

**CANADA: JOINT SUBMISSION TO THE
UN COMMITTEE ON THE RIGHTS
OF THE CHILD**

Regarding list of issues concerning additional and updated information
related to the combined fifth and sixth periodic reports of Canada

Pre-sessional working group
(September 28 to October 2, 2020)

Submitted by:
Justice for Girls, David Suzuki Foundation,
Canadian Feminist Alliance for International Action, Greenpeace Canada
and
Just Planet

July 1, 2020



Justice for Girls

JFG is a Canadian non-governmental organization based in Vancouver, British Columbia that works to promote the health, well-being and human rights of teenage girls who are homeless or living in poverty. Since 1999, it has worked locally, nationally and internationally to promote and protect the rights of teenage girls who face poverty, violence, colonization and environmental injustices. JFG has maintained consultative status with the UN Economic and Social Council since 2009.



Just Planet

Just Planet is an international NGO headquartered in Geneva, with a broad range of expertise, on-the-ground experience and a global network of human rights experts and activists. It advances human rights, recognizing the indivisibility of all human rights across past, present and future generations, and the interdependence of humanity and the planet. It promotes and defends human rights worldwide by identifying contemporary and emerging human rights challenges and responding to human rights violations. Its work is guided by international human rights law, international criminal law and international humanitarian law.



David Suzuki Foundation

DSF's mission is to protect the diversity of nature and quality of human life, now and for the future. Founded in 1990, it uses a combination of sound science and active public outreach to motivate people in Canada to understand and take action on the environmental challenges we collectively face. Canadians consistently name DSF as the most credible and reliable source of science-based environmental information.



Canadian Feminist Alliance for International Action (FAFIA)

FAFIA is an alliance of women's equality-seeking organizations committed to making international human rights agreements a reality in women's everyday lives in Canada. FAFIA's membership spans a diverse array of organizations ranging from research institutes to service providers. FAFIA's membership is also regionally diverse, with members from 10 Provinces and Territories, as well as many national member organizations.



Greenpeace Canada

Greenpeace is an independent campaigning organization that uses non-violent, creative confrontation to expose global environmental problems and force solutions essential to a green, peaceful future. Its goal is to ensure Earth's ability to nurture life in all its diversity. It seeks to protect biodiversity in all its forms, prevent pollution and abuse of ocean, land, air and fresh water, promote peace, global disarmament and non-violence, and end all nuclear threats.

Introduction

This joint submission outlines issues for consideration in relation to the upcoming adoption of the list of issues for Canada's periodic review by the Committee on the Rights of the Child at its 87th session. Our submission focuses on Canada's acts and omissions that harm children and future generations by contributing to global climate change.

Canada's actions to combat climate change have fallen far short of its international commitments and scientists' recommendations. This failure poses a grave threat to the rights of children and future generations, especially girls and Indigenous children.

In 2012, Justice For Girls submitted its urgent concern about Canada's failure to reduce greenhouse gas emissions and the disproportionate harmful impacts these failures would have on teen girls, especially Indigenous girls, to the Committee.¹ Two teen girls represented JFG at Canada's review during the Committee's 61st session. One — Zoe Craig-Sparrow, now JFG co-director — is an author on this submission which, sadly, largely echoes JFG's 2012 submission. Since 2012, the impacts of climate change on children in Canada and worldwide have intensified.

Canada makes no mention of climate change in its combined fifth and sixth reports submitted under article 44 of the Convention on the Rights of the Child (CRC), erasing the most consequential, pressing global threat to children's rights.²

We urge the Committee to ask Canada for information sufficient to provide it with a comprehensive understanding about Canada's environmental protection and climate action as it pertains to Canada's implementation of the CRC, particularly articles 2, 3, 6 and 12.

Attached to this submission is a statement of claim against the Canadian government in which 15 children describe how the Government of Canada is causing and contributing to the detrimental impacts of climate change and infringing on their rights to life, liberty, security and equality under the Canadian Charter of Rights and Freedoms. While the appendix pushes past typically accepted page limits, these children's perspectives provide information critical to the Committee.

¹ *Justice for Girls & Justice for Girls International Submission to: UN Committee on the Rights of the Child at its Sixty-first Session and Periodic Review of Canada 17 September – 5 October, 2012.* Available at: https://www2.ohchr.org/english/bodies/crc/docs/ngos/JusticeForGirls_Canada61.pdf.

