
4 May 2026

English Only

Expert Mechanism on the Rights of Indigenous Peoples

Technical advice to Canada

**Technical Advisory Note of the Expert Mechanism on the Rights
of Indigenous Peoples**

I. Context and purpose of the technical advice

1. Under its mandate, the Expert Mechanism on the Rights of Indigenous Peoples (Expert Mechanism) assists Member States and Indigenous Peoples in achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration). It provides technical assistance upon the request of States and/or Indigenous Peoples and facilitation of dialogue between Indigenous Peoples, States and/or the private sector, pursuant to paragraph 2 of Human Rights Council resolution 33/25. Under this mandate, the EMRIP can provide technical advice regarding, “the development of domestic legislation and policies relating to the rights of Indigenous Peoples” (see the terms of reference in Annex I). This advice is provided by the Expert Mechanism in response to a request from Mr. Jeremy Eugene Matson, and supported by Members of Parliament Leah Gazan, and Jenny Kwan.

2. The purpose of the Expert Mechanism’s technical advice is to provide advice and guidance to the House of Commons in the Parliament of Canada, and the Standing Committee on Indigenous and Northern Affairs, on the implementation of the United Nations Declaration on the Rights of Indigenous Peoples, in particular articles 3, 8, 9, 22, 33, 40, and 44 in relation to amendments to the *Indian Act* and in this instance *Bill S-2, An Act to amend the Indian Act (new registration entitlements)*.

3. This technical advisory note responds to the request concerning “the immediate stop of assimilation under s. 6 of the Indian Act of Canada”, with particular emphasis on the ongoing discrimination against Indigenous women and their descendants.¹ This includes efforts to forcibly assimilate First Nations individuals through this policy, which consists of the second generation cut-off, the 1985 cut-off, and the two parent rule (hereafter referred to together as the second generation cut-off), and failure to provide an effective remedy to victims of such discrimination.²

4. United Nations treaty bodies have found Canada to be in violation of its international human rights obligations due to sex-based discrimination and interference with Indigenous cultures arising from the Indian Act’s status registration provisions.³ United Nations treaty bodies have commented extensively on discrimination in the *Indian Act*. Most recently, in its 2024 Concluding Observations on the tenth periodic review of Canada, the CEDAW Committee stated that “despite amendments to the *Indian Act*, gender-based discrimination against Indigenous women and girls persists.”⁴ Similarly, the Human Rights Committee, in its Concluding Observations on Canada’s seventh periodic report, noted that “discriminatory effects [of the *Indian Act* status provisions] persist against Indigenous women, particularly regarding the second generation cut off rule, which continues to prevent the transmission of Indian status to the third generation, thereby denying affected individuals the entitlements and benefits linked to such status.”⁵

¹ Request from Mr. Jeremy Matson, and Canadian Members of Parliament Jenny Kwan, and Leah Gazan.

² AL CAN 3/2023, Mandates of the Special Rapporteur on violence against women and girls, its causes and consequences; the Special Rapporteur on the rights of Indigenous Peoples; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence.

³ *Lovelace v. Canada*, Communication No. 24/1977, CCPR/C/OP/1 at para 10.

⁴ CEDAW/C/CAN/CO/10 at para 31, Committee on the Elimination of Discrimination against Women, Adopted by the Committee at its eighty-ninth session (7–25 October 2024). Concluding observations on the tenth periodic report of Canada.

⁵ Human Rights Committee, Concluding Observations on Canada, CCPR/C/CAN/CO/7 (2026), paras 55-56.

II. Understandings grounding the technical advice

1. General context

5. This technical advice focuses on two specific issues being considered under the proposed amendments to the *Indian Act*, namely (a) the elimination of the policy of forced assimilation, consisting of the second generation cut-off, the 1985 cut-off, and the two parent rule, and (b) the removal of the bars to compensation from *Bill S-2* that would otherwise have prevented “First Nations women and their descendants from obtaining reparations for human rights violations regarding the *Indian Act*.”⁶

6. The Expert Mechanism provides this advice on the basis of the information received from one of the requestors, Mr. Jeremy Eugene Matson, and other relevant sources⁷, including academic and legal literature on the Canadian legal framework governing First Nations women and their descendants, experts, and observations of United Nations treaty-monitoring bodies. This advice is grounded in the rights affirmed in the United Nations Declaration on the Rights of Indigenous Peoples (Declaration) and other applicable international standards concerning Indigenous Peoples, including relevant provisions of international human rights treaties.

