

# Historical justice and reparation for Indigenous Peoples in Brazil and Canada

*Ana Catarina Zema*<sup>1</sup>

*Clarisse Drummond*<sup>1</sup>

*Marcelo Zelic*<sup>2</sup>

*Elaine Moreira*<sup>1</sup>

<sup>1</sup>Universidade Federal de Brasília, Departamento de Estudos Latino-Americanos,  
Observatório dos Direitos e Políticas Indígenas (OBIND), Brasília/DF, Brasil

<sup>2</sup>Comissão de Justiça e Paz de São Paulo, SP, Brasil

## **Abstract**

The struggle of Indigenous Peoples for historical justice and reparation has gained visibility with the truth commissions' work in Brazil and Canada. Their final reports confirmed the Canadian and Brazilian states' responsibility for the genocide of thousands of Indians. To start a reconciliation process, several redress recommendations were made, but never fully accomplished. We observed repeated violence acts against Indigenous Peoples in both countries more than five years after these recommendations were published. The purpose of this article is to evaluate, from the Critical Studies of Transitions' perspective, the reconciling and reparative scope of the Truth Commissions of Brazil and Canada and to analyze the difficulties of implementing their recommendations. We show that despite promises to transform colonial relations, these Truth Commissions have been unable to address the past and the continuity of structural violence affecting Indigenous Peoples.

**Keywords:** Indigenous Peoples, Reparation, Truth Commissions, Brazil, Canada.

# Justiça histórica e reparação para os povos indígenas no Brasil e no Canadá

## Resumo

A luta dos povos indígenas por justiça histórica e reparação ganhou visibilidade com os trabalhos das comissões da verdade no Brasil e no Canadá. Em seus relatórios finais, a responsabilidade dos Estados canadense e brasileiro pelo genocídio de milhares de indígenas foi confirmada. Para que esses Estados pudessem dar início a um processo de reconciliação, recomendações de reparação foram apresentadas. No entanto, mais de cinco anos após as publicações dessas recomendações, observamos, nos dois países, a repetição de atos de violência contra os povos indígenas. O objetivo deste artigo é avaliar, a partir dos Estudos Críticos de Transições, o alcance reconciliador e reparador das Comissões da Verdade e analisar as dificuldades de implementação de suas recomendações. Veremos que, apesar das promessas de transformação das relações coloniais, essas Comissões da Verdade não foram capazes de abordar o passado e a continuidade das violências estruturais que afetam os povos indígenas.

**Palavras-chave:** povos indígenas, reparação, Comissão da Verdade, Brasil, Canadá.

# Historical justice and reparation for Indigenous Peoples in Brazil and Canada

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The history of European colonization and its impact on Indigenous Peoples from the American continent is well known. Genocide, massacres, disease, slavery and forced labour, looting and displacement, the kidnapping of women and children, imprisonment, policies of forced assimilation, and criminalization of protests and resistance “are deeply rooted in modern societies, and their effects continue to exist and determine the lives of Indigenous Peoples in many countries” (Stavenhagen, 2009: 64). Today, racism against Indigenous Peoples and the structural inequalities that affect them reveal the persistence of political exclusion patterns, social marginalization and cultural discrimination in Brazil and Canada. Despite this legacy of enduring historical injustice, they have resisted and struggled today for their right to truth, justice, reparation and the guarantee of non-repetition of violence in the present.

In recent decades, the struggles of Indigenous Peoples for historical justice and reparation have gained visibility. Truth and Reconciliation Commissions have been established in several countries of the Americas, as necessary forums for processes of democratic transition and/or overcoming the violence and crimes of the past to promote reconciliation. In Guatemala, Peru, Paraguay, Canada, the United States of America, Colombia, Mexico, Chile and Brazil, the commissions have dealt with violence cases against Indigenous Peoples. The efforts to investigate these mechanisms and the general systematization and consolidation of the obtained data have allowed the evaluation of the size and seriousness of the acts of violence against Indigenous Peoples in the Americas.

In Canada, the Truth and Reconciliation Commission (TRC) was created in 2008 to ascertain the history and legacy of Indigenous Residential Schools and build a political response to the injuries inflicted on 150,000 children who lived in boarding schools and to the 80,000 survivors of this long history. The core of their mission was to document the injustices and intergenerational traumas experienced by direct and indirect victims, beginning the process of healing the consequences of “cultural genocide”<sup>1</sup>, and seeking reconciliation (Jaccoud, 2016: 155). The Canadian TRC has gathered thousands of documents and reports, and evidence of what really happened in these schools. In May 2015, the TRC presented a summary of its final report, characterizing Canada’s treatment of Indigenous Peoples as “cultural genocide” and indicating 94 Calls to Action, currently in the implementation phase.

The National Truth Commission (CNV) in Brazil, created in 2012, aimed to investigate the crimes and human rights violations during the military dictatorship from 1946 to 1988. After a claim by the Indigenous Peoples themselves, the crimes committed against them were included in the CNV’s investigations. In its final report, presented in December 2014, the CNV confirmed the State’s responsibility, by action and omission, for the death of at least 8350 indigenous people in 10 studied ethnic groups out of a total of 305 in the country.

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<sup>1</sup> The Truth and Reconciliation Commission of Canada (TRC) define “cultural genocide” as “the destruction of those structures and practices that allow the group to continue as a group. States that engage in cultural genocide set out to destroy the political and social institutions of the targeted group. Land is seized, and populations are forcibly transferred and their movement is restricted. Languages are banned. Spiritual leaders are persecuted, spiritual practices are forbidden, and objects of spiritual value are confiscated and destroyed. And, most significantly to the issue at hand, families are disrupted to prevent the transmission of cultural values and identity from one generation to the next” (Canada, 2015a: 1).

Thirteen recommendations for reparation for the military dictatorship crimes against Indigenous Peoples were presented. However, they quickly fell into oblivion.

