-Indian', the women were forced to leave their community; they could not own property on the reserve nor inherit it from their relatives; they were denied access to cultural and social services in their community; they could no longer participate in its political and social life; even after divorcing, separating or being widowed, they could not return, or if they did, often with children, they faced evictions; and upon death, they could not be buried on the reserve with their ancestors. Overall, this policy had serious deleterious effects on the excluded women and their descendants. Moreover, the stereotyping used to justify the exclusion of the women who 'married out' ultimately affected all women. Indeed, 'the Act's definition of "Indian" is conditioned by the reduction of Indigenous women's identity to primarily, if not exclusively, that of ungovernable sexual beings, appropriately treated as "sub-humans"'. The stereotyping embedded in the law thus fuelled the devaluing of Indigenous women's lives. Meanwhile, the patriarchal values permeated Indigenous communities and further reinforced the marginalization of Indigenous women. See: Jamieson, *Indian Women and the Law in Canada*, supra fn 17, pp 1, 72; Eberts, 'Victoria's Secret', supra fn 11, p 145; R. Kuokkanen, 'Gendered Violence and Politics in Indigenous Communities: The Cases of Aboriginal People in Canada and the Sami in Scandinavia', 17 *International Feminist Journal of Politics* 2 (2015) 271.

[44] UN Convention on the Elimination of All Forms of Discrimination against Women, 1979.

[45] Canadian Charter of Rights and Freedoms, §15, Part I of the Constitution Act, 1982, Being Schedule B to the Canada Act 1982 (UK), 1982, c 11.

[46] V. Napoleon, 'Extinction by Number: Colonialism Made Easy', 16 *Canadian Journal of Law and Society* (2010) 126, 119.

[47] On the political front, Indigenous women mobilized to demand 'Indian Rights for Indian Women'. This was the name of a grassroots campaign led by Indigenous women activists such as Mary Two-Axe Early that was founded in 1967. Actions included submitting a brief to the Royal Commission on the Status of Women and speaking out at the International Women's Year conference in Mexico in 1975. See Jamieson, *Indian Women and the Law in Canada*, supra fn 17; J. Silman, *Enough is Enough: Aboriginal Women Speak Out,* Women's Press, 1987; McIvor, 'Aboriginal Women Unmasked', supra fn 10. Their activism led to a recommendation in the final report of the Royal Commission on the Status of Women in Canada in 1970 for the immediate amendment of the Indian Act to repeal the sections that discriminate on the basis of sex so that Indigenous women and men can enjoy equal rights. Report of the Commission of Inquiry on the Status of Women in Canada, 1970, p 238. On the judicial front, two Indigenous women fought in court to challenge their loss of status upon marriage to a 'non-Indian'. First, Jeannette Corbiere Lavell challenged the law on the grounds of discrimination by reason of sex. She alleged that subsection 12(1)(b),

Bill C-31, adopted in 1985, removed the explicitly discriminatory provisions from the Indian Act and provided for the reinstatement of status to the women who were excluded through marriage, but not on an equal footing to men.[48] All those who had status at the time of the legislative modifications were entitled to maintain it and were registered under section 6(1)(a) of the Act. The 'reinstated' women, however, were registered under section 6(1)(c). Although this might seem like legal technicalities, it had significant repercussions on Indigenous women and their descendants as it maintained the discriminatory effects of the law. By virtue of the 'second generation cut-off rule'[49] – a new form of legal assimilation introduced with the 1985

