

Federal childwelfare and Indigenous childhood sexual violence

By Fallon Simard

THIS BRIEF UNDERSCORES Canadian colonial policies that fail to protect Indigenous children and youth from sexualized violence.

This brief identifies the inadequate approaches taken by Canadian and Indigenous governments to end sexual violence against children and youth (SVACY) and calls for a new approach to these strategies moving forward.

It is no longer acceptable to leave childhood and youth sexual abuse as an afterthought to federal, provincial, and Indigenous governmental child protection strategies. The Canadian government must centralize the administrative and cultural organization of Indigenous child and youth human rights with a focus on ending sexualized violence against Indigenous children and youth. It must also foreground and take direction from Indigenous initiatives that protect Indigenous children and youth from this harm.

COLONIAL CONTEXT: SEXUALIZED VIOLENCE AGAINST INDIGENOUS CHILDREN

Truth and Reconciliation Commission Call to Action #58 calls upon the Pope to issue an apology for the role of the Catholic Church in the childhood sexual abuse of Indigenous children in Catholic-run residential schools. It highlights the pervasiveness of spiritual, cultural, emotional, physical, and sexual violence against Indigenous children who were under the care of the state. Sexual violence is revealed again through **Call to Action #36**, urging all governments to provide services to prison inmates who have been sexually abused. Both Calls to Action reveal how systematized sexual violence is used within state institutions to disempower and dehumanize Indigenous communities. It also speaks to the desire for a better approach to Canada's programs and services provided to children and youth.

The prevalence of sexual violence in state institutions is also a tool of assimilation and land alienation: in terms of residential schools, with no children on the land, how does a Nation exercise jurisdiction, and for what purpose?

With the end of mandatory attendance for Indigenous children and youth enrolled in residential schools in 1948 came the rise of Indigenous child welfare services in the mid-twentieth century. While colonial policy shifted, it continued to disempower children, youth, and families. Today, sexual violence against children and youth within the child welfare system remains a pervasive issue and an active form of land removal across the country.

It is unfortunately commonplace for all colonial governments to take inadequate approaches at ending sexual violence against children and youth. For example, policy critiques note the **gaps** in services and initiatives to stop SVACY through multiple policy

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planks, like human trafficking, gender-based violence, protection of children on the internet, and ending domestic violence. A recent [editorial](#) in a Six Nations newspaper condemned the prevailing silence of sexual abuse against children on reserves. Yet many First Nation governments take a child welfare services and substance abuse approach when these incidents do come to light. Unfortunately, this is an inadequate response to SVACY.

It is no longer acceptable to leave SVACY as an afterthought for all federal, provincial, and Indigenous governmental strategies. In the context of the [Federal First Nation, Inuit, Metis Children, Youth and Families Act \(FNIMCYF\)](#), the “best interest of the child” principle is hardly a driver in decision making regarding children, and rather is a tool of continuing the trauma of SVACY, despite the contradictory terminology used in the legislation.

CHILD WELFARE POLICY IN AN AGE OF HUMAN RIGHTS

The inherent human rights of Indigenous children and youth are essential to ending SVACY. A relatively new policy driver in Canada, the [Canadian Human Rights Act 1977](#) (CHRA), ensures individuals can have their needs accommodated without discrimination, based on a number of identity factors.

The Canadian Human Rights Tribunal ruling of the *First Nation Caring Society v. Canada* against Indian and Northern Affairs Canada also affirmed the human rights of Indigenous children and youth. The case revealed the discriminatory funding gaps for on-reserve First Nations child welfare services in comparison to services provided to Canadian children. The Federal government’s refusal to provide equitable funding for First Nations children and youth conveys a clear disregard for their human rights, despite Canada being a signatory to the United Nations Declaration on the Rights of Indigenous Peoples.

There have been other recent missed opportunities by the federal government to directly address and empower change regarding sexual violence against children and youth.

The [FNIMCYF Act](#) received assent in January 2020, it is a new addition to the landscape of child, youth and family services. The act itself has two purposes and three main principles, including the principle of “best interest of the child.” The Act enables a limited scope of Indigenous jurisdiction with the caveat that Indigenous governing bodies are subject to Canada’s Charter of Rights and Freedoms.

Despite the purpose and the “best interest of the child” clauses, The Act fails on a number of fronts as noted by [Yellowhead Institute](#), but specifically fails in protecting Indigenous children and youth from sexualized violence. I note the failure of this specific legislation to protect children because child services agencies exercise jurisdiction over Indigenous children on behalf of the Canadian state. The Act legislated *no dedicated mechanism* to protect Indigenous children and youth from various forms of sexualized violence, although there was opportunity to in the “best interest of the child” and “preventative care” clauses.

Further, The Act *does not legislate the human rights of children and youth*, an approach recommended by the National Inquiry Calls For Justice. But we must ensure that the inherent [human rights of children and youth](#) are integrated into all future governmental activities to ensure that the best interest of children and preventative care includes education and awareness of the various forms of sexualized violence and consent.

INDIGENOUS-LED APPROACHES TO CHILD WELFARE

Successful Indigenous-led approaches for protecting Indigenous children and youth include Land Back and the National Inquiry Calls for Justice. [Urban Indigenous organizations](#) also offer frameworks to address SVACY that look to specific cultural supports.

Arguably, land back is a call to end SVACY by advocating for an enhanced spectrum of collective consent conceptualizations in Indigenous governance decision-making.

The principles of restorative, epistemic, reciprocal and legitimate consent - laid out in the Yellowhead Land Back report - propel Indigenous autonomy to the forefront. Consent in this conceptualization then can be expressed as an act of inherent jurisdiction for Indigenous children and youth, and further, inherent human rights can be expressed as consent giving, seeking *and* revoking.

In Canada's conceptualization of human rights, there is a lack of concern for practicing, implementing and administering child and youth inherent human rights expressed through child and youth consent-based decision making. This gap is problematic across services, programs, and governance systems.

Following the lead of Indigenous initiatives such as Land Back and National Inquiry Call For Justice #1.1, Canada can develop a definition of consent that includes Indigenous peoples inherent jurisdiction over land and water and their inherent human rights over their own bodies.

The National Inquiry Report and Calls For Justice offer a well-paved path forward for the Canadian-state to create better outcomes for Indigenous children and youth. First, the National Inquiry makes clear Canada's role in genocide and then further illustrates Canada's failure to comply with international human rights tools let alone Canada's own CHRA. The Calls For Justice list eleven recommendations on Human and Indigenous Rights and Governmental Obligations, which urge federal, provincial, territorial, municipal, and Indigenous governments to comply with all existing human rights tools.

In the adoption or signing on to these human rights tools, Canada is legally obligated to partner with Indigenous communities.

While Canada works to implement all of the Calls For Justice, it is urgent to advocate for children and youth to be fully autonomous consent-based rights holders and decision makers informing all policy roll-outs of human rights instruments. Child and youth participation in inherent jurisdiction and consent-based decision making will strengthen all Indigenous self-determination efforts and will enable the Canadian state to work within inherent Indigenous jurisdiction.

No longer will an afterthought approach to ending sexual violence against Indigenous children be acceptable. All governments are required to centre children and youth by equipping them with the necessary educational and developmental resources they require. This is in direct contrast to building services and program systems around them where their lack of human rights is ignored and profited from. Child and youth human rights must be included in all provisions of their development to adequately address the specific forms of sexualized violence they face.