



AAMJIWNAANG
FIRST NATION
Band Council

978 TASHMOO AVENUE
SARNIA, ONTARIO
N7T 7H5
Phone: 519-336-8410
Fax: 519-336-0382

Fraser Thomson and Reid Gomme

1910-777 Bay Street, PO Box 106
Toronto, Ontario M5G 2C8
Tel: 416-368-7533 ext. 545; 708
Fax: 416-363-2746

ftomson@ecojustice.ca

rgomme@ecojustice.ca

October 6, 2025

Submitted online to IAA Canada Registry and Addressed to:

Riverside Generating Station Project
Impact Assessment Agency of Canada
1145-9700 Jasper Avenue
Edmonton, Alberta T5J 4C3

The Honourable Julie Dabrusin MP
Place Vincent Massey Building
351 Saint-Joseph Boulevard
Gatineau QC K1A 0H3

Portlands Energy Centre LP (d/b/a Atura
Power)
200-1415 Joshua Creek Drive
Oakville, ON L6H 7G4

Dear Agency, Minister and Atura Power:

Re: *Atura Power Proposed Riverside Generating Station Project (IAA Ref # 89801)*
Impact Assessment Planning Phase

Ecojustice provides these comments on behalf of Aamjiwnaang First Nation ("Aamjiwnaang" or the "Nation") to explain the need for an impact assessment of the Riverside Generating Station Project (the "Project"). These comments are addressed to the Impact Assessment Agency of Canada (the "Agency"), the Minister of Environment and Climate Change (the "Minister") and Atura Power (the "Proponent").

Aamjiwnaang draws the Agency's attention to information and issues that are relevant to the Agency's mandatory considerations under s. 16(2)(b), (c), (d) and (g) of the *Impact Assessment Act* (the "Act") in anticipation of the Agency's screening decision.¹ However, and as detailed below, Aamjiwnaang also reserves its constitutional rights to provide further submissions to the Agency after collecting more feedback from community members.

¹ *Impact Assessment Act*, SC 2019, c 28, [ss 16\(2\)\(b\), \(c\), \(d\), \(g\)](#) [IAA].



AAMJIWNAANG FIRST NATION Band Council

978 TASHMOO AVENUE
SARNIA, ONTARIO
N7T 7H5
Phone: 519-336-8410
Fax: 519-336-0382

Pursuant to the constitutionally required duty to consult prior to the Agency's screening decision, the Agency is obliged, at a minimum, to consider subsequent submissions, continue engaging with Aamjiwnaang in good faith and make accommodations where needed.

1. Summary of Comments

The level of industrial pollution in the traditional territories of Aamjiwnaang First Nation is unconscionable. It is repeatedly cited as an emblematic example of environmental racism and continues to impact Aamjiwnaang to this day, whose lands have become one of the most polluted areas in Canada. After decades of tireless advocacy by Aamjiwnaang members, the federal government accepted in a joint agreement with the Nation that "the longstanding environmental concerns" in the region necessitate "an urgent and structured response". Now, 13 km from Aamjiwnaang's reserve lands and well within its traditional territories, the Proponent seeks to add new fossil fuel infrastructure that risks intensifying the pollution already impacting the community. Exempting a Project of this scale from an impact assessment would undermine efforts to undertake an "urgent and structured response" touted by the federal government.

This Project is a large gas-fired generating facility planned in an area that is severely overburdened by environmental pollutants and associated cumulative effects. At around 500 MW,² the Project's capacity is two-and-a-half times greater than the 200 MW prescribed threshold at which Cabinet determined "may . . . cause effects within federal jurisdiction" and thus is presumptively subject to an impact assessment.³

Importantly, the Project requires an impact assessment because it is likely to have various adverse impacts on Aamjiwnaang's constitutionally protected Aboriginal, Treaty and Title rights and areas of federal jurisdiction.⁴ As detailed in these comments, the Project will likely amplify the harmful cumulative effects of industrial pollution, worsen air quality and disturb sites of archaeological significance. These effects risk impacting Aamjiwnaang members' rights over their traditional territories, as well as their health and well-being.

² Atura Power, "Initial Project Description: Proposed Riverside Generating Station" (September 2025) at [12](#), online (pdf): *Impact Assessment Agency of Canada* <iaac-aeic.gc.ca/O50/documents/p89801/162724E.pdf> [IPD].

³ IAA, [s 109\(b\)](#); *Physical Activities Regulations*, SOR/2019-285, [s 30](#).

⁴ Any reference to "federal jurisdiction" in these comments must be read in the context of Aamjiwnaang's status as a sovereign and self-determining Nation with inherent rights, jurisdiction and governing authority that existed before and continue to exist irrespective of any assertions of jurisdiction by the federal government. It must also be viewed in light of the decision in *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, [2024 SCC 5](#), which affirmed Indigenous Peoples' inherent right to self-government, including their jurisdiction to make laws that have the same force as federal legislation and can prevail over inconsistent laws.



AAMJIWNAANG FIRST NATION Band Council

978 TASHMOO AVENUE
SARNIA, ONTARIO
N7T 7H5
Phone: 519-336-8410
Fax: 519-336-0382

The Initial Project Description (IPD) also lacks critical details on certain issues that require more thorough consideration through an impact assessment, such as impacts on air quality, climate change and species at risk. Finally, the Agency cannot rely on the provincial assessment regime as an adequate substitute for a federal impact assessment.

2. The Agency Must Fulfill its Duty to Consult and Accommodate Aamjiwnaang as an Indigenous Nation on an Ongoing Basis

At the outset of these comments, Aamjiwnaang maintains that responding by October 6th within the Agency's 20-day comment period on the IPD does not constitute meaningful consultation. Aamjiwnaang submits these comments to share its initial position on the Project but emphasizes that further submissions are forthcoming. The Agency has an ongoing duty to engage with Aamjiwnaang on a Nation-to-Nation level beyond October 6 and make accommodations where required.

Aamjiwnaang is a sovereign and self-determining Indigenous Nation with inherent rights, jurisdiction and governing authority that have existed since time immemorial and continue to exist irrespective of the Act. Aamjiwnaang has repeatedly asserted its rights over its territories and waters to give formal notice of its jurisdiction to the federal government and other parties. Activities that will impact Aamjiwnaang's Aboriginal, Treaty and Title rights engage the honour of the Crown and the duty to consult.

The duty to consult and accommodate Indigenous Peoples is recognized and affirmed by s. 35 of the *Constitution Act, 1982*.⁵ This duty is triggered by the Crown's knowledge of either potential or established claims. The scope and content of the duty are proportionate to the strength of claims and the seriousness of the potential impacts.⁶ As detailed in these comments, this Project has a high potential to impact Aboriginal, Treaty and Title rights. These potential adverse impacts require a higher degree of consultation and accommodation in the form of an impact assessment.

In addition to its constitutional status, this duty is reinforced by statute. Under s. 12 of the Act, "the Agency must offer to consult with . . . any Indigenous group that may be affected by the carrying out of the designated project."⁷ This s. 12 duty is above and beyond the current statutory duty of public consultation under s. 11 of the Act.

Canada's commitment to implementing the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*, expressed in both the Act's preamble and standalone

⁵ *Constitution Act, 1982*, [s 35](#), being Schedule B to the Canada Act 1982 (UK), 1982, c 11.

⁶ *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73 at [para 68](#).

⁷ IAA, [s 12](#).



AAMJIWNAANG FIRST NATION Band Council

978 TASHMOO AVENUE
SARNIA, ONTARIO
N7T 7H5
Phone: 519-336-8410
Fax: 519-336-0382

legislation,⁸ further obliges the Agency to ensure Aamjiwnaang's free, prior and informed consent.⁹ Specifically, Article 32 of *UNDRIP* states that:

1. Indigenous Peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Under its constitutional and statutory obligations, the Agency must provide Aamjiwnaang with opportunities for meaningful consultation past October 6. Aamjiwnaang is more than an individual stakeholder to the procedures of the Act. As these comments will explain, the severity of the Project's adverse impacts on Aamjiwnaang's rights and the gaps in information provided by the IPD obligate the Agency to undertake further consultation and accommodation. Moreover, Aamjiwnaang plans to solicit community members' feedback on the Project throughout November 2025 and cannot provide those full perspectives to the Agency under the constrained timeline designed for individual stakeholders. Thus, additional comments informed by Aamjiwnaang members' feedback are forthcoming.

Furthermore, and of particular relevance to the Planning Process for this Project due to the informational gaps in the IPD detailed below, it is incumbent on the Agency under s. 35 to provide Aamjiwnaang with meaningful consultation opportunities after the proponent provides the Agency with its s. 15 notice and any potential detailed project description.

Given these factors, Aamjiwnaang provides these initial comments but takes the position that the duty to consult requires, at a minimum, that (1) the Agency accept submissions from Aamjiwnaang after October 6 prior to any decision under s. 16 of the Act, and (2) that it conduct a full impact assessment.

3. The Project Requires an Impact Assessment Based on its Potential Adverse Impacts Under Section 16(2) of the Act

Aamjiwnaang's submissions in this section focus on two points pertinent to the Agency's deliberation. First, based on the information provided by the Proponent detailed in these submissions, the Agency cannot reasonably conclude that the Project will not cause

⁸ *Ibid*, [Preamble, para 2](#); *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14, [ss 5–6](#).

⁹ *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UNGAOR, 61st Sess, UN Doc A/RES/61/295 (2007), [arts 29\(2\)](#), [32\(2\)](#).



AAMJIWNAANG FIRST NATION Band Council

978 TASHMOO AVENUE
SARNIA, ONTARIO
N7T 7H5
Phone: 519-336-8410
Fax: 519-336-0382

significant and numerous impacts on Aamjiwnaang's Aboriginal, Treaty and Title rights and adverse effects on areas of federal jurisdiction. Second, there are substantial gaps in the information provided by the Proponent in the IPD and beyond, as well as numerous factors that have yet to be raised by the Proponent, Agency or other commenters that are pertinent to Agency's obligatory considerations under s. 16(2) of the Act. Aamjiwnaang submits that, both individually and together, these factors necessitate an impact assessment.

3.1 Potential Adverse Impacts on Aamjiwnaang First Nation

When deciding whether to require an impact assessment, the Agency "must take into account . . . any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*".¹⁰ As explained in this section, the Project will likely cause adverse impacts on Aamjiwnaang members' Aboriginal, Treaty and Title rights by (1) amplifying the harmful cumulative effects of existing industrial pollution, (2) worsening air quality and (3) disturbing sites of archaeological significance. In doing so, the Project will likely infringe upon rights to maintain the culture, heritage and environment that all sustain Aamjiwnaang as a Nation.

In addition, the Agency must consider "adverse effects within federal jurisdiction — or the direct or incidental adverse effects — that may be caused by the carrying out of the designated project".¹¹ With respect to Indigenous Peoples, the Act defines these adverse effects to include impacts on:

- Physical and cultural heritage,
- The current use of lands and resources for traditional purposes,
- Any structure, site or thing that is of historical, archaeological, paleontological or architectural significance, and
- Health, social or economic conditions.¹²

For the same reasons, the Project will likely cause adverse effects on Aamjiwnaang that the Act deems to fall within federal jurisdiction and warrant an impact assessment.¹³

¹⁰ IAA, [s 16\(2\)\(c\)](#).

¹¹ *Ibid*, [s 16\(2\)\(b\)](#).

¹² *Ibid*, [ss 2\(e\), \(f\)](#).

¹³ Aamjiwnaang does not accept that Indigenous Peoples are "within federal jurisdiction", as they are a sovereign and self-determining Nation with inherent rights, jurisdiction and governing authority. Aamjiwnaang simply acknowledges that the Act deems certain adverse effects on Indigenous Peoples to provide added or alternative support for a federal impact assessment, but adverse effects on Indigenous Peoples' rights are sufficient under s 16(2)(c).



AAMJIWNAANG FIRST NATION Band Council

978 TASHMOO AVENUE
SARNIA, ONTARIO
N7T 7H5
Phone: 519-336-8410
Fax: 519-336-0382

3.1.1 Cumulative Impacts of Industrial Pollution

To situate Aamjiwnaang's request for an impact assessment of this Project, it is necessary to first understand the long history of environmental racism, injustice and extinguishment of Aboriginal title that the Nation has experienced and that continues to this day. This context and the role that the federal government has played in creating and maintaining this unjust situation must inform the Agency's decision to conduct an impact assessment.

Today, this Project's proposed location in one of Canada's most polluted areas poses severe health and environmental risks due to cumulative effects. This Project requires an impact assessment because these cumulative effects will almost certainly interfere with Aamjiwnaang members' rights to fish, hunt and engage in spiritual and cultural practices using their traditional territories. The cumulative impacts of industrial pollution will also likely have adverse effects on Aamjiwnaang members' health, social and economic conditions.

The remainder of this section (1) establishes the historical context of environmental racism facing Aamjiwnaang, (2) provides specific data showing that this Project will likely heighten the cumulative effects of industrial pollution and (3) details the resulting impacts on Aamjiwnaang's rights.

A History of Environmental Racism, Injustice and Extinguishment of Aboriginal Title that Continues to the Present Day

Aamjiwnaang First Nation comprises around 2,500 Anishinaabe — the original peoples — whose territory and reserve land are located by the St. Clair River in Sarnia, Ontario, in an area known as Chemical Valley. Around 900 members of the Nation live on the reserve.

Until the mid-eighteenth century, Aamjiwnaang territory covered a vast expanse of land on both sides of the St Clair River between Lakes Huron and Erie. It contained nine villages supporting a population of 15,000.¹⁴ As historian David Plain recounts, Treaty 29 was signed in 1827 to recognize reserves in Lambton County, including Aamjiwnaang's.¹⁵ But settlers and governments repeatedly encroached on these lands between 1850 and 1950 until Aamjiwnaang's more than 4,040 hectares shrunk to 1,254 hectares.¹⁶

¹⁴ "History" (last visited 30 September 2025), online: *Aamjiwnaang First Nation* <www.aamjiwnaang.ca/history/>.

¹⁵ David D Plain, "Modern History" (September 2015), online (pdf): *Aamjiwnaang First Nation* <www.aamjiwnaang.ca/wp-content/uploads/2015/09/Aamjiwnaang-Website-Detail-Modern-History.pdf>.

¹⁶ Paul Morden, "Aamjiwnaang: Living in the shadow of Sarnia's Chemical Valley", *The Sarnia Observer* (10 May 2024), online: <www.theobserver.ca/news/local-news/aamjiwnaang-living-in-the-shadow-of-sarnias-chemical-valley>.



AAMJIWNAANG FIRST NATION Band Council

978 TASHMOO AVENUE
SARNIA, ONTARIO
N7T 7H5
Phone: 519-336-8410
Fax: 519-336-0382

For example, Indian Agents appointed under the *Indian Act, 1876* by the Department of Indian Affairs misled Aamjiwnaang band leaders into selling reserve land, which was then used to expand the petrochemical industry in the mid-1900s.¹⁷ In 1942, the federal government also chose Sarnia as the site for the Crown corporation Polysar to manufacture synthetic rubber for World War II.¹⁸ Polysar actively encouraged the rapid growth of the petroleum and petrochemical sector in Sarnia, facilitating the development of Chemical Valley.¹⁹

Today, Chemical Valley has the largest concentration of refineries and petrochemical plants in Canada, and Aamjiwnaang is surrounded by 40% of Canada's chemical industry. Aamjiwnaang's community and lands have become sacrifice zones, serving as one of Canada's worst examples of environmental racism.²⁰

The United Nations Special Rapporteur on Toxics and Human Rights has raised the alarm on the environmental racism faced by Aamjiwnaang. After visiting in 2019, Special Rapporteur Baskut Tuncak described the "environmental injustice" in Sarnia as "an ongoing tragedy, a legacy of land use planning that would not be allowed today."²¹ He also stated:

The condition of the Aamjiwnaang First Nation in Sarnia is deeply unsettling. Deeply connected with their land, residents on the reservation are now surrounded on three sides by over 60 industrial facilities that create the physiological and mental stress among community members regarding the risk of impending explosions or other

¹⁷ "Canadian First Nations Policies and Land Loss" (last visited 30 September 2025), online: *Great Lakes Environmental Justice* <greatlakesenvironmentaljustice.wordpress.com/aamjiwnaang/land-loss-and-candian-first-nations-policies/>.

¹⁸ François Larivée, "Polysar, or the adventure of producing synthetic rubber in Canada" (26 May 2016), online (blog): *Library and Archives Canada Blog* <thediscoverblog.com/2016/05/26/polysar-or-the-adventure-of-producing-synthetic-rubber-in-canada/>.

¹⁹ Timothy W Cobban, *The Role of Municipalities in Stimulating Economic Growth: Evidence from the Petroleum Manufacturing Industry in South Ontario, 1860-1960* (PhD Thesis, University of Western Ontario, 2008) [unpublished]; Timothy W Cobban, *Cities of Oil: Municipalities and Petroleum Manufacturing in Southern Ontario, 1860-1960* (Toronto: University of Toronto Press, 2013).