Considering Brazil and Canada's specific historical and political contexts<sup>2</sup>, we propose a comparative analysis of Truth and Reconciliation Commissions and their Calls for Action and recommendations to redress the commitment of crimes and human rights violations against Indigenous Peoples. The Indigenous Peoples of Brazil and Canada share a similar history of colonial violence. In both countries today, these populations face equivalent difficulties concerning colonialism's effects and struggle to overcome them. The comparative analysis of Indigenous Peoples' struggles for reparations in these two countries should contribute to the understanding of persisting obstacles and point out possible responses toward historical justice for Indigenous Peoples. Canada is the country that has mostly complied with the protocols of a reconciliation agenda. In this sense, it is valid to look at specific actions and initiatives in that country that may constitute a horizon of challenges Brazil faces on reparation. Nonetheless, despite being a fully developed society, Canada's ethical and moral issues in the scope of reparations for historical debts concerning Indigenous Peoples are closer to the Brazilian reality than we imagine. This closeness points out that the challenges faced by these populations in the Americas do not become less complicated when these communities are part of rich capitalist nations.

This article's objective is to evaluate, based on the Critical Studies of Transitions' perspective, the "reconciling and reparative reach" (Jaccoud, 2016) of these two truth commissions and to analyze the difficulties of implementing their recommendations. More specifically, we are interested in the extent to which these transitional justice mechanisms have, in fact, contributed to transforming inequalities and ending the violence that has long characterized relations between indigenous and non-Indigenous Peoples in Brazil and Canada. To answer these questions, Alejandro Castillejo-Cuéllar's theoretical proposal for a Critical Studies of Transitions Program (2014, 2017) invites us to think "about the dialectics between the fractures and continuities" of the Brazilian and Canadian "transition scenarios" in order to understand how "these processes coexist with various forms of violence creating new sociabilities.

This article results from research developed within the Observatory of Indigenous Rights and Policies (Obind) of the Department of Latin American Studies (ELA) of the University of Brasilia. It is based on the analysis of the final reports from the Truth and Reconciliation Commissions of Brazil and Canada; on the analysis of the Yellowhead Institute for the Canadian context; and the review of specialized literature on the subject. Comparing these reports and their recommendations should contribute to the debate on historical justice and reparations for the Americas' Indigenous Peoples and to find new ways to address historical power imbalances.

The notion of "historical justice" employed here encompasses the four pillars of transitional justice: justice, truth, reparation, and the guarantee of non-repetition, but seeks to go further. Starting with the indigenous movements critiques on the "transitional justice" and the colonial way in which reconciliation has been carried out, we propose the notion of "historical justice" as a broader category for thinking the struggles of Indigenous Peoples for justice, truth, reparation, and the guarantee of non-repetition, drawing attention to their relationship with their historical struggle for the defense of territories and for social justice. It is a category that considers the denial of the right to history, truth, and memory to Indigenous Peoples as a usurpation of their right to self-determination and a denial of their own humanity. Finally, the notion of historical justice implies understanding the production of indigenous invisibility as a purposeful act with important political consequences.

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<sup>2</sup> The specific historical, political, and social contexts that help to explain why the Canadian and Brazilian societies are comparable in their relations with Indigenous Peoples will not be developed in this paper. For more information on this topic, see Stephen Baines (1997, 2003), Cristian Teófilo da Silva (2013, 2016), Leonardo Barros Soares (2019) and Clarisse Drummond (2021).

The idea of reparation is stated here not only considering the struggle of Indigenous Peoples for the “right to reparation”, as defined by normative documents of international law<sup>3</sup>, which provide for measures of restitution, compensation, rehabilitation, and others considered satisfactory for reparation of damages. It also includes the search to recover the understanding of the Indigenous Peoples themselves. We highlight the “political dimension” (Garapon, 2008: 12) that Indigenous Peoples’ demands for reparation assume when they claim concrete and positive means to eliminate historical injustices’ traces.

## Critical Studies of Transitions

Truth commissions were conceived as investigative mechanisms to help societies that have experienced political violence, civil war, dictatorships, or serious human rights violations to critically face the past. The objective is to help overcome the deep marks and trauma generated by this violence and prevent such facts from repeating themselves. A truth commission should seek to know the causes of violence, identify the parties in conflict, and inquire about human rights violations. In this investigation, it is possible to invoke the victims’ memory, propose a reparation policy for the damage caused, compensate the victims or their families, and prevent those who committed human rights violations from exercising public functions, for example (Rodrigues Pinto, 2007).

The truth commissions are the expression of a new concept of justice, centered on forgiveness and reconciliation, which seeks to restore more than punish and believes in the therapeutic power of truth. This notion of justice is based on the belief that human rights violations should be aware and repent, and that it is up to society to accept or not this repentance. One of the main objectives of transitional justice is society’s pacification by eliminating tensions and animosities among political groups. As it appears idealized in the truth commissions, transitional justice does not presuppose the accused’s arrest but suggests a dialogue channel for seeking forgiveness (Rodrigues Pinto, 2007).

Many truth commissions came with requests for forgiveness from authorities. The purpose of the “policies of forgiveness” (Lefranc, 2006) is to resolve the past problems and end the historical injustices still responsible for several social divisions today. This type of forgiveness is then placed as a political challenge for democratic societies that have sought the path of reconciliation. Political forgiveness refers to a set of political and institutional discourses and devices aimed at recognizing political actors who have suffered directly or indirectly from state violence and point to a duty of justice, reparation, material restitution, and reconciliation (Lefranc, 2006). Reconciliation appears as a possible vector of the democratic transformations and represents one of the reformulation engines of the social contract. The clarification of the truth and the search for justice are considered necessary steps towards reconciliation.

In general, the debate around “transitional justice” relies on these ideas of justice, truth, forgiveness, reparation and reconciliation. Based on these assumptions and their promises of social transformation, truth commissions have acted in various parts of the world. Considering the accumulated experiences and skepticism from various sectors and social organizations regarding the changes set in motion after the truth commissions, Alejandro Castillejo-Cuéllar proposed a Program for Critical Studies of Transitions (2014, 2017). Castillejo-Cuéllar moves further from the technical-judicial arsenal and the legal language that predominate in the field of studies on transitional justice, without abandoning it, towards an anthropological perspective, proposing a critical look and a new form of reading to what he calls “transitional scenarios”. His concern is to understand

<sup>3</sup> The Updated Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (E/CN.4/2005/102/Add.1) and the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law (General Assembly Resolution 60/147) comprise the international normative and operational framework for the UN’s human rights-based approach to transitional justice. These normative documents provide for a comprehensive justice system based on the right to truth, the right to justice, the right to reparation, and the guarantee of non-repetition.

the “transitional scenario” as a social and cultural phenomenon, a “liminal moment” in which “the promise of a new society” emerges through the multiple forms and mechanisms that the “social imagination of the future” assumes (2017: 6). Its focus is on the social relations that are generated in this context of “liminality” or “intermediality” (Castillejo-Cuéllar, 2017: 8), which is the transition.