Indian Act (RSC, c I-6, 1970), which provided for the 'marry-out' rule, violated the equality clause of the 1960 Canadian Bill of Rights. The trial judge rejected her claim, but she won in appeal. Federal Court of Appeal, *Re Lavell v Attorney-General of Canada* [1971] FC 347, at 193, 22 DLR (3d) 188. Second, Yvonne Bedard, from the Six Nations of the Grand River, who separated from her husband in 1970, sought to return to the reserve with her children to live in a house inherited from her mother, but the band council refused to grant her permission to reside on reserve, as she was no longer legally entitled to inherit property on reserve, having lost her status. The band council gave her a year to dispose of the property and leave. Fearing eviction, Bedard brought legal action against the band, arguing on the same grounds as Jeannette Corbiere Lavell. She won in trial. High Court of Justice, *Bedard v Isaac et al*, [1972] 2 OR 391, at 397, 25 DLR (3d) 551. Both cases were appealed jointly at the Supreme Court of Canada, which ruled, in 1974, that the Bill of Rights protected equality of treatment in the enforcement and application of the laws of Canada, and that no such inequality was at play. Supreme Court of Canada, *Attorney General of Canada v Lavell,* [1974] SCR 1349, at 1372–1373, 38 DLR (3d) 481. Subsequently, Sandra Lovelace Nicholas, a Maliseet Woman from the Tobique First Nation, brought the issue to the UN Human Rights Committee following the Supreme Court's disappointing ruling. Sandra Lovelace Nicholas had lost her status through marriage. When her marriage ended, she returned to the reserve, but since she was no longer registered, the band council refused to give her a subsidized house on their land and denied her access to healthcare and education for her children. Before the Human Rights Committee, she alleged that Canada was contravening its obligations pursuant to the International Covenant on Civil and Political Rights*,* 1966 (accession by Canada, 19 May 1976). The Committee concluded that by denying Lovelace the right to reside on her reserve, the Indian Act interfered with her right to access her culture and language, which constituted an unjustified interference with Art 27 of the Covenant. HRCttee, *Sandra Lovelace v Canada,* Comm no R.6/24, 29 December 1977, UN doc supp no 40 (A/36/40) at 166 (1981).

[48] An Act to Amend the Indian Act, SC 1985, c 27.

[49] The 1985 Indian Act rules governing 'Indian Status' introduced a new policy, by virtue of which after two consecutive generations of one 'non-Indian' parent, the third generation is no longer entitled to registration. This is the result of the introduction of two distinct subsections, namely 6(1) and 6(2), which operate as follows: those with two 'Indian' parents are registered under §6(1), while those with only one parent registered under §6(1) will be registered under §6(2). Consequently, those registered under §6(2) cannot transmit status to their children if the other parent is not entitled to registration. As a result, after two generations, the subsequent generations are no longer entitled to registration. See Assembly of First Nations, *Second-Generation Cut-Off Rule*, https://www.afn.ca/wp-content/uploads/2020/01/06-19-02-06-AFN-Fact-Sheet-Second-Generation-cut-off-final-revised.pdf (last accessed 2 March 2023). See also G. Hartley, 'The Search for Consensus: A Legislative History of Bill C-31, 969-1985', in *Aboriginal Policy Research, Volume 5: Moving Forward, Making a Difference,* Thompson Educational Publishing, 2013, pp 21–22. It is interesting to note here that the distinction made within the Act between those born from two status parents and those born with only one, namely subsection 6(1) and 6(2), resulted in a 'Indian Status' policy whose operation is clearly contradictory to the findings of the Human Rights Committee in *Lovelace*. See A. M. Robinson, 'Boomerang or Backfire? Have We Been Telling the Wrong Story about Lovelace v. Canada and the Effectiveness of the ICCPR?', 14 *Canadian Foreign Policy* 1 (2007) 43. The 'second-generation cut-off rule' also

amendments[50] – the women who were reinstated found themselves with a lessened ability to transmit the status to their descendants. Hence, through apparently neutral provisions, the gendered effects of the Act were maintained.[51] It took another 35 years of activism and litigation before gender-based discrimination was finally removed from the Indian Act. During that period, the Canadian state fought hard to keep the discriminatory regime in place.[52] The salience of the onslaught against Indigenous women to the settler colonial project explains why Canada fought for decades to maintain its discriminatory regime, despite repeated criticisms, both nationally and internationally.

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raises important issues as it pertains to the fact that under the 1985 Indian Act, children born to an unknown or undeclared father are considered to have only one 'Indian' parent, such that they will only be entitled to status if their mother is registered under §6(1). Otherwise, the child will not be considered an 'Indian' under Canadian law. This policy is particularly problematic in the context of domestic and/or sexualized violence. See notably, Eberts, 'Victoria's Secret', supra fn 11, pp 156–157; S. Clatworthy, 'Unstated Paternity: Estimates and Contributing Factors', *Aboriginal Policy Research, Volume 2: Setting the Agenda for Change,* Thomson Educational Publishing, 2013, p 225.

