



Native Women's
Association of Canada

L'Association des
femmes autochtones
du Canada

Promoting Environmental Democracy: Procedural elements of the human right to a clean, healthy and sustainable environment

Special Rapporteur on Human Rights and the Environment

2 October, 2023

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Introduction

This written submission from the Native Women's Association of Canada (NWAC) aims to inform the Special Rapporteur on human rights and the environment's report on the implementing the human right to a clean, healthy and sustainable environment, presented at the 55th session of the Human Rights Council.

NWAC is a national Indigenous organization from Canada representing Indigenous Women, Girls, Two-Spirit, Trans and Gender-Diverse (WG2STGD+) Peoples. The people NWAC represents hold the rights affirmed within the *UN Declaration on the Rights of Indigenous Peoples* through their land-based connections, lineages and resiliency as the original stewards and human inhabitants of the lands known today as Canada. The people NWAC represents also claim rights under Canada's *Constitution Act, 1982*, as Indigenous Peoples.

Indigenous WG2STGD+ Peoples s face environmental rights barriers

- 1. What are States' obligations—and businesses' responsibilities—related to the rights to access information, public participation and access to justice with effective remedies in environmental matters? What are the major barriers to the full enjoyment of these rights? How can these barriers be overcome?**

Canada is obligated to provide Indigenous citizens the right to provide feedback and be consulted in environmental matters under both domestic and international law. Canada is likewise obligated to provide remedies in environmental matters, but has not recognized a universal right to a healthy environment through which to seek remedies.

Within Canada's division of powers, opportunities for Indigenous WG2STGD+ Peoples to participate in decisions impacting their environmental rights and to access remedies for their violation are split between both federal and provincial spheres. Federally, Canada's [Impact Assessment Act](#) provides a legislative framework for integrating Western scientific and Indigenous Traditional Knowledge when assessing any project impacting physical lands within Canada. NWAC is currently participating in a funded legislative preview process to gauge this statute's effectiveness in providing Indigenous WG2STGD+ Peoples access to information, participation and access to remedies within this framework. The consultations are expected to conclude in 2025.

The [Canadian Environmental Protection Act](#) provides aspirational protections for Canadians broadly, but not for Indigenous WG2STGD+ Peoples as a specific group uniquely impacted by environmental rights violations. Though the statute provides frameworks to enable public participation and access to information, the statute does not include a right to a healthy environment, something NWAC advocates it should.

Canada also enacted the [UN Declaration on the Rights of Indigenous Peoples Act](#), which seeks to align all Canadian law with the rights affirmed within the UNDRIP, including land-based and environmental rights. This enactment was passed in 2021 and remains largely untested. The Act does not provide an effective mechanism for remedying rights violations.

Canada's Supreme Court ruled in [Nevsun](#) that businesses based in Canada may be obligated to provide remedies if found liable for violating international customary law.¹ The majority accepted that in keeping with Canada's obligations under the *International Covenant on Civil and Political Rights*, Canada is obligated to ensure victims can access an effective remedy, including through civil domestic proceedings in Canada.

Indigenous environmental advocates meet significant barriers

- 2. What are States' obligations related to the right to environmental education, and the rights to freedom of expression and freedom of association in environmental contexts? What are the major barriers to the full enjoyment of these rights? How can these barriers be overcome?**

For every right, there must be a remedy. In Canada, Indigenous WG2STGD+ Peoples' environmental rights are not enforceable under current legislative frameworks. Canada does not recognize a positive right to a healthy environment.

In Canada, youth-led legal actions seeking to affirm a right to a healthy environment and hold public decision-makers accountable for environmental harms have proven ineffective.

Seven youth in [Mathur et al](#) filed a case arguing that when the Ontario provincial government repealed relatively strong carbon pollution reduction targets and replaced them with one inadequate target for 2030, it violated their constitutional rights to life, security of the person, and equality.² The Ontario Superior Court dismissed the claim because it found Ontario's targets did not violate 'principles of fundamental justice'. Though the Court agreed that young people and Indigenous peoples are disproportionately impacted by the climate crisis, there remains no positive obligation for Ontario to address that inequality through the target.

The Quebec-based Environnement Jeunesse filed a similar argument framed as a class action on behalf of all youth in Quebec under age 35. The plaintiffs accused the Canadian government failed to take sufficient action against global warming. The Court declined to certify the action because the remedies the youth sought were tantamount to asking the courts to tell the legislature what to do, which is not their role.³

¹ *Nevsun Resources Ltd. v Araya*, 2020 SCC 5 at para 122

² *Mathur v Ontario*, 2020 ONSC 6918.