To explain what the “transitional scenario” is and how it works, Castillejo-Cuéllar uses the notion of “liminality”. In anthropology, liminality is a useful concept for studying ritual processes, demarcating the idea of passing from one peculiar stage to another or between a previous stage and its subsequent one. Because it is transitory in nature, the preliminary injunction refers to the indefinite and, invariably, to change. It is “between”: it is no longer what it was, but neither has it achieved what it desires. Brought to the field of discussions about reparation, the idea of preliminary injunction also refers to a transitory state in which the balance between inter-ethnic relations, that is, between national states and Indigenous Peoples, has not been completely reached yet. However, the violence and hostility that marked those relations in the past are no longer accepted. The work of making liminality no longer a condition between a past, represented by trauma and violence, and a future, where relations between indigenous and non-indigenous people will be based entirely on respect and recognition (Taylor, 1994), is precisely the effort translated by transitional justice and truth commissions.

Alejandro Castillejo-Cuéllar defines the “Transition Scenarios” as:

(...) the social spaces (and their legal, geographic, productive, imaginary, and sensory devices) that are generated as a product of the application of what I generically call laws of unity and national reconciliation and which are characterized by a series of sets of institutional practices, specialized knowledge, and global discourses that intersect in a specific historical context with the objective of facing serious violations of human rights and other forms of violence (2017: 20).

In reading and interpreting these historical and social processes that are the “transitional scenarios,” it is interesting to understand how the ideas of the past and the future are built from a “transitional (always) present.” (Castillejo-Cuéllar, 2017: 18). The emphasis is then placed on the “dialectics of fracture and the continuity of various forms of violence,” by the “decipherable and unspeakable that the paradigm of transition imposes and by the problematization of its foundational assumptions and the practices that concretely establish them” (Castillejo-Cuéllar, 2017: 19).

In order to avoid falling into the triumphalism of the “transitional paradigm,” or into the naivety that surrounds the discourse of those who preach the “global gospel of forgiveness and reconciliation”, Castillejo-Cuéllar draws attention to the fact that, although “it is true that moments of transition present ruptures in certain registers of violence, there are others that are simply a continuity” (Castillejo-Cuéllar, 2017: 3). Thinking critically of “transition scenarios” in terms of continuity with the past is questioning how these continuities can be identified and how they “determine the fate of politics in the present.” (Castillejo-Cuéllar, 2014: 63). Or yet, how can we talk about reconciliation if the violence and structural causes of conflicts are still present?

Castillejo-Cuéllar refers to “structural violence” or “violence of long duration” as the violence to which the indigenous people and enslaved people’s descendants were subjected. This “long-term violence” constitutes a “mode of victimization” that “lies outside the legal epistemologies that inform global debates on transitional justice” (2017: 17). In this sense, the question of what understanding of violence the truth commission adopts is plausible. Knowing what is understood by violence and what definition is to be used are necessary to have an objective understanding of the wound to be healed and a clear vision of the meaning of the act of reparation (2017: 17).

The perspective of the Critical Studies of Transitions proposes to think about liminality, to consider long-term violence and to identify the continuities in its dialectics with ruptures, in order to detect the tensions that they reflect when individuals or peoples interconnect in the present with larger historical processes, to create a future. Thinking about the dialectics between fractures and continuities in transitional settings means problematizing global discourses about transitions and how they are applied in different national contexts “creating the expectation of a new nation through the implementation of the language of reconciliation and forgiveness in societies still deeply rooted in diverse forms of structural violence and other forms of violence” (Castillejo-Cuellar, 2014: 64).

## **The Canadian Truth and Reconciliation Commission**

The emergence of the Canadian Truth and Reconciliation Commission is directly related to the impacts of residential school system on First Nations, Métis and Inuit. It is important to know why these institutions were established and operated for over a century, as well as the negative legacy they have left on Indigenous people, their families and communities.

The residential school system was the most aggressive form of assimilation ever developed by the Canadian state, operating for over a century as a total institution (Schissel & Wotherspoon, 2003; Chrisjohn *et al.*, 2006; Knockwood, 2001; McKegney, 2007; Neu & Therrien, 2003; Petoukhov, 2011). Established in the early 19th century as day schools in the 1850s, its structure was complemented by boarding schools and industrial schools. In the 1920s, the model reached its most improved version, the residential schools themselves (Chrisjohn *et al.*, 2006).

The first Indigenous Residential School in Canada was opened in the 1870s, and the last one was closed in 1996 in Saskatchewan Province, just 25 years ago. The residential schools operated under a partnership agreement between the Canadian government and the Christian churches, primarily the Catholic, Anglican, Methodist (United) and Presbyterian. Other religious groups (Mennonites, Baptists, and the Salvation Army) were involved in starting and running the residential school deliberately operating the children’s conversion to Christianity Euro-Canadian culture (Fondation Autochtone de Guérison, 2006: 7). More than 130 schools operated throughout the country and involved about 150,000 children and youths from the First Nations, Métis and Inuit (Fondation Autochtone de Guérison, 2006: 8). Children and young people were forbidden to speak their mother tongue and to practice their own culture. Communication with their families was also prohibited.

The attendance of indigenous children in residential schools was made mandatory through the Gradual Civilization Act (1857), the Gradual Indian Enfranchisement Act (1869), the Indian Act (1876), and the Indian Progress Act (1884). In 1920, Campbell Scott, Vice Superintendent of Indian Affairs, acted directly to implement legislation to eradicate what he considered the “Indian problem” (Neu & Therrien, 2003). In that year, it became mandatory for every indigenous child between the ages of seven and fifteen to attend school (Fondation Autochtone de Guérison, 2006: 477). In the 1950s, with the growing pressure and resistance of the First Nations, the sending of indigenous children to residential schools was no longer compulsory. There was lobbying to construct new schools to be stopped and for those in operation to be closed.

