

ENVIRONMENTAL PROTECTION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS ON THE PACIFIC COAST OF CANADA

PARALLEL REPORT SUBMITTED BY THE DAVID SUZUKI FOUNDATION
TO THE UNITED NATIONS COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS
ON THE OCCASION OF ITS CONSIDERATION OF CANADA'S 6TH PERIODIC REPORT
AT ITS 57TH SESSION (22 FEB 2016 - 04 MAR 2016)

SUBMITTED: JANUARY 2016



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SOLUTIONS ARE IN OUR NATURE

ENVIRONMENTAL PROTECTION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS ON THE PACIFIC COAST OF CANADA

January 2016



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Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being.

Principle 1, Stockholm Declaration, 1972

All human beings depend on the environment in which we live. A safe, clean, healthy and sustainable environment is integral to the full enjoyment of a wide range of human rights, including the rights to life, health, food, water and sanitation. Without a healthy environment, we are unable to fulfil our aspirations or even live at a level commensurate with minimum standards of human dignity.

UN Special Rapporteur on human rights and the environment, 2013

When we think of human rights, we think of equality, freedom, democracy. But what good are any of those if we don't have clean air, soil and water? It has to start with nature.

Participant, Coastal Connections Tour, 2015

I. INTRODUCTION

1. The David Suzuki Foundation's¹ mission is to protect the diversity of nature and quality of human life, now and for the future. Through a combination of sound science and active public outreach, the David Suzuki Foundation, founded in 1990, motivates Canadians to understand and take action on the environmental challenges we collectively face. Canadians consistently name the David Suzuki Foundation as the most credible and reliable source of science-based environmental information in Canada. They also rank the Foundation above all other Canadian environmental organizations in working cooperatively with business to resolve critical issues.²

2. In this submission, the David Suzuki Foundation aims to assist the Committee on Economic, Social and Cultural Rights (the Committee) in clarifying important aspects of Canada's international human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. Based on discussions with Pacific coastal communities, we outline specific environmental dimensions of Canada's obligations under the *International Covenant on Economic, Social and Cultural Rights (the Covenant)*. This "ecologically literate"³ interpretation of Canada's human rights obligations recognizes environmental protection as fundamental to the realization of core economic, social and cultural rights of coastal peoples.

3. Oceans cover 70 per cent of the planet's surface and absorb consequences of what happens on land and in the atmosphere. Ocean health is a necessary condition for human health and survival, and must be understood as essential to the realization of all human rights and human dignity. To hold otherwise would be to, first, deny the central importance of the environment to human well-being and, second, default on the commitment to the indivisibility of all human rights.

¹ For more information see: www.davidsuzuki.org

² Leger Marketing Survey, September 2014

³ Collins, Lynda M. "An Ecologically Literate Reading of the Canadian Charter of Rights and Freedoms", *Windsor Rev. Legal & Soc. Issues* 26 (2009): 7.

4. For well over a decade, the Committee has issued concluding observations and recommendations that recognize the relationship between States' obligations under the *Covenant* and the obligation to protect the environment.⁴ In this time of increasing awareness of the serious consequences of human-induced climate change, the Committee's recognition and articulation of this relationship is critical.

5. The David Suzuki Foundation submits that Canada has failed to protect core economic, social and cultural rights of Pacific coastal peoples by failing to protect Canada's Pacific coastal ecosystems.⁵ Immediate environmental degradation as well as climate change caused by industrial and commercial activity threaten Pacific coastal ecosystems and the people living there.

We urge the Committee to make recommendations that Canada protect the economic, social and cultural rights of Pacific coastal peoples by protecting the environment; in particular, the health of the Pacific Ocean and its coastline.

Discussion basis of this submission: Evidence from Pacific coastal peoples

6. Scientific models can be useful in painting a broad picture of the impacts and potential long-term consequences of environmental degradation and climate change. However, these models fall short of providing specific, qualitative information about environmental changes at the local level and their impacts on human rights.⁶ For this reason, it is critically important in the evaluation of environmental impacts to gather evidence from those who directly observe and are affected by State failures to protect the environment.

7. The David Suzuki Foundation presents evidence in this submission gathered from a June 2015 discussion with coastal peoples of British Columbia. Twelve coastal communities⁷ in British Columbia, situated within the traditional territories of 12 coastal First Nations,⁸ were consulted about their direct observations and experiences of environmental degradation of Canada's Pacific coastal ecosystems and its impacts on their lives and communities.⁹

8. The evidence set forth in the submission is based on a thematic review of 1,577 narratives — observations, stories, thoughts, ideas, feeling and concerns of coastal peoples — gathered during these discussions through interviews and surveys. Although not a randomized group (participants came to our sessions out of interest and curiosity), the participants represent a broad range of experience, demographics and geographic location. Participants included First Nations, forest workers, recreational and commercial fishers, men, women, elders, children, educators, marine planners, nurses, scientists, students, librarians, parents, grandparents, world travellers, kayak guides, pilots, politicians, researchers, community organizers, fish-hatchery workers, government employees, ecotourism entrepreneurs, divers, small business owners, retirees, wildlife rehabilitation specialists, long-time residents and newcomers.

⁴See for instance: E/C.12/1/ADD.57 (CESCR, 2001); E/C.12/1/ADD.85 (CESCR, 2002)

⁵The Pacific coastal ecosystem is a complex combination of interconnected geography and biological systems including the seabed, the water and air above the seabed, the animals, plants and other organisms that live within the area, and the shorelines and forests adjacent to it. It includes nearby wetlands, estuaries, islands, and coastal islands. Coastal birds, fish and marine mammals breed and feed in the area and travel thousands of kilometres outside of it, including Pacific salmon that swim hundreds of kilometres inland.

⁶Salick, Jan, and Anja Byg. "Indigenous peoples and climate change." *Tyndall Center for Climate Change Research, Oxford* (2007).

⁷Nanaimo, Port Alberni, Comox, Campbell River, Fort Rupert, Bella Bella, Smithers, Kitimat, Prince Rupert, Masset and Skidegate.

⁸First Nations territory visited included Snuneymuxw, Heiltsuk, Tseshaht, Wei Wai Kum, K'ómoks, Namgis, Kwakiutl, Wet'suwet'en Haisla, Metlakatla, Lax Kw'alaams and Haida Nations.

⁹From June 1 to 14, 2015 the David Suzuki Foundation visited 12 British Columbian coastal communities to encourage and document discussion about ocean health, climate change and how to address challenges and opportunities. Comments and ideas were recorded via video, audio and written statements. Over 3,000 people attended the events and 1,577 comments were received.

9. Participants have observed their environment through direct contact with Pacific coastal ecosystems. For years, decades and sometimes generations, they have walked the beaches, rivers and streams, travelled the waters and hiked the forests and mountains, studying the environment and wildlife through scientific fieldwork, recreational hiking and boating, sailing, diving, commercial fishing, logging, boating, harvesting traditional foods, and gardening. They also learned and shared histories of their environment and ecosystems through science, art and oral histories from current and previous generations.