³ *Environment Youth v Attorney General of Canada*, 2021 QCCA 1871.

Indigenous activists protesting against logging and pipelines in their traditional territories, based on environmental and cultural concerns, experience heavy-handed legal responses including fines, criminal charges and jail.⁴ Through a gender-lens, criminalizing the Wet'suwet'en is particularly troubling; as a matriarchal society, there are many WG2STGD+ land defenders actively protecting their lands and waters while facing ongoing harassment and violence, including a pregnant Wet'suwet'en mother arrested at gunpoint facing criminal charges.⁵

Indigenous WG2STGD+ Peoples play unique, gender-based roles that vary across the country but remain rooted in inherent land-based Indigenous rights. The discordance between resource extraction projects and Indigenous WG2STGD+ Peoples' land based (environmental) rights are addressed on a case-by-case basis and not protected by statutory frameworks that provide access to remedies for their violation.

Canada must safeguard land defenders

3. What can States and businesses do to ensure the safety of environmental human rights defenders?

Domestically and abroad, Canada's officials and corporations have not only failed to protect human rights defenders (HRDs) but have caused or increased harm. Canada has an obligation to honour their obligations to respect Indigenous rights, rather than favouring corporate and economic interests Global Affairs Canada's "[Voices at Risk](#)"⁶ policy guidelines aim to protect HRDs but have thus far proved ineffective.

Too often, when Canada's economic interests clash with the Indigenous Peoples' rights, Canada prioritizes the former. Indigenous HRDs have been subject to violent repression and incarceration for protecting their lands.

Canada's embassies have consistently ignored their obligations to protect HRDs while advocating, even when facing escalating violence. The Justice & Corporate Accountability Project's (JCAP) submission⁷ to the UNHRC details Canada's repeated failures to safeguard HRDs opposed to Canadian mining projects.

⁴ See e.g. [Canada: Indigenous land defenders criminalized, surveilled and harassed as pipeline construction continues on Wet'suwet'en territory \(amnesty.ca\)](#).

⁵ "Criminalization of Wet'suwet'en land defenders", (1 March 2023), online: *Amnesty International* <<https://www.amnesty.org/en/latest/news/2023/03/criminalization-wetsuweten-land-defenders/>>.

⁶ Global Affairs Canada, "Voices at risk: Canada's guidelines on supporting human rights defenders", (21 February 2017), online: *GAC* <https://www.international.gc.ca/world-monde/issues_developpement-enjeux_developpement/human_rights-droits_homme/rights_defenders_guide_defenseurs_droits.aspx?lang=eng>.

⁷ *Canada's Systematic Failure to Fulfill its International Obligations to Human and Environmental Rights Defenders Abroad: Submission to the UPR Working Group of the United Nations Human Rights Council In anticipation of the*

UNDRIP Art. 32 requires Indigenous Peoples' free, prior, and informed consent for projects on their lands. The *UN Declaration on Human Rights Defenders*⁸ principles could be used as a model for domestic legislation. To protect HRDs, Canada and other States must stop criminalizing them.

NWAC recommends Canada create binding legislation, or an enforcement and monitoring mechanism. Compliance monitoring should be done by a third party, and in consultation with Indigenous Peoples and civil society groups.

Indigenous WG2STGD+ Peoples are vulnerable to the climate crisis

4. Please specify ways that the rights to environmental education, access to information, public participation and access to justice with effective remedies, freedom of expression and freedom of association can be fulfilled for populations who may be particularly vulnerable to climate and environmental harms

Indigenous WG2STGD+ Peoples are harmed when their lands are harmed: environmental contamination cuts off access to the land and its gifts, harming communities and individuals. Indigenous women living near industrial pollutants suffer health consequences through exposure to toxins. Traditional foods become poisoned, leading to intergenerational poisoning. For example, in Grassy Narrows First Nation, mercury contaminated water, so children whose mothers ate fish while pregnant were four times more likely to experience nerve disorders and learning disabilities.⁹ Further, when industrial work camps are established in their lands, sexual violence against Indigenous WG2STGD+ Peoples spikes.¹⁰

Access to justice for Indigenous WG2STGD+ Peoples impacted by climate and environmental harms is a multifaceted issue, just like the problem.

There must be recourse for Indigenous People harmed by polluters, domestically and internationally. For example, Canadian or international courts must have the authority to assume jurisdiction over cases where Canadian corporations have breached environmental and human rights laws. Without adequate enforcement mechanisms, polluters can do harm without

2023 Universal Periodic Review (UPR) of Canada, by Justice & Corporate Accountability Project (2023) <https://miningwatch.ca/sites/default/files/jcap_submission_to_unpr_2023.pdf>.