²⁰ David R Boyd & Marcos Orellana, "A/HRC/49/53: The right to a clean, healthy and sustainable environment: non-toxic environment – Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment" (12 January 2022) at 10, online: *Office of the United Nations High Commissioner for Human Rights* <www.ohchr.org/en/documents/thematic-reports/ahrc4953-right-clean-healthy-and-sustainable-environment-non-toxic>.

²¹ Baskut Tuncak, "End-of-visit statement by the United Nations Special Rapporteur on toxics and human rights, Baskut Tuncak on his visit to Canada, 24 May to 6 June 2019" (6 June 2019), online: *Office of the United Nations High Commissioner for Human Rights* <www.ohchr.org/en/statements/2019/06/end-visit-statement-united-nations-special-rapporteur-toxics-and-human-rights>.



AAMJIWNAANG FIRST NATION Band Council

978 TASHMOO AVENUE
SARNIA, ONTARIO
N7T 7H5
Phone: 519-336-8410
Fax: 519-336-0382

disasters, as well as a wide variety of health impacts from unquestionably poisonous chronic exposures. It is one of the most polluted places in Canada, dubbed “chemical valley.”

Under s. 16(2)(f) of the Act, the Agency must take account of the Special Rapporteur’s site visit and findings, in addition to other existing data on the cumulative effects of industrial pollution in Chemical Valley.²² Accordingly, the Special Rapporteur’s report has been attached as **Appendix A**. More generally, given the federal government’s role in allowing this tragedy to occur, it has an obligation to ensure that new, large polluting facilities like this Project do not exacerbate the ongoing injustice and add to the environment racism experienced by the people of Aamjiwnaang. One way the federal government can meet its obligations and stop compounding this injustice is by conducting a full impact assessment for this Project.

Cumulative Impacts of Existing and Proposed Facilities in Chemical Valley

The Project poses risks of serious harm from the cumulative impacts of numerous sources of industrial pollution in Chemical Valley. A full impact assessment is needed to evaluate and minimize these risks, which are either unaddressed or understated in the IPD.

In Lambton County, 43 existing facilities on the National Pollutant Release Inventory (NPRI) report emissions of the same pollutants as this Project: carbon monoxide (CO), nitrogen oxides (NO_x), particulate matter less than 2.5 micrometers in diameter (PM_{2.5}), polycyclic aromatic hydrocarbons (PAHs) and volatile organic compounds (VOCs).²³ The vast majority of these facilities are in Chemical Valley.

As seen below in **Figure 1**, these facilities already release more than 30,000 tonnes of these pollutants each year. Reported emissions in 2024 included nearly 11,000 tonnes of nitrogen dioxide (NO₂), which the federal government has listed as a toxic substance.²⁴ Further, the Figure shows a marked increase of these pollutants in the last two years and a significant increase since 2019 when the UN Special Rapporteur found that levels were already at “unquestionably poisonous chronic exposures.”

²² IAA, [s 16\(2\)\(f\)](#). The Act defines a “jurisdiction” that can prepare a study requiring the Agency’s consideration to include “an international organization of states or any institution of such an organization.” *Ibid*, [s 2](#).

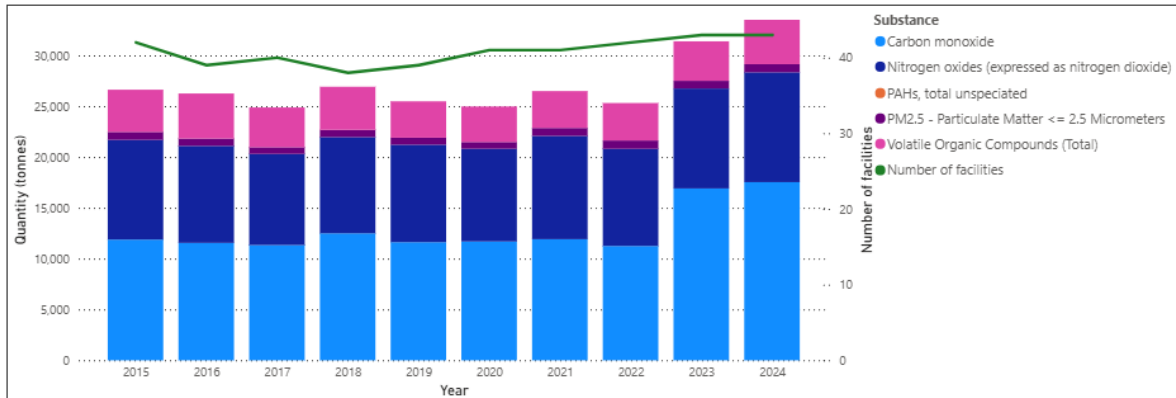
²³ Environment and Climate Change Canada, “National Pollutant Release Inventory Dashboard” (last modified 31 March 2025), online: *Government of Canada* <www.canada.ca/en/environment-climate-change/services/national-pollutant-release-inventory/tools-resources-data/all-year-dashboard.html>; IPD, *supra* note 2 at [156](#).

²⁴ Environment and Climate Change Canada, “Toxic substances list: schedule 1” (last modified 2 June 2025), online: *Government of Canada* <www.canada.ca/en/environment-climate-change/services/canadian-environmental-protection-act-registry/substances-list/toxic/schedule-1.html>; *Canadian Environmental Protection Act, 1999*, SC 1999, c 33, [Schedule 1](#).



Releases, disposals and transfers (by substance):

*This graph can only display data for a limited number of substances at one time and should only be used once one of more filters have been applied. Complete data is available in the table below the graph.



Total reported quantity by substance

Part	Substance	CAS Number	Units	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
2	PAHs, total unspciated	NA - P/H	kg		0.02	0.84	54.39	80.16	30.15	55.90	69.69	61.94	111.84
4	Carbon monoxide	630-08-0	tonnes	11,886.25	11,557.62	11,346.01	12,501.87	11,630.46	11,698.67	11,925.28	11,257.15	16,919.49	17,538.97
	Nitrogen oxides (expressed as nitrogen dioxide)	11104-93-1	tonnes	9,812.77	9,550.86	8,969.63	9,471.94	9,593.42	9,123.23	10,165.73	9,558.04	9,841.14	10,811.47
	PM2.5 - Particulate Matter <= 2.5 Micrometers	NA - M10	tonnes	782.76	720.91	660.35	712.93	691.28	668.33	782.20	824.81	754.40	799.50
	Volatile Organic Compounds (Total)	NA - M16	tonnes	4,157.60	4,437.56	3,918.21	4,243.63	3,579.81	3,498.61	3,630.46	3,687.21	3,885.21	4,369.06

Figure 1: Releases of CO, NO_x (expressed as NO₂), PM_{2.5}, PAHs and VOCs reported by facilities in Lambton County to the NPRI.²⁵

The IPD provides little assurance that the Project’s emissions of CO, NO_x and PM_{2.5} will avoid adding to cumulative effects that already endanger health and the environment. Alarminglly, while the Proponent detected both PAHs and VOCs in exhaust streams, it chose to exclude them from its Air Quality Assessment “[d]ue to the low emissions of these compounds from natural gas combustion”.²⁶ This decision ignores the present and historical context of Chemical Valley, where the petroleum and petrochemical sector emits these compounds at high volumes. Moreover, the IPD mentions PAHs and VOCs only in exhaust streams, but does not address leaking or fugitive emissions of these pollutants that may well occur at large gas-fired plants and as yet unspecified pipeline infrastructure.

In particular, benzene is a type of VOC that the IPD admits has overburdened the Sarnia area, creating “the need for continued monitoring and mitigation efforts.”²⁷ The federal government has recognized this need as well, requiring facilities handling at least 10 tonnes

²⁵ Environment and Climate Change Canada, “National Pollutant Release Inventory Dashboard” (last modified 31 March 2025), online: *Government of Canada* <www.canada.ca/en/environment-climate-change/services/national-pollutant-release-inventory/tools-resources-data/all-year-dashboard.html>.

²⁶ IPD, *supra* note 2 at 156.

²⁷ *Ibid* at 72.



AAMJIWNAANG FIRST NATION Band Council

978 TASHMOO AVENUE
SARNIA, ONTARIO
N7T 7H5
Phone: 519-336-8410
Fax: 519-336-0382

of benzene or other VOCs to report these emissions to the NPRI each year.²⁸ However, the IPD fails to provide assurance that VOCs released by this Project, through direct or fugitive emissions, will avoid amplifying the effects of pollution from other industrial activities in the area. Nor does the IPD measure or even name the specific VOCs that it discovered in the Project's exhaust streams, leaving unclear how these VOCs may interact with existing ones in the area such as benzene. The Proponent also excluded both sulphur dioxide (SO₂) and a list of unspecified "metals" from the Air Quality Assessment,²⁹ making the potential adverse impacts of these substances difficult to assess without more detailed information that could be gathered through an impact assessment. Without a proper assessment of ambient levels of any of these pollutants, it is impossible to assert that "low" additional contributions will not cause adverse cumulative effects, especially in light of the clear evidence of dangerously high ambient levels.

Existing facilities causing a rise in these harmful exposures are only part of the picture. Aamjiwnaang has also been alerted to several forthcoming projects that plan to expand fossil fuel infrastructure in the area. In particular, Invenergy has proposed adding a 245 MW gas turbine to the St. Clair Energy Centre.³⁰ Meanwhile, Eastern Power recently announced a pair of new 195 MW gas-fired plants, adding a total capacity of 390 MW.³¹ Aamjiwnaang has also been informed by a third proponent that it plans to expand yet another nearby gas-fired facility to add significant extra capacity. The need for an impact assessment for this Project is only heightened by the concurrent development of these other large gas-fired facility projects and expansions that will likely release similar pollutants. The Agency must consider the potential for cumulative impacts from these projects together to understand the true risks to health and the environment.

Both the provincial and federal governments have recognized this need to assess health and environmental risks from multiple pollution sources in Sarnia. Notably, this Project has been proposed within the study area of the Sarnia Area Environmental Health Project (SAEHP). The Ontario Ministry of Environment, Conservations and Parks (MECP) established SAEHP in 2017 to understand the concerns of Sarnia communities about air pollution and

²⁸ Environment and Climate Change Canada, "Substance list by threshold" (last modified 22 July 2022), online: *Government of Canada* <www.canada.ca/en/environment-climate-change/services/national-pollutant-release-inventory/substances-list/threshold.html>.

²⁹ IPD, *supra* note 2 at 156.

³⁰ Paul Morden, "Invenergy looks to expand St. Clair Township gas-fired power plant", *The Sarnia Observer* (21 June 2025), online: <<https://www.theobserver.ca/news/local-news/invenergy-looks-to-expand-natural-gas-electricity-plant-in-st-clair-township>>.

³¹ Heather Wright, "Eastern Power gets St. Clair support for 390 MW gas power plan", *The Independent* (19 August 2025), online: <<https://petrolialambtonindependent.ca/2025/08/19/eastern-power-gets-st-clair-support-for-390-mw-gas-power-plan/>>.



AAMJIWNAANG FIRST NATION Band Council

978 TASHMOO AVENUE
SARNIA, ONTARIO
N7T 7H5
Phone: 519-336-8410
Fax: 519-336-0382

other environmental stressors caused by local industries.³² SAEHP released findings from its Air Exposure Review last year, which confirmed that industrial pollution already seriously and disproportionately threatens the health of Aamjiwnaang community members.³³

However, MECP has not taken meaningful steps to act upon these findings, as most of the SAEHP report's recommendations remain unimplemented. As a study on the existing burden of pollution and cumulative effects facing the Project area, the Agency must now take account of its findings under s. 16(2)(f) of the Act. The addition of this Project and others as described above will add more local pollution to those levels already disproportionately affecting Aamjiwnaang community members. This additional cumulative polluting effect demands a proper impact assessment.

Further, Sarnia has 12 Federal Contaminated Sites.³⁴ In these areas, the federal government has determined that "substances occur at concentrations that: (1) are above background levels and pose, or are likely to pose, an immediate or long-term hazard to human health or the environment; or (2) exceed the levels specified in policies and regulations."³⁵ Earlier this year, Environment and Climate Change Canada (ECCC) agreed with Aamjiwnaang to "recognize the longstanding environmental concerns necessitating an urgent and structured response" in the region. ECCC has also worked collaboratively with Aamjiwnaang to study cumulative effects through the Integrated Chemical Mixtures Project.

In addition, the federal government has recognized in law that a disproportionate number of people who live in environmentally hazardous areas are members of Indigenous, racialized or other marginalized communities.³⁶ Establishing new sites for polluting industries in areas inhabited primarily by these groups can constitute racial discrimination.³⁷ As this Project is proposed near Aamjiwnaang's traditional territories — which are already known to bear a significant burden of pollution — approving the Project without a full impact assessment

³² "Sarnia Area Environmental Health Project", online: *Clean Air Sarnia and Area* <www.cleanairsarniaandarea.com/>.

³³ Sarnia Area Environmental Health Project, *Air Exposure Review: Assessment Report: Final Report* (March 2024), online (pdf): *Clean Air Sarnia and Area* <www.cleanairsarniaandarea.com/resources/documents/saehp/SAEHP-Air-Exposure-Review-Assesment-Report.pdf> [SAEHP Air Exposure Review].

³⁴ Treasury Board of Canada Secretariat, "Find Sites by Province or Territory" (last visited 30 September 2025), online: *Government of Canada* <www.tbs-sct.gc.ca/fcsi-rscf/cen-eng.aspx?dataset=prov&sort=name>.

³⁵ Treasury Board of Canada Secretariat, "Federal Contaminated Sites Inventory" (last visited 30 September 2025), online: *Government of Canada* <www.tbs-sct.gc.ca/fcsi-rscf/home-accueil-eng.aspx>.

³⁶ *National Strategy Respecting Environmental Racism and Environmental Justice Act*, SC 2024, c 11, [Preamble, para 2](#).

³⁷ *Ibid*, [Preamble, para 3](#).



AAMJIWNAANG FIRST NATION Band Council

978 TASHMOO AVENUE
SARNIA, ONTARIO
N7T 7H5
Phone: 519-336-8410
Fax: 519-336-0382

risks perpetuating discrimination against Indigenous Peoples. Further, the perpetuation of discrimination by any government body can run afoul of obligations under the *Charter of Rights and Freedoms* and the *Canadian Human Rights Act*.

As detailed below, by adding to the already significant cumulative effects of fossil fuel infrastructure in Aamjiwnaang's traditional territory, this Project will likely aggravate adverse impacts faced by Aamjiwnaang First Nation.

Adverse Impacts on Aamjiwnaang's Rights

High concentrations of environmental pollutants from industrial activities have previously forced Aamjiwnaang to declare a local state of emergency,³⁸ close community buildings³⁹ and urge members to refrain from going outdoors or using waterways.⁴⁰ Indeed, the federal government has recognized that these impacts on Aamjiwnaang's rights are severe and disproportionate, including by issuing an Interim Order to the petrochemical industry in Sarnia in response to these events last year.⁴¹ To this day, Aamjiwnaang continues to collect its own continuous air monitoring data – including on pollutants this Project will release, such as NO_x, PM_{2.5} and VOCs – and issue emergency warnings to community members when detected levels pose risks their health.⁴²

The cumulative effects of industrial pollution impede the rights of Aamjiwnaang members to use their own traditional lands for various cultural, spiritual and recreational purposes.

³⁸ See e.g. Councillor Darren Henry, "DECLARATION OF A LOCAL STATE OF EMERGENCY" (25 April 2024), online: *Aamjiwnaang First Nation* <www.aamjiwnaang.ca/wp-content/uploads/2024/04/20240425211407045.pdf>.

³⁹ See e.g. Aamjiwnaang Band Council, "NOTICE" (22 April 2024), online: *Aamjiwnaang First Nation* <www.aamjiwnaang.ca/wp-content/uploads/2024/04/Notice-April-22-2024.pdf>.

⁴⁰ See e.g. Aamjiwnaang First Nation Emergency Planning, "***URGENT NOTICE**" (4 August 2024), posted on *Aamjiwnaang First Nation Emergency Planning*, online: *Facebook* <www.facebook.com/share/p/19TzF5kmsf/>.

⁴¹ Environment and Climate Change Canada, "Minister Guilbeault imposes strict benzene pollution controls in the pursuit of environmental justice for Aamjiwnaang First Nation and Sarnia, Ontario" (17 May 2024), online: *Government of Canada* <www.canada.ca/en/environment-climate-change/news/2024/05/minister-guilbeault-imposes-strict-benzene-pollution-controls-in-the-pursuit-of-environmental-justice-for-aamjiwnaang-first-nation-and-sarnia-ontario.html>;

Environment and Climate Change Canada, "Protections for the Aamjiwnaang First Nation and Sarnia from benzene emissions officially extended for two years" (28 May 2024), online: *Government of Canada* <www.canada.ca/en/environment-climate-change/news/2024/05/protections-for-the-aamjiwnaang-first-nation-and-sarnia-from-benzene-emissions-officially-extended-for-two-years.html>.

