

Children's Right to a Healthy Environment: Opportunity in Bill C-69

Bill C-69 makes significant improvements in the federal environmental review process. It is also an opportunity for Canada to take seriously its responsibility to protect the rights of children to a healthy environment. It is an opportunity to implement the Convention on the Rights of the Child and take action on one of the recommendations Canada received five years ago, in the last review of how Canada implements children's rights.

The Canadian Coalition for the Rights of Children offers the following analysis and recommendations for consideration before final approval of Bill C-69.

I. Introduction

When members of the Coalition gather young people to discuss their rights, a healthy environment is frequently identified as a high priority and a matter of great concern. One of the concerns voiced by young people is that short-term interests often seem to get more attention than impacts for their health, including healthy conditions for their future and for future generations. They also name the reality that young people have no voice in making decisions that will have a significant impact on their lives.

The Convention on the Rights of the Child, which addresses these factors, is a helpful tool to guide governance and public policy formation for intergenerational objectives.

The goal of Bill C-69 is a more comprehensive and integrated approach to making decisions about development proposals that impact the environment. It includes, for example, consideration of the impacts for indigenous peoples and recognition of gender differences. It is unfortunate that it does not include specific provisions to ensure consideration of potential impacts for children to protect their right to a healthy environment. The Convention on the Rights of the Child identifies the right to a healthy environment as part of the right to health.

This omission can be corrected before final approval. Below is a description of relevant provisions in the Convention on the Rights of the Child; the recommendations Canada received during the last review; and recommendations for inclusion in Bill C-69.

II. Children's Rights and Governance for the Environment

Canada has several obligations under the Convention on the Rights of the Child which relate to the mandate, the structure, and the processes of the proposed Impact Assessment Agency of Canada and Canadian Energy Regulator in Bill C-69. These include the following:

II. A. Best interests of children are high priority (Article 3)

The Convention requires focused consideration of the best interests of children, separate from those of adults, because they may not always be the same. Impacts for children are to be given priority because of the added vulnerability of children and the fact they do not have other ways to protect their own interests.

Some proposed projects that affect the environment will have different impacts for children than for adults. Research shows that some pollutants cause more harm to children because their developing bodies absorb them more readily. Children are more vulnerable to some toxins in the air and contamination of the water they use. Bill C-69 recognizes the need to consider impacts for different genders and population groups, but it does not name children for separate consideration. Incorporating Canada's commitment to give priority to the best interests of children and including consideration of impacts for children in the mandate of the new impact assessment agency would improve the impact assessments as well as fulfill Canada's obligations under the Convention.

The UN Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Baskut Tuncak, identified the importance of preventive action to protect the best interests of the child:

The best interests of the child are best served by preventing exposure to toxic chemicals and pollution, and taking precautionary measures with respect to those substances whose risks are not well understood. Unfortunately, industrial competitiveness, risk management options and cost-benefit considerations are prioritized over the best interests of the child. (Human Rights Council, Report of the UN Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Thirty-third session, 2 August, 2016, A 21, A/HRC/33/41, p. 7.

The concept of sustainable development theoretically includes consideration for future generations; but unless that objective is translated into specific provisions, shorter-term balancing of economic, social, and environmental objectives may be given higher priority than long-term impacts. Incorporating consideration for the best interests of children into the

mechanisms for decision-making to protect the environment could help to ensure longer-term interests are given appropriate weight

II. B. Right to life and maximum development of potential (Article 6)

In addition to the right to live, the Convention obliges states parties to ensure “*to the maximum extent possible the survival and development of the child.*” (Article 6) The Convention goes beyond minimum standards; that is relevant for the criteria we use in making decisions that impact the quality of the environment and the social context within which children develop.

II. C. Right to healthy living conditions (Article 24)

Article 24, the articulation of a child’s right to health, includes specific reference to “*adequate nutritious food and clean drinking water, taking into consideration the dangers and risks of environmental pollution.*” Under health education and support for families, it specifically names “*hygiene and environmental sanitation and the prevention of accidents.*”

Environmental pollution has a differential impact on the health of children because of their stages of development and additional vulnerability. It is dangerous to assume that health impact assessments for adults are adequate to assess impacts for children and ensure the right of children to a healthy environment. Potential impacts for children require focused attention in the mandate and decision-making process of the proposed Impact Assessment Agency of Canada.