According to Dyck (2004), more than a direct attack on the social cohesion of aboriginal nations, the policy of “Enfranchisement” would enable the government to dispossess Indians from their lands and convert them to private property to be freely traded. This has always been the ultimate goal of the project of cultural assimilation developed in residential schools through the compulsory detention of children and youth. In 1996, evidence gathered by the Royal Commission of Aboriginal Peoples (RCAP) led the government to adhere to the “global gospel of forgiveness and reconciliation” (Castillejo-Cuellar, 2014, 2017). The Canadian government issued a Declaration of Reconciliation in 1998 addressing the legacy of violence in residential schools.

Before that, former students filed lawsuits asking provincial, federal, and church governments for redress for the abuses and violence they suffered.

Opening the “transitional scenario” (Castillejo-Cuellar, 2014, 2017) in Canada, the TRC of Canada sought to ascertain Indigenous Residential Schools’ history and legacy, documenting a significant number of indigenous survivors. It was created in 2008 from the restorative models of the South African and Latin American Truth Commissions. The TRC, however, was not the first mechanism to repair the legacy of residential schools. The Alternative Dispute Resolution Process and the Indigenous Residential School Settlement Agreement, which included compensation and apologies, were also part of the Canadian government’s reconciliation efforts (Canada, 2015a: 385).

Whether in restorative justice, understanding survivors’ needs is a central issue in addressing past violence and preventing its repetition in the future. In this sense, in gathering testimonies, the TRC was expected to ensure that survivors were not intimidated into sharing their experiences of violence. Nevertheless, experts and indigenous people who followed and participated in these hearings considered that the TRC failed to fulfill many other expectations concerning the good performance of its mandate aimed at healing and reconciliation (Green, 2016; Petoukhov, 2011).

It would be expected not only that the survivors would have a culturally appropriate environment in which to share their stories, but that they would also be able to hear their perpetrators express guilt, regret, and apologize. However, the events promoted by the TRC in Canada were not attended by the abusers.

In 2014, The Truth and Reconciliation Commission released the summary of its final report on the Residential School system and survivors’ experiences, characterizing the Canadian treatment of Indigenous Peoples as “cultural genocide”. The report details how the Indigenous Residential School System has contributed to the over-representation of First Nations, Métis and Inuit adults in prisons, children in adoption and correctional systems, child welfare systems, justice, inferior health services in indigenous communities, educational deficit, lack of land rights, lack of access to water, and the increase in the number of murdered and missing indigenous women and girls across Canada. It also included 94 Calls to Action aimed at correcting the legacy of residential schools and assisting the reconciliation process. The 94 Calls to Action called on individuals, governments and organizations to address the legacy of Indian Residential Schools and advance the reconciliation process (Canada, 2015b).

The 94 Calls to Action cover eighteen major thematic sub-areas, all related to promoting reconciliation between Indigenous and non-Indigenous people, grouped as follows: (1) legacy and child welfare, (2) education, (3) health, (4) justice, (5) Canadian Governments and the UNDRIP, (6) Settlement Agreement Parties and the UNDRIP, (7) Equity for Aboriginal People in the Legal System, (8) National Council for Reconciliation, (9) Church Apologies and Reconciliation, (10) Youth Programs, (11) Museums and Archives, (12) Missing Children and Burial Information, (13) National Centre for Truth and Reconciliation, (14) Commemoration, (15) Media and Reconciliation, (16) Sports and Reconciliation, (17) Business and Reconciliation, and (18) Newcomers to Canada (Canada, 2015b).

Thierry Rodon, Professor in the department of political science at Laval University, provided a good picture of government execution of the Calls to Action. According to Rodon (2019) Trudeau’s government promised to implement all the TRC’s Calls to Action. Nevertheless, only a few recommendations have been fully implemented, such as revealing the names of 2,800 children who died in federal residential schools run by religious communities. It is important to note, however, that most of the recommendations involve several agencies. Regarding investments in education, health, infrastructure and clean water, Trudeau’s government has invested \$21 billion in indigenous policy services over four years. The government gave itself six years to spend \$1 billion on land claims, \$1.2 billion on health care and social services for children, and \$739 million to improve the quality of drinking water on reserves (Rodon, 2019).



One of the Calls to Action that appears across the board concerns the demand for full implementation of the UN Declaration on Indigenous Peoples' Rights. Liberal politicians signed onto Bill C-262, introduced by Romeo Saganash and passed in 2019, to ensure that Canada's Government would make federal laws consistent with the United Nations Declaration on the Rights of Indigenous Peoples. However, the bill was blocked in the Senate by Conservative politicians and had no progress after that. Justin Trudeau has promised to reintroduce the bill if the Liberals were re-elected in October (Rodon, 2019).

As for the pledge to adopt a framework for recognizing and valuing indigenous rights, in February 2018, the government promised a "government-wide change" to review the Indian Act of 1876 and allow the creation of indigenous governance structures. However, communities disapproved how the government went about the project, which had no continuity. "Only First Nations can determine the path forward to achieve decolonization and reconciliation," said Perry Bellegarde, National Chief of the Assembly of First Nations, in November 2018. "We all want to move beyond the Indian Act, but that will take time" (AFN, 2018).

On building nation-to-nation relationships between Canada and Indigenous Peoples, Rodon assessed that the Department of Indigenous Affairs and Northern Development's division of responsibilities represented a breakthrough for eliminating the Indian Act in 2017. However, "The decision was met with caution by Native chiefs; some, including Ghislain Picard of the Assembly of First Nations of Quebec and Labrador, pointing out that they were not consulted before the announcement" (Rodon, 2019).