⁴² "Air Monitoring Reports" (last visited 30 September 2025), online: *Aamjiwnaang First Nation* <www.aamjiwnaang.ca/environment-department/air-monitoring/>; "Emergency Response and Planning", (last visited 30 September 2025), online: *Aamjiwnaang First Nation* <www.aamjiwnaang.ca/emergency-response-and-planning-3/>.



AAMJIWNAANG FIRST NATION Band Council

978 TASHMOO AVENUE
SARNIA, ONTARIO
N7T 7H5
Phone: 519-336-8410
Fax: 519-336-0382

Aamjiwnaang members are deprived of their rights to hunt and fish while emergency warnings or closures are in place. Even when emergency warnings or closures are not in effect, Aamjiwnaang members cannot meaningfully exercise these rights without the real and reasonable fear of exposure to toxic substances that may accumulate over time and threaten their health. Consequently, these cumulative effects interfere with Aamjiwnaang members' ability to live off the land and water, in accordance with their protected traditions and practices.

Critical structures that advance Aamjiwnaang's ability to self-govern are also located near multiple pollution sources, such as band offices, community centres and daycares.⁴³ Aamjiwnaang has previously been forced to relocate or lose access to these sites of cultural significance due to the cumulative effects of industrial pollution. Losing access to these locations diminishes Aamjiwnaang's capacity to self-govern and exercise jurisdiction over matters of family and child welfare in its community.

The cumulative effects of pollution in Chemical Valley have severely worsened the health and well-being of Aamjiwnaang members as well. A 2021 study found that children born in Sarnia in the 1990s and early 2000s had a disproportionately higher risk of developing asthma in their first few years of life compared to children in other neighbouring cities.⁴⁴ In Aamjiwnaang, these risks have become reality, as numerous community members receive prescriptions for inhalers each year to mitigate asthma and other respiratory conditions. As SAEHP's Air Exposure Review released last year found, Aamjiwnaang members also face elevated incremental lifetime cancer risk compared to residents outside the study area.⁴⁵

In sum, the cumulative effects of industrial pollution already cause adverse effects on Aamjiwnaang member's rights to hunt and fish. When pollution levels spike, Aamjiwnaang members cannot use their traditional lands for cultural, spiritual and recreational practices, or can only do so at unacceptable risk to their health and families. The cumulative impacts of pollution also restrict Aamjiwnaang's access to key locations that are significant to its

⁴³ Emma Loop, "Aamjiwnaang First Nation near Sarnia tells some members to evacuate over high benzene levels", *CBC* (13 June 2025), online: <www.cbc.ca/news/canada/windsor/sarnia-benzene-aamjiwnaang-first-nation-chemical-evacuation-1.7560742>; Desmond Brown, "Aamjiwnaang First Nation set pollution levels that would trigger closure of facilities", *CBC* (3 May 2024), online: <www.cbc.ca/news/canada/windsor/aamjiwnaang-first-nation-air-standards-1.7194067>; Bob Becken, "Aamjiwnaang First Nation members say industrial benzene emissions in Sarnia, Ont., area made them ill", *CBC* (18 April 2024), online: <www.cbc.ca/news/canada/windsor/aamjiwnaang-harmful-chemicals-community-reaction-1.7177365>.

⁴⁴ Dhenuka Radhakrishnan et al, "Comparison of childhood asthma incidence in 3 neighbouring cities in southwestern Ontario: a 25-year longitudinal cohort study" (2021) 9:2 *CMAJ Open* E433, online: <pmc.ncbi.nlm.nih.gov/articles/PMC8101639/>.

⁴⁵ SAEHP Air Exposure Review, *supra* note 33 at [165](#), [170](#).



AAMJIWNAANG FIRST NATION Band Council

978 TASHMOO AVENUE
SARNIA, ONTARIO
N7T 7H5
Phone: 519-336-8410
Fax: 519-336-0382

heritage and self-determination as a Nation. Moreover, these pollutants pose clear and substantial dangers to Aamjiwnaang members' health and well-being.

These previously demonstrated impacts support the need for a federal impact assessment to account for any cumulative effects of further pollution by this Project. Otherwise, the Agency may fail to account for the potential adverse effects of this Project that are compounded by other existing and planned industrial developments. A full impact assessment is therefore required to ensure the protection of Aamjiwnaang's Aboriginal, Treaty and Title rights.

3.1.2 Project-Specific Impacts on Air Quality

The Project's own anticipated emissions, both cumulatively with existing pollution effects in Chemical Valley and by themselves, will likely cause adverse impacts to air quality. As discussed earlier, the IPD's information on air quality contains significant gaps in detail, such as its exclusion of pollutants known to impact human health. Moreover, the Project also risks causing distinct adverse impacts on air quality described in this section. Degraded air quality caused by the Project itself in turn risks infringing Aamjiwnaang members' rights in similar ways to those established above, such as infringing their rights to hunt and fish, cutting off access to vital community sites and causing unacceptable health risks.

In particular, the Project's NO_x emissions will exceed the Canadian Ambient Air Quality Standards (CAAQS). As the Proponent recognizes in its Air Quality Assessment, the CAAQS have set a health-protective standard for NO₂ concentrations of 42 parts per billion (ppb) or 78.9 micrograms per cubic metre (µg/m³) over a one-hour averaging period.⁴⁶

The Project's predicted one-hour NO_x concentrations during startup and shutdown are 135.8 µg/m³ at grid receptors and 83.2 µg/m³ at sensitive receptors.⁴⁷ These estimates exceed the CAAQS by 72% and 5%, respectively. Since the Proponent asserts that the facility will operate for only 1,500 hours per year — around 17% of total hours — startup and shutdown emissions will likely comprise a significant share of the Project's effects.⁴⁸

The IPD ignores that the Project will breach the CAAQS and claims that NO_x emissions will comply with Ontario's Ambient Air Quality Criteria (AAQC) instead.⁴⁹ However, the CAAQS provide more appropriate standards for federal impact assessment purposes, especially with regard to adverse effects faced by a First Nation like Aamjiwnaang.

⁴⁶ Canadian Council of Ministers of the Environment, "CAAQS" (last modified 2025), online: <ccme.ca/en/air-quality-report#slide-7>; IPD, *supra* note 2 at [156](#).

⁴⁷ IPD, *supra* note 2 at [95](#).

⁴⁸ *Ibid* at [90–91](#).

⁴⁹ *Ibid* at [95](#).



AAMJIWNAANG FIRST NATION Band Council

978 TASHMOO AVENUE
SARNIA, ONTARIO
N7T 7H5
Phone: 519-336-8410
Fax: 519-336-0382

First, the provincial AAQC are significantly under-protective of health. Ontario's AAQC standard allows one-hour concentrations of NO₂ to reach up to 200 ppb or 400 µg/m³, exceeding the federal CAAQS roughly five-fold.⁵⁰ Whereas the CAAQS have been updated to reflect the latest health-based evidence in 2025,⁵¹ the AAQC standard for NO_x has remained unchanged for over 20 years since it was enacted in 2005.⁵² Since the AAQC are not health protective, the Project's AAQC compliance cannot negate its exceedance of the CAAQS. The health risks of NO_x exposure are already well known and recognized through the federal government's toxic substances list,⁵³ making an impact assessment according to federal standards necessary.

Second, the federal CAAQS offer more clarity and consistency for the impact assessment process. Without explanation, the Proponent cites the CAAQS elsewhere in the IPD when predicted emissions would meet federal standards but omits the CAAQS when emissions would exceed them. For example, the Proponent uses both the CAAQS and AAQC to benchmark its normal operating conditions,⁵⁴ but only mentions the AAQS for startup and shutdown conditions.⁵⁵ The CAAQS must apply consistently across a federal impact assessment process that adheres to Parliament's direction to "integrate[] scientific information"⁵⁶ and to ensure protection of the rights and health of Aamjiwnaang members, rather than merely highlighting favourable test results for the Proponent.

The Proponent also avoids addressing these potential adverse effects of NO_x emissions by referencing Ontario's Guideline A-5 Atmospheric Emissions from Stationary Combustion Turbines.⁵⁷ But as the IPD admits, this policy document is only intended to control emissions during operations of no more than 1,500 hours per year.⁵⁸ It is therefore unclear that the Proponent has accounted for startup and shutdown conditions where NO_x concentrations will pose health risks. Moreover, the Proponent's assertion of its operating conditions is tentative and non-binding at this time. A federal impact assessment is still

⁵⁰ Ministry of the Environment, Conservation and Parks, "Ontario's Ambient Air Quality Criteria" (last modified 10 July 2025), online: *Government of Ontario* <www.ontario.ca/page/ontarios-ambient-air-quality-criteria>; IPD, *supra* note 2 at 156.

⁵¹ Canadian Council of Ministers of the Environment, "CAAQS" (last modified 2025), online: <ccme.ca/en/air-quality-report#slide-7>.

⁵² Compare O Reg 419/05, [Schedule 3](#) (2023), with O Reg 419/05, [Schedule 3](#) (2005).

⁵³ Environment and Climate Change Canada, "Toxic substances list: schedule 1" (last modified 2 June 2025), online: *Government of Canada* <www.canada.ca/en/environment-climate-change/services/canadian-environmental-protection-act-registry/substances-list/toxic/schedule-1.html>; *Canadian Environmental Protection Act, 1999*, SC 1999, c 33, [Schedule 1](#).

⁵⁴ See e.g. IPD, *supra* note 2 at [96](#), [170](#).

⁵⁵ *Ibid* at [95](#), [167](#).

⁵⁶ IAA, [Preamble, para 4](#).

⁵⁷ IPD, *supra* note 2 at [88](#).

⁵⁸ *Ibid*.



AAMJIWNAANG FIRST NATION Band Council

978 TASHMOO AVENUE
SARNIA, ONTARIO
N7T 7H5
Phone: 519-336-8410
Fax: 519-336-0382

needed to assess the potential adverse effects in the plausible scenario that the Proponent chooses to deviate from this 17% operating estimate due to future increases in energy demands.

A final indicator that the Project's own environmental effects are sufficient to warrant an impact assessment is that the Project was designated for Agency review as a "fossil fuel-fired power generating facility with a production capacity of 200 MW or more."⁵⁹ According to the Agency, designated projects are those that are "determined to have the greatest potential for adverse and complex effects in areas of federal jurisdiction".⁶⁰ At around 500 MW, the Project's capacity is two-and-a-half times the threshold at which a facility is presumed to have potential adverse and complex effects.⁶¹ There is nothing in the materials provided by the Proponent to guarantee that the Project will not cause these presumptive impacts.

The Proponent has not provided sufficient assurance that these potential adverse impacts on air quality posed by the Project can be avoided. Worsened air quality due to the Project's anticipated NO_x emissions may potentially impact Aamjiwnaang members' rights to use their lands for traditional purposes such as hunting and fishing. These emissions may force Aamjiwnaang to evacuate or close critical community structures. Finally, they may pose risks to Aamjiwnaang members' health and well-being, which warrant a full impact assessment to ensure that these risks are considered and minimized.

3.1.3 Impacts on Sites of Archaeological Significance

Aamjiwnaang has identified several factors indicating that a full impact assessment is needed to assess the Project's potential adverse impacts on sites of archaeological significance. The Agency should conduct an impact assessment to ensure that these issues receive more meaningful consideration than in the Proponent's archaeological investigation.

First, the Project site is unlikely to have ever received a comprehensive assessment of its archaeological significance in the past. The previous facility, the coal-fired Lambton Generating Station, opened in 1969 and preceded the federal impact assessment regime.⁶² In the absence of a proper assessment to determine the archaeological impact of development on the site, a full impact assessment should be conducted now to identify and minimize these potential adverse effects before risking further disturbances. It is

⁵⁹ *Physical Activities Regulations*, SOR/2019-285, s 30;

⁶⁰ Impact Assessment Agency of Canada, "Designating a Project under the *Impact Assessment Act*" (last modified 4 September 2025), online: *Government of Canada* <www.canada.ca/en/impact-assessment-agency/services/policy-guidance/designating-project-impact-assessment-act.html>.

⁶¹ IPD, *supra* note 2 at 12.

⁶² Tyler Kula, "OPG plans to decommission Lambton Generating Station in 2017", *Chatham Daily News* (22 November 2016), online: <www.chathamdailynews.ca/2016/11/22/lambton-generation-station-to-be-decommissioned>.



AAMJIWNAANG FIRST NATION Band Council

978 TASHMOO AVENUE
SARNIA, ONTARIO
N7T 7H5
Phone: 519-336-8410
Fax: 519-336-0382

incumbent on the Agency to ensure that archaeological impacts are meaningfully considered – especially where it is reasonable to believe that no comparable assessment has taken place before – and not addressed through minimum or cursory processes.

Second, Aamjiwnaang has identified areas in the nearby vicinity of the Project, as close as 100 m to the planned site, where items of archaeological significance may lie. Areas around the site will likely experience increased disruption throughout the process of building and commissioning the Project. However, the Proponent has not provided assurance that these nearby areas have been considered in its investigation, as non-village sites adjacent to a project by more than 10 m do not trigger an archaeological assessment beyond Stage 2 under provincial guidelines.⁶³ The Proponent only states that “[a]dditional site investigations or avoidance measures are being considered” but offers no concrete guarantee that any of these surrounding areas will undergo investigation in the future.⁶⁴

These areas are particularly likely to contain items of archaeological significance since the Sarnia region marks a critical gathering place, where Lake Huron flows into the St. Clair River, that was used by First Nations for millennia.⁶⁵ This waterway facilitated fish harvesting and trading by Indigenous Peoples throughout history. Accordingly, a full impact assessment is needed to identify and minimize possible disruptions to sites of archaeological significance during the Project’s construction process.

3.2 Concerns Over the Proponent’s Presentation of Impacts and Lack of Information

Aside from the potential adverse impacts identified above, Aamjiwnaang directs the Agency’s attention to other areas of the IPD that are uncertain, ambiguous or vague regarding critical issues that will affect Aamjiwnaang members, demonstrating the need for a full impact assessment to ensure that these issues are properly considered.

First, the Proponent adopts the assumption for calculating its greenhouse gas (GHG) emissions that the Project will only operate 1,500 hours per year, or 17% of possible hours.⁶⁶ In other words, the Project’s stated impacts are presented as though it will run for less than one fifth of every year. But once the Project’s infrastructure is built, there is no guarantee or

⁶³ Ministry of Tourism and Culture, “Standards and Guidelines for Consultant Archaeologists” (2011) at [76](#), online (pdf): *Government of Ontario* <files.ontario.ca/mhstci-standards-guidelines-consultant-archaeologists-en-2022-03-29.pdf>.

⁶⁴ IPD, *supra* note 2 at [67](#).

⁶⁵ Paul Morden, “Recent artifacts discovery just the latest at known archaeological site”, *The Sarnia Observer* (18 May 2017), online: <www.theobserver.ca/2017/05/18/recent-artifacts-discovery-just-the-latest-at-known-archaeological-site>.

⁶⁶ IPD, *supra* note 2 at [90](#).



AAMJIWNAANG FIRST NATION Band Council

978 TASHMOO AVENUE
SARNIA, ONTARIO
N7T 7H5
Phone: 519-336-8410
Fax: 519-336-0382

requirement that the Proponent adheres to this initial assumption. In fact, the IPD makes clear that this assumption is uncertain and dependent on future energy demands.⁶⁷

As it is plausible that local and provincial energy demands may increase over time, the Agency should conduct a full impact assessment to examine different demand scenarios rather than screen out the Project based on this tentative and non-binding prediction. At a minimum, the potential for this project to operate at more than its stated capacity of 17% should favour an impact assessment to understand these uncertainties, including the potential for greater adverse effects from pollutants than initially anticipated.

The uncertainty of the Project's impact on GHG emissions also demands federal impact assessment, given the potential impacts on the Aamjiwnaang community brought by climate impacts on top of other pollutant impacts. Even under the assumption that the Proponent will choose to operate the Project for only 17% of each year, the IPD states that a "conservative" estimate places the Project's annual GHG emissions at up to 345,000 tonnes of carbon dioxide equivalent (CO₂e).⁶⁸ These annual GHG emissions are already significant and may rise above this conservative estimate, which would risk frustrating the emissions targets set out in federal law. Specifically, the federal government has announced its target of reducing GHG emissions by 45 to 50% below 2005 levels by 2035⁶⁹ and to further decreasing emissions to reach net-zero by 2050.⁷⁰ Achieving this reduction in GHG emissions is a key objective of the federal government to combat climate change and its potentially catastrophic impacts on lands, waters, species and other components of the environment within federal jurisdiction, as well as the rights and health of Aamjiwnaang members.