² UN Doc CRC/C/CAN/5-6.

Climate emergency: the most pressing and serious threat to children and future generations

Climate change is an urgent existential threat to humanity. A series of recent Intergovernmental Panel on Climate Change reports paint a devastating picture, in which unprecedented species extinction, marine ecosystem breakdown, wide-ranging and deadly human rights impacts and potential full-scale ecosystem collapse loom if we do not rapidly reduce GHG emissions.³

Children in Canada and worldwide are already suffering grave impacts of climate change. Among children, girls, Indigenous children, children with disabilities, children in poverty, minority and racialized children, LGBTQ children, along with many other marginalized and disadvantaged children, suffer the harshest consequences. All nations must take immediate and urgent action to limit GHG emissions.

Canada is warming at approximately twice the global rate — the North almost three times as fast.⁴ Canada has already suffered recent increases in devastating wildfires, floods, polar ice melt, sea level rise, storm surges, extreme weather events, shoreline erosion, ocean warming and acidification, extreme heat, drought, water shortages and species extinction.⁵ The scope, scale and intensity of these impacts are projected to dramatically increase, especially if Canada fails to drastically reduce GHGs in the coming decade.

The International Energy Agency has repeatedly warned that the window is closing to prevent climate catastrophe, most recently urging all governments to adopt green

³ IPCC, 2018: *Global Warming of 1.5°C*. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A. Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, T. Maycock, M. Tignor, and T. Waterfield (eds.)]; IPBES (2019): Global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services. E. S. Brondizio, J. Settele, S. Díaz, and H. T. Ngo (editors). IPBES secretariat, Bonn, Germany; IPCC, 2019: IPCC Special Report on the Ocean and Cryosphere in a Changing Climate [H.-O. Pörtner, D.C. Roberts, V. Masson-Delmotte, P. Zhai, M. Tignor, E. Poloczanska, K. Mintenbeck, A. Alegría, M. Nicolai, A. Okem, J. Petzold, B. Rama, N.M. Weyer (eds.)]

⁴ Government of Canada, *Canada in a Changing Climate: Advancing our Knowledge for Action* (2019). Available at: <https://changingclimate.ca/CCCR2019/>.

⁵ Bush, E. and Lemmen, D.S., editors (2019): *Canada's Changing Climate Report*; Government of Canada, Ottawa, ON. 444 p.

recovery strategies with ambitious GHG reductions in response to COVID-19.⁶ In all these warnings, the message has been clear: the world must rapidly transition from fossil fuels to renewable energy sources.

We urge the Committee to include the following issues and their impacts on children's rights, especially the rights of girls and Indigenous children, in its list of issues:

1. Canada's investment in fossil fuels, including the most carbon-intensive and environmentally destructive projects;
2. Canada's failure to take adequate action on climate change;
3. Canada's failure to meet its obligations under the CRC to respect, protect, fulfill and remedy children's right to life and to live in a safe, healthy and sustainable environment; and
4. Canada's failure to promote meaningful and empowered participation of children as a requirement for all official decision-making processes that relate to children and the environment.

Canada's climate failures

Canada continues to cause, contribute to and allow a level of GHG emissions incompatible with a stable climate.⁷ Canada has adopted GHG emissions targets inconsistent with the best available science about what is necessary to avoid dangerous climate change and to restore a stable climate capable of sustaining human life and liberties.

According to Canada's Environment Commissioner, Canadian investment in fossil fuel is "undermining efforts to combat climate change, encouraging wasteful consumption of fossil fuels and discouraging investments in cleaner energy sources."⁸

⁶ See Fiona Harvey, "World has six months to avert climate crisis, says energy expert," *Guardian* (18 Jun 2020); IEA (2020), *Sustainable Recovery*, IEA, Paris. Available at: <https://www.iea.org/reports/sustainable-recovery>.

⁷ Best available and most current climate science indicates that, to prevent dangerous climate change, ensure maintenance of a stable climate system and mitigate, reverse and prevent climate change impacts, average global atmospheric CO₂ concentrations must be reduced to below 350 ppm by 2100 and large amounts of carbon must be sequestered from the atmosphere and into the Earth's soil.