[50] M. Cannon, 'Revisiting Histories of Legal Assimilation, Racialized Injustice and the Future of Indian Status in Canada', in *Aboriginal Policy Research Series, Volume 5* (2007), p 41.

[51] In its fourth periodic report on Canada, the UN Human Rights Committee wrote: 'The Committee is concerned about ongoing discrimination against [Indigenous] women. Following the adoption of the Committee's views in the Lovelace case in July 1981, amendments were introduced to the Indian Act in 1985. Although the Indian status of women who had lost status because of marriage was reinstituted, this amendment affects only the woman and her children, not subsequent generations, which may still be denied membership in the community. The Committee recommends that these issues by addressed by the State party'. Concluding Observations of the Human Rights Committee: Canada, 7 April 1999, UN doc CCPR/C/79/Add105, §19.

[52] Notably, the Act was challenged in court and ruled contrary to the equality provision of the Canadian Charter in 2009: British Columbia Court of Appeal, *McIvor v Canada (Registrar of Indian and Northern Affairs),* 2009 BCCA 153, 306 DLR (4th) 193. The state's response failed to adequately remove the inequities built into the law. Rather, the *An Act to Promote Gender Equity in Indian Registration by Responding to the Court of Appeal for British Columbia Decision in McIvor v Canada (Registrar of Indian and Northern Affairs)* (SC 2010, c 18) was purposely tailored to narrowly focus on remedying the Court's specific finding of discrimination, without seeking to address comprehensively all the remaining gender-based inequalities, although it was clear and obvious that the Act was still contrary to the Charter. It did not take long before the issue was back in court and once again found in violation of Canada's constitution: Superior Court of Quebec, *Descheneaux v Canada (Attorney General),* 2015 QCCS 3555, [2016] 2 CNLR 175. *An Act to Amend the Indian Act in Response to the Superior Court of Quebec Decision in Descheneaux c. Canada (Procureur général),* (SC 2017, c 25), "Bill S-3" was finally adopted in 2017.[52] Yet, it took almost another two years before it was fully implemented, because the implementation of Bill S-3 occurred in two phases. First, some amendments to the Indian Act came into force immediately after the adoption of the Bill. These amendments essentially corrected the inequities found by the Quebec Superior Court in the two scenarios at the heart of the *Descheneaux* case. Then, between 2018 and 2019, the Government undertook what it called the Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship in order to 'consult' with First Nations on remaining issues. In June 2019, in its report to parliament, the government indicated that the consultation had shown general agreement for the removal of the '1951 cut-off'. Consequently, on 15 August 2019, Bill S-3 was fully brought into force with the removal of the '1951 cut-off' and the repealing of all the 6(1)(c) subsections to replace them with new 6(1)(a) provisions. The second-generation cut-off rule was kept, however. Moreover, to this day, the situation of women who were enfranchised pursuant to their husband's enfranchisement has not been corrected (they are still registered under §6(1)(d), meaning that they cannot transmit full (6(1)) status to their children, unlike the women who 'married out' prior to 1985.

2. Ongoing Colonialism: From Legislated Discrimination to Systemic Violations

As demonstrated above, since confederation, racism and sexism have worked hand in hand to achieve the state's assimilationist goals by purposefully targeting Indigenous women. Consequently, to understand the particular vulnerability of Indigenous women to human rights violations today, it is essential to conduct the analysis through the prism of their position at the confluence of both mechanisms of oppression, namely race and gender, as they operated in the framework of settler colonialism. [53]

The effects of this discrimination are still deeply felt today by all Indigenous women, regardless of whether they 'married out' or not. 'The history of colonization of indigenous peoples continues to manifest itself in structural factors such as poverty, lack of access to lands and resources or limited access to education and health services, and indigenous women often bear the excessive brunt of these factors'.[54] Settler colonialism has sought from the start to undermine Indigenous women's existence and reproductive capacities in order to advance the goal of the 'elimination of the Native'.[55] Consequently, 150 years of legislated discrimination against Indigenous women has left deep wounds, as a result of a history of persistent economic marginalization, social isolation and overall devaluing of the lives and roles of Indigenous women within their communities. As a result, Indigenous women's right to life and security, and their sexual and reproductive rights are still being compromised today at epidemic levels, despite the entrenchment of human rights protection internationally and within Canadian law.