Further, this unabated gas plant project risks misalignment with the federal *Clean Electricity Regulations (CER)*, a crucial pillar of the federal government climate targets whose implementation plays a major part in determining Canada's contributions to detrimental climate impacts on Aamjiwnaang's Aboriginal, Treaty and Title rights.⁷¹ While the proponent acknowledges in the IPD that the *CER*, released in December 2024, will limit the carbon emissions from electricity generation and "ultimately eliminate emitting sources of supply connected to public electricity grids in Canada",⁷² there is no analysis in the IPD to determine how this unabated plant will meet the timelines and emissions requirements set

⁶⁷ *Ibid* at [91](#).

⁶⁸ *Ibid* at [90](#).

⁶⁹ The Honourable Steven Guilbeault, "Canada's next net-zero milestone: the 2035 emissions reduction target" (last modified 6 January 2025), online: *Government of Canada* <www.canada.ca/en/services/environment/weather/climatechange/climate-plan/2035-emissions-reduction-target/next-netzero-milestone.html>.

⁷⁰ *Canadian Net-Zero Emissions Accountability Act*, SC 2021, c 22, [s 6](#).

⁷¹ *Clean Electricity Regulations*, [SOR/2024-263](#).

⁷² IPD, *supra* note 2 at [87](#).



AAMJIWNAANG FIRST NATION Band Council

978 TASHMOO AVENUE
SARNIA, ONTARIO
N7T 7H5
Phone: 519-336-8410
Fax: 519-336-0382

out in the *CER*, and how the plant will avoid violating the mandatory net-zero emissions timelines set out in the *CER*.

Second, the Proponent has not made clear how it will source the natural gas needed for the Project. The IPD is ambiguous, stating that “[n]atural gas will be supplied through a new gas supply to the project site from a natural gas pipeline supplier, to be determined as the project progresses.”⁷³ As the exact source of this natural gas supply remains to be determined, the Proponent has not ruled out the likelihood of new pipeline construction. At a minimum, the IPD suggests that at least some additional construction is necessary even if the Project can connect to existing pipelines.⁷⁴ All potential adverse impacts that may arise from new natural gas infrastructure, including the risk of pipeline malfunctions or accidents, are relevant concerns that should be addressed through a full impact assessment.⁷⁵ Further, the lack of specificity of the Project’s pipeline infrastructure suggests further uncertainty on its potential impacts on air quality, as set out above. Without specifying its pipeline infrastructure, the details of some fugitive emissions will remain uncertain.

Third, the Proponent has provided only minimal or cursory assurances of the Project’s potential effects on species at risk. The Proponent informed Aamjiwnaang that species at risk assessments would take place during early summer 2025, including field investigations on bats, birds, amphibians and vegetation. However, the Proponent later failed to notify Aamjiwnaang of most of these scheduled assessment dates to enable Aamjiwnaang’s participation. For other assessments, the Proponent informed Aamjiwnaang only on short notice and failed to meaningfully engage with Aamjiwnaang. It is unclear how Aamjiwnaang’s concerns regarding species at risk that it raised to the Proponent were ultimately considered in the IPD’s brief conclusions on species at risk.⁷⁶

Fourth, the IPD is scarce on detail and analysis of potential impacts from the Project on water usage and any potential effects of the Project on aquatic species in the St. Clair River and local watershed. It is imperative that potential impacts to water and aquatic species be fully assessed, considering Aamjiwnaang’s recognized and asserted rights to water. In the IPD, the Proponent explains that water will be sourced from the Lambton Area Water Supply System, which is the primary supplier of water to Aamjiwnaang.⁷⁷ Despite having knowledge that the Project will demand water from this shared supply, the Proponent does not appear

⁷³ *Ibid* at [36](#).

⁷⁴ *Ibid* at [43](#).

⁷⁵ IAA, [s 22\(1\)\(a\)\(i\)](#).

⁷⁶ IPD, *supra* note 2 at [79–81](#).

⁷⁷ St. Clair Region Conservation Authority, “St. Clair River Tributaries: Subwatershed Report Card 2018” (February 2019) at [5](#), online (pdf): <www.scrca.on.ca/wp-content/uploads/2019/02/2018-SCRCA-WRC-St.-Clair-River-Tributaries.pdf>.



AAMJIWNAANG FIRST NATION Band Council

978 TASHMOO AVENUE
SARNIA, ONTARIO
N7T 7H5
Phone: 519-336-8410
Fax: 519-336-0382

to know the level of water usage required for the Project's operation, stating that "[p]rocess water consumption requirements will be determined as the project progresses".⁷⁸

This uncertainty is not acceptable. Aamjiwnaang's recognized and asserted rights to water demand a fulsome assessment of the potential impact of the Project on their water supply. Further, a full impact assessment is necessary to determine the possible impact of the Project on water quality in the St. Clair River and surrounding watershed, given the potential for impacts on aquatic species integral to Aamjiwnaang's right to fish. It is known from the IPD that the Project will collect runoff and discharge from the site to be released into the St. Clair River.⁷⁹ However, there are few guarantees for additional mitigation measures for this added runoff and discharge into these waters crucial to Aamjiwnaang's exercised and asserted rights. A full assessment of potential impacts from the Project's effects on the St. Clair and its watershed is necessary to understand and avoid potential adverse impacts.

Given the uncertainty surrounding these aspects of the Project, the Agency should conduct a full impact assessment to address unresolved concerns surrounding GHG emissions, pipeline infrastructure and species at risk that may impact federal jurisdiction.

4. Ontario's Environmental Assessment is an Inadequate Substitute for a Federal Impact Assessment

The Agency cannot rely on Ontario's Environmental Assessment (EA) process as an adequate substitute for a federal impact assessment. The streamlined provincial process is a self-assessment by the proponent without meaningful oversight. As the IPD confirms, this Project is a Category B project under Ontario's *Environmental Assessment Act*,⁸⁰ and is therefore exempt from a Comprehensive EA if it undergoes an Environmental Screening Process.⁸¹ Instead of a fulsome EA, the proponent has only committed to and is only required to submit an Environmental Review Report. This report is not an independent review of the project, it is — as the Ontario Guide describes — a "self-assessment process".⁸² There is no guarantee that the project will be required to undergo a Comprehensive EA where the relevant provincial departments and Ministers could determine whether this project adequately prevents or mitigates environmental harms.

Section 16(2)(f.1) of the Act obligates the Agency to consider whether this alternate means would allow another jurisdiction to "address" the potential adverse effects within federal

⁷⁸ IPD, *supra* note 2 at [37](#).

⁷⁹ *Ibid.*

⁸⁰ *Ibid* at [75](#).

⁸¹ "Guide to Environmental Assessment Requirements for Electricity Projects" (last modified February 2024) at [12](#), online: *Government of Ontario* <prod-environmental-registry.s3.amazonaws.com/2024-04/Guide%20to%20EA%20Requirements%20for%20Electricity%20Projects_Feb%202024_02.pdf>.

⁸² *Ibid* at [22](#).



**AAMJIWNAANG
FIRST NATION
Band Council**

978 TASHMOO AVENUE
SARNIA, ONTARIO
N7T 7H5
Phone: 519-336-8410
Fax: 519-336-0382

jurisdiction caused by the Project, not simply study or gather information on the Project.⁸³ Interpreting Ontario's process to satisfy this obligatory requirement would be both an incorrect and unreasonable interpretation of the Act.

The lack of accountability and transparency regarding environmental effects through the streamlined Ontario EA process, including in relation to federal effects and the rights and health of Aamjiwnaang members, should compel the Agency to order an impact assessment to ensure environmental concerns are independently investigated and adequately addressed by the proponent.

5. Conclusion

For the reasons set out in these comments, detailing the Project's potential adverse effects and gaps in information, Aamjiwnaang submits that the Project be required to undergo an impact assessment. The potential impacts on both Aamjiwnaang's Aboriginal, Treaty and Title rights and areas of federal jurisdiction are significant. Gaps in information relating to the Project's emissions, fuel supply and effects on species at risk warrant a thorough assessment as well. It would be unreasonable for the Agency to conclude that the Project should not be required to undertake an impact assessment given these deficiencies.

Sincerely,

Fraser Thomson
Barrister & Solicitor

Reid Gomme
Barrister & Solicitor

Encl.:

Appendix A: Visit to Canada - Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

cc:

Chief Janelle Nahmabin, Aamjiwnaang First Nation (chief@aamjiwnaang.ca)
Harrison Plain, Aamjiwnaang First Nation (hplain@aamjiwnaang.ca)
James Wrightman, Aamjiwnaang First Nation (jwrightman@aamjiwnaang.ca)
Courtney Jackson, Aamjiwnaang First Nation (cjackson@aamjiwnaang.ca)

⁸³ /AA, [s 16\(2\)\(f.1\)](#).



General Assembly

Distr.: General
27 November 2020

Original: English

Human Rights Council

Forty-fifth session

14 September–2 October 2020

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Visit to Canada

Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes* **

Summary

The Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Baskut Tuncak, visited Canada from 24 May to 6 June 2019. The present report contains his findings and recommendations to the Government of Canada and Canadian business enterprises.

* The summary of the report is being circulated in all official languages. The report itself, which is annexed to the summary, is being circulated in the language of submission only.

** The present report was submitted after the deadline in order to reflect recent developments.



Annex

Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes on his visit to Canada

I. Introduction, background and context

1. The Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Baskut Tuncak, expresses his most sincere gratitude to the Government of Canada for the invitation to carry out the visit and for the full support and collaboration extended to him. He thanks all the individuals and organizations he met in Canada for sharing their thoughts and information on the struggles, challenges and opportunities they face in improving the protection of human rights in the context of exposure to hazardous substances and wastes (toxics).¹

2. The Special Rapporteur visited Ottawa, Toronto, Asubpeeschoseewagong Netum Anishinabek (also formerly known as Grassy Narrows First Nation), Aamjiwnaang First Nation, Sarnia, Fort McMurray, Edmonton, Vancouver and Montreal, where he met representatives of the federal Government and their representatives from the Ontario, Quebec, Alberta and British Columbia governments. He met with indigenous peoples' representatives and elders, civil society representatives, defenders,² academics, youth representatives and representatives of the business community.

3. The Special Rapporteur is grateful to all who took time and opened their doors to dialogue in order to participate in a cross-cutting debate on protecting the human rights of those affected by toxic exposure.

A. Implications of toxics for the human rights obligations of Canada

4. Canada has ratified or acceded to seven United Nations human rights treaties and therefore has numerous obligations in relation to the impacts on human rights of hazardous substances and wastes. Under these treaties, Canada has the obligation to protect, respect and fulfil the human rights to life and dignity, health, security of the person and bodily integrity, safe food and water, adequate housing, safe and healthy working conditions, among others. Canada has obligations regarding the rights to information, participation, access to justice and remedies, and specific obligations regarding the rights of indigenous peoples, children, people of different genders, workers, minorities, migrants and persons with disabilities, among other vulnerable groups, as discussed below. These are all underpinned by the fundamental principle of non-discrimination.

5. Together, these rights and obligations create a duty for Canada to prevent exposure to toxic and otherwise hazardous substances. The only way to protect against violations of the above-mentioned human rights is to prevent exposure.³ This is a fundamental obligation that

¹ Consistent with the previous reports of the current mandate holder and those of his predecessors, hazardous substances and wastes are not defined strictly; they include, inter alia, toxic industrial chemicals and pesticides, pollutants, contaminants, explosive and radioactive substances, certain food additives and various forms of waste. For ease of reference, the Special Rapporteur refers to hazardous substances and wastes as "toxics" and, therefore, in the present report, the term "toxics" (or "toxic substances") should be understood to also include non-toxic but hazardous substances and wastes.

² www.ohchr.org/en/issues/srhrdefenders/pages/defender.aspx.

³ A/74/480.

rests with the State.⁴ However, businesses too have critical responsibilities to prevent exposure.

B. Canadian businesses and human rights

6. All business enterprises in Canada have responsibilities to respect human rights. In fulfilling these responsibilities, business enterprises should carry out robust due diligence in their supply chains and business relationships in order to identify and assess the impacts of toxic exposure and ensure prompt and accurate public reporting.⁵

7. During his mission, the Special Rapporteur focused on the extractive industries, in particular those involved in mining metals and oil sands and in constructing oil and gas pipelines, and on the chemical industries, including those using pesticides in agriculture. Over 50 per cent of multinational mining companies are based in Canada.⁶ In 2015, agriculture and agribusiness, including food processing, contributed to approximately 2.6 per cent of the gross domestic product of Canada.

C. Cooperation, collaboration and shared jurisdiction

8. Canada has taken positive steps to increase collaboration between relevant authorities to protect the human rights of those exposed to toxics. Federal and provincial jurisdictions overlap in important areas, namely health, the environment and agriculture. Health Canada and Environment and Climate Change Canada share responsibilities for many toxic chemicals under the Canadian Environmental Protection Act, 1999. This is a good practice that other States may wish to emulate. Other examples of cooperation include the Chemicals Management Plan,⁷ which brings existing federal chemical programmes together under a single strategy. Strengthened collaboration between various government bodies can be leveraged to address intersectional inequalities in accessing rights in relation to toxic exposure.

9. In some respects, discussed below, the flexibility given to provinces and territories to set standards more stringent than the federal requirements has reduced actual and potential exposure to toxic substances. For example, the legally binding and more stringent air pollution limits in certain provinces illustrate the potential positive role of provincial autonomy.

10. The fact that jurisdiction is shared by the federal, provincial and territorial authorities has also created challenges, however. One example is the jurisdictional quagmire faced by indigenous peoples, whose reserves often fall between the cracks of federal and provincial jurisdiction, posing a risk of unregulated toxic exposure. For example, throughout Canada, the provincial drinking water quality standards are not applicable on reserves and the federal standards, which have yet to be set, are not legally binding. Jurisdictional separation is not an excuse for shortcomings by the Government in taking prompt action to address toxic exposure.

11. The active participation of Canada in international forums on toxics is welcome. Canada has ratified all international treaties on chemicals and wastes and co-chairs the intersessional process initiated by the International Conference on Chemicals Management to prepare recommendations for the implementation beyond 2020 of the Strategic Approach to International Chemicals Management, a non-binding global policy framework on toxic chemicals and wastes.

⁴ Ibid.

⁵ Ibid.

⁶ Submission by the Assembly of First Nations (2019).

⁷ www.canada.ca/en/health-canada/corporate/about-health-canada/accountability-performance-financial-reporting/evaluation-reports/evaluation-phase-chemicals-management-plan-2011-2012-2015-2016.html#exsum.

D. Implementation of international obligations

12. The Canadian Charter of Rights and Freedoms, the Canadian Human Rights Act and provincial and territorial human rights codes form the main national human rights framework. The Canadian Human Rights Commission was established by the Canadian Human Rights Act. As discussed below, these instruments, the various courts and tribunals that make decisions in relation to them and the Commission are the foundation for addressing discrimination related to the disproportionate impacts of toxic exposure.

13. The Canadian Human Rights Commission faces various challenges, however, including limited public awareness of available avenues for filing complaints and a limited mandate to handle human rights issues relating to discrimination. Therefore, with regard to human rights violations or abuses linked to toxics, the Commission is hindered from offering much-needed services.

14. A concern that was expressed repeatedly was that Canada does not pay appropriate attention to the implementation of relevant international obligations and recommendations. Various recommendations of United Nations human rights mechanisms, including on the justiciability of economic, social and cultural rights, have not been cohesively implemented.⁸ While the international human rights obligations of Canada may be implemented in law and policy, economic, social and cultural rights are not directly actionable in Canadian courts. Furthermore, insufficient funding at the provincial, territorial and municipal levels of government to strengthen implementation of these rights poses a hindrance.⁹ Thus, the rights to health, to safe water and food, to adequate housing, to safe and healthy working conditions, among other rights implicated by toxics, do not appear to be directly actionable under Canadian law.

15. Reports cited the tendency of the Government to focus on reporting obligations at the expense of comprehensive planning, assessment and action on human rights recommendations. The intergovernmental Continuing Committee of Officials on Human Rights has reportedly not consistently followed up on the practical implementation of recommendations.¹⁰ The Special Rapporteur notes that the Federal-Provincial-Territorial Ministers Responsible for Human Rights met in 2017, for the first time in nearly 30 years. Furthermore, environmental rights do not feature prominently in the mandate of the Canadian Human Rights Commission. Consequently, the Special Rapporteur considers that the Government must strengthen its legal and institutional frameworks and mechanisms to implement all of its obligations under international human rights law.

16. As discussed below, the Canadian Environmental Protection Act and various government plans and programmes offer opportunities to further integrate human rights protection into the Canadian legal framework.

II. Rights to life, health and bodily integrity

17. Pollution and exposure to toxic chemicals threaten the right to life and a life with dignity, as environmental degradation threatens or poisons individuals and communities, poses health challenges and erodes opportunities to maintain bodily integrity.¹¹

18. Canada has taken steps in several areas to implement its duty to prevent exposure. One example relates to air pollution, which accounts for millions of premature deaths globally.¹² Air quality in Canada has improved by some metrics in recent years.¹³ For example, the phasing out of coal-based power plants in Ontario has had a positive impact.¹⁴

⁸ E/C.12/CAN/CO/6.