⁸ See, 2 April 2019 "Canada's failure to fight climate change 'disturbing,' environment watchdog says." CBC, Available at: <https://www.cbc.ca/news/politics/environment-commissioner-julie-gelfand-disturbing-climate-change-1.5081027>

Canada continues to subsidize and promote fossil fuels, touting the oil and gas sector as a key driver of the its economy.⁹ Many of Canada’s fossil fuel projects, such as shale gas and oilsands production, are the most carbon-intensive, environmentally destructive extractive industries. The Alberta oilsands, once a boreal forest, is now one of the largest, most environmentally destructive fossil fuel extraction projects in the world.¹⁰ Labelled by some Indigenous Peoples as a “slow genocide,”¹¹ the Alberta oilsands have had devastating health, environmental and cultural impacts on Indigenous Peoples and the lands and species they rely on.¹²

Canada’s GHG emissions are projected to be above 1990 levels beyond 2030, well past the Paris Agreement targets Canada committed to meet and nowhere near the 1.5 C pathway Canada advocated during COP21¹³ — a pathway still not considered safe or scientifically sound for present or future generations.¹⁴

The IEA predicts that, in the next 25 years, Canadian oil production will increase by approximately 2.5 million barrels per day, with exploitation of the Alberta oilsands

⁹ See for instance, What are the oil sands? | Natural Resources Canada. Available at: <https://www.nrcan.gc.ca/our-natural-resources/energy-sources-distribution/clean-fossil-fuels/crude-oil/what-are-oil-sands/18089>; According to the International Institute for Sustainable Development, Canada spent approximately 600 million (CAD) in federal fossil fuel subsidies in 2019. See, <https://www.iisd.org/library/canada-fossil-fuel-subsidies-2020>Canada's Federal Fossil Fuel Subsidies in 2020.

¹⁰ Oilsands (also referred to as “tarsands”) are a combination of clay, sand, water and bitumen. Bitumen is a tar-like heavy oil substance that is highly toxic and particularly difficult to remediate after a spill. Extraction of bitumen that lies too deep beneath the surface for mining involves a water- and carbon-intensive process in which steam is blasted into Earth’s core to melt deeper level bitumen stores for extraction and processing into oil. The extraction and dilutant process is extremely water and energy intensive and results in huge amounts of a highly toxic sludge byproduct referred to as “tailings.” The Canadian oilsands, which occupy a land mass the size of Greece, contain tailings ponds covering 220 square kilometres and holding approximately 975 billion litres of toxic sludge. For more information see: Greenpeace Canada, “Everything you need to know about the oilsands and how they impact you.” Available at: <https://www.greenpeace.org/canada/en/story/3138/everything-you-need-to-know-about-the-tar-sands-and-how-they-impact-you/>.

¹¹ Indigenous Environmental Network, <https://www.ienearth.org/>.

¹² See for instance, *Ominayak and Lubicon Lake Band v. Canada* (1990) Communication No. 167/1984 UN Doc CCPR/C/38/D/167/1984.

¹³ See <https://climateactiontracker.org/countries/canada/>.

¹⁴ The 2018 IPCC Special Report on 1.5°C has made clear that allowing a temperature rise of 1.5 C: “is **not considered ‘safe’** for most nations, communities, ecosystems, and sectors and poses significant risks to natural and human systems as compared to current warming of 1°C (*high confidence*)”. Roy, J., et al., *Sustainable Development, Poverty Eradication and Reducing Inequalities. In Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty* at 447 (2018) (emphasis added).

accounting for the majority of this growth.¹⁵ The Canadian energy regulator projects a nearly threefold increase in raw bitumen¹⁶ production from the oilsands between 2010 and 2040.¹⁷

In 2018, Canada purchased the Trans Mountain pipeline and related infrastructure for \$4.5 billion from Texas oil giant Kinder Morgan.¹⁸ This pipeline will carry bitumen from the Alberta oilsands to the B.C. coast.

Despite widespread public protest and numerous environmental and Indigenous legal claims against the project, in 2019, Canada approved the Trans Mountain expansion project, which will double the capacity of this pipeline and support the projected nearly threefold increase in oilsands production.¹⁹ In March 2020, Canada's Supreme Court declined to hear appeals from five groups challenging a federal judge's denial of judicial review of the pipeline's re-approval by the federal government.²⁰ Once this infrastructure is built, it is projected to lock in a 25 to 40-year production cycle.