10. Coastal communities and indigenous peoples have directly witnessed the impacts of climate change and industrial activities. During the discussion, they expressed deep concern about the many impacts on Canada's Pacific coastal ecosystems: unpredictable and extreme weather; unpredictable seasons; lack of snow; lack of ice; glacier melt; water shortages due to drought; flooding; crop failure; wildfires; storms; shoreline erosion; mountain pine beetle infestation due to warm winters; salmon spawning failure; invasive species dominance over native species; mutation and disease in fish. They also remarked on a reduction in biodiversity, mentioning many species including migrant song birds, seagulls, herons, otters, elk, eagles, salmon, abalone, cod, perch and herring. They described fewer black bears on Vancouver Island, fewer migrating whales, plummeting bee populations, disappearing starfish, increases in jellyfish populations, changes in animal behaviour and a general loss of biodiversity in the ocean.

11. Extreme and unpredictable weather patterns were also a key theme. Coastal peoples described more frequent thunder and lightning and storms, very hot summers with drought conditions, less snow in the winter, changes in cloud cover (one resident noted observing more cumulus clouds in winter months), increasing ocean temperatures, rising sea level, decreasing snowpacks, increased frequency of mudslides, receding glaciers, low water levels and dry river and stream beds.

What follows in this submission chronicles those changes and concerns articulated in the 2015 discussions.

II. HEALTHY OCEANS: A NECESSARY CONDITION FOR THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

12. As a nation, Canada has the longest marine coastline in the world and therefore an enormous stake in and responsibility for the health of three major oceans surrounding the country. For decades, Canada's oceans have provided resources that form the base of cultural, economic and recreational opportunities for many Canadians. Ocean-related activity accounts for more than \$26 billion annually in the Canadian economy.¹⁰ The lives and culture of Canada's indigenous and non-indigenous people along the Pacific coast are interwoven with the cycles and features of the ocean.

¹⁰Government of Canada, *Our Oceans, Our Future: Federal programs and activities* (2009). Available at: <http://www.dfo-mpo.gc.ca/oceans/publications/brochures/fpa09-paf09/pdf/brochure-eng.pdf>

13. The coastal waters of British Columbia are an environmental treasure, known around the world for their beauty and biodiversity. However, for people living along Canada's Pacific coastal waters, this marine ecosystem is something far more important; it is the foundation of their survival, health, well-being and identity. As a source of rights to food, health and culture, Canada's Pacific coastal waters play a key role in food forage, economic activity, trade, recreation, transportation and tourism. A healthy ocean also helps to regulate climate by absorbing heat and redistributing it through currents, evaporation, condensation and precipitation. On a global level, most ocean life relies on plankton, microscopic organisms that convert the sun's energy to organic matter, producing more than half of the world's oxygen. Plankton also form the base of the ocean food web, of which humans are a part. Despite their critical function to support life and regulate the climate, plankton are under increasing threat from industrial pollution and excessive greenhouse gas emissions.

14. Oceans are under increasing pressure from shipping, fishing, tourism activities and pollution, which combine to create serious cumulative impacts on coastal and marine environments and wildlife on which coastal residents depend.

15. The health of Canada's oceans is gradually but steadily declining, as evidenced by the loss of abundance of many fish stocks other marine wildlife.

16. Canada has failed to meet its obligations to protect Pacific coastal ecosystems from industrial pollution, commercial overfishing, overharvesting, and (climate-related) ocean acidification.

CANADA'S RETROGRESS ON ENVIRONMENTAL PROTECTION

17. In 2012, with the passage of Bill C-38, a federal omnibus budget bill, Canada's government substantially weakened a number of critical environmental protections including the *Canadian Environmental Assessment Act*, *National Energy Board Act*, *Fisheries Act* and *Navigable Waters Protection Act*.¹¹ Despite the vast scope and impact of these legislative rollbacks, particularly on First Nations, there was no specific consultation with indigenous peoples. This was contrary to Canada's constitutional duties as affirmed by case law from the Supreme Court of Canada.¹² Evidence suggests that the government's weakening of environmental regulation was in response to the demands of extractive industries to facilitate the construction of oil and gas pipelines.¹³

18. In January 2016, the Commissioner of the Environment and Sustainable Development released her finding that the National Energy Board has not adequately tracked company implementation of pipeline approval conditions, or consistently followed up on company non-compliance with regulatory requirements.¹⁴

¹¹For overview of the impacts of the Bill C-38 on environmental protections, see: http://www.elc.ab.ca/Content_Files/Files/Bill38AnalysisArticlefinal.pdf

¹²UN Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples, Addendum : The situation of indigenous peoples in Canada*, 4 July 2014, A/HRC/27/52/Add.2

¹³Greenpeace, see: <http://www.cbc.ca/news/politics/energy-industry-letter-suggested-environmental-law-changes-1.1346258>

¹⁴Office of the Auditor General of Canada. Report available at: http://www.oag-bvg.gc.ca/internet/English/parl_cesd_201601_02_e_41021.html

CANADA'S FAILURE TO ADDRESS CLIMATE CHANGE

19. Canada's actions to combat climate change have fallen far short of the recommendations of scientists and international commitments. While Canadian cities and provinces have acted independently to implement policies to reduce emissions and transition to renewable energy sources, Canada lacks a cooperative, unifying national strategy. The most significant climate change policy Canada adopted in the past decade was to formally withdraw from the Kyoto protocol, a move that damaged the country's international reputation and indicates a reluctance to deal with climate change. Although emissions have fallen over the past decade, Canada is well behind global leaders, and the modest reductions are largely due to provincial policies on coal-fired power, and the global economic downturn. Without broader application of the carbon-reduction policies proven successful at the provincial level, the long-term trend is toward increased emissions, poor air quality and degraded natural systems.

LACK OF MARINE PROTECTION AND MANAGEMENT

20. Canada has made both national and international commitments to protect 10 per cent of its ocean environment by 2020. However, to date, less than one per cent of Canada's Pacific coastal waters have legal protection status.¹⁵ Marine protection falls primarily under federal jurisdiction. Pursuant to section 35(2) of the *Oceans Act*, the federal government is required to establish a national system of marine protected areas. In 2002, in compliance with the *Oceans Act*, the federal government developed the *Oceans Strategy*, which outlines a strategic path for realizing international commitments and domestic mandates for marine conservation through an ecosystem-based management approach. Since 2002, however, Canada has failed to meet its obligations under the *Oceans Act*, making little to no progress on the most basic elements of the act. The federal government has refused to recognize Indigenous Community Conserved Areas as legally binding,¹⁶ significantly underfunded the Oceans Action Plan, established very few marine protected areas, and failed to ratify any comprehensive marine-use plans. During the same period, the United States, the United Kingdom, Australia and other developed nations implemented marine-use plans and protected areas with significant success.¹⁷

21. A record decline of the Fraser River sockeye salmon in 2009 was the impetus for the Cohen Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River.¹⁸ In October 2012, Justice Bruce Cohen released his final report, which contained 75 time-bound and specific recommendations to government to restore this critical resource and improve management by Fisheries and Oceans Canada. The majority of the recommendations have not been acted upon, and numerous Pacific salmon populations along the entire West Coast of Canada remain in a highly depleted state. Full implementation of the recommendations would not only significantly improve the management and status of Pacific salmon, but would improve the overall role of science and transparency in government.¹⁹

¹⁵Government of Canada website: <http://www.dfo-mpo.gc.ca/oceans/management-gestion/marineprotection-protectionmarine/boofram2011/faq-eng.htm>

¹⁶Herrmann, T.M., Ferguson, M.A.D., Raygorodetsky, G. and Mulrennan, M. 2012. Recognition and Support of ICCAs in Canada. In: Kothari, A. with Corrigan, C., Jonas, H., Neumann, A., and Shrumm, H. (eds). *Recognising and Supporting Territories and Areas Conserved by Indigenous Peoples and Local Communities: Global Overview and National Case Studies*. Secretariat of the Convention on Biological Diversity, ICCA Consortium, Kalpavriksh, and Natural Justice, Montreal, Canada. Technical Series no. 64.