It is notable that reconciliation, from an Indigenous perspective, is not directly related to the completion of the Calls to Action, even though it was important for improving social equality in Canadian society. Despite the budgets for multiple and concomitant actions, such as "healing policies", with \$350 million invested in providing survivors support, counselling services and financial compensation arrangements (Fondation Autochtone de Guérison, 2006: 1), "fractures and continuities" (Castillejo-Cuellar, 2014, 2017) have been the tonic of the Canadian style repair. The difficulty to reveal the truth about the harm done to Indigenous people by Canada's colonial interests requires action to ensure ongoing harms are stopped and past harms are repaired, and a willingness to do things differently so that new harms are not created. The Aboriginal Healing Foundation, for example, a non-profit organization run by indigenous people with a mandate to respond to the Residential Schools' legacy, had its funding ended in 2014 without significant results. Also, instead of pointing to the need for structural changes, the Canadian TRC emphasized that indigenous communities needed to be treated (which means fixed), contributing to the indigenous survivors' stigmatization as victims and their communities as dysfunctional societies (Green, 2016).

From 2009 to 2015, the TRC collected 6,750 statements from survivors, family members and people directly affected by residential schools. Community hearings and events were held, with 238 days of hearings in 77 communities and seven national events (Yellowhead Institute, 2019). The first national event, held in June 2010 in Winnipeg's city, focused on the stories and testimonies of survivors, their families, and their impacts on communities. Nevertheless, the evaluation of many indigenous participants was that the event failed in its objective of healing and reparation by not including in the program the account of the perpetrators of the violence, who felt threatened to have to respond judicially after exposing their crimes publicly. At these national, regional, and hearing events, Indians were warned not to speak their violators' names during their testimony.

Justin Trudeau's government pledged to implement all 94 actions in partnership with indigenous communities, provinces, and territories, but the pace of government action frustrated survivors and their families' expectations. Creating a page on the National Center for Truth and Reconciliation's website was an attempt to make it possible to follow the Calls, but the page was taken off the air without further explanation. However, this follow-up has been done consistently by the Yellowhead Institute, the First Nations-led research center based in the Faculty of Arts at Ryerson University in Toronto, beginning in October 2016.

By the end of that year, its analysis revealed that five of the 94 Calls had been completed, one by the federal government, two by churches involved, one by a Crown Corporation and one by a non-profit organization. By October 2017, this number had risen to seven. In November 2018, there were eight, emphasizing the federal government's execution, and in 2019, only nine calls had been executed.

For the Yellowhead Institute (2019), the Canadian government's performance was very unsatisfactory. The explanation for this lies in the fact that Canada still faces three "structural barriers" that prevent the full implementation of actions, the low priority given by the government to implementing significant structural changes dictated by public interest resistance; oppressive and paternalistic attitudes and behaviors on the part of the federal technocracy; and high resistance to implementing strategies to combat structural racism that still prevail in Canadian society. In this sense, for Yellowhead, it is not so much what or how many actions have been implemented, yet to what extent they are capable of producing the structural changes needed to improve the lives of Indigenous Peoples,

The combination of ongoing paternalism, Canadian self-interest, and Canada's broader failure to admit or to even address the structural racism at the heart of many of the institutions responsible for providing health, welfare, legal, education services to Indigenous communities does not bode well for justice for the survivors of residential schools and their families (Yellowhead Institute, 2019).

The indigenous residential school system was not the only form of cultural genocide committed in Canada against Indigenous Peoples. Other examples of systemic violence that have contributed to putting these populations at a permanent disadvantage compared to non-indigenous people have been "dispossession, environmental degradation, relocations, child welfare removals, the murder of Aboriginal women and the subsequent neglect of the victims by police personnel, and the notably high incarceration rates for Indigenous individuals" (Green, 2016: 18).

The Call to Action to establish a national inquiry to look into missing and murdered indigenous women and girls in 2016 has been fulfilled. In June 2019, the national inquiry final report presented over 200 recommendations to improve relations between Indigenous Peoples and police forces. Justin Trudeau has also committed to develop and implement a "national action plan" to respond to the recommendations (Rodon, 2019).

## **National Commission of Truth and Indigenous Peoples in Brazil**

The CNV was created in 2012 in response to a historical request from Brazilian society to investigate the serious human rights violations committed in Brazil during the period from 1946 to 1988. The main objective was to fill in the gaps in the country's history concerning that period and, at the same time, to reinforce democratic values (Brazil, 2014).

Brazil's transitional scenario finally consolidated through the institution of a CNV, led to the rediscovery of a series of documents proving that Indigenous Peoples were victims of the military dictatorship and probably the most important and least reported victims of that period, given the violence suffered during development projects implemented by military governments. Among the documents found, the publication of the so-called Figueiredo Report<sup>4</sup> was fundamental for the CNV to realize that the conflict and persecution against Indigenous Peoples was a political issue and was due to a development model based on the expropriation and theft of indigenous lands.

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<sup>4</sup> In 1967, an Inquiry Commission was created, chaired by Jader Figueiredo, Federal Prosecutor, to investigate irregularities of the Indian Protection Service (SPI), hence the name Figueiredo Report. In March 1968, Jader Figueiredo delivered the final report of the investigation to the Interior Minister, General Albuquerque Lima, who presented the results at a press conference in Rio de Janeiro in April 1968. Shortly after, the report disappeared and, until its rediscovery in April 2013, the only documents available were those published after the press conference.

The Figueiredo Report is an essential document on what happened to the Indigenous Peoples of Brazil before and during the military dictatorship, which revealed many gaps in the history of Indigenous Peoples, not only in terms of the physical and moral violations they suffered but also in terms of the expropriation of their lands. Supposedly destroyed in a fire at the Ministry of Agriculture, the report was found by Marcelo Zelic almost intact at the Museum of the Indian in Rio de Janeiro in April 2013, with over preserved 7,000 pages (Zema & Zelic, 2020).

The Figueiredo Report contains the main evidence of the many crimes committed “against the person, honor and heritage of the indigenous people in Brazil,” in addition to the crimes committed “against the public assets” by officials of the Indian Protection Service (SPI). Prosecutor Jader Figueiredo states that the presented charges are unsuspected and full of evidence; that the SPI was a “den of corruption indescribable for many years,” which was incredible to have “in the administrative structure of the country a distribution that fell to such a low level of decency”; and that there were “public officials whose bestiality had reached such refinement of perversity” (Brazil 1968: 2). For him, “it seems unrealistic that there are men, supposedly civilized, who act so cold and barbarously” (Brazil, 1968: 3).