Children's rights and environment

Children's rights depend on a safe, clean, healthy and sustainable environment and a stable climate.²¹ According to the UN Special Rapporteur on human rights and

¹⁵ Government of Canada, What are the oil sands? | Natural Resources Canada. Available at: <https://www.nrcan.gc.ca/our-natural-resources/energy-sources-distribution/clean-fossil-fuels/crude-oil/what-are-oil-sands/18089>.

¹⁶ Bitumen is a tar-like heavy oil substance that is highly toxic and particularly difficult to remediate after a spill.

¹⁷ Government of Canada, Canada's Energy Futures 2019 Supplement: Oil Sands Production. Available at: <https://www.cer-rec.gc.ca/nrg/ntgrtd/ft/2019lsnds/nrgftsr2019splmntslsnds-eng.pdf>.

¹⁸ Trans Mountain Corporation is a Federal Crown corporation, incorporated under the Canada Business Corporations Act on May 28, 2018 and was acquired by Canada TMP Finance Ltd. on May 31, 2018. TMC is a wholly owned subsidiary of TMP Finance, which is a wholly owned subsidiary of Canada Development Investment Corporation. CDEV is wholly owned by Her Majesty in Right of Canada and is an agent Crown corporation. TMC's mandate is to operate the existing Trans Mountain Pipeline and to complete the Trans Mountain Expansion Project in a commercially viable manner. For more information see: <https://www.transmountain.com>.

¹⁹ www.transmountain.com, Press release, 18 June 2019.

²⁰ Supreme Court of Canada Judgements in Leave Applications--SCC Cases Lexum. Decision available at: <https://decisions.scc-csc.ca/scc-csc/news/en/item/6811/index.do>; See also, 'Supreme Court will not hear B.C. groups' Trans Mountain challenges', *CBC* (5 March 2020). Available at: <https://www.cbc.ca/news/canada/british-columbia/trans-mountain-pipeline-appeals-supreme-court-of-canada-1.5486592>.

²¹ Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment focusing the relationship between children's rights and environmental protection, UN Doc A/HRC/37/58/.

environment, States have heightened obligations to protect children from environmental harm,

...including by ensuring that their best interests are a primary consideration with respect to all decision-making that may cause them environmental harm. In particular, States should adopt and implement environmental standards that are consistent with the best available science and relevant international health and safety standards. States must never take retrogressive measures. They should pursue precautionary measures to protect against environmental harm, especially when there are threats of serious or irreversible damage.²²

The Trans Mountain pipeline poses such a threat and its expansion project constitutes a retrogressive measure under the CRC. An immediate, drastic reduction in GHG emissions — in line with scientifically derived emissions targets that ensure climate stabilization — is required for Canada to fully comply with its obligations to respect, protect and fulfil a broad spectrum of children’s rights under the CRC, including the right to life, survival and development.

The right to non-discrimination (art. 2)

Climate change amplifies existing discrimination and inequalities, locally and globally.²³ Canada’s failure to adequately address climate change disproportionately harms children due to their social and physical vulnerability, and because children will live long enough to endure the worst impacts of climate change.²⁴ These harms are compounded by intersecting social and economic inequalities, poverty, disability and the intergenerational harms of colonization and genocide.

General Recommendation No. 37 of the Committee on the Elimination of all Forms of Discrimination Against Women identifies the disproportionate deadly impacts of climate change on women and girls.²⁵ Girls face increased male violence during and after climate-induced disasters. They also face increased mortality from climate-induced

²² Ibid, Online summary, Available at:

<https://www.ohchr.org/en/issues/environment/srenvironment/pages/environmentandrightschild.aspx>.

²³ See for instance, Diffenbaugh, Noah S., and Marshall Burke. "Global warming has increased global economic inequality." *Proceedings of the National Academy of Sciences* 116, no. 20 (2019): 9808-9813.

²⁴ Watts, Nick, Markus Amann, Nigel Arnell, Sonja Ayeb-Karlsson, Kristine Belesova, Maxwell Boykoff, Peter Byass et al. "The 2019 report of The Lancet Countdown on health and climate change: ensuring that the health of a child born today is not defined by a changing climate." *The Lancet* 394, no. 10211 (2019): 1836-1878; UNICEF, '2013 Report Climate Change: Children's Challenge'. Available at: <https://downloads.unicef.org.uk/wp-content/uploads/2013/09/unicef-climate-change-report-2013.pdf>.