¹⁷See: (http://cpaws.org/uploads/CPAWS_DareDeep2015_v10singleLR.pdf)

¹⁸Final report available at: <http://publications.gc.ca/pub?id=9.652609&sl=0>

¹⁹Ibid.

22. Over the past decade, the federal government reduced Fisheries and Oceans Canada's budget, resulting in severe changes to sustainable fisheries and aquaculture, habitat, general science and species at risk programs.²⁰ While some funding is anticipated to be restored under a new government, it will not equal the amount previously reduced. Specific examples relevant to understanding the health of British Columbia's marine ecosystems include the loss of marine contaminant monitoring, insufficient funds for stock assessments (e.g., groundfish, herring), delayed recovery strategies for species at risk and less enforcement of habitat violations.

III. ENVIRONMENTAL AND HUMAN RIGHTS IMPACTS OF CANADA'S FAILURE TO PROTECT PACIFIC COASTAL ENVIRONMENTS

In my lifetime I have seen the mountains go from green to brown, from rainforest to barren and streams that have dried up. Starfish melting. Fish disappearing. The crucial snow hasn't come. Thunder, lightning and storms have become more frequent. Very hot summers. Elk disappearing. Invasive species are becoming more dominant. (Port Alberni, B.C.)

SCIENTIFIC EVIDENCE SUPPORTS OBSERVATIONS OF PACIFIC COASTAL PEOPLES

23. The observations of climate change made by coastal peoples are consistent with observations and predictions made by the Intergovernmental Panel on Climate Change, a body that represents a global scientific consensus about the dangers and causes of climate change.²¹

24. The loss of biodiversity witnessed by coastal peoples is reflected in the International Programme on the State of the Ocean's (IPSO) *State of the Ocean 2013 Report*, which predicts numerous marine species and entire marine ecosystems being lost within a single generation due to the combined effects of climate change and overexploitation.²² According to IPSO scientists, "This [acidification] is unprecedented in the Earth's known history. We are entering an unknown territory of marine ecosystem change, and exposing organisms to intolerable evolutionary pressure. The next mass extinction may have already begun."²³ The report further illustrates the unprecedented pressures on the ocean from the effects of climate change, and that the speed of many negative changes to the ocean are near to the worst-case scenarios predicted by IPCC. Human stressors including overfishing, industrial pollution and habitat destruction have severely compromised the ocean's resilience to climate change impacts.

HUMAN RIGHTS IMPACTS ON COASTAL PEOPLES

25. Coastal peoples articulated a range of human rights impacts of Canada's failure to protect Pacific coastal ecosystems, including violations of rights to self-determination, non-discrimination, food security, health and culture.

²⁰Government of Canada, Department of Fisheries and Oceans, see: <http://www.dfo-mpo.gc.ca/reports-rapports-eng.htm>

²¹IPCC, 2014: *Climate Change 2014: Synthesis Report*. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (AR5).

²²Report available at: <http://www.stateoftheocean.org/science/state-of-the-ocean-report/>

²³Fiona Harvey, "Rate of ocean acidification due to carbon emissions is at highest for 300m years" *The Guardian* 3 October 2013.

26. Coastal peoples, indigenous and non-indigenous, often described their experience of the ocean and its surrounding environment as deeply connected to their identity, spirituality, sense of meaning and psychological well-being. Coastal peoples reported fearing that their food sources are at risk, cultural experiences of nature for themselves and future generations may be lost, and their very survival is threatened by species extinction and ocean ecosystem collapse. Recognizing these experiences of nature as part of the common heritage of humanity and beneficial for present and future generations, they observed with great concern that they are living in an ecological state less abundant and diverse than that experienced by their parents and grandparents. Many expressed profound worry and grief for their children, grandchildren and future generations. Youth worried about the disappearance of species and ecosystems, expressing an urgent desire to experience them before they disappear, and an overwhelming fear about their future.

The fish count is getting lower every year and that scares me. I grew up eating fish and I would love it if I could show my grandchildren everything I knew about fishing and our traditional ways of using fish as food. (Kitimat, B.C., self-identified as member of Gitksan and Squamish Nation)

We on the West Coast are not protesting pipelines and terminals for tankers just to be awkward or selfish. We are thinking about our children and our children's children and what life could be like for them if these proposed developments are allowed to proceed as suggested. (Victoria, B.C.)

I am afraid to have children because I don't know if they will have a suitable environment to live in. (Smithers, B.C.)

Please protect our whales, sea stars and octopus. (Alert Bay, B.C., age 6)

27. Coastal First Nations cultures, spiritual traditions, histories and philosophies are inextricably linked to the natural environments and territories the people have stewarded for millennia, "We are stewards of the land and sea from which we live, knowing that our health as a people and our society is intricately tied to the health of the land and waters."²⁴ During the discussions, Coastal First Nations expressed grave concern about declining Pacific coastal environments, specifically identifying a threat to food security, health and culture through loss of traditional food sources. Concern that iconic species, central to indigenous cultures and health, are declining or becoming toxic was a common theme.

28. In the biosphere, air, water and land are all connected, just as within the human rights sphere, food security, culture and the environment are indivisible. This interdependence of humans and nature is poignantly captured in the comments of coastal peoples whose lived experience is interconnection, in contrast to what they see as a fractured governance model.

My family have lived in the Kemano and Kitlope river valleys since pre-contact with Europeans. We have survived off the abundance of natural foods. Salmon, oolichan, moose and mountain goat are held in high respect amongst my community. With the influx of industrial activity within Kitimat B.C., oolichan and moose have suffered greatly. I hope that it is not too late to save and recover what is remaining... (Prince Rupert, B.C.)

²⁴Brown, F. and Y.K. Brown, *Staying the Course, Staying Alive – Coastal First Nations Fundamental Truths: Biodiversity, Stewardship and Sustainability* (2009). Available at: www.biodiversitybc.org

As a mother, I am afraid my children will not have the same foods, joys or opportunities that I have had on the coast. I live and work in a First Nations Community, my children are First Nations and I will strive to make a change. (Prince Rupert, B.C.)

I am Nisga'a and love to eat sea lion, but is too toxic to eat now. (Port Alberni, B.C.)

29. Coastal communities consistently articulated concerns about Canada's failure to protect economic, social and cultural rights against interference by private entities — oil and gas companies, commercial fishing operations, fish farms, logging companies, pipeline construction companies — via industrial pollution and environmental destruction. They worried about industrial interests coming before the health, culture and security of coastal communities. Of greatest concern are the industrial impacts of oil and gas pipelines and tankers (immediate degradation and climate change impacts), potential oil spills, liquefied natural gas development (immediate degradation and climate change impacts), coal mines, fish farming (disease and species contamination), aquaculture and overfishing.

30. Participants believed that procedural and indigenous rights to consultation had been violated by biased, unfair or inadequate environmental assessment processes. The common view was that government policy prioritizes short-term business interests over the economic, social and cultural rights of indigenous peoples, coastal communities and future generations.

I have been disappointed with our provincial and federal governments with their lack of support, shortsightedness and making decisions that favour the dollar over the oceans and land. This has to change. We need leaders that care for our earth. (Campbell River, B.C.)