7. It has been brought to the attention of the Expert Mechanism that Canada has the opportunity to address persistent discrimination through amendments proposed by Canada’s Standing Senate Committee on Indigenous Peoples, and adopted by the Senate of Canada, to *Bill S-2, An Act to Amend the Indian Act*, which is currently under consideration before Canada’s House of Commons.

2. Information from treaty-monitoring bodies and Special Procedures mandate holders

8. In providing this technical advice, the Expert Mechanism was guided by its mandate to assist and advise, and to facilitate dialogue in support of the implementation of recommendations addressed to Canada by United Nations human rights mechanisms and Special Procedures mandate holders relevant to this matter.

(a) Human Rights Committee

Concluding Observations on Canada, CCPR/C/79/Add.105, 7 April 1999, para 19.

Concluding Observations on Canada, CCPR/C/CAN/CO/5, 20 April 2006, para 22.

Concluding Observations on Canada, CCPR/C/CAN/CO/6 (2015), paras 17 – 18.

Concluding Observations on Canada, CCPR/C/CAN/CO/7 (2026), paras 55-56.

(b) Committee on the Elimination of Racial Discrimination

Concluding Observations on Canada, CERD/C/CAN/CO/18, 25 May 2007, para. 15.

Concluding Observations on Canada, CERD/C/CAN/CO/19-20, 9 March 2012, para. 18.

(c) Committee on the Elimination of Discrimination Against Women

Report of the 28th and 29th Sessions, A/58/38 (supp.) (2003), paras. 361–362

Concluding Observations on Canada, CEDAW/C/CAN/CO/7 (7 December 2008), paras. 17–18.

Report of the inquiry concerning Canada under article 8 of the Optional Protocol, CEDAW/C/OP.8/CAN/1 (2015), para. 219 (e).

⁶ CEDAW/C/CAN/CO/10 at para 31(c),

⁷ Including the submissions made to the Standing Senate Committee on Indigenous Peoples in their study of Bill S-2, September - December 2025. <https://sencanada.ca/en/committees/APPA/briefs/45-1>

Concluding Observations on Canada, CEDAW/C/CAN/CO/8-9 (18 November 2016), paras. 12–13.

Concluding Observations on Canada, CEDAW/C/CAN/CO/10 (30 October 2024), paras. 31–32 and 52.

(d) Committee on Economic, Social and Cultural Rights

Concluding Observations on Canada, E/C.12/CAN/CO/4 and E/C.12/CAN/CO/5, (22 May 2006), paras 17 and 45.

Concluding Observations on Canada, E/C.12/CAN/CO/6, (23 March 2016), para 22 (b).

(e) Working Group on the Universal Periodic Review

Report of the Working Group on the Universal Periodic Review, Canada, A/HRC/24/11 (28 June 2013), para 128.59.

Report of the Working Group on the Universal Periodic Review, Canada, A/HRC/39/1, (11 July 2018), para 142.78, 142.79, 142.80.

(f) Communications and reports from Special Mandate Holders

Report of the Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay, on his visit to Canada (24 July 2023).

Joint communication AL CAN 3/2023 (27 October 2023) by the Special Rapporteurs on violence against women and girls; the rights of Indigenous Peoples; contemporary forms of racism; and the promotion of truth, justice, reparation and guarantees of non-recurrence.

Joint follow-up communication AL CAN 1/2025 (27 February 2025) by the Special Rapporteurs on violence against women and girls; the rights of Indigenous Peoples; contemporary forms of racism; and the promotion of truth, justice, reparation and guarantees of non-recurrence.

(g) Individual communications and decisions under international human rights treaties

Lovelace v. Canada, Communication No. 24/1977, CCPR/C/OP/1.

McIvor v. Canada, CCPR/C/124/D/2020/2010.

Matson et al. v. Canada, CEDAW/C/81/D/68/2014.