²⁵ UN Committee on the Elimination of Discrimination Against Women, General Recommendation No. 37 on Gender-related dimensions of disaster risk reduction in the context of climate change.

disaster and disease.²⁶ In general, climate change acts as a threat multiplier, exacerbating existing gender-based inequalities, insecurity and violence.

For Indigenous girls, climate change intensifies the intergenerational harms of colonization and genocide²⁷ already suffered, including widespread poverty, dislocation from traditional lands and territories, loss of culture (forced assimilation), and an epidemic of racialized sexual and physical violence, disappearances and murders of Indigenous women and girls. Extractive industries perpetuate the colonial exploitation of Indigenous women and girls, who are raped and sex trafficked at higher rates when these industries and labour camps are on or near Indigenous lands.²⁸ Primarily non-Indigenous male workers are largely immune from criminal prosecution and victims in remote locations are unable to access protective, legal or victim services, compounding the intergenerational harms and genocidal impacts of colonization.

According to the UN Special Rapporteur on the rights of Indigenous peoples:

*Indigenous peoples are among those who have contributed least to the problem of climate change, yet they are the ones suffering from its worst impacts. They are disproportionately vulnerable to climate change because many of them depend on ecosystems that are particularly prone to the effects of climate change and extreme weather events such as floods, droughts, heatwaves, wildfires and cyclones.*²⁹

²⁶ See for example, Plan International, 'Effects of climate change on girls' rights'. Available at: <https://plan-international.org/emergencies/effects-of-climate-change-girls-rights>.

²⁷ A legal analysis of genocide: Supplementary report of the National Inquiry into Missing and Murdered Indigenous Women and Girls. Available at: <https://www.mmiwg-ffada.ca/final-report/>.

²⁸ See, Lori Culbert, "Indigenous women vulnerable to 'man camps'": MMIWG report. So, what's at stake with the pipeline approval?' *Vancouver Sun* (6 July 2019); Brandi Morin, 'Pipelines, man camps and murdered Indigenous women in Canada' *Al Jazeera* (5 May 2020); University of Colorado Boulder, "Violence from Extractive Industry 'Man Camps' Endangers Indigenous Women and Children." Available at: <https://www.colorado.edu/program/fpw/2020/01/29/violence-extractive-industry-man-camps-endangers-indigenous-women-and-children>; Rebecca Tsosie, *Indigenous Women and International Human Rights Law: The Challenges of Colonialism, Cultural Survival, and Self-Determination*, 15 *UCLA J. Int'l L. & For. Aff.* 187, 198 (2010); Kayla Walsh, "Moving More than Oil: The intimate link between dirty energy and human trafficking in Minnesota," *Earth Island Journal* (Online). Available at: <https://www.earthisland.org/journal/index.php/magazine/entry/moving-more-than-oil/>; Gibson, G., K. Yung, L. Chisholm, and H. Quinn with Lake Babine Nation and Nak'azdli Whut'en. 2017. *Indigenous Communities and Industrial Camps: Promoting healthy communities in settings of industrial change*. Victoria, B.C.: The Firelight Group.

²⁹ Report of the UN Special Rapporteur on the rights of indigenous peoples on the impacts of climate change and climate finance on indigenous peoples' rights (2017) UN Doc A/HRC/36/46.

Canada consistently violates the rights of Indigenous Peoples in order to promote and pursue fossil fuel projects and was recently admonished by the Committee on the Elimination of Racial Discrimination for police violence against Indigenous land defenders and failure to fully discharge its duties to obtain free, prior and informed consent.³⁰ Under articles 2 and 30 of the CRC, as well as the UN Declaration on the Rights of Indigenous Peoples, Canada has specific obligations to protect Indigenous children against climate change.³¹

The best interests of the child (art. 3)

Children in Canada have a right to have their best interests assessed and taken into account as a primary consideration in all government actions or decisions that concern them. This right imposes an obligation on Canada to take into account the possibility of future risk and harm to children and to not engage in affirmative conduct that causes children harm.³²

Canada has failed to meet its obligations under article 3 to make the best interests of the child a primary consideration in the creation and implementation of climate policies and continued fossil fuel development. Canada's legal duty applies to decisions and actions that directly or indirectly affect children.³³

The right to life, survival and development (art. 6)

Canada is failing to respect, protect and fulfil children's right to life, survival and development by failing to adequately reduce GHG emissions, and continuing to promote, subsidize and authorize fossil fuel development.