The Figueiredo Report served as the basis for investigating crimes committed against Indigenous Peoples during the military dictatorship in Brazil. In addition to the Figueiredo Report, indigenous people made other accusations to the National Truth Commission group about the existence of concentration camps, torture centers, and illegal prisons for indigenous people during the military dictatorship. Brazilian indigenous people were the target of clandestine arrests, torture, disappearances, and politically motivated arrests, as well as so many others who suffered in the “basements of the dictatorship”. Antonio Cotrim, a former employee of the National Indian Foundation (Funai), denounced the indigenous prison known as the Krenak Reformatory and resigned for not wanting to participate in the extermination of Indians (Zema, 2014: 201).

Documents also showed the creation, in 1969, of the Indigenous Rural Guard (GRIN), whose mission was “to execute the ostensible surveillance of the areas reserved for forestry.” Three years after the graduation of the first class of the GRIN, a balance was made of their actions, and the conclusion was that “everything went wrong”. There were many “reports of beatings, arbitrariness, insubordination and even rapes committed by the indigenous guards who returned to their communities.” GRIN began to be deactivated in the late 1970s, but this would not be enough to extinguish their practices of violence (Zema, 2014: 203).

The CNV could not investigate the whole defined period (1946-1988) and focused on the military dictatorship from 1964 to 1985. However, it was essential for the Indigenous Peoples to respect the CNV’s defined period, since the serious human rights violations committed against them began long before the military dictatorship and did not stop with the end of General Figueiredo’s mandate in 1985 (Fernandes, 2015).

In its final report, presented in December 2014 to President Dilma Rousseff, the CNV recognized that the military dictatorship committed the crime of genocide against the Waimiri-Atroari, the Avá-Canoeiro, the Xetá and the Cinta Larga Indigenous Peoples and the massacres of Bororo, Xavante, Guarani, Pataxó, Tapayuna, Yanomami, and many others.

Actions against Indigenous Peoples included forced displacements, burning and bombing entire communities with napalm, slavery, concentration camps, the prohibition of speaking their language, policies that established “Indianness” criteria, the attempt to “emancipate” them so that they would lose their rights to land, the denial of their existence as peoples and granting illegal licenses for economic activities on their lands (Fernandes, 2015).

The CNV report also showed that most of these crimes were related to development projects and that the different types of human rights violations committed by the Brazilian State against Indigenous Peoples during the studied period were focused on the central objective of forcing, or accelerating, the “integration”

of Indigenous Peoples and colonizing their territories, considered strategic for the implementation of its political and economic project (Brazil, 2014: 251).

The CNV concluded that these serious violations of Indigenous Peoples' human rights were not sporadic, nor were they accidental, but systemic, since they resulted directly from the State's structural policies, both through its action and inaction. The apathy and violence of the Brazilian State, which have always accompanied indigenous policies, were highlighted when, for example, by protecting local authorities and private interests and by not controlling the corruption of its employees, the State ended up creating conditions conducive to the dilapidation of indigenous lands (Brazil, 2014: 204).

The Brazilian State's responsibility is even more evident when one considers its deadly omissions in the area of health and in the control of corruption, denounced throughout the 1960s and 1970s. The killing of 8,350 indigenous people, during the military dictatorship period, was due to the state agents' direct action and/or omission. However, this estimate includes only the cases investigated by the CNV. Many other cases will have to be studied to provide a more accurate picture of the number of indigenous people killed during this period. Without a doubt, the number should be exponentially higher than the estimate presented by the CNV (Brazil, 2014: 205).

The CNV recognized the Brazilian State's responsibility, by direct action or omission, for the expropriation of illegally occupied indigenous lands during the period under review and other severe violations of human rights against these populations, ending up recommending thirteen actions to the Brazilian State: 1) Public apology for the squandering of indigenous lands; 2) Recognition that persecution of Indigenous Peoples constituted a politically motivated crime; 3) Installation of a National Indigenous Truth Commission; 4) Promotion of national information campaigns to the population; 5) Inclusion of the theme of "serious human rights violations that occurred against Indigenous Peoples between 1946-1988" in the official curriculum of the educational network; 6) Creation of specific funds to promote research and broad dissemination of serious human rights violations committed against Indigenous Peoples; 7) Meeting and systematization, in the National Archive, of all documentation pertinent to the investigation of serious human rights violations committed against Indigenous Peoples; 8) Recognition by the Amnesty Commission of the persecution of indigenous groups for colonization of their territories; 9) Creation of a working group within the Ministry of Justice to organize the instruction of processes of amnesty and reparation to Indigenous Peoples; 10) Proposal of legislative measures to amend the Amnesty Law, in order to contemplate forms of amnesty and collective reparation to Indigenous Peoples; 11) Strengthening of public policies to care for the health of Indigenous Peoples; 12) Regularization and un-intrusion of indigenous lands as the most fundamental form of collective reparation for the severe violations suffered by Indigenous Peoples; and 13) Environmental recovery of boiled and degraded indigenous lands (Brazil, 2014: 253-254).

Recommendation no. 3 suggested creating an Indigenous National Truth Commission to follow up on the study of serious human rights violations against Indigenous Peoples that were not mentioned in the study conducted by the CNV's special group from 2012 to 2014, but this never happened (Zema & Zelic, 2020).

During the CNV's period of investigation, debates over the punishment and accountability of torturers and the need for legal action against those who tortured and/or committed murder gained prominence and media attention. The responsibility of the torturers is one of the axes of transitional justice, but as the recommendations of justice and reparation for crimes committed against Indigenous Peoples demonstrate, many other elements must be taken into account for historical justice to take place: a formal apology (recommendation no. 1), the strengthening of differentiated public health and education policies, and the amendment of the Amnesty Law so that Indigenous Peoples can be repaired, both individually and collectively. However, maybe the most important aspect of achieving historical justice in Brazil is the change in the State's conduct.