Day after day the Lax Kw'alaams people voice their opposition to development on Lelu Island, yet [the government] signs an agreement with a foreign government. It is extremely insulting to all people. (Prince Rupert, B.C.)

I am a Nisga'a/Haida/Gitksan First Nations woman. I am from New Aiyansh but I live in Prince Rupert. I am very concerned about the big oil and gas industry pushing their way into our beautiful coastal area. My husband and I lived in Alberta and saw how the industry operates to separate the people from their land and their souls. (Prince Rupert, B.C.)

Oil tanker traffic and mining operations are the two industries that have the potential to destroy whole ecosystems and the livelihood of coastal communities...The cost analysis of these operations should factor in the cost of destroying the environment and the livelihood of nearby coastal communities. (Kitimat, B.C.)

31. Coastal communities called for stronger environmental standards, regulation and enforcement. Indigenous peoples also called for Canada to fulfill its domestic and international obligations to engage in a process of free, prior and informed consent of the coastal First Nations affected by projects.

IV. INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

NORMATIVE BASIS FOR ENVIRONMENTAL PROTECTIONS UNDER ICESCR

Human rights and the environment

32. International environmental law has recognized the connection between human rights and the environment for decades.²⁵ Although international human rights law has been much slower to adopt these norms, it now firmly recognizes the connection between human rights and the environment.²⁶ In 2011 and 2012, the UN Human Rights Council (HRC) acknowledged and established human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and set forth the mandate of the Independent Expert on human rights and the environment.²⁷ The HRC affirmed States' obligation to protect against non-State infringements of human rights, *inter alia*, through enforcement of environmental laws that directly or indirectly contribute to the protection of human rights.²⁸ In 2015, the HRC extended the mandate of the Independent Expert in recognition of the increasing importance of the environmental dimensions of human rights.²⁹

33. A number of UN special rapporteurs and independent experts have articulated the impacts of climate change within the frame of economic, social and cultural rights and established environmental protections within rights to food, water and adequate housing.³⁰

34. In his first report, John Knox, UN Special Rapporteur on human rights and the environment, established the obligations that human rights law imposes regarding environmental protection, and conceptually clarified the interdependence between human rights and environment.³¹ Pointing to a range of HRC resolutions, the work of numerous UN special rapporteurs and independent experts, regional instruments and substantial jurisprudence, Knox has made a powerful case for the existence of environmental protections within human rights, concluding that human rights are indeed dependent on "an environment that allows them to flourish."³²

Climate change and human rights

35. The United Nations understands climate change as one of the greatest and most urgent threats to humanity.³³ *The Paris Agreement* articulates this threat as an "urgent and potentially irreversible threat to human societies and the planet".³⁴ The 2030 Agenda for Sustainable Development — a global plan of action "for the people, planet and prosperity" that integrates economic, social and environmental dimensions of development — specifically recognizes the threat of climate change to coastal communities:

*Increases in global temperature, sea level rise, ocean acidification and other climate change impacts are seriously affecting coastal areas and low-lying coastal countries, including many least developed countries and small island developing States. The survival of many societies, and of the biological support systems of the planet, is at risk.*³⁵

²⁵Stockholm Declaration, U.N. Doc. A/Conf.48/14/Rev.1(1973).

²⁶A/HRC/RES/19/10; A/HRC/RES/25/21; A/HRC/RES/28/11.

²⁷Resolutions 16/11 and 19/10.

²⁸A/HRC/25/L.31, para 4 (e).

²⁹A/HRC/RES/28/11.

³⁰Orellana M A, Kothari M & Chaudry S, "Climate Change in the Work of the Committee on Economic, Social and Cultural Rights", accessed online http://www.ciel.org/Publications/CESCR_CC_03May10.pdf; A/HRC/9/23; A/HRC/19/34.

³¹A/HRC/22/43.

³²Ibid, para 10.

³³Secretary-General Ban Ki Moon, Remarks to the General Assembly on Outcome of COP21, 15 December 2015.

³⁴*Paris Agreement*, FCCC/CP/2015/L.9/Rev.1.

³⁵A/RES/70/1, para 14.

36. The HRC has become active in advocating a human-rights-based approach to climate change.³⁶ A human-rights-based approach confirms that climate change is fundamentally a matter of human rights and recognizes that those who contributed least to climate change are unjustly and disproportionately harmed. Further, the Office of the High Commission on Human Rights (OHCHR) recently affirmed that:

*States have an obligation to respect, protect, fulfil and promote all human rights for all persons without discrimination. Failure to take affirmative measures to prevent human rights harms caused by climate change, including foreseeable long-term harms, breaches this obligation.*³⁷

Rights of Indigenous Peoples

37. The UN General Assembly adopted the *UN Declaration on the Rights of Indigenous Peoples (UNDRIP)* in 2007. It is the most comprehensive international statement of the rights of indigenous peoples.³⁸ *UNDRIP* establishes minimum standards for the survival, dignity, well-being and rights of the world's indigenous peoples. Centred in the leadership and expertise of indigenous peoples and with a view to preserving the rights of future generations, *UNDRIP* indivisibly connects environmental and human rights and recognizes indigenous environmental stewardship as a globally sustainable model of development.³⁹ The concept of environmental stewardship (rather than ownership) is fundamental to indigenous rights frameworks. Within this frame, environmental rights are accompanied by a deep responsibility to protect the environment for the sake of all creatures and future generations.

38. Canada must accept and implement these international norms connecting human rights and the environment in all measures including environmental regulation and constitutional interpretation.

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)

39. As far back as 2001, the Committee has issued concluding observations and recommendations that call for environmental protection of *Covenant* rights.⁴⁰ For example, the Committee has made recommendations on the environmental impacts of infrastructure development projects, natural resource extraction, investment agreements, dam construction and agricultural practices.

Recommendation: The State party must take immediate action, including international co-operation and adoption of legislative measures, to protect the Pacific coastal environment. The State party must also ensure effective remedy for environmental infringements on human rights by ensuring that constitutional protections include the right to live in a healthy environment.

³⁶For an overview of the Human Rights Council advocacy, including resolutions, reports and statements on climate change, see: <http://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/HRClimateChangeIndex.aspx>

³⁷OHCHR's key messages in the lead-up to COP21, key message #1, available at http://www.ohchr.org/Documents/Issues/ClimateChange/KeyMessages_on_HR_CC.pdf

³⁸A/RES/61/295.

³⁹Ibid, preamble.

⁴⁰The Universal Human Rights Index lists 43 sets of concluding observations containing environmental observations or recommendations issued by CESCR since 2001.

ICESCR, Article 1 — Right to self-determination

How do we remove systemic barriers that are enforced through control stemming from colonialism? How can we encourage collectivism that encourages support for all things living? (Telegraph Cove, B.C.)

There is a parallel between what was done to First Nations and what is being done to our whole community. Government needs to reconcile with the entire nation for promoting environmental genocide. (Port Alberni, B.C.)

Dangerous goods being shipped through our livelihood's water! And it's going on without our knowledge or without our consent. (Bella Bella, B.C.)