A. The Right to Life and Security

[53] Kuokkanen 'Globalization as Racialized, Sexualized Violence', supra fn 38, 218; C.f. K. Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics and Violence Against Women of Color', in K. Crehsnahw (ed), *Critical Race Theory: The Key Writings That Formed the Movement*, New Press, 1996.
[54] Kuokkanen, 'Gendered Violence and Politics', supra fn 43, p 272.
[55] Patrick Wolfe, « Settler colonialism and the elimination of the native » (2006) 8:4 Journal of Genocide Research 387.

Statistics regarding violence against Indigenous women in Canada are troubling. '[Indigenous] women are eight times more likely to be murdered than non-indigenous women'.[56] In 2014, statistics showed that nearly 1,200 Indigenous women had been murdered or had gone missing over a three-decade period. This means that, although they make up only 4 percent of the country's female population, Indigenous women represent around 16 percent of all femicides and 12 percent of the missing women in Canada.[57] However, that these numbers are probably much lower than reality, given notably the lack of trust within Indigenous communities towards law enforcement and inadequate data collection by the authorities. That being said, one fact remains evident: there is an over-representation of Indigenous women amongst the victims of murder and disappearances in Canada.

The root causes of the high levels of violence against Indigenous women in Canada can be traced back to 'a history of discrimination beginning with colonization and continuing through laws and policies such as the Indian Act and residential schools' which have 'laid the foundations of pervasive violence against Indigenous women, and have created circumstances that contribute to the risks these women face, through economic poverty, social dislocation, and psychological trauma'.[58] Furthermore, numerous reports and studies have shown that police have systematically failed to provide Indigenous women with adequate levels of protection.[59] The inadequate

[56] J. Anaya, 'Statement Upon Conclusion of the Visit to Canada by the United Nations Special Rapporteur on the Rights of Indigenous Peoples', 15 October 2013, UN Office of the High Commissioner for Human Rights https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13868&LangID=E (last accessed 2 March 2023).

[57] Royal Canadian Mounted Police (RCMP), *Missing and Murdered Aboriginal Women: A National Operational Overview*, 2014, https://www.rcmp-grc.gc.ca/en/missing-and-murdered-aboriginal-women-national-operational-overview (last accessed 2 March 2023).

[58] Inter-American Commission on Human Rights (IACHR), *Missing and Murdered Indigenous Women in British Columbia, Canada,* 2014, https://www.oas.org/en/iachr/reports/pdfs/indigenous-women-bc-canada-en.pdf (last accessed 2 March 2023) § 93, 95-101, 153.

[59] In 2012, a provincial commission mandated to inquire into the high rates of women reported missing from the Vancouver Downtown Eastside area – amongst whom Indigenous women were disproportionately represented – found that police failures in the initiation and conduct of the missing and murdered women investigations, characterized by systemic inadequacies and repeated patterns of error, had detrimental impacts on the outcomes of these investigations. After analysing the police investigations into cases of missing women, Commissioner Oppal found the following systemic failures: poor report taking and follow ups; faulty risk analysis and risk assessments; an inadequate proactive strategy to prevent further harm; failure to follow established practices and policies for case management, to consider and properly pursue all investigative strategies, to address cross-jurisdictional issues and ineffective coordination between police forces; and inadequate internal review and external accountability mechanisms: The Honorable Wally T. Oppal, QC Commissioner, *Forsaken: The Report of the Missing Women Commission of Inquiry. Volume IIB, Nobodies: How and Why We Failed the Missing and Murdered Women*,

protection of women from violence and ineffective investigation into these crimes is a product of institutional failures to remedy historic racist and sexist practices and policies, which is manifested in systemic discrimination against Indigenous women.[60] Furthermore, the longstanding stereotyping of Indigenous women has caused and exacerbated their vulnerability to multiple forms of violence while undermining the state's response.[61] In other words, not only do Indigenous women experience higher levels of all forms of violence – both in terms of incidence and severity – because they live in 'a society that poses a risk to their safety',[62] but this vulnerability to violence is coupled with and heightened by the state's repeated failure to fulfil its duty of due diligence.[63] This has been qualified as genocide.[64]

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https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/inquiries/forsaken-vol_2b.pdf (last accessed 2 March 2023); See also: Amnesty International, *Canada: Stolen Sisters: A Human Rights Response to Discrimination and Violence Against Indigenous Women in Canada*, 2004, https://www.amnesty.org/en/documents/amr20/003/2004/en/ (last accessed 2 March 2023); Human Rights Watch (HRW), *Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada*, 2013, https://www.hrw.org/report/2013/02/13/those-who-take-us-away/abusive-policing-and-failures-protection-indigenous-women (last accessed 2 March 2023).