A change in conduct can directly affect the present indigenous population. Nevertheless, none of this has been done (Zema & Zelic, 2020).

Recommendation no. 7, which provided for the collection and systematization in the National Archive of all relevant documentation for the investigation of serious human rights violations against Indigenous Peoples for broad public dissemination, was partially accomplished thanks to the efforts of Marcelo Zelic, who, after the CNV, dedicated himself to the creation of an Indigenous Virtual Reference Center (CRVI), where thousands of pages of archive documents and diverse collections, as well as films, documentaries, and publications on Indigenous Peoples, are available on a free and universal access portal (Zema & Zelic, 2020).

The recommendations stress the importance of guaranteeing the right to land, truth, and memory to promote reconciliation and appeal to the country's leaders to ensure that the limits of indigenous lands still under analysis are defined, that invaded lands are unoccupied and that the recovery of degraded indigenous lands is guaranteed. These recommendations confirm that the violence inflicted upon Indigenous Peoples yesterday and today is directly related to the expropriation of their lands (Zema & Zelic, 2020).

### **Comparison and concluding remarks**

This article proposed to analyze and compare the “transitional scenarios” in Brazil and Canada. The comparative study on the truth commissions and their final reports was an attempt to understand how this mechanism deals with the fractures and continuities of the violence against Indigenous Peoples in the Canadian and Brazilian context. Looking to Canada to improve the understanding of the reconciliation project was considered important because Canada has gained a worldwide projection on this topic in recent years.

Canada has officially established a broad reconciliation ‘agenda’ aimed at Indigenous Peoples with no parallel in the Brazilian context. The comparative analysis of the truth commissions helps to understand how sophisticated the Canadian policies of reconciliation became, since this country has successfully projected itself worldwide as the ultimate reference in redress and reconciliation policies, despite the constant critics of its Indigenous Peoples.

Based on the Critical Studies of Transitions’ approach and to guide the comparative analysis of the truth commissions’ final reports, and their Calls to Action and Recommendations, we ask: to what extent the truth commissions in Brazil and Canada have contributed to overcome inequalities and end up the structural violence that has long characterized relations between indigenous and non-Indigenous Peoples? Despite promises to transform colonial relations and the fact that both final reports ratified the Canadian and Brazilian states’ responsibility for the genocide of thousands of Indigenous Peoples, these truth commissions were not capable to satisfactorily address the past and to stop the continuity of structural violence affecting them.

The Critical Studies of Transitions’ theoretical proposal favors a keen perspective, drawing attention to the existing dialectics between the fractures and continuities of transitional processes. Thinking about the transitional scenarios attentive to this dialectic necessarily leads us to question the fracture’s idea that the transitional mechanisms sustain, emphasizing continuities and works to allow continuity (Castillejo-Cuéllar, 2017: 19).

A first point to note when comparing the two commissions is that the Canadian TRC was established not to address all the historical injustices committed in Canada against Indigenous Peoples during colonial times. The Canadian TRC was established to specifically investigate the crimes, abuses and violence committed against the First Nations, the Métis and the Inuit people within the Residential Schools context. In Brazil, the CNV was created to investigate the military dictatorship crimes, focusing on the dead and missing people and the crimes of torture committed against political prisoners. The Brazilian indigenous movement questioned the

human rights organizations involved with the CNV's work because they were not included in the investigations' dictatorship victims. After this claim, a specific working group was created to deal with violence and crimes against Indigenous Peoples.

Another point is that the participation of indigenous people in the Canadian TRC was not limited, as in the Brazilian case, to depositors' and witnesses' roles. In Canada, the TRC was presided over by three Indians: Ojibwe Judge and Senator Murray Sinclair; Chief Wilton Littlechild, a lawyer and member of the Maskwacis; and Marie Wilson, an indigenous woman from Yellowknife, Northwest Territories (NCTR, 2009).

The Canadian effort to implement the 94 Calls to Action is at a more advanced stage than that of Brazil with its 13 recommendations, and with a higher investment in terms of budgets, human and technological resources applied by the government to this end. Nonetheless, some indigenous intellectuals and survivors highly criticize the reconciliation agenda and the legacy of the TRC.

On the apologies there is another crucial difference between Brazil and Canada concerning the symbolic initiatives for expressing regret for the historical injustices committed by the state against Indigenous Peoples. Over the past 30 years, the various Canadian governments and Catholic and Protestant churches directly involved in the residential school system have begun to apologize publicly. Brazil has not done anything similar to demonstrate its regrets.

However, for the Indigenous Peoples in Canada, the apologies have worked as "policies of distraction" to the demands for recognition of the sovereignty, autonomy, and self-determination they claim (Corntassel & Holder, 2008). The Canadian apologies also left behind the other "Rs" that could bring about real social transformation, such as restitution, redistribution and recognition (Alfred, 2009; Green, 2016; Henderson & Wakeham, 2013). The Canadian government has made four attempts to express its sentiment toward survivors of residential schools. The most significant was the apology of Prime Minister Stephen Harper on June 11, 2008. Before Harper finally did so, three government attempts were made without achieving the expected result.

As a discursive act, an apology seeks to promote interaction between offender and offended (Tavuchis, 1991). But in Harper's 2008 apology ceremony, there were no indigenous survivors or their families. Harper called the residential schools policy as a "sad episode" and "sad chapter" of the Canadian history, summarizing more than a hundred years of integrationist political project to sporadic events (Tager, 2014). Without disregarding the best intentions embedded in these official excuses, Corntassel and Holder's analysis points out that they failed to "illustrate the dangers of co-opting the language of reconciliation without first establishing meaningful forms of group restitution and compensation" (2008: 483). Even when the apology is sincere, it becomes insufficient if it is not accompanied by proportional reparation.

Although it was officially written and responsibility was accepted for the damage caused, none of the Canadian apologies were assertive enough to transform the colonial relations with Indigenous Peoples. Despite the concrete ceremonial measures and widespread publicity, none of them morally involved the perpetrators, nor were felt with sincerity by the indigenous survivors. To be authentic, an apology must name the errors in question; it must include non-repetition commitments, not demand forgiveness in return; and ensure sincerity (James, 2013).