⁸ *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, UN General Assembly resolution 53/144, 1998.

⁹ *Indigenous Knowledge Policy Framework for Project Reviews and Regulatory Decisions*, by Impact Assessment Agency of Canada (2020) at 42.

¹⁰ *Reclaiming Power and Place: The Final Report of the National Inquiry Into Missing and Murdered Indigenous Women and Girls, Volume 1a*, by National Inquiry into Missing and Murdered Indigenous Women and Girls, 978-0-660-29274-8 (Ottawa, 2019) at 585, 593.

meaningful consequence, which often leaves Indigenous WG2STGD+ Peoples without legal redress.

For remote Indigenous communities, access to legal information, resources, and justice are all challenges, especially when there is active repression against organizing. In Canada, many rural Indigenous communities still do not have access to reliable (or any) internet connectivity, limiting ability to organize, access their rights, and share knowledge with others.

Canada engages international environmental treaties in a limited way

- 5. To what extent have the two regional treaties on environmental democracy—the Aarhus Convention and the Escazu agreement—been effective in advancing human rights related to access to information, public participation, access to justice with effective remedies, environmental education, freedom of expression and association, and safe spaces for environmental human rights defenders?**

Canada has chosen not to become a party to the *Aarhus Convention*. The federal government nevertheless claims that Canadian laws are equivalent.¹¹ While the *Escazu Agreement* structure might be more suitable because it includes specific reference to Indigenous rights, its status as a regional instrument means that it is not open to Canada to join. Canada’s relationship with the Inter-American human rights system suggests that lessons from *Escazu* may merit exploration.

Canada’s environmental laws do not prioritize Indigenous Knowledge

- 6. Please provide examples of good practices related to access to information, public participation, access to justice with effective remedies, environmental education, freedom of expression and association, and safe spaces for environmental human rights defenders.**

In Canada, there are limited mechanisms or examples in place. In 2017, the Government of Canada published *Voices at Risk: Canada’s guidelines on supporting human rights defenders*, intended to “complement and support the ongoing work of Canada’s diplomatic corps.”¹² However, for Canada to demonstrate it is serious about human rights and women human rights defenders, it must do more than establish a set of guidelines. Witnesses before the House of Commons Committee on Foreign Affairs and International Development called for a variety of bilateral and multilateral diplomatic interventions, including making public statements and engaging in bilateral dialogue to push for respect for civil and political rights, including free

¹¹ Sara L Seck & Erin Dobbeltsteyn, “Access to justice and human rights approaches to procedural environmental rights: lessons from and for Canada.” *The Global Network for Human Rights and the Environment*. Accessed from <https://gnhre.org/?p=16666>

¹² *Supra* Note 6

speech and freedom of association.¹³ This includes urging governments to lift restrictions on NGO funding. Although Canada is making some advances as far as diplomatic missions in protecting women human rights defenders are concerned, there is far more than can be done to ensure the protection of these rights.

The Inter-American Court of Human Rights (the Court), which applies and interprets the American Convention on Human Rights in respect to the 20 State Parties (including Canada) that have agreed to the Court's contentious jurisdiction, and the Inter-American Commission on Human Rights (IACHR), the organ responsible for promoting the observance and defense of human rights in all Member States of the Organization of American States, have clarified human rights obligations relating to the protection of environmental human rights defenders.¹⁴ The Court has developed a strong jurisprudence on Indigenous and tribal property rights issues through its interpretation of the American Convention.

The public can access environmental-related information on Ontario's web-based Environmental Registry, created pursuant to the *Ontario Environmental Bill of Rights*. The law's purpose is, among other things, to protect the right to a healthy environment.¹⁵

Through providing internet access to environmentally-relevant information, the Environmental Registry allows the public to exercise its right under Ontario's Environmental Bill of Rights to be given public note of a range of governmental proposals and decision related to environmental matters, and to provide comments on those issues.

¹³ House of Commons, "Raising her voice: confronting the unique challenges facing women human rights defenders", (June 2019), *Report of the Standing Committee on Foreign Affairs and International Development*. Accessed: <https://www.ourcommons.ca/Content/Committee/421/FAAE/Reports/RP10585326/faaerp29/faaerp29-e.pdf>

¹⁴ Organization of American States (OAS), *American Convention on Human Rights, "Pact of San Jose", Costa Rica*, 22 November 1969, available at: <https://www.refworld.org/docid/3ae6b36510.html> [accessed 22 September 2023].

¹⁵ See Ontario Environmental Bill of Rights (1993), S.O. 1993, Chapter 28, sec. 2; website of the Registry, <http://www.ebr.gov.on.ca>