40. Pursuant to Article 1 and the *UN Declaration on the Rights of Indigenous Peoples*,⁴¹ indigenous peoples in Canada have the right to lands, territories and resources that they have traditionally owned, occupied or otherwise used or acquired. Indigenous peoples also have the right to develop priorities and strategies for development or use of their lands or territories and other resources⁴² and the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned lands, territories, water and coastal seas.⁴³

41. Coastal indigenous peoples may not be deprived of their means of subsistence or culture, which is principally derived from the Pacific Ocean. Indigenous peoples have lived on the B.C. coast for thousands of years, harvesting and stewarding a wide range of food from the ocean, including seaweed, shellfish, salmon, herring and halibut.⁴⁴

42. Indigenous rights to consultation are guaranteed under section 35 of the *Canadian Constitution*.⁴⁵ A body of jurisprudence has established Aboriginal rights and title in British Columbia.⁴⁶ In a landmark ruling that is the most current and comprehensive statement of the law of Aboriginal title in Canada, the Supreme Court of Canada recently clarified the nature and scope of Aboriginal title and the duty to consult:

*The nature of Aboriginal title is that it confers on the group that holds it the exclusive right to decide how the land is used and the right to benefit from those uses, subject to the restriction that the uses must be consistent with the group nature of the interest and the enjoyment of the land by future generations...This means the government must act in a way that respects the fact that Aboriginal title is a group interest that inheres in present and future generations, and the duty infuses an obligation of proportionality into the justification process: the incursion must be necessary to achieve the government's goal (rational connection); the government must go no further than necessary to achieve it (minimal impairment); and the benefits that may be expected to flow from that goal must not be outweighed by adverse effects on the Aboriginal interest (proportionality of impact). Allegations of infringement or failure to adequately consult can be avoided by obtaining the consent of the interested Aboriginal group. This s. 35 framework permits a principled reconciliation of Aboriginal rights with the interests of all Canadians.*⁴⁷

The court confirmed that Aboriginal title extends to territories (beyond the bounds of reserves) that First Nations regularly and exclusively used at the time the Crown asserted sovereignty.

⁴¹Article 26, para 1.

⁴²UNDRIP Article 31, para. 1.

⁴³UNDRIP Article 25

⁴⁴Brown & Brown, *Staying the Course, Staying Alive*.

⁴⁵Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11.

⁴⁶See for instance: *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44, [2014] 2 S.C.R. 256; *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, 2004 SCC 73; *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010.

43. B.C. First Nations have legally challenged federal and provincial governments for their failure to engage in a consultation that meets international standards of free, prior and informed consent in the assessment of a number of oil and gas development projects⁴⁸ that affect Coastal First Nations territories.

44. Canada has failed to meet core obligations under the *Covenant* and section 35 of the *Canadian Constitution* by authorizing private exploitation of natural resources and industrial/commercial activity in the coastal and marine territories traditionally occupied or used by coastal First Nations without their free, prior and informed consent.⁴⁹ In so doing, Canada has breached its obligations under Article 1 of the *Covenant*. The Canadian government has also failed to consider the specific and disproportionate impacts of industrial/commercial activity on indigenous women and girls in breach of obligations under Articles 2 and 3 of the *Covenant*.

45. Canada has failed to mitigate the environmental and human rights impacts of ocean acidification and warming on coastal First Nations by failing to implement comprehensive marine planning and protection that is consistent with indigenous principles of ecosystem-based management⁵⁰ and meets obligations under the *Oceans Act*⁵¹ and the *Convention on Biological Diversity*.⁵² The negative impacts on ocean health from ocean warming and acidification are made worse by ocean stressors such as pollution and the reduction of biodiversity due to overfishing. Furthermore, Canada has failed to assess the gender-based impacts of climate change on coastal First Nations women and girls, and has denied indigenous women equal access to climate change decision-making processes.⁵³

Recommendation: The State party (including provincial and federal governments) must ensure the free, prior and informed consent of coastal First Nations in advance of the government approving resource development in the traditional territories and ecosystems of Pacific Coastal First Nations. Consultation must specifically invite the participation of indigenous women and address the impacts of industrial activity on the rights of indigenous women and girls.

⁴⁸For example, the Enbridge Northern Gateway Project aims to construct two pipelines that would carry an average of half a million barrels of crude oil and 193,000 barrels of condensate per day approximately 1,170 kilometres between Alberta and coastal British Columbia. The proposed pipeline route crosses over 1,000 streams and rivers, including the salmon-bearing Fraser and Skeena watersheds. The pipeline would bring crude oil tankers to B.C.'s north coast, requiring them to navigate treacherous waters of the pristine Pacific coastal environment; The Kinder Morgan proposal to twin the Trans Mountain pipeline from Edmonton to the B.C. coast (approximately 900 km of new pipeline) would more than double the amount of heavy crude travelling through B.C. from 300,000 barrels to 750,000 barrels; The Petronas Pacific Northwest Liquefied Natural Gas project on Lelu Island has been rejected by a wide coalition of First Nations leaders, local residents and federal and provincial politicians due to its threat to critical salmon habitat. For more information, see: <https://intercontinentalcry.org/first-nations-mlas-and-mp-sign-declaration-for-permanent-protection-of-lelu-island-from-petronas-lng-project/>

⁴⁹Eight First Nations — Gitga'at First Nation, Gitxaala Nation, Haida Nation, Haisla Nation, Heiltsuk Nation, Kitsoo Xai'Xais Nation, Nadleh Whut'en, Nak'azdli Whut'en — launched legal challenges to the federal government's approval of the Enbridge Northern Gateway Project. For legal arguments, see: <http://wcel.org/resources/publication/legal-backgrounder-what-are-northern-gateway-court-challenges-about>; See recent B.C. Supreme Court ruling *Coastal First Nations v. British Columbia (Environment)*, 2016 BCSC 34

⁵⁰See http://www.coastalfirstnations.ca/sites/default/files/imce/Fact_Sheet_1.pdf

⁵¹Oceans Act, SC 1996, c 31

⁵²1760 UNTS 79

⁵³Native Women's Association of Canada, *Aboriginal Women and Climate Change: An Issue Paper (2007)*; Also see <http://www.idlenomore.ca/>

ICESCR, Article 2, paragraph 1 — State obligations

Oil tanker traffic and mining operations are the two industries that have the potential to destroy whole ecosystems and the livelihood of coastal communities...The cost analysis of these operations should factor in the cost of destroying the environment and the livelihood of nearby coastal communities. (Unspecified community, B.C.)

Like everyone I know, I am alarmed at how rapidly our climate is changing and I am deeply disappointed by our leaders' reluctance to address the serious issues. People must compel our leaders to take action and override the influence of the industry lobbyists who appear to hold sway over public policy. (Port Alberni, B.C.)

I would want to say to [decision-makers] that no matter how upsetting the short term change from fossil fuels to green energy would be, it is necessary if we want to keep this beautiful green planet in a healthy state for use and enjoyment by future generations. (Maple Ridge, B.C.)

46. Canada has an obligation to ensure the ecological conditions necessary for the realization of *Covenant* rights. Canada's failure to protect Pacific coastal ecosystems from degradation and climate impacts caused by business enterprises is unjustified and results in foreseeable infringements of numerous *Covenant* rights. State obligations under the *Covenant* include enforcement of environmental laws.⁵⁴

47. Moreover, Canada has not met its obligation to act with due diligence to ensure that economic, social and cultural rights of coastal peoples are adequately protected against interference by business enterprises that degrade Pacific coastal environments.⁵⁵ Canada has failed to take appropriate steps to prevent these infringements by retrogressively weakening environmental regulations in 2012 and failing to adequately protect and manage oceans pursuant to the *Oceans Act*.