⁹ *Ibid.*

¹⁰ A/HRC/22/50/Add.1, para. 12, and E/C.12/CAN/CO/4-E/C.12/CAN/CO/5, para. 12.

¹¹ A/74/480.

¹² www.who.int/health-topics/air-pollution#tab=tab_1.

¹³ www.canada.ca/en/environment-climate-change/services/environmental-indicators.html. See also <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2016-151/index.html>.

¹⁴ www.ontario.ca/page/end-coal.

Canada has also taken action to prevent exposure to other substances of concern. For example, since the 1970s, various measures have contributed to a 90 per cent reduction in mercury emissions.¹⁵

19. The recent regulations restricting the use and export of asbestos¹⁶ and collaborative initiatives to protect workers from toxic exposure¹⁷ are notable.

20. The efforts of Canada to better understand the nuanced ways in which early-age exposure to toxics can affect health are encouraging. As has often been said, children are not little adults. The impacts of exposure to toxics during sensitive periods of development are unique and multifaceted. The silent pandemic of diseases and disabilities linked to childhood exposure adversely affects human rights at various stages of life, with profound economic costs, including in terms of health care and lost productivity.

21. Despite these efforts, problems persist. Canada had the second-highest number of known mining accidents during the period 2007–2017, a significant increase over previous years.¹⁸ Such accidents display only one avenue through which the rights of workers and nearby communities are threatened and, in certain instances, ignored.

22. The people and peoples of Canada are chronically exposed to a multitude of toxic substances; this can and should be prevented. Chronic exposure to various hazardous substances in Canada contributes tremendously to premature deaths and numerous diseases and disabilities. For example, exposure to just three anthropogenic air pollutants prematurely kills an estimated 14,600 people annually in Canada.¹⁹ In 2015, urban air pollution, including exposure to fine particulate matter (PM_{2.5}), accounted for 7,712 deaths and to health-related and well-being-related costs estimated at 36 billion Canadian dollars (Can\$).²⁰

23. Air pollution poses significant health risks to children in Canada, including adverse pregnancy outcomes in mothers and respiratory health problems.²¹ One study has found that vehicle emissions contribute to about 20 per cent of childhood asthma cases.²² Furthermore, studies suggest that there is a link between an increased risk of early childhood cancers and prenatal exposure to ambient air pollution.²³

24. In 2011, occupational exposure to toxics accounted for 3.9–4.2 per cent of cancer cases, a significant contribution to the cancer burden of Canada.²⁴ A 2018 study in British Columbia found that cancer caused more than 86 per cent of firefighter deaths and that firefighters were often exposed to toxic carcinogens from fire sites.²⁵ Another study found strikingly high rates of acute myeloid leukaemia in areas highly populated by industrial

¹⁵ www.ourcommons.ca/DocumentViewer/en/42-1/INAN/meeting-155/evidence.

¹⁶ <https://pollution-waste.canada.ca/environmental-protection-registry/regulations/view?id=150>.

¹⁷ www.canada.ca/en/health-canada/programs/consulting-integrated-strategy-protection-canadian-workers-exposure-chemicals.html.

¹⁸ https://gridarendal-website-live.s3.amazonaws.com/production/documents/:s_document/371/original/RRR_MineTailings_lores.pdf?1510660693, p. 27.

¹⁹ http://publications.gc.ca/collections/collection_2018/sc-hc/H144-51-2017-eng.pdf;
http://publications.gc.ca/collections/collection_2019/sc-hc/H144-51-2019-eng.pdf;
www.canada.ca/en/health-canada/services/air-quality/health-effects-indoor-air-pollution.html.

²⁰ www.iisd.org/story/costs-of-pollution-in-canada/.

²¹ Samuel Koranteng, Alvaro R. Osornio Vargas and Irena Buka, “Ambient air pollution and children’s health: a systematic review of Canadian epidemiological studies”, *Paediatrics and Child Health*, vol. 12, No. 3 (March 2007), pp. 225–233.

²² www.vchri.ca/articles/2019/07/03/1-5-new-cases-childhood-asthma-canada-are-caused-traffic-pollution; Pattanun Achakulwisut and others, “Global, national, and urban burdens of paediatric asthma incidence attributable to ambient NO₂ pollution: estimates from global datasets”, *The Lancet Planetary Health*, vol. 3, No. 4 (April 2019).

²³ Éric Lavigne and others, “Maternal exposure to ambient air pollution and risk of early childhood cancers: a population-based study in Ontario, Canada”, *Environment International*, vol. 100 (March 2017), pp. 139–147.

²⁴ www.occupationalcancer.ca/wp-content/uploads/2019/09/OCRC_National-Burden-Report_2019.pdf.

²⁵ www.thesafetymag.com/ca/topics/occupational-hygiene/millions-of-canadians-exposed-to-cancer-causing-agents-at-work/184489.

facilities, including Sarnia and Hamilton, well above the national average.²⁶ Canadians continue to be exposed to pesticides that are banned in other countries for health and environmental reasons but that are still in use in Canada.

25. The environmental health laws of Canada do not adequately protect health. Canada does not have national legally binding ambient air pollution standards and some provincial laws offer considerable flexibility for industries to develop their own standards, for example in Sarnia, Ontario. This flexibility impedes the enforcement of health-based standards and accountability for violations. For example, between 2010 and 2014 the oil sands industry contributed to some substances being in the air in concentrations exceeding provincial health thresholds, elevating the likelihood of adverse health impacts.²⁷ Notable ongoing efforts by the Government include supporting indigenous community-led initiatives and contributing to data generation through air quality and odour investigations.

26. While the situation is not particular to Canada alone, there is increasingly a need to formulate binding caps on ambient pollution. An opportunity for taking corrective action has been presented through the review of the Canadian Environmental Protection Act, which could mandate ministers to establish binding caps on ambient air pollution and enact regulations to safeguard water quality.²⁸ This would contribute towards addressing acute air pollution in hotspots. Failing to consider this, a province may remain within the provincial air quality levels yet communities in hotspots suffer inordinately higher levels of pollution than the general population, posing heightened risks to their life and health.

27. The Canadian Environmental Protection Act unfortunately requires exposure to be factored into assessments to designate substances as “toxic”, which manipulates classification of hazardous substances and denies the public its right to know.²⁹ Where substances are determined to be toxic at an international level, such as by the European Union or the Organization for Economic Cooperation and Development (OECD), the Government should implement interim measures, such as preliminary bans, to expedite exposure reduction.

28. Contamination from the extractive industries, including the massive tailings ponds in Alberta, which could seep into local water supplies, is of concern. Local communities reported limitations in accessing traditional foods or water sources, citing sickened animals, contaminated meat and mutations in fish. Despite apparent adherence to regulations, evidence confirms the claims of local communities, including regarding access to food and water. For example, despite compliance with the Fisheries Act, 76 per cent of metal mines have confirmed effects on fish, fish habitat or both. Of these mines, 92 per cent confirmed at least one effect of a magnitude that may be indicative of a higher risk to the environment.³⁰

29. Finally, Canadians experience numerous health problems, including cancers, reproductive health issues and behavioural and developmental challenges linked to childhood exposure to toxics.³¹ For example, children ingest “acceptable” traces of harmful pesticides in food.³² Children are also exposed to air pollution such as particulate matter – from phthalates in fragrances, volatile organic compounds in cleaning products and other consumer products – at home, at school and outdoors.³³ It is widely acknowledged that

²⁶ Feras M. Ghazawi and others, “Analysis of acute myeloid leukemia incidence and geographic distribution in Canada from 1992 to 2010 reveals disease clusters in Sarnia and other industrial US border cities in Ontario”, *Cancer*, vol. 125, No. 11 (June 2019), pp. 1886–1897.

²⁷ www.aer.ca/documents/reports/FortMcKay_FINAL.pdf.

²⁸ <https://cela.ca/wp-content/uploads/2019/07/CEPA-Cosmetics-Regs-Briefing-Note.pdf>.

²⁹ www.canada.ca/en/health-canada/services/chemical-substances/canada-approach-chemicals/risk-assessment.html.

³⁰ http://publications.gc.ca/collections/collection_2016/eccc/En14-64-2016-eng.pdf.

³¹ Michael Tyshenko and others, “Regulatory and nonregulatory strategies for improving children’s environmental health in Canada”, *Journal of Toxicology and Environmental Health*, vol. 10, Nos. 1–2 (December 2007), pp. 143–156; Nicole De Long and Alison Holloway, “Early-life chemical exposures and risk of metabolic syndrome”, *Diabetes, Metabolic Syndrome and Obesity: Targets and Therapy*, vol. 2017, No. 10 (March 2017), pp. 101–109.

³² <https://d36rd3gki5z3d3.cloudfront.net/wp-content/uploads/2018/09/Whats-In-Your-Lunch-Glyphosate-Report-Sept-2018.pdf?x19835>.

³³ <https://environmentaldefence.ca/2018/04/23/asthma-rates-children-toxics/>.

children are also exposed to other pollutants, including lead, mercury, dioxins, polychlorinated biphenyls, some solvents, polyhalogenated compounds such as flame retardants and so-called “forever chemicals”, and that the list of adverse effects identified is growing steadily.³⁴

III. Non-discrimination

30. The Canadian Charter of Rights and Freedoms and legislation at all levels of government guarantee the right of every individual to equality and equal protection and benefit of the law without discrimination on various grounds.³⁵

31. While the constitutional recognition of protection against discrimination is applauded, such recognition does not appear to have served as a significant safeguard or recourse for disproportionately affected communities. A 2018 analysis found that health inequalities existed in respect of various socioeconomic indicators, including income, employment and occupational status, and that certain groups, such as indigenous peoples, immigrants and racial minorities, had less favourable health outcomes than the general population.³⁶ In examining toxic exposure in Canada, the question of discrimination becomes simply unavoidable. Canada has not explicitly recognized the right to a healthy environment at the federal level,³⁷ unlike Quebec and Ontario, as well as most countries in the world. That said, it has been argued that the Canadian Charter of Rights and Freedoms may be implicitly read to include environmental rights protections. As shown in recent climate change litigation,³⁸ a constitutional provision would place Canada at the forefront of global efforts. In the interim, a provision under the Canadian Environmental Protection Act³⁹ would extend the application of the right to everyone in Canada.

32. Equality and non-discrimination require urgent attention in Canada. The present section focuses on those at risk of being left behind notwithstanding the general progress made. Different levels of discrimination intersect, exacerbating the problem and making it necessary to consider the ways in which intersectional forms of discrimination manifest themselves in the impacts of toxic exposure.

A. Indigenous peoples

33. The fact that indigenous peoples in Canada have struggled for recognition of their human rights is nothing new. History has shaped the laws, policies and practices of Canada today regarding indigenous rights.

34. Many interlocutors spoke positively about the roles of the Truth and Reconciliation Commission and the National Inquiry into Missing and Murdered Indigenous Women and Girls in moving away from a sad history of cultural genocide and assimilation.⁴⁰ The Government acknowledges the “unacceptable socioeconomic gap” that has resulted from the development of colonial structures, negatively affecting indigenous peoples in Canada,⁴¹ and has begun to strengthen institutional frameworks.

³⁴ https://opha.on.ca/OPHA/media/Resources/Resource%20Documents/boh_environmental_threats_summary_all.pdf?ext=.pdf.

³⁵ Canadian Charter of Rights and Freedoms, sect. 15; HRI/CORE/CAN/2019, in particular sect. IV.

³⁶ www.canada.ca/content/dam/phac-aspc/documents/services/publications/science-research/key-health-inequalities-canada-national-portrait-executive-summary/key_health_inequalities_full_report-eng.pdf.

³⁷ www.ubcpres.ca/asset/9095/1/9780774824125.pdf.

³⁸ <https://enjeu.qc.ca/justice-eng/>.

³⁹ www.ecojustice.ca/cepa-turns-20-its-time-to-modernize-canadas-cornerstone-environmental-law/; Niladri Basu and Bruce P. Lanphear, “The challenge of pollution and health in Canada”, *Canadian Journal of Public Health*, vol. 110, No. 2 (April 2019), pp. 159–164; submission by Lynda Collins (2019).

⁴⁰ <http://nctr.ca/reports2.php>; www.mmiwg-ffada.ca/final-report.

⁴¹ HRI/CORE/CAN/2019.

35. The struggle of indigenous peoples across Canada has been harder than has generally been acknowledged. Indigenous peoples face several more challenges than the rest of the population: higher poverty rates, greater food insecurity, greater incidence of inadequate living conditions, higher incarceration rates, lower levels of education and higher health inequalities.⁴² The invisible violence inflicted by toxics is an insidious burden disproportionately borne by indigenous peoples in Canada.

36. Emblematic is the mercury poisoning of the Grassy Narrows First Nation and the Wabaseemoong (Whitedog) Independent Nations. From 1963 to 1970, a pulp and paper mill released several tons of highly toxic mercury into the water, contaminating the English River and the Wabigoon River, including the fish and game these peoples traditionally depended upon.⁴³ A 2016 study found mercury levels to be 130 times higher in the river sediment near the mill site than immediately upstream.⁴⁴ A subsequent assessment of the soil and groundwater at the site revealed a continued presence of elevated levels of mercury,⁴⁵ giving credence to claims that those communities were still at risk of exposure due to the failure to remediate contamination for over 50 years (see sect. IV below).

37. Mercury exposure poses various health risks, especially to fetuses and to children, whose developing nervous systems are extremely sensitive.⁴⁶ Over 58 per cent of the community members examined have or are suspected of having Minamata disease, a serious neurological disease resulting from mercury exposure.⁴⁷ Socioeconomic impacts include the destruction of fisheries, tourism and related industries, and severe impacts on hunting and gathering, forcing changes in modes of sustenance and negatively affecting people's culture and sense of pride.⁴⁸ Access to safe water and nutritious food has been a persistent problem. Furthermore, communities have reported delays in the delivery of effective remedies, lack of funding and inadequate political will to secure a dignified life for them and future generations.⁴⁹

38. The health risks posed to indigenous peoples by the multibillion-dollar oil sands industry are also of concern. The situations at Fort McMurray, Fort MacKay and Fort Chipewyan paint a disturbing picture of the negative health outcomes of the oil sands (i.e., tar sands), outcomes that were not properly investigated for years, despite increasing evidence that the health of local communities was being affected. The alarming health trends recorded at Fort Chipewyan were raised repeatedly.⁵⁰ The oil sands situation cannot be divorced from the troubling Trans Mountain Pipeline Expansion Project, which has been strenuously opposed by many. Landfills, incinerators and waste disposal sites are often closest to indigenous reserves. For example, concerns have been expressed relating to the Swan Hills hazardous waste treatment centre, where highly toxic polychlorinated biphenyls from around Canada are incinerated.

39. The situation of the Aamjiwnaang First Nation in Sarnia is profoundly unsettling. Deeply connected with their land, the residents on the reserve have been invaded by industry as far back as the 1940s. They are now almost entirely surrounded by over 60 industrial facilities whose presence creates physiological and mental stress among community members because of the risk of impending explosions or other disasters and because of

⁴² www.canada.ca/content/dam/phac-aspc/documents/services/publications/science-research/key-health-inequalities-canada-national-portrait-executive-summary/key_health_inequalities_full_report-eng.pdf; A/HRC/39/11, para. 8.

⁴³ www.canada.ca/en/indigenous-services-canada/news/2020/04/the-government-of-canada-and-asubpeeschoseewagong-netum-anishinabek-grassy-narrows-first-nation-sign-a-framework-agreement-to-build-a-mercury-care-.html.

⁴⁴ <http://docs.assets.eco.on.ca/reports/environmental-protection/2017/Good-Choices-Bad-Choices-03.pdf>.

⁴⁵ www.ourcommons.ca/DocumentViewer/en/42-1/INAN/meeting-155/evidence.

⁴⁶ *Ibid.*

⁴⁷ <http://docs.assets.eco.on.ca/reports/environmental-protection/2017/Good-Choices-Bad-Choices-03.pdf>.

⁴⁸ www.ourcommons.ca/DocumentViewer/en/42-1/INAN/meeting-155/evidence.

⁴⁹ *Ibid.*

⁵⁰ https://landuse.alberta.ca/Forms%20and%20Applications/RFR_ACFN%20Reply%20to%20Crown%20Submission%206%20-%20TabD11%20Report_2014-08_PUBLIC.pdf.

chronic exposure to unquestionably poisonous substances. Sarnia, one of the most polluted places in Canada, has been dubbed “chemical valley”.