Canada's legal obligations under article 6 include:

1. States parties recognize that every child has the inherent right to life.
2. States parties shall ensure to the maximum extent possible the survival and development of the child.

³⁰ See for example, Committee on Elimination of Racial Discrimination, Decision 1 (100) under its Early Warning and Urgent Action Procedures.

³¹ UN Committee on the Rights of the Child, General Comment No. 11 on Indigenous children and their rights under the Convention.

³² UN Committee on the Rights of the Child, General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration.

³³ Ibid.

Children's right to life is a supreme right from which no derogation is permitted. Canada's duty to protect children's right to life extends to reasonably foreseeable threats and life-threatening situations, including climate change.³⁴ Especially pertaining to Indigenous children, Canada has an obligation to "closely consider the cultural significance of traditional land and the quality of the natural environment while ensuring the children's right to life, survival, and development to the maximum extent possible."³⁵

Article 6 imposes positive obligations on Canada to fulfil to the maximum extent possible the survival and healthy development of children.³⁶ The Committee specifically considers environmental degradation a threat to children's right to survival.³⁷

General comment No. 36 on the right to life under article 6 of the International Covenant on Civil and Political Rights is the most current and comprehensive interpretative framework for the right to life. It articulates States' obligations to protect the right to life against environmental threats in paragraph 62:

*Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. Obligations of States parties under international environmental law should thus inform the contents of article 6 of the Covenant, and the obligation of States parties to respect and ensure the right to life should also inform their relevant obligations under international environmental law. **Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors.** [emphasis added].³⁸*

This framework was reinforced in a recent landmark case *Portillo Cáceres v. Paraguay*.³⁹

³⁴ UN Human Rights Committee, General Comment No. 36 on the right to life.

³⁵ UN Committee on the Rights of the Child, General Comment No. 11 on Indigenous children and their rights under the Convention.

³⁶ M Nowak, *Article 6: the Right to Life, Survival and Development* (Brill Academic Pub 2005); Detrick, Sharon, *A Commentary on the United Nations Convention on the Rights of the Child*. Martinus Nijhoff Publishers, 1999.

³⁷ UN Committee on the Rights of the Child, General Comment No. 16 on State obligations regarding the impact of the business, para 35.

³⁸ UN Human Rights Committee, General Comment No. 36 on the right to life, para 62.

³⁹ Decision available at:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2F126%2FD%2F2751%2F2016&Lang=en; On September 23, 2019, 16 children from five nations submitted a communication to the UN Committee on the Rights of the Child under article 5 of the Third Optional Protocol to the Convention. The children assert that States are failing to meet their obligations under the Convention to protect children against climate change. The claim cites, *inter alia*, ICCPR GC 36 as a legal basis for the claim.

The right of the child to be heard (art. 12)

Canada has not taken children's views into account in making decisions and policies on oil and gas development and climate change. Canada has failed to provide children accessible information on the state of the environment, including disaggregated data on harmful impacts of climate change. Canada has also failed to fully discharge its duties to consult Indigenous Peoples, including Indigenous children, in relation to fossil fuel development.⁴⁰

Article 12 imposes obligations on Canada to, "assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."⁴¹ Children's views must be solicited through accessible procedures and formats and given proper and meaningful consideration.⁴²

According to the UN Special Rapporteur on human rights and environment,

*In particular, the views of children should be taken into account with respect to long-term environmental challenges, such as climate change and the loss of biodiversity, that will shape the world in which they will spend their lives.*⁴³

In the absence of meaningful opportunities to participate in environmental decision-making, hundreds of thousands of children have marched in Canadian streets to demand government action on climate change, including fossil fuel divestment.⁴⁴ Teen girls have taken the lead globally on challenging climate change and yet continue to be denied meaningful input into Canadian climate policy. Canada must protect the rights of child environmental and Indigenous land defenders in compliance with the UN Declaration on Human Rights Defenders.⁴⁵

⁴⁰ UN Committee on Elimination of Racial Discrimination, Decision 1 (100) under its Early Warning and Urgent Action Procedures.