To make these symbolic gestures less empty, an apology must be combined with a systematic review of the past, to hold institutions and individuals directly involved in human rights violations accountable, and recognize self-determination, not to mention that any discussions or gestures of reconciliation must be preceded by real acts of restitution (Corntassel & Holder, 2008).

In Canada, the confession of responsibility by the Canadian state coupled with the logic of neoliberalism, accountability mechanisms, laws and public policies converged to create a political and economic climate in which spending on reparations, though viewed as morally necessary, was in shock from the legacy of the economic recession that marked the late 1990s. In exchange for the reparations policies that began to be offered

at that time, Indigenous Peoples should demonstrate their adherence to the neoliberal citizenship Canadian model (Green, 2016). In this sense, the Canadian government reconciliation initiatives were used to contain indigenous demands for land, jurisdiction, and most importantly, restitution.

In Brazil, as the CNV has proven, the military dictatorship had tragic effects on the Indigenous Peoples, to the point of being considered the greatest victims of this period in history. More indigenous people died because of the dictatorship's decisions than political prisoners. With the CNV, Indigenous Peoples were included in the official debates on historical justice and reparation, the State's responsibility for past crimes began to be established, and some violations were recognized by the courts, such as the Aikewara people case (Brazil, 2014: 245). However, this process of holding the state accountable was abruptly interrupted in early 2015 by the political crisis generated by the likely reelection of President Dilma Rousseff. With her impeachment in 2016, there was an interruption of the reparations process, a resumption of anti-democratic actions, and a return to the practices of violence against Indigenous Peoples in the manner of state violence pointed out by the CNV (Zema & Zelic, 2020).

The CNV was expected to provoke a more open public debate on the military dictatorship crimes in Brazil. However, this did not happen. Shortly after the final report's publication with thirteen recommendations for reparations to Indigenous Peoples, they quickly fell into oblivion by the public authorities, and the matter also disappeared from the press. None of the thirteen recommendations were implemented by the Brazilian state (Zema & Zelic, 2020).

Institutional racism and structural violence against Indigenous Peoples have not ceased since then in Brazil. The indigenous movement denounces the genocide that is underway and accelerating in these pandemic times. The similarity of the acts and crimes committed by the Brazilian State with military dictatorship is denounced in virtual and alternative media. The Brazilian indigenous movement has declared that they are living today "the most serious and imminent offensive against Indigenous Peoples' rights since the 1988 Federal Constitution. This offensive is orchestrated by the Republic's three powers, in collusion with national and international economic oligarchies, to usurp and exploit Indigenous Peoples' traditional territories (APIB, 2020). The Bolsonaro Government promoted the return of an integrationist and tutelary policy similar to that of the military dictatorship responsible for the ethnocide and genocide of these peoples, directly affronting their right to self-determination, autonomy and dignity, expressly guaranteed by the Federal Constitution (Zema & Zelic, 2020).

Regarding the difficulties encountered in implementing the 13 recommendations of the CNV aimed at reparation for the Indigenous Peoples in Brazil, we have resorted to the notion of historical justice. At first, we emphasize that hegemonic society still encourages Indigenous Peoples' historical invisibility and propagates racist and discriminatory views and behavior against them. There is a kind of prohibition on the memory of crimes committed against Indigenous Peoples throughout history. This forbidden memory encourages the perpetuation or repetition of acts of violence and barbarity already observed in the past. In a second moment, we observe a general difficulty in understanding Indigenous Peoples' human rights violations, which leads to indifference and a total lack of respect for the victims. There is also a refusal and abstention when it comes to assuming historical responsibility for the past barbarities, which is repeated regarding violence. The denial of historical justice and reparation to Indigenous Peoples prevents the construction of true reconciliation (Zema & Zelic, 2020).

Another important point to be compared is that truth commissions in Brazil and Canada have investigated crimes for a limited period, yet violence against Indigenous Peoples is a long-standing process. They began before the limited period on each Truth Commission and have never ceased. In both cases, instead of rupturing with the state violence and institutional racism, there is a continuity with the past in terms of violence against Indigenous Peoples.

Even though the Canadian reparation effort is at a much more advanced stage than in Brazil, even in rich countries like Canada mechanisms such as truth commission' recommendations, human and technological resources invested, and more budget for social policies and services, did not represent a real possibility of changing the existing structural asymmetries between indigenous and non-indigenous populations.

The political processes of reconciliation and reparation for Indigenous Peoples in Brazil and Canada are directly associated with each country's economic and ideological contexts. However, much Canada has projected itself worldwide as a reference in the field of the policy of reparations to Indigenous Peoples, the global and neo-liberal capitalist logic prevails in this country, albeit of a multicultural nature, which seeks the economic inclusion of excluded segments of the population under the paradigms of an idea of citizenship aligned with these values and principles. In these two points, however, Brazil and Canada are entirely aligned.

Received: January 30, 2021

Approved: August 17, 2021



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*Ana Catarina Zema*

Federal University of Brasília. Department of Latin American Studies. Observatory of Indigenous Rights and Policies. Brasília/DF, Brazil.

<https://orcid.org/0000-0003-0391-8573>

Email: [ana.zema@gmail.com](mailto:ana.zema@gmail.com)

*Clarisse Drummond Martins Machado*

University of Brasília, Department of Latin American Studies. Observatory of Indigenous Rights and Policies, Brasília/DF, Brazil

<https://orcid.org/0000-0002-0671-3197>

Email: [clarisse.drummond@gmail.com](mailto:clarisse.drummond@gmail.com)

*Marcelo Zelic*

Justice and Peace Commission of São Paulo. *Armazém Memória* Coordinator. São Paulo/ SP, Brazil.

<https://orcid.org/0000-0002-0097-8231>

Email: [marcelozelic@gmail.com](mailto:marcelozelic@gmail.com)

*Elaine Moreira*

Federal University of Brasilia. Department of Latin American Studies. Observatory of Indigenous Rights and Policies. Brasilia/DF, Brazil.

<https://orcid.org/0000-0003-2949-6145>

Email: [elainemoreiralau@gmail.com](mailto:elainemoreiralau@gmail.com)