40. Various interlocutors acknowledged that existing regulations do not protect the health of the Aamjiwnaang. Improvements can be made in terms of investigating the health impacts, conducting proper monitoring and enforcing existing standards. Risk assessments do not fully take into account the cumulative health impacts. The environmental injustice to which the Aamjiwnaang are subjected is an ongoing tragedy, the legacy of land use planning that would not be allowed today. Encouragingly, the community and companies have increased cooperation and engagement in recent years, including through financing for the communities to hire their own environmental scientists to facilitate meaningful participation.

41. Despite suffering from greater exposure to hazardous substances, indigenous peoples face considerable challenges in accessing quality health care in comparison to non-indigenous peoples in Canada.⁵¹ Sixty-two percent of Grassy Narrows First Nation members, those living on the reserve, report experiencing barriers to health care compared to those living off reserve (38 per cent).⁵² Only through robust campaigns have strides been made to establish a primary health-care facility.⁵³ It is harder to access adequate health care on reserves than in other parts of Canada. Challenges include remoteness, physical inaccessibility of health centres and perceived racial discrimination when accessing health-care facilities. This different reality experienced by indigenous peoples reflects the systematic lack of consideration given to their particular challenges in environmental health policies. Policies should pursue funding for all public services on reserves, including for health care, water, food, housing, sanitation and waste management, and not stand in for piecemeal steps that do not decisively and comprehensively address the rights of indigenous peoples.

42. Measures to address the cumulative impact of exposure to toxic chemicals must be informed by an understanding of the deep connection that indigenous peoples have with their land and water. Indigenous peoples’ reliance on natural resources for food, medicine, culture, identity, knowledge and the economy must be considered in any assessment of risks and impacts. For example, the aerial spraying of pesticides such as glyphosate on indigenous territories and lands poses serious, multidimensional threats to indigenous peoples’ lives, health and environment.⁵⁴

43. The Special Rapporteur was informed that efforts were being taken through remediation, planning for the closure of projects and impact assessments, but there appears to be room for improvement. For example, while illegal dumping off reserve (i.e., on provincial lands) is subject to fines of hundreds of thousands of dollars under provincial laws, the maximum fine for illegal dumping on reserves is Can\$100.⁵⁵

44. The Aamjiwnaang First Nation raising concern about the shrinking of their ancestral grounds due to the encroachment of petrochemical processing plants and indigenous communities agitating for free, prior and informed consent regarding the Trans Mountain Pipeline Expansion Project serve as just two examples of how existing and proposed megaprojects crisscross the lands of indigenous peoples.⁵⁶ They do not, however, simply represent examples of straightforward opposition to economic development, as some critics have implied. Instead, they illustrate an underlying trend of duty bearers’ failure to resolve issues relating to indigenous rights and titles unless forced to do so through lengthy and costly litigation.⁵⁷

⁵¹ Submission by the Government of Canada (2019).

⁵² Submission by Asubpeeschoseewagong Netum Anishinabek (May 2018).

⁵³ www.ourcommons.ca/DocumentViewer/en/42-1/INAN/meeting-155/evidence.

⁵⁴ Submission by the Traditional Ecological Knowledge Elders (2019).

⁵⁵ https://laws-lois.justice.gc.ca/eng/regulations/C.R.C.,_c._960/page-1.html#h-599822; www.woodwardandcompany.com/wp-content/uploads/pdfs/2016-09-20-Contaminated_Sites_on_First_Nation_Lands-Final.pdf.

⁵⁶ Submission by the Union of British Columbia Indian Chiefs (2019).

⁵⁷ <https://davidsuzuki.org/story/pipeline-actions-signal-need-for-true-reconciliation/>.

B. Income, race and ethnicity

45. Poverty contributes to vulnerability both in terms of greater exposure to toxics and of less power to take action to obtain protection from such exposure.⁵⁸ Poverty, health and the environment intersect in especially prominent ways when it comes to addressing water and air pollution.⁵⁹ More than 1 million low-income Canadians live within one kilometre of a major source of industrial pollution, which results in elevated risks of hospitalization for respiratory and cardiovascular illnesses.⁶⁰ The burden of such disproportionate exposure has plagued poor communities. A 2003 study in Ontario found a correlation between exposure to particulate matter and sulphur dioxide and income level.⁶¹ A 2008 mapping of poverty and pollution in Toronto showed that 17 neighbourhoods with high levels of air pollutants also had poverty rates above the national average.⁶² The concentration of poverty in Hamilton and health inequalities between different neighbourhoods, including with respect to air pollution, amplify social deprivation.⁶³

46. Inequality among low-income Canadians regarding their exposure to toxics must be considered in the context of complex and overlapping inequalities that, together, form a cumulative barrier to the fulfilment of rights. Approximately 20.8 per cent of racialized (non-Caucasian) people have low incomes compared to 12.2 per cent non-racialized people.⁶⁴ According to the 2016 census, about 81 per cent of people on reserves had median incomes below the low-income measure.⁶⁵ Indigenous and racialized people in Canada tend to be locked in a vicious, intergenerational cycle of poverty,⁶⁶ to which their disproportionate exposure to toxic substances contribute. For example, the First Nations Food, Nutrition and Environment Study confirms that indigenous peoples in some geographic areas have higher levels of heavy metals in their blood than the general Canadian population.⁶⁷ Exposure to heavy metals not only leads to reduced income when diseases or disability become manifest, but also to well-documented cognitive and behavioural impacts that reduce earning potential across lifetimes.

47. Environmental injustice persists in Canada. A significant proportion of the population in Canada experiences racial discrimination, with indigenous and racialized peoples being worst affected.⁶⁸ The Canadian Human Rights Commission recently raised concerns of “environmental racism” to the Human Rights Council, explaining that “landfills, waste dumps and other environmentally hazardous activities are disproportionately situated near neighbourhoods of people of African descent, creating serious health risks”.⁶⁹ Garbage dumps are disproportionately situated in African-Canadian communities in Nova Scotia.⁷⁰ The disproportionate exposure to pollution is worsened by pre-existing and long-standing socioeconomic inequalities resulting from the colonial legacy of Canada. Outside Canada,

⁵⁸ www.ipcc.ch/site/assets/uploads/2018/03/SREX-Chap2_FINAL-1.pdf.

⁵⁹ www.who.int/tobacco/research/economics/publications/oecd_dac_pov_health.pdf.

⁶⁰ https://secure.cihi.ca/free_products/UrbanPhysicalReport2012EN_web.pdf.

⁶¹ Murray M. Finkelstein and others, “Relation between income, air pollution and mortality: a cohort study”, *Canadian Medical Association Journal*, vol. 169, No. 5 (September 2003), pp. 397–402. See also www.euro.who.int/__data/assets/pdf_file/0003/78069/E93670.pdf.

⁶² https://cela.ca/wp-content/uploads/2019/07/633B_PWSES_TOfacts.pdf.

⁶³ <https://macsphere.mcmaster.ca/bitstream/11375/14827/1/fulltext.pdf>.

⁶⁴ <https://colourofpoverty.ca/wp-content/uploads/2019/03/cop-coc-fact-sheet-2-an-introduction-to-racialized-poverty-3.pdf>.

⁶⁵ *Ibid.*

⁶⁶ Submission by the Canadian Centre for Policy Alternatives (2019); www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2019/12/Canada%27s%20Colour%20Coded%20Income%20Inequality.pdf.

⁶⁷ www.fnfnes.ca/docs/FNfnES_draft_technical_report_Nov_2__2019.pdf.

⁶⁸ www.environmentalinstitute.org/docs/default-source/project-documents/race-relations-2019-survey/race-relations-in-canada-2019-survey---final-report-english.pdf?sfvrsn=ef8d61e3_2.

⁶⁹ www.upr-info.org/sites/default/files/document/canada/session_30_-_may_2018/chrc_upr30_can_e_main.pdf; A/HRC/36/60/Add.1, para. 63.

⁷⁰ Submission by Ingrid Waldron (2019).

communities in low- and middle-income countries raise similar concerns regarding the harmful effects of Canadian extractive industries (see sect. V below).⁷¹

48. Systemic racism has contributed to the overrepresentation of indigenous and racialized people in the criminal justice system.⁷² Furthermore, as they live on the fringes of protection from toxics, indigenous and racialized communities are more likely to be exposed because they lack enforceable environmental rights, typically do not have the political or financial means to challenge powerful polluting industries and often face societal pressures to accept such industries because of the need for employment, among other factors. Adding insult to injury, “lifestyle choices” associated with poverty are cited to dismiss, discredit and even blame victims of discriminatory toxic exposure who develop diseases and disabilities, instead of placing the burden on polluting actors to demonstrate that they did not contribute to adverse health impacts.

49. For example, some indigenous peoples living amid the oil sands in Alberta are in relative poverty, which begs the question as to whether the oil sands industry is really as beneficial to the local communities as has been postulated.⁷³

50. There are very limited mappings of the intersection of pollution and poverty in Canada. The commitment of Ontario to developing an online platform for public community reporting is welcome.⁷⁴ While civil society has tried to fill that gap,⁷⁵ that has not sufficed and a parliamentary committee has recently called for mandatory, robust mapping at the federal level to support the identification of hotspots requiring priority attention. The Canada Centre for Mapping and Earth Observation could be helpful in such an initiative.

C. Age

51. Every child has the right to life and Canada must ensure to the maximum extent possible the survival and development of the child.⁷⁶ Canada has an obligation to prevent childhood exposure to toxics, including through consumer products and contaminated air, water and food, to ensure the full realization of children’s rights.⁷⁷

52. Children are more likely than adults to absorb toxic contaminants. Children living in poverty, in substandard housing conditions and with lower nutrition levels, are even more prone.⁷⁸ Children in indigenous communities, which tend to be relatively poor, face elevated risks of exposure compared to children in non-indigenous communities.⁷⁹ Studies have revealed that in northern Canada children in indigenous communities, whose diet relies heavily on wild foods, had higher blood mercury levels compared with other populations.⁸⁰ Moreover, the impact of toxic chemicals on malnourished children is even more acute than on children with proper nutrition. Identifying and protecting children whose bodies bear such enormous toxic burdens must be a priority.

53. Canada has an obligation to provide every child the opportunity to be heard. All children capable of forming their own views should be supported to express those views in

⁷¹ CERD/C/CAN/CO/21-23, paras. 21–22.

⁷² www.justice.gc.ca/eng/rp-pr/jr/jf-pf/2019/may01.html.

⁷³ Brenda L. Parlee, “Avoiding the resource curse: indigenous communities and Canada’s oil sands”, *World Development*, vol. 74 (October 2015), pp. 425–436.

⁷⁴ Submission by the government of Ontario (2019); www.ontario.ca/page/open-default-new-way-forward-ontario.

⁷⁵ See https://cela.ca/wp-content/uploads/2019/07/633B_PWSES_TOfacts.pdf.

⁷⁶ Convention on the Rights of the Child, art. 6.

⁷⁷ A/HRC/33/41.

⁷⁸ www.cps.ca/en/documents/position/lead-toxicity.

⁷⁹ Margo Lianne Greenwood and Sarah Naomi de Leeuw, “Social determinants of health and the future well-being of Aboriginal children in Canada”, *Paediatrics and Child Health*, vol. 17, No. 7 (August–September 2012), pp. 381–384.

⁸⁰ Catherine McLean Pirkle, Gina Muckle and Melanie Lemire, “Managing mercury exposure in northern Canadian communities”, *Canadian Medical Association Journal*, vol. 188, No. 14 (October 2016), pp. 1015–1023; submission by Keepers of the Athabasca (2019).

fulfilment of this right.⁸¹ From visiting communities in Canada such as Sarnia, where children are born “pre-polluted” and are exposed to toxic substances during crucial periods of development, before they can voice their views, it is clear that more efforts need to be made by the Government to ensure that every child is afforded the opportunity to fully enjoy his or her rights.

D. Gender

54. Discrimination based on gender is a crucial consideration in discussions on protection from toxic exposure. An improved focus on gender analyses of adverse health impacts is necessary for a gendered approach to addressing toxic exposure.

55. Environmental health policies in Canada inadequately address the root causes of the differential impacts on men and women, including the physical, biological, social and environmental factors, thereby running the risk of exacerbating inequality and discrimination.⁸² Government programmes have identified the need for enhanced communication efforts focusing on women of childbearing age, including in the more northern areas of Saskatchewan, as well as in Manitoba, Ontario and Quebec. Such recognition is a positive step towards addressing the gender inequalities that persist and aggravate the impacts of toxic exposure across Canada.

56. Varying gender roles contribute to the differentiated burdens and impacts of toxic exposure.⁸³ Yet, the Canadian Environmental Protection Act inadequately factors this in, as male models for toxics exposure dominate research and various chemicals inordinately affecting women, including many endocrine-disrupting chemicals, are not classified as toxic.⁸⁴

57. The intrinsic hazards of toxic chemicals pose gendered risks, such as miscarriages and reduced sperm count, as well as various cancers. For example, the neurotoxic effects on children of heavy metals such as lead and mercury can differ by gender.⁸⁵ In addition, consideration of the different levels of exposure between genders is necessary. For example, in Canada, men are more exposed to toxics such as asbestos (in the construction industry)⁸⁶ and women to endocrine-disrupting chemicals in plastics, raising their relative risk to developing cancer and other health conditions.⁸⁷ The exposure of female consumers to toxic chemicals in cosmetic products and the intense exposure, predominantly of female workers, at beauty salons offer further examples.⁸⁸ Indigenous women endure some of the highest levels of exposure in Canada.⁸⁹

⁸¹ A/HRC/33/41.

⁸² http://bccewh.bc.ca/wp-content/uploads/2012/05/2013_RethinkingWomenandHealthyLiving.pdf.

⁸³ Sarah Lewis and Dayna Nadine Scott, “Regulating toxics: sex and gender in Canada’s chemicals management plan”, *Osgoode Legal Studies Research Paper Series* (2014).

⁸⁴ See http://acsqc.ca/sites/default/files/feminist_statement_on_cepqa.pdf; Sarah Lewis and Dayna Nadine Scott, “Regulating toxics”.

⁸⁵ www.ncbi.nlm.nih.gov/pubmed/16996054.

⁸⁶ www.carexcanada.ca/profile/asbestos-occupational-exposures; www.inspq.qc.ca/en/publications/1374.

⁸⁷ See www.saicm.org/Portals/12/documents/meetings/IP1/Beyond-2020-Women-and-chemical-safety-24-Jan-2017.pdf.

⁸⁸ www.ncbi.nlm.nih.gov/pubmed/16996054; Ami R. Zota and Bhavna Shamasunder, “The environmental injustice of beauty: framing chemical exposures from beauty products as a health disparities concern”, *American Journal of Obstetrics and Gynecology*, vol. 217, No. 4 (October 2017); Jessica S. Helm and others, “Measurement of endocrine disrupting and asthma-associated chemicals in hair products used by Black women”, *Environmental Research*, vol. 165 (August 2018), pp. 448–458.

⁸⁹ www.afn.ca/uploads/files/rp-enviro_health_and_women.pdf;
www.fnfnes.ca/docs/FNFNES_draft_technical_report_Nov_2__2019.pdf.

E. Workers

58. Unquestionably, some workers experience a unique and elevated risk of chemical exposure. In Canada, occupational diseases and disabilities due to such exposure pose a major challenge to the fulfilment of workers' rights. Recent estimates show that, nationally, over 2.9 million workers are exposed to carcinogens and other hazardous substances at work, which is an underestimation.⁹⁰ The exposure that many workers endure is much higher than the exposure levels of the general population. Often, for the substances in question, there is no safe level of exposure.

59. There remains significant opportunity for action, including on the intersectionality of occupational exposure for some subpopulations,⁹¹ including persons of different genders, racialized persons, indigenous people and workers living in poverty, who are already in situations of vulnerability and are more likely to hold precarious positions than other workers.⁹² All these factors further entrench their vulnerability to exposure to toxics.

60. The Chemicals Management Plan could help to better protect workers (see para. 8 above). Under the Plan, Canada does not recognize workers as a vulnerable population, despite workers being one of the groups most vulnerable to toxic chemicals.⁹³ Furthermore, the Plan does not account for occupational exposure in risk assessments, which results in chemicals being misclassified as non-toxic because the general public is not exposed to the same degree as workers.⁹⁴ While progress has been made to assess the risks posed by over 3,000 chemicals to the general public, the levels of exposure and corresponding risks to workers have not been adequately evaluated.

61. Many cases of occupational disease-related deaths remain unrecorded due to various challenges, including lack of data and of accurate health reports.⁹⁵ The fact that diseases are often diagnosed decades after employment poses a significant challenge for victims seeking compensation,⁹⁶ especially for latent occupational diseases such as mesothelioma, asbestosis and lung cancer, which result from asbestos exposure.⁹⁷ Asbestos exposure is the leading cause of occupational death in Canada.