48. The State party has retrogressively deprived people of environmental protections they once enjoyed and that are essential for the continued enjoyment of rights set out in the *Covenant*. Weakening of Canadian environmental regulation was a deliberately retrogressive measure that is not justified by reference to the totality of the rights provided for in the *Covenant*.

49. Canada is not justified in its failure to protect *Covenant* rights, including core obligations, on the argument that it lacks available resources. A wealthy country with great potential for sustainable economic development, Canada has a specific and continuing obligation to move "as expeditiously and effectively" as possible toward the full realization of rights set out in the *Covenant*.⁵⁶

⁵⁴See report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, A/HRC/17/31, Principle 3.

⁵⁵Ibid

⁵⁶UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, 14 December 1990, E/1991/23, para 9.

Recommendation: To fully abide by its obligations under Article 2, paragraph 1, the State party must strengthen environmental regulations to protect enjoyment of Covenant rights against interference from business enterprises. We strongly recommend that the State party take immediate steps to restore robust environmental protection, oversight and assessment, ensuring that in so doing the State party fully executes its constitutional and international human rights obligations, including Aboriginal and treaty rights and the United Nations Declaration on the Rights of Indigenous Peoples.

ICESCR, Article 2, paragraph 2, and Article 3 — Disproportionate impacts on vulnerable populations

Human rights are impacted negatively but also unequally. Those who rely directly on the environment are impacted first, while those with financial means can deny that impact. (Prince Rupert, B.C.)

There are so many human rights issues including poverty, addiction, mental health issues and violence in our communities which makes us easy prey for big industry to sweet talk people into accepting money in lieu of our national resources. (Terrace, B.C.)

I want to be heard as a youth. All of our beauty, food, hobbies, and overall lifestyles will be damaged if we let industry push their way in and walk all over us. I want to continue to traditionally harvest salmon, oolichans, seaweed, clams, herring eggs, and all the delicious berries! Oil and gas will ruin everything that we have and if not right away....slowly. (Kitimat, B.C.)

50. Canada has immediate obligations to undertake to guarantee that the rights enunciated in the *Covenant* will be exercised without discrimination.⁵⁷ Under this obligation, Canada must immediately act to prevent and mitigate the disproportionate impacts of environmental degradation and climate change on vulnerable groups, especially indigenous peoples, women and girls, children and people living in poverty. Under Article 3, economic, social and cultural rights must be enjoyed equally by men and women.

51. Canada's failure to protect Pacific coastal ecosystems results in specific and disproportionate negative impacts on the economic, social and cultural rights of women, children and indigenous peoples. Food and water insecurity, extreme weather and disease related to pollution or climate change aggravate existing conditions of social and economic inequality with particularly grave impacts on indigenous women and girls.

52. According to UNICEF, which has made environmental sustainability a priority for 2016, "the evidence is indisputable: climate change and environmental degradation undermine the rights of every child, especially the most disadvantaged."⁵⁸ Children and future generations will bear the brunt of climate change due to the fact that they will live long enough to see the worst impacts, but also due to their physical and social vulnerability as dependents. Among children, girls — especially those living in poverty, in geographically vulnerable regions such as coastal communities, and indigenous girls — are hit the hardest.⁵⁹

⁵⁷Ibid.

⁵⁸<http://www.unicef.org/environment/>

⁵⁹Justice for Girls and Justice for Girls International, Submission to the UN Committee on the Rights of the Child At its 61st session and Periodic Review of Canada 17 September - 5 October, 2012

53. Women and girls are disproportionately vulnerable to fatality and ill health caused by food and water scarcity and extreme weather disasters.⁶⁰ Globally, droughts, floods and storms kill more women than men, and tend to kill women at a younger age. Women are also more at risk, in both relative and absolute terms, of dying in heatwaves⁶¹ and are more likely to experience male violence, including rape and sexual assault, physical assault, psychological and emotional abuse, sexual exploitation and trafficking in the aftermath of extreme weather disasters.⁶²

54. Acting as a “threat multiplier”, environmental degradation and climate change compound the colonial legacy of social and economic inequality faced by indigenous women and girls. Social and economic inequality of indigenous women and girls are cited by the CEDAW Committee,⁶³ Inter-American Commission on Human Rights⁶⁴ and Human Rights Watch as the root causes of an epidemic of murdered and missing indigenous women in British Columbia.⁶⁵

55. Indigenous peoples face severe, potentially genocidal impacts of climate change through loss of subsistence and culture.⁶⁶ Indigenous livelihoods often depend on natural resources that are directly affected by climate change in areas that contain abundant but fragile ecosystems.⁶⁷ Environmental degradation and climate change disproportionately affect indigenous communities due to their proximity to sites of resource extraction and industrial pollution, as well as a closer reliance on the natural environment for sustenance. Beleaguered by intergenerational impacts of residential schools,⁶⁸ as well as widespread poverty and violence against women and girls, indigenous communities are more vulnerable to environmental degradation and climate-related disaster. According to the UN Special Rapporteur on the rights of indigenous people, indigenous peoples in Canada face the highest risks to their health, economy and cultural identity from environmental degradation related to resource development.⁶⁹

56. The UN Committee on the Elimination of Racial Discrimination (CERD) recognizes encroachment on the traditional lands and territories of indigenous peoples for natural resource exploitation as a potential trigger for early warning and urgent action procedures to prevent irreparable harm or genocide.⁷⁰

⁶⁰World Health Organization. *Gender, Climate Change and Health, WHO Report* (2014); Neumayer, Eric, and Thomas Plümper. “The gendered nature of natural disasters: The impact of catastrophic events on the gender gap in life expectancy, 1981-2002.” *Annals of the Association of American Geographers* 97, no. 3 (2007): 551-566.

⁶¹WHO, *Gender, Climate Change and Health*.

⁶²Gennari, Floriza; Arango, Diana; Hidalgo, Nidia; McCleary-Sills, Jennifer. 2015. *Violence against women and girls resource guide: disaster risk management brief*. Washington, DC; World Bank Group.

⁶³Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 30 March 2015) CEDAW/C/OP.8/CAN/1.

⁶⁴Missing and Murdered Indigenous Women in British Columbia, Canada (21 December 2014) Inter-American Commission on Human Rights, OEA/Ser.L/V/II. Doc. 30/14.

⁶⁵Human Rights Watch, *Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada*, February 2013, ISBN: 1-56432-985-2

⁶⁶Williams, Jay. “The impact of climate change on indigenous people — the implications for the cultural, spiritual, economic and legal rights of indigenous people.” *The International Journal of Human Rights* 16, no. 4 (2012): 648-688.

⁶⁷Salick, J and Byg, A, “Indigenous Peoples and Climate Change” A Tyndall Centre Publication Tyndall Centre for Climate Change Research, Oxford May 2007

⁶⁸*Honouring the Truth, Reconciling for the Future: Summary of the final report of the Truth and Reconciliation Commission of Canada* (2015), available at http://www.trc.ca/websites/trcinstitution/File/2015/Honouring_the_Truth_Reconciling_for_the_Future_July_23_2015.pdf; *Gender Matters: Building strength in reconciliation* (2012) Native Women's Association of Canada & Justice for Girls, available at <http://www.nwac.ca/wp-content/uploads/2015/05/Gender-Matters-Introduction.pdf>

⁶⁹UN Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples, Addendum: The situation of indigenous peoples in Canada*, 4 July 2014, A/HRC/27/52/Add.2.

⁷⁰CERD Guidelines for the Early Warning and Urgent Action Procedures, A/62/18, Annexes, Chapter III, para 12 (h)(i).