[60] Oppal, *Forsaken*, *ibid*, pp 218–219.

[61] Amnesty International, *Canada: Stolen Sisters*, supra fn 59, pp 5–6.

[62] Oppal, *Forsaken, supra* note 59.

[63] Amnesty International, *Canada: Stolen Sisters*, supra fn 59, pp 5–6.

[64] In September 2016, after over a decade of grassroots mobilization and increasing attention from international organizations, Canada finally launched a National Inquiry into Missing and Murdered Indigenous Women and Girls. The inquiry was mandated to 'look into and report on the systemic causes of all forms of violence against Indigenous women and girls, including sexual violence'. To complete its mandate, the commissioners held 24 hearings and statement-gathering events across Canada in 2017 and 2018. In total, 2,386 survivors, family members and loved ones, frontline service providers, representatives of Indigenous organizations, scholars, legal experts and Indigenous leaders were heard. The final report, released on 3 June 2019, presents in great detail the underlying social, economic, cultural, institutional and historical causes that contribute to the ongoing violence and particular vulnerabilities of Indigenous women in Canada. Moreover, the commissioners delivered 231 recommendations, entitled 'Calls for Justice', directed at the federal, provincial and territorial governments, public institutions, social-service providers, industries and the general public. The Inquiry's main conclusions on its root causes were non-equivocal: "The significant, persistent, and deliberate pattern of systemic racial and gendered human rights and Indigenous rights violations and abuses – perpetuated historically and maintained today by the Canadian state, designed to displace Indigenous Peoples from their land, social structures, and governance and to eradicate their existence as Nations, communities, families and individuals – is the cause of the disappearances, murders, and violence against Indigenous women, girls and 2SLGBTQQIA[64] people, and is genocide. This colonialism, discrimination, and genocide explains [*sic*] the high rates of violence against Indigenous women, girls, and 2SLGBTQQIA people". According to the commissioners, Canada is failing to meaningfully implement the many international instruments it has ratified, by providing inadequate protection of Indigenous women's human rights and ineffective remedies for the violations that have been consistently perpetrated against them.[64] These conclusions point to two interrelated phenomena to explain the over-representation and under-protection of Indigenous women as victims of violence in Canada: social and economic marginalization and the persistence of racist and sexist stereotypes. Together, these two phenomena have created fertile ground for violence against Indigenous women: National Inquiry, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls,* https://www.mmiwg-ffada.ca/final-report/ (last accessed 5 March 2023); See also:

B. Sexual and Reproductive Rights

In July 2017, the Saskatchewan Health Authority published a report documenting the experiences of 16 Indigenous women who reported being coerced into having a tubal ligation during or immediately after childbirth in the province's hospitals over a five-year period (2005–2010).[65] According to the drafters of the report, today's reproductive rights violations are to be understood in the context of the long-lasting negative effects on Indigenous women's physical, mental and social health of the institutions, laws, legislations and policies shaped by patriarchal values.[66] They are a product of the socio-economic marginalization of Indigenous women resulting from the gendered consequences and ongoing legacies of colonialism.[67]

While the report documents 16 individual cases, it is unknown how many Indigenous women have been subjected to forced sterilization in Canada in recent years. What is known however is that, historically, Indigenous women were disproportionately represented amongst the victims of Canada's sterilization policies, motivated by eugenics and aimed at those deemed 'mentally unfit'.[68] Research has revealed notably that approximately 1,150 Indigenous women were sterilized in federally operated 'Indian hospitals' during a 10-year period ending in the early 1970s. Archives related to these cases reveal racist and paternalist attitudes, which led to the view that sterilization was in the women's best interests, regardless of their wishes.[69] 'Sterilization was viewed as a way to eventually eliminate the Indigenous population entirely'.[70] Justified by the racist and sexist view of Indigenous women as promiscuous and uncivilized intentionally