9. The Expert Mechanism’s advice provides guidance on article 8 of the Declaration, which prohibits forced assimilation and destruction of culture, by situating that prohibition within broader patterns of race and sex discrimination against Indigenous women and girls and their descendants. In its *Study on the rights of the Indigenous child*, the Expert Mechanism examined the Declaration in conjunction with other international human rights instruments, such as the Convention on the Rights of the Child, notably article 7, which “*deals with a key issue in the history of Indigenous children, namely the collective right of Indigenous Peoples not to be subjected to any act of genocide or any other act of violence, including the forcible removal of children of one group to another group*”.⁸ The study, in paragraph 36 stated that “while the forcible removal of children from indigenous groups is prohibited under article 7 (2) of the Declaration and article 8 prohibits forced assimilation or destruction of their culture, assimilationist and discriminatory policies have often led to the removal of Indigenous children from their communities and subsequent institutionalization. Such removals impact many of their rights, including their collective rights to their traditional

⁸ A/HRC/48/74 (August 9/21), Rights of the indigenous child under the United Nations Declaration on the Rights of Indigenous Peoples, Study of the Expert Mechanism on the Rights of Indigenous Peoples, at para 11.

lands, to belong to an Indigenous community, to practise their spiritual and religious traditions, and to their languages and culture.”⁹

10. The Expert Mechanism notes that one of the requestors, Mr. Jeremy Eugene Matson, is a successful author in Communication No. 68/2014, decided by the Committee on the Elimination of Discrimination against Women (CEDAW) in 2022. In that communication, the Committee found that Canada had violated its obligations under articles 2 and 3 of the Convention, read in conjunction with article 1, including in relation to access to justice and sex-based discrimination arising from the Indian Act’s status-registration provisions. In its views, the Committee also referred to the Declaration as a relevant interpretive framework, including article 8, and concluded that “*the unequal criteria by which men and women are permitted, according to the State party, to transmit their Indigenous identity to their descendants*” were inconsistent with the standards affirmed in the Declaration, including the prohibition of forced assimilation and the destruction of Indigenous culture.¹⁰

11. The Expert Mechanism notes that the *Joint communication AL CAN 3/2023* in October 2023 by several Special Rapporteurs called on Canada to implement the recommendations of the Special Rapporteur on the rights of Indigenous Peoples, in particular to implement the recommendations of the Standing Senate Committee on Indigenous Peoples to repeal section 6 (2) of the Indian Act (the “second generation cut-off”), which reduces the number of individuals with status; to repeal non-liability clauses in the amendments to the Act, in order to allow First Nations women and their descendants who were denied status to be compensated; to develop plain language materials in Indigenous languages and the country’s official languages to explain the eligibility and the registration process; and support registration by women and their descendants newly eligible for status through a streamlined, easily accessible process; and create an affordable, reliable, timely and accessible remedy to compensate those who have suffered the effects of discrimination.¹¹

12. The Expert Mechanism further takes note of the Committee on the Elimination of Discrimination against Women (CEDAW) concluding observations on Canada in October 2024, where the Committee recommended that the State party:

(a) Amend section 6 of the Indian Act to remove status categories under sections 6 (1) (f) and 6 (2) and any other legal provisions that do not recognize the equal rights of women and men to transmit their Indian status to their children and eliminate all remaining categories or classes of Indian status, including differentiations in eligibility caused by pre- and post-1985 birth and marriage dates;

(b) Review records to grant status to First Nations women, and their descendants, who were previously denied status and are now eligible;

(c) Repeal all domestic legal provisions restricting access to comprehensive reparations for the violation of human rights of First Nations women and their descendants, including those stemming from the Indian Act, and develop a mechanism to address reparation claims, in coordination with First Nations women and their descendants;

(d) Conduct outreach campaigns to inform First Nations women and their descendants that they may be newly entitled to status, while allocating sufficient resources, funding and support to achieve increased membership numbers and secure successful, expedited registration processes within the same time frame as other identification services, establish a mechanism to challenge all refusals issued in the procedure to recognize status to

⁹ Ibid.

¹⁰ Matson v. Canada, CEDAW/C/81/D/68/2014, Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning communication No. 68/2014, 11 March 2022, at para 18.4

¹¹ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28327>. See also A/HRC/54/31/Add.2

Indigenous women and their descendants, which includes representation of First Nations, and develop and implement comprehensive policies ensuring that all Indigenous women and girls, including those who are unregistered and off-reserve, have equal access to early learning, childcare, employment support and educational opportunities. These policies should be adequately funded, culturally relevant and developed in consultation with Indigenous Peoples.

13. Similarly, the Expert Mechanism takes note of the Human Rights Committee concluding observations on Canada in 2026,¹² where the Committee:

(a) takes note of the State Party's efforts to address gender-based discrimination under the Indian Act, including amendments aimed at removing the "cut-off rule". However, the Committee remains concerned that discriminatory effects persist against Indigenous women, particularly regarding the second generation cut off rule, which continues to prevent the transmission of Indian status to the third generation, thereby denying affected individuals the entitlements and benefits linked to such status. The Committee is also concerned about significant delays in processing registration applications under the Indian Act, due to a substantial backlog (arts. 3 and 27).