62. While health care is available and accessible to many in Canada, it can reduce individuals' motivation to pursue judicial remedies, which artificially lowers recorded incidences and does not contribute to improvements in prevention or accountability. In Canada, mesothelioma is a compensable disease, yet less than 50 per cent of potential claimants do not pursue their rights through reporting; they incorrectly believe that at the time they were exposed none of the duty bearers knew of asbestos' potential harm to workers.⁹⁸ Without concerted efforts to raise awareness and provide support in accessing the justice system to pursue compensation, such victims' rights are left unfulfilled.

F. People and peoples outside Canada

63. The groups that are disproportionately affected by business activities in Canada⁹⁹ are the same groups subjected to the effects of these activities abroad. In these respects, Canada

⁹⁰ www.carexcanada.ca/CAREX_Health_Care_Package_Oct_2019.pdf.

⁹¹ www.canada.ca/en/health-canada/services/chemical-substances/consulting-future-chemicals-management-canada/what-we-heard-defining-vulnerable-populations.html.

⁹² www.lco-cdo.org/wp-content/uploads/2013/03/vulnerable-workers-final-report.pdf.

⁹³ www.canada.ca/en/health-canada/corporate/about-health-canada/accountability-performance-financial-reporting/evaluation-reports/evaluation-phase-chemicals-management-plan-2011-2012-2015-2016.html#exsum.

⁹⁴ *Ibid.*

⁹⁵ www.uregina.ca/business/faculty-staff/faculty/file_download/2019-Report-on-Workplace-Fatalities-and-Injuries.pdf.

⁹⁶ www.cia-ica.ca/docs/default-source/2015/215005e.pdf.

⁹⁷ *Ibid.*

⁹⁸ <http://cansav.ca/compensation>; www.asbestos.com/mesothelioma/canada/.

⁹⁹ Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017).

has a duty to ensure that Canadian businesses do not abuse the rights of victims in other countries, regardless of race, colour, nationality or other distinction.¹⁰⁰

64. One global trend is the export of toxic impacts from wealthier countries like Canada with relatively stronger environmental health protections to poorer countries with lower standards of protection. Exporting hazardous substances and wastes from developed countries to developing countries is a form of international environmental discrimination.¹⁰¹ Through the action or inaction of the State and businesses, the rights of individuals and communities where such exposure takes place are not equally respected. Those most seriously affected are the poor, who often face inordinate challenges in obtaining recourse and pursuing protection.¹⁰² Stricter regulations and the cost of managing such wastes in the country that generated it being higher than in the importing countries is no excuse for placing the safety and health of the populations in the destination country at risk.¹⁰³

65. Various extraterritorial impacts of Canadian businesses activities on human rights in the context of toxics were raised, in addition to the impacts of Canadian businesses in Canada discussed in other parts of this report. An evaluation of these cases suggests that Canada does not fully uphold its obligations concerning the extraterritorial impacts of Canadian businesses, embodied in part through the failure to implement sufficient measures to ensure accountability for these companies in a vast number of cases.¹⁰⁴ Certain Canadian companies are implicated in the intentional release of toxic waste, tailings dam failures, in the start of activities without the meaningful participation, let alone the free, prior and informed consent, of indigenous peoples and in other conduct resulting in the exploitation and abuse of human rights of workers and local communities (see sect. V below).

III. Rights to information, participation and free, prior and informed consent

A. Rights to information and participation

66. The right to information is crucial for protecting the human rights of all people.¹⁰⁵ Information must be available and accessible in an appropriate and usable form, including to those most vulnerable.¹⁰⁶

67. Non-personal health and safety information should never be confidential.¹⁰⁷ Various stakeholders, however, have reported the tendency for information to be withheld from the public to protect commercial interests.¹⁰⁸ For example, various interlocutors stressed that maintaining confidentiality of information in respect of the chemical properties and constituents of mixtures used in pesticide spraying hindered efforts to address the associated health and safety risks.

68. The legal framework should better empower the public to demand health- and safety-related information on hazardous substances from industry, and to ensure that such

¹⁰⁰ Ibid.

¹⁰¹ Rozelia S. Park, "An examination of international environmental racism through the lens of the transboundary movement of hazardous wastes", *Indiana Journal of Global Legal Studies*, vol. 5, No. 2 (1998).

¹⁰² E/CN.4/2004/46 and Corr.1.

¹⁰³ Laura A. Pratt, "Decreasing dirty dumping? A reevaluation of toxic waste colonialism and the global management of transboundary hazardous waste", *William and Mary Environmental Law and Policy Review*, vol. 35, No. 2 (2011).

¹⁰⁴ E/CN.4/2003/56/Add.2, E/C.12/CAN/CO/6, A/HRC/38/48/Add.1, CERD/C/CAN/CO/19-20 and CRC/C/CAN/CO/3-4.

¹⁰⁵ A/74/480 and A/HRC/30/40.

¹⁰⁶ A/HRC/30/40.

¹⁰⁷ A/74/480 and A/HRC/30/40.

¹⁰⁸ www.canada.ca/content/dam/eccc/documents/pdf/pded/cbi-flowchart/Confidential-business-information-approach.pdf.

information is made publicly available.¹⁰⁹ The Special Rapporteur notes that Toronto has passed the first “community right-to-know by-law”, which obliges local business to disclose the toxic chemicals used in their processes.¹¹⁰

69. Canada has made certain positive steps to ensure the availability of health data.¹¹¹ The Health Canada platform on maternal-infant research on environmental chemicals is contributing towards improved understanding of the impact of chemicals on the health of children and vulnerable populations.¹¹² Ongoing research raises important questions about policies based on “acceptable” exposure levels for children, considering the impacts of even very low levels of toxic exposure.¹¹³

70. The Special Rapporteur was encouraged to learn that 71 per cent of Canadian children understand complex environmental issues, including issues related to nuclear waste and air pollution, and that 81.5 per cent of children 12–17 years old feel confident to express their own ideas and opinions.¹¹⁴

71. Canada already generates data on health inequalities, recognizing their existence and increases in certain instances. Measures to address such inequalities include developing environmental policies and decision-making, monitoring, integrating an equity-sensitive approach, strengthening collaboration between environmental and health entities, concentrating more on exposure hotspots when implementing environmental laws, carrying out targeted interventions that address the needs of vulnerable populations, giving due regard to procedural rights in environmental matters and securing the participation of disadvantaged populations in decision-making processes.¹¹⁵

72. Unfortunately, no socioeconomic mapping has been done by the Government of the proximity of sources of exposure to toxics with indigenous peoples or others at elevated risk, such as low-income or minority communities. Disaggregated data, including economic and social indicators for ethnic minority groups, indigenous peoples and non-citizens,¹¹⁶ consistently collected and maintained, would support monitoring and evaluation regarding actions to achieve environmental justice.¹¹⁷ For example, comprehensive health studies have not been undertaken on all communities affected by the oil sands in Alberta by either the federal or the provincial authorities. That said, the Special Rapporteur notes, however, the attempt made by Alberta to conduct a comprehensive health study about a decade ago.

73. Initiatives such as the Northern Participant Funding Program, which supports the informed engagement of indigenous governments and other northerners in the environmental and socioeconomic assessment processes established under land claims agreements in three territories, are promising, as are similar programmes supporting indigenous participation in federal environmental assessments in the provinces.¹¹⁸ It may be useful to scale up such initiatives for socioeconomically disadvantaged populations and to implement them throughout Canada.

74. Neither the Canada Consumer Product Safety Act nor the Canadian Environmental Protection Act require producers to identify, on labels for non-food consumer products,

¹⁰⁹ A/74/480 and A/HRC/30/40.

¹¹⁰ Submission by Joanna Mestre (2019).

¹¹¹ A/74/480 and A/HRC/30/40.

¹¹² www.canada.ca/en/health-canada/services/environmental-workplace-health/environmental-contaminants/human-biomonitoring-environmental-chemicals/maternal-infant-research-environmental-chemicals-mirec-study/findings.html.

¹¹³ Bruce Lanphear, “Low-level toxicity of chemicals: no acceptable levels?”, *PLOS Biology*, vol. 15, No. 12 (December 2017).

¹¹⁴ www.canada.ca/content/dam/phac-aspc/documents/services/publications/science-research/key-health-inequalities-canada-national-portrait-executive-summary/key_health_inequalities_full_report-eng.pdf.

¹¹⁵ www.euro.who.int/__data/assets/pdf_file/0018/404640/WHO-report-SUMMARY-ENG-WEB.pdf?ua=1.

¹¹⁶ CERD/C/CAN/CO/21-23.

¹¹⁷ E/CN.4/2003/56/Add.2 and CERD/C/CAN/CO/21-23.

¹¹⁸ www.rcaanc-cirnac.gc.ca/eng/1545150205116/1547478360408.

substances that are carcinogenic or otherwise toxic.¹¹⁹ Without such information, consumers cannot fully realize their right to know the toxic properties of the products they purchase.¹²⁰ Reform of the Canadian Environmental Protection Act should include mandatory labelling of chemicals of concern¹²¹ on various consumer products, including cosmetics, to implement the right to know for all in Canada.

75. Reports of insufficient public participation in the review of the Canadian Environmental Protection Act, including of inadequate consideration of civil society input, are concerning. All stakeholders should have guaranteed participation in the formulation and implementation of environmental law, including the Canadian Environmental Protection Act. Furthermore, where a substance has been banned by other countries, citizen enforcement action should be envisioned so that members of the public can initiate a review of substances of concern – and call for enforcement when violations of the Canadian Environmental Protection Act occur, on a public interest basis and without the requirement to show specific actual environmental damage. Periodic reviews of the National Pollutant Release Inventory are also useful, upholding the principle of public participation.

B. Freedom of expression

76. The Special Rapporteur reiterates his utmost concern about repeated reports of harassment, prosecution and persecution of defenders of indigenous and environmental rights.¹²² The Special Rapporteur heard of scientists discredited for highlighting the impacts of toxic industries, as well as threats, arrests and acts of intimidation of youth and elders exercising their rights to be heard and to freedom of expression. He was repeatedly told that community members do not feel free to express their health concerns for fear of not being protected and of suffering other negative consequences.

77. For example, hundreds of people were allegedly arrested for peacefully protesting against the proposed Trans Mountain Pipeline Expansion Project, some of whom received jail sentences as lengthy as five months. Indigenous women have reportedly gone missing after alleging health impacts from oil sands operations. The chilling effect of such actions can be telling of a trend to preserve the status quo. Moreover, Canadian businesses are repeatedly alleged to be implicated in attacks against human rights defenders outside Canada, which is of grave concern.

C. Free, prior and informed consent

78. Current constitutional protections of indigenous peoples' rights, including in relation to the duty to consult, do not adequately implement the standards for consultation and consent set out in the United Nations Declaration on the Rights of Indigenous Peoples. Canada should ensure that State and non-State actors cooperate in good faith with indigenous peoples and obtain their free, prior and informed consent when taking measures that may affect them, including for the storage or disposal of hazardous materials on their lands or territories.¹²³

79. It was appreciated that the federal Government and certain provinces had stated that they were working to improve adherence to the principle of seeking and obtaining the free, prior and informed consent of affected populations in Canada by moving beyond consultation towards partnership and collaboration with indigenous peoples. In November 2019, British Columbia passed landmark legislation developed with indigenous peoples' participation to

¹¹⁹ www.ourcommons.ca/Content/Committee/421/ENVI/Reports/RP9037962/envirp08/envirp08-e.pdf; <https://cela.ca/wp-content/uploads/2019/07/CEPA-CCSPA-Cosmetics-Regs-Briefing-Note.pdf>.

¹²⁰ www.ourcommons.ca/Content/Committee/421/ENVI/Brief/BR8603235/br-external/BoydDavid-e.pdf.

¹²¹ www.canada.ca/content/dam/eccc/documents/pdf/cepa/FollowUpCepaReport-eng.pdf.

¹²² Submission by the Union of British Columbia Indian Chiefs (2019).

¹²³ See articles 19 and 29 of the Declaration.

implement the United Nations Declaration on the Rights of Indigenous Peoples.¹²⁴ This is a tremendous achievement, and one to be emulated in other provinces and federally.

80. Indigenous peoples have had to make significant efforts to compel some project proponents to consult them and even greater efforts to compel the Government to carry out its duty. For example, indigenous and civil society organizations have repeatedly expressed concern about the fact that a pesticide categorized as probably carcinogenic (glyphosate) was applied by aerial spraying in and around indigenous peoples' reserves and traditional lands without consultation or consent. They have reportedly not received any response from the Government.

81. Various interlocutors highlighted that project proponents often do the bare minimum to fulfil their duty to consult, thus rendering indigenous peoples inadequately informed for decision-making processes. This has happened in respect of projects involving the following, among others: pesticides spraying in general and its impacts on workers, the environment, water and human health; the extractive industries operating in the Atlantic region; fracking, affecting the community of Penobscis in New Brunswick; the Alton Gas project, where grass-roots leaders from the Mi'kmaq First Nation are concerned about the consequences of asserting their treaty rights; the Sisson Brook mine, in the area of the Nashwaak watershed, New Brunswick; the pulp and paper mill in Abercrombie, Nova Scotia; the impacts of dumping effluent into Boat Harbour on the Mi'kmaq reserve; and offshore drilling in the waters of the North Atlantic.

82. While in some cases consultation with indigenous peoples has improved, the example of the Muskrat Falls hydroelectric project has raised questions regarding the extent of such improvements.¹²⁵ Specifically, concerns were raised regarding the meaningful participation of two affected First Nations, the risk of methylmercury contaminating traditional foods and negatively affecting health, the unaddressed risk of dam failure and the flooding of sites containing toxic military waste.¹²⁶

83. While Canada withdrew its objections to the United Nations Declaration on the Rights of Indigenous Peoples in 2016 and committed itself to its implementation,¹²⁷ there is inadequate execution at the national level. The principle of seeking and obtaining the free, prior and informed consent of affected communities should be applied nationally. The Principles Respecting the Government of Canada's Relationship with Indigenous Peoples appear promising,¹²⁸ yet further efforts are necessary, including by non-State actors. A positive example is provided by the Canadian Nuclear Safety Commission, which strives to better engage indigenous peoples, including through its Participant Funding Program.¹²⁹ Initiatives such as the Indigenous Centre of Expertise for Cumulative Effects Assessment and Management present opportunities for action.¹³⁰ In considering the implementation of the principle of seeking and obtaining free, prior and informed consent, including at the federal level, an "indigenous-informed relational approach" should be paramount.¹³¹

IV. Access to justice and remedies

84. Every victim of a violation or an abuse of human rights related to toxic exposure has the right to justice and to an effective remedy.¹³² This may include restitution, compensation,

¹²⁴ www2.gov.bc.ca/gov/content/governments/indigenous-people/new-relationship/united-nations-declaration-on-the-rights-of-indigenous-peoples.

¹²⁵ Submission by the Innu Nation (2019); www.muskratfallsinquiry.ca/files/Volume-1-Executive-Summary-Key-Findings-and-Recommendations-FINAL.pdf.

¹²⁶ Ibid. See also the submission by the Ontario-Muskrat Solidarity Coalition (2019).

¹²⁷ www.aadnc-aandc.gc.ca/eng/1309374407406/1309374458958.

¹²⁸ www.justice.gc.ca/eng/cs-j-sjc/principles.pdf.

¹²⁹ www.nuclearsafety.gc.ca/eng/pdfs/reports/compendium-of-indigenous-consultation-and-engagement-eng.pdf.

¹³⁰ www.aadnc-aandc.gc.ca/eng/1553539034821/1553539063871.

¹³¹ Terry Mitchell and others, "Towards an indigenous-informed relational approach to free, prior, and informed consent", *International Indigenous Policy Journal*, vol. 10, No. 4 (October 2019).

¹³² General Assembly resolution 60/147.

rehabilitation, satisfaction, guarantees of non-repetition, remediation of contamination or an apology. Binding legal standards, enforcement and the rule of law are basic prerequisites.

85. Access to justice remains a considerable challenge, particularly for victims of chronic exposure and vulnerable groups. Obstacles include information asymmetries, an unjust burden of proof on victims and the limited availability of class actions and legal aid.¹³³ The courts remain the preserve of Canadians with sufficient financial resources, leaving out disgruntled rights holders with inadequate capacity to pursue legal avenues, further embedding them in disadvantaged positions. The overlapping jurisdictions among the territories, the provinces and the federal Government, notwithstanding the cross-jurisdictional impacts of toxic exposure, contribute to the lack of clarity on the proper forum for seeking justice. Indigenous women have found it especially difficult to pursue discrimination cases for various reasons, including jurisdictional confusion and because the particular form of discrimination experienced is not clearly delineated under the Canadian Human Rights Act.¹³⁴

86. There appears to be a pervasive trend of inaction by the Government in the face of existing health threats from decades-long historical and current environmental injustices and the cumulative impacts of toxic exposure on indigenous peoples.¹³⁵ The case of Grassy Narrows and White dog is emblematic of indigenous communities being denied truth, justice, remedies and accountability for decades.¹³⁶ The failure to provide these communities with an effective remedy for 50 years, still enduring the impacts of 10 tons of highly toxic mercury dumped in their rivers legally and without their consent, is a clear case of discrimination and a gross violation of their human rights under the International Covenant on Civil and Political Rights. The failure to investigate claims of aerial spraying of glyphosate on indigenous territories and lands illustrates the systemic challenge that continues today.