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National Inquiry, *A Legal Analysis of Genocide: Supplementary Report,* p 8, https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Supplementary-Report_Genocide.pdf (last accessed 5 March 2023);

[65] Dr Y. Boyer and Dr J. Bartlett, *External Review: Tubal Ligation in the Saskatoon Health Region: The Lived Experience of Aboriginal Women,* Saskatchewan Regional Health Authority, 2017, https://www.saskatoonhealthregion.ca/DocumentsInternal/Tubal_Ligation_intheSaskatoonHealthRegion_the_Lived_Experience_of_Aboriginal_Women_BoyerandBartlett_July_22_2017.pdf (last accessed 5 March 2023).

[66] Ibid, p 6.

[67] "the issues are compounded by the negative effects of racism and systemic discrimination that is grounded in false notions that somehow they are in some way responsible for their own plight": *Ibid*, p 8.

[68] Ibid, pp 7–8.

[69] Standing Senate Committee on Human Rights, *Forced and Coerced Sterilization of Persons in Canada*, June 2021, p 18.

[70] National Inquiry, *Reclaiming Power and Place*, vol 1a, supra fn 64, p 266.

fomented by the settler colonialism, the legacy of eugenics continues to have long-lasting and ongoing consequences for Indigenous women's reproductive rights.

While the legislative framework is different today and forced sterilization laws were repealed in the 1970s, the practice still exists, as evidence by an external review commissioned by the Saskatchewan regional health authority, and the reported cases are not isolated. In October 2017, two Indigenous women who alleged being sterilized without consent launched a class action. Quickly, more than 100 Indigenous women from 7 different provinces and territories contacted the lawyer leading the case, claiming to have been sterilized without free, prior and informed consent, often in very troubling circumstances of coercion.[71] Research still needs to be conducted in order to gain a full understanding of the magnitude of the issue. However, what is clear is that forced or coerced sterilization blatantly violates Indigenous women's human rights.[72]

Forced sterilization is premised on the longstanding racist and sexist assumptions that Indigenous women are promiscuous, unfit parents and in need of control. Moments before her death, Joyce Echaquan was told by the health workers that she was stupid, that she made bad decisions and that her children would be ashamed if they saw her.[73] The racist insults she endured while in care were deeply gendered and directly attacked her as a mother. As the report on forced sterilization documents, her experience is not exceptional. Indigenous women are routinely asked by health professionals questions such as 'How much have you had to drink?', 'What drugs have you done?' and 'You are a prostitute, are you not?', regardless of the reasons why they are seeking medical care.[74] What is at play is the intersection of racism and gendered discrimination, which

[71] Standing Senate Committee on Human Rights, *Forced and Coerced Sterilization of Persons in Canada*, supra fn 69, pp 19–20.
[72] 'Human rights bodies have affirmed that the failure to provide reproductive health information and to ensure full, free and informed consent for sterilization procedures for women belonging to ethnic minorities [and Indigenous women] is a violation of basic human rights, including the right to information, women's right to determine the number and spacing of their children, the right to be free from inhumane and degrading treatment, and the right to private life. They have also found that it is a manifestation of multiple discrimination on the grounds of gender and race'. World Health Organization, *Eliminating Forced, Coercive and Otherwise Involuntary Sterilization: An Interagency Statement, OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO* 2014, p 5.
[73] M.-L. Josselin, 'Les dernières heure de la vie de Joyce Echaquan, selon les témoignages', *Espaces Autochtones*, *Radio Canada*, 3 June 2021, https://ici.radio-canada.ca/espaces-autochtones/1795382/enquete-mort-joyce-echaquan-temoins-hopital-joliette (last accessed 5 March 2023).
[74] Y. Boyer and P. Kampouris, Trafficking of Aboriginal Women and Girls*,* Public Safety Canada, 2014, https://publications.gc.ca/collections/collection_2015/sp-ps/PS18-8-2014-eng.pdf (last accessed 5 March 2023).

translates into a lack of trust in the healthcare system and, ultimately, must be viewed as a determinant of the health of Indigenous women.[75] Sustained by the stereotypes used to validate the imposition of the Victorian model of family, which was premised on the disenfranchisement of Indigenous women, the delegitimization of Indigenous motherhood served in turn to justify the removal of Indigenous children from their families, cultures and nations, either by placing them in non-Indigenous families or by preventing their existence in the first place.[76] Therefore, today's violations of Indigenous women's sexual and reproductive rights must be understood as part of the historical efforts to eradicate Indigenous nations.