57. Canada has failed to adopt all reasonable measures, to the maximum of its available resources, to protect coastal communities, especially those most vulnerable and disproportionately affected, against foreseeable human rights harms caused by industrial degradation and climate impacts on Canada's Pacific coastal waters. In so doing, Canada has breached its obligations to non-discrimination under Articles 2 and 3.

Recommendation: Recognizing climate change as an urgent and potentially irreversible threat to human societies and the planet, one that disproportionately affects indigenous peoples, women and children, we urge the State party to cut carbon emissions by 35 per cent below 1990 levels by 2025 and move to 100 per cent renewable energy production (i.e., zero emissions) by 2050. These emissions targets must be enshrined in domestic law. We also urge the State party to act urgently to ensure that ocean protection is a priority in domestic and international climate change agreements and actions.

ICESCR, Article 11 — Right to adequate standard of living: food security

My Tsimshian grandfather was a fisherman. Our ancestors were skilled navigators of this rugged, dangerous coast and fed their families sustainably. Risking our salmon, halibut, oolichan and seaweed means risking our right to feed ourselves. (Kitimat, B.C.)

I'm uncomfortable eating food from the ocean because I am unsure whether it is safe or healthy anymore. (Coastal community, B.C.)

58. Article 11, paragraph 1, of the *Covenant* specifies a number of rights emanating from and indispensable for the realization of the right to an adequate standard of living, including the right to adequate food. Within the right to adequate food, the obligation to protect requires that States take measures to ensure that business enterprises do not deprive individuals of their access to adequate food. Core obligations of the right include States' obligation to refrain from discrimination in access to food and to ensure no retrogress in implementation.⁷¹

59. Adequacy under Article 12 requires food to be "safe for human consumption, free of adverse substances, culturally acceptable and nutritious."⁷² Environmental contamination and degradation of the Pacific coastal environment via industrial/commercial activity and related climate change threatens the right to food for coastal communities, with particular and disproportionate impacts on Coastal First Nations.

60. Indigenous communities along the Pacific coast have relied on salmon for food and ceremonial purposes. Other fish and marine stocks are central, traditional elements in coastal indigenous diets.

⁷¹UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 12: The Right to Adequate Food* (Art. 11 of the Covenant), 12 May 1999

⁷²UN General Assembly, *Right to food: note / by the Secretary-General*, 5 August 2015, A/70/287 para 15.

61. Many salmon populations in British Columbia are in a state of decline, with some reaching endangered status. Climate change impacts, including rising ocean temperatures and ocean acidification, are expected to have major negative effects on fish stocks and thus food security.⁷³ Recent research in B.C. indicates that increased sea surface temperatures are likely to affect 98 fish and shellfish species that First Nations groups rely on for food and result in job losses estimated to be worth between \$6.7 and \$12 million per year by 2050.⁷⁴

62. During his visit to Canada in 2012, the UN Special Rapporteur on the right to food described “deep and severe food insecurity” faced by Aboriginal peoples.⁷⁵ According to the Rapporteur environmental threat was a key issue.

*Issues with accessing traditional foods include the impacts of climate change on migratory patterns of animals and on the mobility of those hunting them; limited availability of food flora and fauna; environmental contamination of species; flooding and development of traditional hunting and trapping territories; lack of equipment and resourcing to purchase equipment or inputs necessary for hunting, fishing and harvesting; and lack of requisite skills and time.*⁷⁶

Indigenous peoples’ right to traditional food intersects with rights to self-determination, culture, health and non-discrimination.

ICESCR, Article 12, paragraph 2 (b) — The right to health: environmental obligations are underlying determinants of health

Our human health needs healthy ecosystems. Decision-makers need to know and understand these connections and make better decisions. (Smithers, B.C.)

63. The right to health under Article 12 encompasses underlying determinants of health such as access to adequate food and clean water, and environmental conditions that are conducive to the realization of the highest attainable standard of health.⁷⁷ In *General Comment 14*, the Committee articulates States’ duties to reduce exposure to detrimental environmental conditions that directly or indirectly impact upon human health.⁷⁸ The primary international instrument for protecting children’s right to health, the *UN Convention on the Rights of the Child*, also names environmental protection as necessary to the full implementation of children’s right to health.⁷⁹ Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals.⁸⁰

64. Canada’s obligation to protect the right to health requires measures that prevent third parties from interfering with Article 12 guarantees. Canada has an obligation to protect the right to health against pollution and climate change caused by business enterprises that affect the health of the Pacific Ocean — a critical source of adequate food and traditional diet for coastal peoples and mechanism of climate regulation.

⁷³A/67/268.

⁷⁴Weatherdon L.V., Ota Y., Jones M.C., Close D.A., Cheung W.W.L. (2016) Projected Scenarios for Coastal First Nations’ Fisheries Catch Potential under Climate Change: Management Challenges and Opportunities. PLoS ONE 11(1): e0145285. doi:10.1371/journal.pone.0145285.

⁷⁵UN Human Rights Council, *Report of the Special Rapporteur on the Right to Food, Olivier de Schutter: Addendum, Mission to Canada*, 24 December 2012, A/HRC/22/50/Add.1.

⁷⁶Ibid, para 64.

⁷⁷UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health* (Art. 12 of the Covenant), 11 August 2000, E/C.12/2000/4, para 11.

⁷⁸Ibid.

⁷⁹Article 24, para 2(c).

⁸⁰UNDRIP, Article 24 (1).

ICESCR, Article 15 — Right to culture

Growing up on the west coast, the ocean is the backdrop to every memory, family meal, adventure and teaching. Education and conservation in the modern day are essential to preserving the sometimes invisible relationships that thoroughly exist between every human and other living creatures with the great water bodies on our planet. (Unspecified community, B.C.)

I grew up fishing on my traditional territories, my mother grew up fishing, my grandmother too! I want my son growing up and being able to fish there and his children! (Kitimat, B.C.)

When the fish come home or pass by Campbell River this whole community comes alive. When the fishing begins, I imagine how our ancestors, both aboriginal and non-aboriginal, celebrated the coming of the salmon. We spend time together harvesting and putting away our food for the winter. Without the fish, a large piece of our island culture goes with them. (Campbell River, B.C.)

65. Pacific coastal communities — indigenous and non-indigenous — experience the natural environment culturally. The ocean and surrounding environment, including marine species and plant life, define their identities, occupations and traditions.

66. The right to culture is broadly defined under Article 15 of the *Covenant* as an “inclusive concept encompassing all manifestations of human existence” and as “a living process, historical, dynamic and evolving, with a past, a present and a future.”⁸¹ Within its definition of culture, the Committee includes natural environments and food.⁸² Further, the right guarantees the freedom to “follow a way of life associated with the use of cultural goods and resources such as land, water, biodiversity, language or specific institutions, and to benefit from the cultural heritage and the creation of other individuals and communities.”⁸³

67. The necessary conditions for the full realization of the right of everyone to take part in cultural life on the basis of equality and non-discrimination include, *inter alia*, availability of “nature’s gifts, such as seas, lakes, rivers, mountains, forests and nature reserves, including the flora and fauna found there, which give nations their character and biodiversity”.⁸⁴

68. Children play a fundamental role as the “bearers and transmitters of cultural values from generation to generation.”⁸⁵ Canada’s failure to protect the Pacific Ocean and surrounding environment has a disproportionate negative impact on children and future generations. Children and future generations are denied access to “nature’s gifts”⁸⁶ essential to the realization of the right to culture due to species extinction, toxicity of iconic species and reduction in biodiversity.