(b) recommends that Canada should increase its efforts to eliminate the remaining discriminatory effects of the Indian Act on Indigenous women and their descendants, including by adopting proposed amendments concerning the second-generation cut-off rule and ensuring equal enjoyments of associated rights and entitlements. It should also ensure the timely processing of registration applications, including by allocating adequate resources to eliminate the existing backlog.

III. Core of the Advice

14. The Expert Mechanism is of the view that, in addition to the extensive recommendations and views by United Nations human rights bodies on sex and race discrimination embedded in the *Indian Act*, the second-generation cut-off rule (together with the 1985 cut-off and the two-parent rule) raises serious concerns in light of article 8 of the United Nations Declaration on the rights of Indigenous Peoples that affirms that,

1. Indigenous Peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
 - (d) Any form of forced assimilation or integration

15. The second-generation cut-off has the effect of forcibly assimilating Indigenous individuals because, as the data from Indigenous Services Canada demonstrates,¹³ it will lead to diminishing numbers of persons with legal Indian status who are recognized by Canada as having treaty, aboriginal and inherent rights, as well as being persons to whom Canada owes a fiduciary duty. The cumulative effect of the deprivation of status and recognition assimilates Indigenous Peoples into the general population of the state irrespective of their wishes, thereby raising serious concerns in light of article 8 of the Declaration, which affirms the right of Indigenous Peoples and individuals not to be subjected to forced assimilation or the destruction of their culture.

¹² CCPR/C/CAN/CO/7 (2026), paras 55-56.

¹³ Collaborative Process on the Second-Generation Cut-off and Section 10 Voting Thresholds: Community Specific Data Sheets <https://open.canada.ca/data/en/dataset/39194018-abf3-45fd-9310-2acac0f64fa2>

16. The Expert Mechanism's review of the concluding observations and views of United Nations treaty bodies, together with communications and reports of Special Procedures mandate holders on this matter as well as the extensive testimony presented to the Standing Senate Committee on Indigenous Peoples in 2025, demonstrates that Canada has a unique opportunity to amend the *Indian Act* at this juncture in order to address the core of both the persistent sex and race discrimination and the policy of forced assimilation inherent in the second generation cut-off provision of the *Indian Act*. Furthermore, it also provides an opportunity to ensure access to effective remedies and redress for harms arising from any form of forced assimilation, consistent with articles 8 and 40 of the Declaration.

17. With respect to article 22 of the Declaration, the Expert Mechanism notes that the concluding observations of several United Nations treaty bodies, as well as reports and communications of Special Procedures mandate holders, have consistently recognized that the effects of the *Indian Act* are not gender-neutral, and are experienced differently by First Nations women and their descendants.

18. In this regard, both the 2015 inquiry of the Committee on the Elimination of Discrimination against Women and the National Inquiry into Missing and Murdered Indigenous Women and Girls identified discrimination under the Indian Act as a significant cause of the crisis of murders and disappearances of Indigenous women in Canada.¹⁴ The legal requirements of s 6 of the *Indian Act* mean that First Nations women who are of 6 (2) (or "half") status, must be able to identify and establish the status entitlement of the child's father in order to transmit status to their child. This requirement means that First Nations women often face barriers in transmitting status due to the presence and/or threat of violence, which First Nations women experience disproportionately.

19. In this regard, the Committee on the Elimination of Discrimination against Women observed in 2015 that "*given the high rates of unstated and/or unrecognized paternity, aboriginal women are more adversely affected by non-registration and non-membership than men and, as a result, they are denied access to the rights and benefits conferred by registration and membership for their children.*"¹⁵

20. Individuals and communities both suffer from harm as a result of forced assimilation. Individuals directly experience losses of education and health care, community and family proximity and support, as well as deprivation of culture. Reparations for loss, as well as for the cost of restoration, should fall into the category of "redress." Yet, losses are not only experienced by individuals and families. Information gathered by the Expert Mechanism indicates that successive legislative amendments to the *Indian Act*, from 1985 onwards has imposed costs on First Nations communities from returning status to individuals and individuals to communities: housing, government services, community development, and pressures on existing reserve land. Therefore, measures of redress should be considered and understood as encompassing not only compensation for individual harm but also support for communities to address the cost of restoration.

21. As noted by the Committee on the Elimination of Discrimination against Women CEDAW,¹⁶ the legal provisions that prohibits First Nations women and their descendants from obtaining compensation for discrimination caused by the *Indian Act* were first

¹⁴ 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/>

¹⁵ CEDAW/C/OP.8/CAN/1, Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, at para. 24.