3. Without 'Structural Justice', Better Implementation Will Not Suffice

Settler colonialism is a system of exploitation and dispossession that relies on the exclusion and marginalization of Indigenous women as a key strategy to further the goal of the disappearance of Indigenous peoples as distinct political entities. Settler colonial laws, policies and practices premised on White/Male/Christian/European superiority and driven by the desire to gain uncontested sovereignty over the territory through the erasure of Indigeneity have deeply shaped the formation of the Canadian state and continue to be woven into its fabric today.[77] As the dramatic rupture of decolonization has not yet transformed Canada's settler colonial state, an unbroken thread links the past to the present, such that historical harms have created a legacy of structural injustices that are today profoundly embedded in Canadian institutions, legislations and processes. [78]

Settler colonialism is the root cause of today's epidemic of violations of Indigenous women's human rights. The state's systemic failure to adequately protect Indigenous women from violence, and to effectively prevent and investigate crimes committed against them is a product of its persistent refusal to remedy historical racist and sexist practices and policies. Because

[75] Boyer and Bartlett, *External Review*, supra fn 65, pp 6–7. For further discussion on how racism impacts the health outcomes of Indigenous peoples, see Allan and Smylie, *First Peoples, Second Class Treatment*, supra fn 4.
[76] Ibid.
[77] P. Regan, *Unsettling the Settler Within: Indian Residential Schools, Truth Telling and Reconciliation in Canada* UBC Press, 2011, p 6.
[78] P. Edmonds, *Settler Colonialism and (Re)Conciliation: Frontier Violence, Affective Performances, and Imaginative Refoundings,* Palgrave Macmillan, 2016, pp 1–2.

discrimination against Indigenous women is tightly entangled in the making of the settler state, to fully grasp this reality and to craft an adequate response, a historical outlook is essential. Systemic racism is the continuation of settler colonialism. In such a context, simply repealing discriminatory laws and correcting legislated inequities cannot and will never suffice to address this crisis.

As stated by Chickasaw scholar Elizabeth Rule, 'this context necessitates a rethinking of violence levelled against Indigenous women throughout Canada and demands a new conceptual framework in which such violence must be understood as both an immediate threat to Indigenous women's lives and a systematic attack on Indigenous nations and cultures'.[79] Colonialism relies on Indigenous dehumanization and oppression.[80] Hence, the task moving forward will necessitate dismantling the laws, policies and practices that justify, uphold and perpetuate the dispossession, subjugation and erasure of Indigenous peoples. Just as settler colonialism is a process of 'structural genocide',[81] addressing systemic racism and discrimination must be one of 'structural justice'.[82] For Indigenous women, this means the rejection of the patriarchal colonial structures purposefully designed to marginalize them, with the ultimate goal of making Indigeneity and the challenges it poses to settler sovereignty and land appropriation vanish. What is required is a framework of Indigenous rights that 'not only simultaneously advances individual and collective rights, but also explicitly addresses gender-specific human rights violations of indigenous women in a way that does not disregard the continued practices and effects of colonialism.'[83]

[79] Rule, 'Seals, Selfies, and the Settler State', supra fn 35, 749.
[80] J. Green, 'Honoured in Their Absence: Indigenous Human Rights' in Joyce Green (ed), *Indivisible*, supra fn 11, p 13.
[81] Wolfe, 'Settler Colonialism and the Elimination of the Native', supra fn 55.
[82] J. Balint, J. Evans and N. McMillan 'Rethinking Transitional Justice, Redressing Indigenous Harm: A Conceptual Approach', 8 *International Journal of Transitional Justice* 2 (2014).
[83] R. Kuokkanen, 'Self-Determination and Indigenous Women's Rights at the Intersection of International Human Rights', 34 *Human Rights Quarterly* (2012) 232.