⁸¹UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment no. 21, Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights)*, 21 December 2009, E/C.12/GC/21, para 11.

⁸²*Ibid*, para 13.

⁸³*Ibid*, para 15(b).

⁸⁴*Ibid*, para 16 (a).

⁸⁵ *Ibid*, para 26.

⁸⁶ *Ibid*, para 16 (a).

69. For thousands of years, diverse groups of coastal First Nations built their culture around the ocean's riches — fish, clams, seaweed, mammals and birds. One of the most iconic and important groups were salmon — six species — that were integral to the food web of birds, fish and mammals, including humans.

70. In its *General Comment 21*, the Committee stressed the connection between nature and indigenous cultural identity,

*Indigenous peoples' cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected, in order to prevent the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity.*⁸⁷

States obligation to indigenous peoples under Article 15 “includes protection from illegal or unjust exploitation of their lands, territories and resources by State entities or private or transnational enterprises and corporations.”⁸⁸

71. Canada's failure to protect the Pacific coastal environment is a breach of all coastal peoples' right to culture. This failure has specific and disproportionate negative impacts on children and future generations, and coastal First Nations.

THE CANADIAN CONSTITUTION — DOMESTIC EFFECT OF THE COVENANT

72. Domestic recognition of economic, social and cultural rights is manifested in constitutional provisions, *inter alia*, under section 7 (life, liberty and security of the person) and section 15 (equality) of the *Canadian Charter of Rights and Freedoms (Charter)*. According to Collins, within “the ecological paradigm that is arguably emerging as a dominant theoretical framework for life in the twenty-first century”, environmental protections should be understood as a component of Canadian Constitutional rights to equality and life, liberty and security of the person.⁸⁹

73. International human rights standards — treaties, declarations, agreements and jurisprudence — are sources for Canadian constitutional interpretation.⁹⁰ Indeed, under Article 27 of the *Vienna Convention on the Law of Treaties*, domestic constitutional interpretation must comply with international human rights standards.⁹¹ Canada thus has an obligation under international law to interpret the *Charter* in a way that is consistent with international norms surrounding human rights and the environment.

⁸⁷Ibid, para 36.

⁸⁸Ibid, para 50 (c).

⁸⁹Collins, “Ecologically Literate Reading”, p.47

⁹⁰Young, Margot E., “The Other Section 7” (2013) 62 *Supreme Court Law Review (2d)* 3-48. Available at SSRN.

⁹¹23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331

Canada must accept international norms surrounding human rights and the environment

Interpretation of sections 7 and 15

74. Section 7 of the *Charter* guarantees basic necessities of life, including basic means of subsistence.⁹² Canada must recognize a healthy environment as a basic necessity of life and must urge its courts to adopt this interpretation of section 7. Government authorizations of private conduct or environmental regulation that increase risk of death due to disease, extreme weather disaster, food insecurity or extinction due to climate change must be interpreted as a breach of the right to life and security under section 7. Indeed, the UN Human Rights Committee, in *EHP v. Canada*, acknowledged section 7 of the *Charter* as the appropriate legal protection in response to government action resulting in environmental threats to the right to life.⁹³

75. Section 7 also protects liberty, including the right to choose the environment in which one lives free from State-imposed penalty.⁹⁴ The notion of liberty as a more inclusive right to autonomy and self-fulfillment is growing within Canadian jurisprudence.⁹⁵ Canada's failure to protect the Pacific coastal environment from pollution (e.g., oil spill), degradation or climate-related disaster thus infringes on the right to liberty if a person is unable to freely make important life choices as a result.

76. The right to security under section 7 protects health and bodily integrity, including freedom from State-imposed psychological and emotional stress.⁹⁶ Environmental protections within the right to security must protect rights holders against State authorizations of environmentally harmful industrial activity resulting in ill health or psychological distress.

77. Given the disproportionate impacts of environmental degradation and climate change on already disadvantaged groups, section 15 (equality provisions) would almost certainly be engaged within an environmental reading rights to life, liberty and security of the person.

Recommendation: Recognizing international human rights norms that affirm the indivisibility of human rights and the environment, we encourage the State party to accept these norms as a primary source of interpretation of section 7 of the *Canadian Charter of Rights and Freedoms*. The State party must incorporate environmental protections within the right to life, liberty and security of the person and recognize a healthy environment as a basic necessity of life. The State party must take all reasonable measures, including resource allocation, legal research, judicial education and policy, to promote environmental protections within section 7 guarantees.

⁹²Young, "The Other Section 7"

⁹³Communication No. 67/1980, *EHP v. Canada* (UNDOC CCPR/C/OP/2) [*EHP v. Canada*].

⁹⁴Collins, "Ecologically Literate Reading".

⁹⁵Young, "The Other Section 7".

⁹⁶Collins, "Ecologically Literate Reading".

Need for free-standing constitutional right to a healthy environment

78. Seen as one of the most important steps ever taken to protect and promote environmental democracy internationally, and endorsed by multiple UN special procedures,⁹⁷ 20 governments⁹⁸ in Latin America and the Caribbean are advancing toward a regional agreement on rights of access to information, participation and justice in environmental matters.⁹⁹ More than three quarters of the world's national constitutions now include explicit references to environmental rights and/or environmental responsibilities.¹⁰⁰ Canada's *Constitution*, however, does not contain a free-standing right to a healthy environment nor any other explicit environmental protection.

79. The David Suzuki Foundation conducted an opinion poll in 2015 for which 85 per cent of respondents believed environmental rights should be included in the *Canadian Charter of Rights and Freedoms*.¹⁰¹ More than 10 million people in Canada now live in communities where their local governments recognize that they should have the basic human right to clean air, safe drinking water and a stable climate.¹⁰²

Recommendation: We urge the State party to recognize that all of its citizens enjoy the right to live in a healthy environment, including clean air, access to safe drinking water and adequate sanitation, nutritious and affordable food, native biodiversity and resilient, fully functioning ecosystems. Implicit in this right are procedural rights that contribute to its fulfillment, including the rights of access to environmental information, public participation in environmental decision-making, and access to justice in environmental disputes. The right to a healthy environment should be immediately recognized in federal, provincial, and territorial legislation, and eventually granted constitutional recognition along with other fundamental human rights.

⁹⁷Statement by United Nations experts on the ECLAC's negotiation of a regional instrument on environmental democracy - See more at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16630&LangID=E#sthash.E7AAsceY.mQFgy2M9.dpuf>.

⁹⁸Antigua and Barbuda, Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Panama, Paraguay, Peru, Saint Vincent and the Grenadines, Trinidad and Tobago, and Uruguay.

⁹⁹"In Panama Countries Conclude Second Round of Negotiations for Agreement on Rights of Access in Environmental Matters" (30 October 2015) Press release, Economic Commission for Latin America and the Caribbean (ECLAC).

¹⁰⁰Boyd, David R. "The Status of Constitutional Protection for the Environment in Other Nations" (2014). Paper published by The David Suzuki Foundation. Available at: <http://david Suzuki.org/publications/2014/whitepapers/DSF%20White%20Paper%204.pdf>

¹⁰¹Polling conducted by Angus Reid Public Opinion for the David Suzuki Foundation, January 2012.

¹⁰²see <http://bluedot.ca/take-action/>