¹⁶ CEDAW/C/CAN/CO/10, 30 October 2024, paras 31-32 and 52.

introduced in 1985, and constitute sex discrimination. These prohibitions appear incompatible with the rights affirmed in Articles 8(2)(d) and 40 of the United Nations Declaration on the Rights of Indigenous Peoples, which affirm the right of First Nations women and their descendants to redress for forced assimilation.

22. Clauses in Bills C-31, C-3, S-3, and the original, unamended version of Bill S-2, have provided that no claim can be made against the Crown in right of Canada, the Minister, any government employee, or any band, council or member of a band for good faith acts or omissions resulting in a person not being registered or entered on a band list before the day on which the legislation came into effect. These provisions also refer to clauses enacted by that Bill and excuse any failure or omission to register a person under that clause before the amendment came into effect.

23. The Expert Mechanism welcomes the adoption of *United Nations Declaration on the Rights of Indigenous Peoples' Act in 2021* and Canada's commitment to align its domestic legal framework with the Declaration.

IV. Recommendations

24. Improve domestic implementation of the provisions of the *United Nations Declaration on the Rights of Indigenous Peoples* by:

- (a) Implementing the relevant recommendations and findings of United Nations treaty bodies and Special Procedures mandate holders, including the most recent recommendations of the Committee on the Elimination of Discrimination against Women (2024) and the Human Rights Committee (March 2026).¹⁷**
- (b) Taking steps to fully realize articles 3 and 33 of the United Nations Declaration on the rights of Indigenous Peoples by ensuring that concerns arising under article 8 are addressed as a matter of priority.¹⁸**
- (c) Addressing the ongoing impact associated with non-compliance with article 8 of the Declaration by adopting legislative measures, as a matter of priority, to eliminate the second-generation cut-off, 1985 cut-off, and two-parent rule, and their assimilatory effects, from the *Indian Act*.¹⁹**
- (d) Taking steps to fully realize article 9 of the Declaration by adopting legislation to eliminate the second-generation cut-off and its assimilatory effects as a matter of priority.²⁰**
- (e) Taking steps to fully realize articles 22 and 44 of the Declaration by addressing the core of the remaining sex discrimination that is perpetuated by the impacts of the second-generation cut-off, and the history of sex discrimination in the *Indian Act*.²¹**

¹⁷ CCPR/C/CAN/CO/7 (2026), para 56. "The State Party should increase its efforts to eliminate the remaining discriminatory effects of the Indian Act on indigenous women and their descendants, *including by adopting proposed amendments concerning the second-generation cut-off rule and ensuring equal enjoyments of associated rights and entitlements*. It should also ensure the timely processing of registration applications, including by allocating adequate resources to eliminate the existing backlog." (emphasis added)

¹⁸ In this context, and at the time of writing in May 2026, the EMRIP is aware that Bill S-2, as amended by the Senate, is presently under consideration and provides a timely opportunity for the remedy of the assimilatory effects of the second-generation cut-off. This opportunity to address ongoing rights violations should be taken without delay.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

- (f) Taking steps to fully realize article 33 of the Declaration by eliminating the assimilationist practices and legislative barriers that bar children and grandchildren of current status holders from receiving Indian status and legal identity.
- (g) Ensure that Indigenous Peoples and individuals are able to effectively exercise their right to redress as affirmed by articles 8(2)(d) and 40 of the Declaration by reviewing and repealing legislative provisions, that unduly restrict or prevent access to remedies.²²

25. Reconsider Canada's response to the CEDAW Committee's decision in *Matson et al. v. Canada* (Communication No. 68/2014, views adopted in 2022), and communicate the outcome to all relevant bodies.

V. Follow-up

26. As provided in the terms of reference, the parties agreed that this advisory note should be made public.

27. In follow-up, the Expert Mechanism remains seized of this concern and, as per the terms of reference, offers to meet bilaterally, as necessary, with stakeholders including the members of the House of Commons in the Parliament of Canada and Mr. Matson, the Indigenous individual from the Squamish Nation.

28. Both parties are welcome to share their experiences as dialogue and, or, best practices during the agenda item on country engagement at the Expert Mechanism's annual sessions.

29. Upon request, and depending on the Expert Mechanism's assessment of future developments and the availability of resources, the Expert Mechanism may undertake follow-up engagements with the requestors and the Member State.

²² Ibid.