⁴¹ Art. 12 (1).

⁴² UN Committee on the Rights of the Child, General Comment No. 12 on the right of the child to be heard.

⁴³ Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment focusing the relationship between children's rights and environmental protection, UN Doc A/HRC/37/58/, Para 48.

⁴⁴ 27 September 2019, 'Hundreds of thousands march in Canada for climate', *CBC*. Available at: <https://www.cbc.ca/news/canada/photos/climate-strike-across-canada-montreal-greta-thunberg-1.5299682>

⁴⁵ Canada has a long and troubling history of using force against peaceful Indigenous land defenders. For recent examples relating to oil and gas development see, Jaskiran Dhillon & Will Parish, 'Indigenous people outraged at Canada police's possible use of lethal force' *Guardian* (24 December 2019); Jaskiran Dhillon & Will Parish, "Exclusive: Canada police prepared to shoot Indigenous activists, documents

With no ability to vote or meaningfully participate in climate policy development, 15 children in Canada are legally claiming their constitutional right to a stable climate under sections 7 (life, liberty, security) and 15 (equality) of the Canadian Charter of Rights and Freedoms.⁴⁶

Canada has an obligation to provide children with access to an effective remedy⁴⁷ and to provide children, “the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”⁴⁸

In an attempt to deny these children access to legal remedy, the Canadian government plans to file a motion to strike the children’s claims.⁴⁹

Failure to grant children accessible procedures and formats to have their views heard on matters affecting them, especially climate change and other environmental harms that disproportionately affect them, constitutes a violation of article 12 of the CRC. This gross violation of the fundamental right to be heard is further highlighted by the state’s motion to strike the children’s’ case and concerns.

Recommendations for list of issues

We recommend that the state please inform the Committee:

Of measures taken to ensure children’s rights impact assessments and children’s views are given primary consideration in climate, environmental and energy regulation and policy development.

show,” *Guardian* (20 December 2019); Andrew Nikiforuk, “From the Archives: When Indigenous Assert Rights, Canada Sends Militarized Police,” *The Tyee* (17 January 2019).

⁴⁶ See: *La Rose v. HMTQ* Statement of Claim to the Defendants, available at: <https://davidsuzuki.org/wp-content/uploads/2019/10/Statement-of-Claim-2019-10-25-FILED.pdf>. See also, *Mathur, et al. v. Her Majesty the Queen in Right of Ontario* Statement of Claim to the Defendants, available at: <https://ecojustice.ca/case/genclimateaction-mathur-et-al-v-her-majesty-in-right-of-ontario/>, *Olivier Adkin-Kaya, et al. v. Attorney General of Canada, et al.*, 2020 CanLII 17606 (SCC) Decision at: <http://canlii.ca/t/j5pw5> and submissions at <https://www.ourearthourfuturevictoria.com/legal-submissions>

⁴⁷ UN Committee on the Rights of the Child, General Comment No. 16 on State obligations regarding the impact of the business.

⁴⁸ Art. 2 (2).

⁴⁹ David Suzuki Foundation (25 May 2020) “Government of Canada seeks to have La Rose et. al. youth climate lawsuit thrown out.” News release available at: <https://davidsuzuki.org/press/government-of-canada-seeks-to-have-la-rose-et-al-youth-climate-lawsuit-thrown-out/>.

How Canada will facilitate children's participation in climate, environmental and energy decision-making processes, and protect them from reprisals for their participation or otherwise expressing their views on climate change and environmental matters.

Of measures taken to remove barriers to children's' access to justice for climate disaster and environmental harm to the full enjoyment of their human rights.

On measures taken to incorporate the CRC into climate change, environmental and energy policy and decision-making.

On whether the State party has a unified system for data collection and analysis with a child-rights focus, covering all groups of children, with disaggregated data by age, sex, provinces/territories, socio-economic background and ethnic origin in relation to environmental harm, climate change impacts and risks.

On whether the State party has conducted children rights impact assessments (or any other human rights impact assessments) in the authorization of, investment in or promotion of fossil fuel projects or energy policy decisions.

Of measures taken to ensure that educational programs increase children's understanding of climate change and strengthen their capacity to participate in climate, environmental and energy decision-making.