

Environmental Rights in CEPA

November 5, 2020



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One nature.

2017 ENVI recommendations 2-5

- Expand and strengthen duties and rights for transparency, public participation, accountability mechanisms and consultation.
- Amend the preamble to recognize a right to a healthy environment, mention the importance of considering vulnerable populations in risk assessments, and recognize the principles put forward in UNDRIP
- Include the right to a healthy environment in the administrative duties (sec. 2), development of objectives, guidelines and codes of practice (sec. 54-55), assessment of risks of toxic substances (sec. 76.1), and the development of risk management tools (sec. 91)
- Incorporate a series of substantive and procedural improvements to give greater force and effect to environmental rights.

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A parallel: Precautionary principle

- **Preamble:** Whereas the Government of Canada is committed to implementing the precautionary principle that, where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation;
- **Duties**
 - **s. 2 (1)** In the administration of this Act, the Government of Canada shall...
 - **(a)** exercise its powers in a manner that protects the environment and human health, applies the precautionary principle ...
- **Part 5**
 - **s.76.1** When the Ministers are conducting and interpreting the results of [risk assessments] the Ministers shall apply a weight of evidence approach and the precautionary principle.
- **implementation guidance**

Operationalizing environmental rights in CEPA

1. General statement:

- Preamble: “Whereas all people in Canada have the right to a healthy environment.”
- Ministerial duty to “respect, protect and fulfill human rights” or “the human right to a healthy environment” in the administration of CEPA.

Operationalizing environmental rights in CEPA

2. **Mandatory requirements in Part 5 to identify potential human rights impacts from substances.**
3. **Provisions expressly addressing vulnerable populations**
 - Require consideration of vulnerable populations in assessment and management of toxic substances – including Indigenous Peoples, workers, seniors, children and lower socio-economic populations
4. **Implementation guidelines**

The environmental rights gap in CEPA

No requirement to systematically assess (and prevent) adverse human rights impacts.

- ***Adverse human rights impact*** occurs when risk assessment and management actions fail to prevent threats and/or harm to human health or the environment that remove or reduce the ability of an individual to enjoy their human rights.

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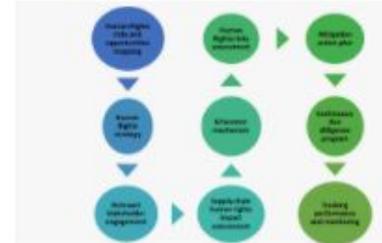
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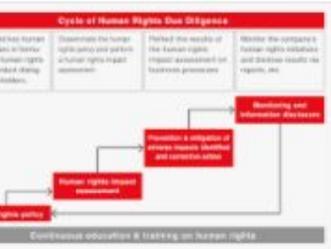
Equality & Human Rights Impact Assessment eqhria.scottishhumanrights.com



Adapting social impact assessme... sciencedirect.com



Human Rights vale.com



Implementing Human Rights Due Diligence ... kirinholdings.co.jp

Table with columns: Right, Initial assessment 2009, Monitor 1 2010, Monitor 2 2011, Monitor 3 2014. Lists various rights and their monitoring status.

Table with columns: Right, Monitoring rating, Objective, Key Indicators. Lists rights and their corresponding indicators and ratings.



Human rights impact assessment

Resources:

- U.S. Executive Order on Environmental Justice

<https://www.epa.gov/laws-regulations/summary-executive-order-12898-federal-actions-address-environmental-justice>

- Framework Principles for Human Rights and the Environment – UN Special Rapporteur on Human Rights and the Environment

<https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/FrameworkPrinciplesReport.aspx>

Human rights impact assessment – key elements (a starting point)

- Environmental justice – Would a decision have discriminatory effects?
- Would a decision result in regression of environmental standards, without scientific basis?
- Completeness of exposure and effects data for marginalized and vulnerable populations?
- The extent to which substances impact the rights of those who are most vulnerable to environmental harm and the potential need for additional measures to protect these individuals' rights.
- Consistency with UNDRIP, Canada's obligations to Indigenous Peoples.
- Cumulative health effects of substances assessed as a group or class.

Electronic Petition 2758

We, the undersigned, **citizens and residents of Canada**, call upon the **House of Commons** to pass legislation to modernize the Canadian Environmental Protection Act, 1999 without delay, to ensure

- i. better control of toxic substances — notably, banning highly hazardous substances like carcinogens and reproductive toxicants, addressing cumulative effects and requiring substitution with safer alternatives, and disclosure of chemicals in products through better labelling,
- ii. enforceable national air and water quality standards,
- iii. protection for vulnerable populations, and
- iv. recognition of the human right to a healthy environment.

Thank you!

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