87. Initiatives such as the Contaminated Sites On-Reserve Program, the First Nations Waste Management Initiative and the Northern Contaminants Program present opportunities for action, including on waste management and decontamination.¹³⁷ Scaling up such programmes may be useful for achieving greater involvement of indigenous peoples. Improving capacity and increasing institutional support to marginalized communities towards self-governance and for strengthening their own mechanisms established to address environmental protection should be prioritized.

88. Other cases have raised questions about compliance and enforcement. For example, the selenium pollution from coal mines in the Elk Valley has raised concerns about lack of compliance with water quality guidelines at the provincial and federal levels, resulting in transboundary pollution from British Columbia into the United States of America. Government and industry efforts should strengthen compliance and enforcement mechanisms to prevent the repetition of similar incidences.

89. The 2014 Mount Polley tailings dam disaster has illustrated the need for enhanced accountability measures to help prevent recurrence. Canada has the second-highest number of tailings dams in the world (256), and has the fifth-highest number of upstream dams categorized as high-risk.¹³⁸ Preventable dam failures may occur in the future, especially without sufficient early detection mechanisms at the federal and provincial levels, including independent and dedicated investigation, compliance and enforcement teams.¹³⁹

¹³³ www.cba.org/CBAMediaLibrary/cba_na/images/Equal%20Justice%20-%20Microsite/PDFs/EqualJusticeFinalReport-eng.pdf; www.justice.gc.ca/eng/tp-pr/csj-sjc/jsp-sjp/op00_2-po00_2/op00_2.pdf.

¹³⁴ www.chrc-ccdp.gc.ca/eng/content/honouring-strength-our-sisters-increasing-access-human-rights-justice-indigenous-women-and.

¹³⁵ A/HRC/38/48/Add.1, para. 49, A/HRC/10/7/Add.3, A/HRC/18/35/Add.1 and E/C.12/CAN/CO/4-E/C.12/CAN/CO/5.

¹³⁶ Submissions by the Asubpeeschoseewagong Netum Anishinabek (2019) and Lynda Collins (2019).

¹³⁷ Submission by Crown-Indigenous Relations and Northern Affairs Canada (2019); www.sac-isc.gc.ca/eng/1583779185601/1583779243216.

¹³⁸ <https://graphics.reuters.com/MINING-TAILINGS1/0100B4S72K1/index.html>.

¹³⁹ <https://news.gov.bc.ca/releases/2015MEM0030-002119>.

90. Remediation remains a widespread concern. Concerns have been raised regarding the inadequacy of financial guarantees from polluting enterprises for site clean-up and remediation, leaving so-called contaminated orphan sites. The National Orphaned/Abandoned Mines Initiative is a welcome step.¹⁴⁰ Efforts by Quebec and British Columbia to ensure that polluters pay for the closure and remediation of contaminated sites are encouraging.¹⁴¹ Thousands of such sites remain across Canada, however, particularly in Alberta, with considerable concern that the public and future generations will bear the Can\$ 100 billion price of restoration, monitoring and remediation.¹⁴²

91. The Special Rapporteur was concerned to hear allegations that the aforementioned acts of intimidation and harassment against human rights defenders have not been properly investigated. For example, it was alleged that the Government still has not fully investigated the disappearance of an indigenous woman who raised concerns of exposure to toxic pollution from oil sands operations.

V. Extraterritorial impacts of business enterprises

92. The obligations of Canada to ensure that companies respect human rights, including its duty to prevent exposure to toxics and help provide remedies to those affected by Canadian business activities, do not stop at the country's territorial borders.¹⁴³

A. Waste exports

93. In the case of waste exports, certain Canadian companies have shipped waste to a number of countries in Asia, in apparent contravention of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. Despite repeated protests in importing countries, the Government of Canada has been unable to compel the business involved to return the waste, which was finally repatriated to Canada only five years later.¹⁴⁴ Illegal shipments to Malaysia have also been reported.¹⁴⁵

94. Only 9–11 per cent of Canadian plastic waste is recycled,¹⁴⁶ and there are concerns that plastic recycling is technically a myth. There is an urgent need to dramatically decrease consumption and use of plastics in Canada. Despite global regulation on plastic waste exports under the Basel Convention, the only way to minimize externalized impacts on people throughout the lifecycle of plastics is by reducing their consumption and production.

B. Extractive industries

95. A perpetual pattern of human rights abuses by Canadian extractive industries operating abroad is undeniable. The limited efforts of the State to deter well-documented and widespread abuses has inspired much of the need for global standards on business and human rights.

96. Worrying reports have raised the issue of the complicity of the Government of Canada in these abuses. The Special Rapporteur is troubled by reports of the extent to which the Government may be extending financial and political support to weaken or impede

¹⁴⁰ www.abandoned-mines.org/en/; submission by Arn Keeling, John Sandlos and Caitlynn Beckett (2019).

¹⁴¹ <https://thenarwhal.ca/environmental-stain-bc-announces-clean-up-2000-oil-gas-wells/>.

¹⁴² www.cdhowe.org/sites/default/files/attachments/research_papers/mixed/Commentary_%20492_0.pdf; www.policyschool.ca/wp-content/uploads/2017/03/Inactive-Oil-Wells-Muehlenbachs-1.pdf.

¹⁴³ A/74/480.

¹⁴⁴ www.wcel.org/blog/canada-should-stop-opposing-un-ban-exporting-waste-developing-countries.

¹⁴⁵ www.greenpeace.org/canada/en/qa/6971/media-briefing-canadas-plastic-waste-export-trends-following-chinas-import-ban/.

¹⁴⁶ www.canada.ca/content/dam/eccc/documents/pdf/pded/plastic-pollution/Science%20Assessment%20Plastic%20Pollution.pdf; www.iisd.org/sites/default/files/publications/plastic-waste-canada.pdf.

enforcement of environmental health laws and laws protecting environmentally sensitive areas of host States. Overseas diplomats allegedly pressure host States to refrain from strengthening environmental standards to protect human rights, including threats of legal action under international investment agreements.

97. Certain Canadian mining companies are using, or propose to use, practices not permitted in Canada. For example, Barrick Gold's riverine tailings disposal of mine waste at the Porgera Joint Venture Mine in Papua New Guinea affects an 800-km fish-bearing river system. In Canada, environmental standards effectively prohibit such unrestrained disposal. Studies have recorded high levels of heavy metals in the waste, presenting health risks, and legal analyses have found the Canadian corporation in breach of its responsibility to respect the Porgerans' right to water.¹⁴⁷

98. Differences in political power between Canadian-based companies and individuals and communities in countries in which they operate elicit concern.¹⁴⁸ At the Marlin Mine in Guatemala, affected communities, including indigenous peoples, reportedly suffer mental health impacts from the long battle against the operation of the mine and the uncertainty of the future physical health consequences they may develop from contaminated water.¹⁴⁹

99. In the Peruvian Amazon, the Frontera Energy corporation began servicing an oil and gas concession (Block 192) on indigenous territories in 2015, relying on a dilapidated pipeline.¹⁵⁰ The pipeline was known for many years before 2015 to leak and rupture. Evidence suggests that indigenous peoples in these territories have elevated blood levels of heavy metals above recommended limits.¹⁵¹ Since then, there have been at least 65 oil spills from the pipeline. Frontera is clearly contributing to the incessant abuse of indigenous rights from the contamination, and failing to uphold its responsibilities under the Guiding Principles on Business and Human Rights to help secure an effective remedy. To the contrary, it continues to pump oil well aware of the impacts that will result with the next rupture.

C. Canadian Ombudsperson for Responsible Enterprise

100. In an effort to help address abuses by Canadian businesses operating abroad, the Office of Canadian Ombudsperson for Responsible Enterprise was established in 2018.

101. The establishment of that Office is generally welcome. The Ombudsperson has the potential to use economic and other incentives to compel Canadian businesses to prevent and provide redress for abuses in their operations. Yet, the originally envisioned role of the Ombudsperson has not materialized, in particular regarding the extent of investigative powers and the timeliness of investigations. For example, the Office of the Ombudsperson carries out an advisory, not investigative, role and its position suggests that it does not operate truly independently of the Government. The Office lacks an adequate budget for the magnitude of its task. Reports of lack of consultation with affected communities for investigative missions are of concern. To date, the Office has not taken up a single case, bringing into question its ability to adequately carry out an urgent mandate in a timely and effective manner. It is critical that the Office be given the powers, funding and independence required to fulfil its mandate and promise.

102. Policy interest among various government representatives, in adherence with the Guiding Principles on Business and Human Rights, is noteworthy. Yet, marginal efforts have been made to establish a national action plan on business and human rights, while various

¹⁴⁷ <https://ac4.earth.columbia.edu/sites/default/files/content/2019%20Knuckey%2C%20Hoffman%2C%20Fisher%20and%20Russo%20Red%20Water%20Report%20-%20FINAL.pdf>.

¹⁴⁸ Committee on Economic, Social and Cultural Rights, general comment No. 24.

¹⁴⁹ www.amnesty.org/download/Documents/4000/amr340022014en.pdf.

¹⁵⁰ <https://politicsofpoverty.oxfamamerica.org/righting-the-many-wrongs-at-perus-polluted-oil-block-192/>.

¹⁵¹ www.defensoria.gob.pe/wp-content/uploads/2018/10/Informe-de-Adjunt%C3%ADa-N%C2%BA-001-2018-DP-AMASPPI-PI.pdf; <https://observatoriopetrolero.org/analisis-toxicologico-en-el-lote-192-niveles-de-plomo-por-encima-del-limite-permitido/>.

countries and the European Union are now making progress towards mandatory human rights due diligence requirements.

VI. Conclusions and recommendations

A. Conclusions

103. In various ways, Canada has made welcome improvements to addressing human rights violations and abuses from exposure to toxic substances. Just as there are recent examples of shortcomings, there are also examples of new energy employed in finding ways to prevent pollution, seek and obtain informed consent and work in partnership with indigenous peoples and other groups disproportionately affected by toxic exposure. Nevertheless, much work still needs to be done and deep concerns remain unaddressed.

104. It was clear from the visit that many communities in Canada continue to suffer from exposure to toxic substances. Some key concerns that persist include the limited degree of protection of human health and ecosystems under various pieces of legislation and the lack of environmental information and monitoring in areas of high risk. Long delays in or absences of health impact assessments persist for affected communities. Inadequate compliance with and enforcement of laws and policies, and other systemic obstacles to access to justice, in particular for cases involving health impacts due to chronic exposure, increases the reluctance of victims to seek fulfilment of their right to an effective remedy.

105. The prevalence of discrimination in Canadian laws and policies regarding the application of regulations on hazardous substances and wastes is clear. There exists a pattern in Canada whereby marginalized groups, and indigenous peoples in particular, find themselves on the wrong side of a toxic divide, subject to conditions that would not be acceptable in respect of other groups in Canada. A natural environment conducive to the highest attainable standard of health is not treated as a right; unfortunately, for many in Canada today, it is an elusive privilege.

106. Similarly, communities in States hosting Canadian business enterprises endure enormous burdens that would not be acceptable in Canada. The impacts on these communities are compounded by the inordinate power imbalance between low- and middle-income countries and Canadian corporations.

107. In general, Canada must better acknowledge that decisions, actions and inactions regarding toxic pollution have profoundly affected the health of exposed communities, including indigenous peoples. Reconciliation through a process of building trust, establishing and maintaining healthy relationships and entrenching respect for indigenous peoples is essential for the realization of indigenous peoples' rights, including in the context of toxics.

108. These needs can be met through legal recognition of the human right to a healthy environment, including the duty of Canada to prevent exposure to hazardous substances.

109. Overall, Canada should take action through a precautionary approach, to mitigate the consequences of continued exposure and to allow timely regulatory processes to take their course, while protecting local populations.

110. Despite the challenges, the Special Rapporteur was left with the impression that Canadians deeply value their environment. Canada has the financial means and technical capacity to be on the path of sustainable development and to view a healthy environment as more than a privilege. The Special Rapporteur remains optimistic that Canada will embrace the many opportunities to transition to a cleaner, healthier and more equitable economy. The well-being of people and peoples, not only in Canada but around the world, depends on it.

B. Recommendations

111. The Special Rapporteur recommends that the Government of Canada:

(a) Recognize the right to a healthy environment in its legislation, eventually, through a constitutional amendment, and ensure that that right includes the duty to prevent exposure to hazardous substances;

(b) Ratify the Amendment to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal and establish mechanisms for its implementation;¹⁵²

(c) Bring federal, provincial and territorial legislation fully into line with the United Nations Declaration on the Rights of Indigenous Peoples;¹⁵³

(d) Ensure that environmental standards on reserves are as strong as or stronger than the standards on neighbouring provincial, territorial and federal lands, to ensure equal protection for indigenous persons;

(e) Use the leverage it has, as the largest investor in various megaprojects, including the Muskrat Falls dam and the Trans Mountain Pipeline Expansion Project, to review procedures to ensure that they are compatible with the United Nations Declaration on the Rights of Indigenous Peoples and address the safety concerns of provincial governments;

(f) Amend the federal Impact Assessment Act to require consideration of the impacts of proposed projects and policies on human rights, particularly the rights of vulnerable populations;

(g) Establish legally binding and enforceable health-based standards for air quality and drinking water quality;

(h) Improve the capacity of the Canadian Human Rights Commission to initiate investigations and pursue environmental and human rights-based initiatives, including on toxic exposure, including through budgetary allocations and research promotion;

(i) Consider potential environmental and health risks in developing regulatory criteria for the treatment and discharge of process-affected water, including in respect of oil sands;

(j) Review federal, provincial and territorial laws to prevent upstream mine waste dams from placing downstream communities at risk of exposure, require independent panels to review extractive industry projects and apply best practices on mine tailings safety;

(k) Set clear and ambitious timelines to phase out industrial chemicals and pesticides that are prohibited in other OECD member States;

(l) Prohibit the export to non-OECD countries of industrial chemicals and pesticides whose use is banned in Canada;

(m) Increase traceability and transparency of chemicals in products to protect, inter alia, the rights of the child and reproductive health;

(n) Fully incorporate the Convention on the Rights of the Child in policies and procedures related to toxics and ratify its Optional Protocol on a communications procedure;

(o) Require the protection of vulnerable populations at all stages of the review of the Canadian Environmental Protection Act and categorize chemicals as toxic based on their hazard, not their risk;

¹⁵² See also E/CN.4/2003/56/Add.2.

¹⁵³ See also E/C.12/CAN/CO/6, para. 14.

(p) **Include workers as a vulnerable group under its Chemicals Management Plan and expeditiously re-evaluate previously assessed substances from the perspective of individual workers' exposure to toxics;**

(q) **Ensure that mine-related regulatory structures incorporate robust planning for mine closures before projects have been developed or assessed, and enforce strict financial penalties to ensure industry accountability for the long-term care of mines;**

(r) **Take stringent measures to halt economic and political support to business enterprises operating abroad where human rights abuses are reported;**

(s) **Respect concerns expressed regarding the risk of harm, including where host countries have established no-go zones for resource extraction, to guarantee accountability and ensure access to justice for people affected by the activities of Canadian enterprises abroad;**

(t) **Implement legal requirements for robust mandatory human rights due diligence and provide redress where activities of business enterprises both at home and abroad are associated with impacts of toxic exposure, with a cause of action for victims both in the host country and in Canada;**

(u) **Expand the mandate of Office of the Canadian Ombudsperson for Responsible Enterprise to include other economic sectors, providing additional investigative powers, including the ability to compel the provision of documents and testimony, and providing the resources required for it to carry out its mandate;**

(v) **Revise the avenues available to access justice, to give full effect to the justiciability of economic, social and cultural rights through the court system in Canada, engaging civil society and indigenous peoples in that revision;**

(w) **Conduct continuous national and regional cumulative environmental and socioeconomic assessments, including environmental health inequality assessments, and facilitate environmental justice mapping;**

(x) **Establish a sound environmental justice framework based on the principles of procedural justice, geographic justice and social justice;**

(y) **Involve indigenous peoples and other population subgroups in self-assessments to complement assessments by members of other population subgroups.**

112. **The Special Rapporteur recommends that business enterprises in Canada:**

(a) **Invest in technologies to phase out chemicals of concern and increase the traceability and transparency of chemicals in products, especially consumer products;**

(b) **Take proactive measures to prevent environmental harm and respect concerns of risk of harm, including where host countries have put in place no-go zones for resource extraction;**

(c) **Implement robust and transparent human rights due diligence and provide redress when activities, whether carried out in Canada or abroad, cause, contribute to or are linked with impacts of toxic exposure. These processes should oblige business enterprises to undertake human rights risk assessments in respect of their activities throughout the supply chain.**