II. D. Right to have views taken into consideration (Article 12)

Under the Convention, duty-bearers are required to provide an opportunity for young people to be heard in all decision-making processes that affect them, through age-appropriate means. (Article 12)

Furthermore, experience shows that involving young people in making decisions that affect their well-being leads to more effective outcomes.

Given that young people are affected by environmental decisions in both the short and long term, they should have an identified role in the decision-making processes under the proposed Impact Assessment Agency.

III. Recommendations to Canada in Last Review of Children’s Rights

Canada received many recommendations to take the necessary steps to incorporate the Convention on the Rights of the Child into all areas of Canadian public policy. Canada was

asked, for example, to establish procedures to ensure that the best interests of children are given high priority in each area of public policy. Incorporating the rights of children into the structures for environmental protection is an important area for attention.

In addition, in a section on Respect for the Views of the Child, the environment was specifically named.

“Specifically, the Committee recommends that the views of the children be a requirement for all official decision-making process that relate to children, including custody cases, child welfare decisions, criminal justice, immigration, and the environment.”

Committee on the Rights of the Child, *Concluding Observations: Canada*, paragraph 37, (CRC/C/CAN/CO/3-4, p. 8)

IV. Recommendations for Consideration in Bill C-69

IV. A: Purpose statement in the preamble to Bill C-69:

The Coalition recommends that the Preamble for C-69 add children to the list of groups explicitly recognized in the following paragraph:

And whereas the Government of Canada is committed to assessing how groups of women, men and gender-diverse people may experience policies, programs and projects and to taking actions that contribute to an inclusive and democratic society and allow all Canadians to participate fully in all spheres of their lives;

In addition, the Coalition recommends that the purpose statement in the Preamble of Bill C-69 add the following statement to explicitly recognize Canada’s duties under the Convention on the Rights of the Children:

And whereas Canada is committed to give high priority to the best interests of children and realize their right to a healthy environment and to respect for their views, as articulated in the Convention on the Rights of the Child, which has been ratified by Canada and all provinces;

IV. B. Factors to be considered

The Coalition recommends the inclusion of an explicit requirement to specifically consider impacts for children in the lists of factors to be considered by both the Impact Assessment

Agency and the Canadian Energy Regulator. As stated by the Committee on the Rights of the Child,

States should take explicit account of children's rights in assessments of laws, policies, action plans (strategic environmental assessments) and projects (environmental impact assessments), which are likely to have an impact on the environment. This includes recognizing children as a stakeholder group, adequately considering their rights, risks and vulnerabilities and addressing actual and potential impacts. (Committee on the Rights of the Child, Children's Rights and the Environment: Report of 2016 Special Day of Discussion, p. 33. Available at: <http://www.ohchr.org/EN/HRBodies/CRC/Pages/Discussion2016.aspx>)

IV. C. Views of young people in public consultation processes

The Coalition recommends that an explicit requirement to consider the views of young people potentially impacted by a proposal be included in the provisions for public consultation by both the Impact Assessment Agency and the Canadian Energy Regulator. As stated by the Committee on the Rights of the Child,

States should ensure that all children are given opportunities to participate in discussions on the impacts of environmental issues and should build children's meaningful participation into environmental policy-making at all levels. (Committee on the Rights of the Child, Children's Rights and the Environment: Report of the 2016 Day of Discussion, p. 34. Available at: <http://www.ohchr.org/EN/HRBodies/CRC/Pages/Discussion2016.aspx>)

IV. D. Expertise in agencies and composition of review panels

The Coalition recommends that there be a requirement to include expertise in assessing impacts for children in the staff of agencies and composition of review panels established to do impact assessments for particular projects.

Conclusion

Including specific provisions to protect the rights of children to a healthy environment will improve the outcomes of the federal environmental review processes, as well as implement Canada's obligations under the Convention on the Rights of the Child.

Given the growing international attention to this area of children's rights, it will also contribute to Canada's international leadership in the areas of environmental protection and human rights.

For more information, send message to info@rightsofchildren.ca.