

# Report to the International Court of Justice

## International Court of Justice Advisory Opinion on the Obligation of States in Respect of Climate Change

Joint Submission of the International Human Rights  
Program, University of Toronto Faculty of Law and  
Greenpeace Canada

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## TABLE OF CONTENTS

I. Introduction .....	1
II. Canada's obligations in respect of climate change .....	2
A. The relationship between climate change and Canada's international human rights obligations .....	2
a) Canada's obligations under the International Covenant on Civil and Political Rights .....	2
b) Canada's obligations under the International Covenant on Economic, Social and Cultural Rights .....	3
c) Canada's obligations under other international human rights instruments .....	4
B. Canada's obligations in respect of climate change under international human rights law .....	7
C. Canada is failing to fulfill its obligations in respect of climate change .....	9
a) Failure to reduce emissions .....	9
b) Support for fossil fuel projects and corporations .....	10
c) Subsidies and public financing of the oil and gas sector .....	11
d) Failure to regulate transnational business and ensure corporate accountability .....	13
e) The clean energy transition and threats to human rights .....	15
III. Legal consequences for Canada .....	16

# **International Court of Justice Advisory Opinion on the Obligation of States in Respect of Climate Change: Joint Submission of the International Human Rights Program, University of Toronto Faculty of Law and Greenpeace Canada**

## **I. INTRODUCTION**

United Nations (UN) General Assembly resolution 77/276<sup>1</sup> asked the ICJ to provide a legal opinion on the following questions, taking into account international environmental and human rights instruments, including, among others, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, and the rights recognized in the Universal Declaration of Human Rights:

- (a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations?
- (b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:
  - (i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?
  - (ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?

This request follows two other requests for advisory opinions on climate change - one to the International Tribunal for the Law of the Sea (ITLOS)<sup>2</sup> and the other to the Inter-American Court of Human Rights (IACHR).<sup>3</sup>

The International Human Rights Program at the University of Toronto Faculty of Law and Greenpeace Canada submit this report to the ICJ to be treated as a publication readily available and which may be referred to by States and intergovernmental organizations presenting written and oral statements in respect of this advisory opinion request.

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<sup>1</sup> International Court of Justice, *Request for Advisory Opinion transmitted to the Court pursuant to General Assembly resolution 77/276 of 29 March 2023: Obligations of States in Respect of Climate Change* (29 March 2023).

<sup>2</sup> International Tribunal for the Law of the Sea, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (12 December 2022),

<sup>3</sup> Inter-American Court of Human Rights, *Request for an advisory opinion the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile* (9 January 2023).

This submission provides inputs regarding Canada’s obligations in respect of climate change and the legal consequences for Canada as a result of such obligations. In particular, this report discusses: a) Canada’s international human rights commitments and the obligations arising from such commitments in respect of climate change; b) Canada’s failure to comply with its international human rights obligations in respect of climate change; and c) the legal consequences for Canada with respect to peoples and individuals of the present and future generations affected by the adverse effects of climate change.

## **II. CANADA’S OBLIGATIONS IN RESPECT OF CLIMATE CHANGE**

### **A. The relationship between climate change and Canada’s international human rights obligations**

Canada has obligations under international law to protect, respect, and promote human rights. These obligations flow from international human rights instruments to which Canada is a party and/or adopted by Canada domestically, including, among other things: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination on All Forms of Discrimination Against Women, and the United Nations Declaration on the Rights of Indigenous Peoples.

The impact of climate change on the enjoyment of human rights is well-established and accepted in the international human rights system, including by the UN Human Rights Council, UN treaty bodies, and special mandate-holders. In 2014, a group of 27 UN special rapporteurs and other independent experts issued a joint statement, stating “[a] safe, clean, healthy and sustainable environment is indispensable to the full enjoyment of human rights, including rights to life, health, food, water and housing, among many others.... There can no longer be any doubt that climate change interferes with the enjoyment of human rights recognised and protected by international law.”<sup>4</sup> The interdependence between respecting, promoting, and considering a State’s obligations on human rights and taking action to address climate change is also recognized in the preamble of the Paris Agreement, which was ratified by Canada on October 5, 2016.<sup>5</sup>

Accordingly, Canada’s obligations under international law to protect the climate system and other parts of the environment are inextricably linked to the country’s obligations on human rights, as further elaborated below.

#### a) Canada’s obligations under the International Covenant on Civil and Political Rights

Under Article 6 of the International Covenant on Civil and Political Rights (ICCPR), every human being has the inherent right to life. The UN Human Rights Committee in General Comment No.

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<sup>4</sup> Office of the United Nations High Commissioner for Human Rights [OHCHR], *A new climate change agreement must include human rights protections for all* (17 October 2014).

<sup>5</sup> *Paris Agreement to the United Nations Framework Convention on Climate Change*, T.I.A.S. No. 16-1104 (12 December 2015) [*Paris Agreement*].

36 explains that the duty to protect life implies that “State parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity.”<sup>6</sup> This includes conditions in society, including the actions of public and private actors, that contribute to climate change.

Climate change causes extreme weather-related events, such as record-breaking heat waves, severe floods, years-long droughts, and extreme wildfires.<sup>7</sup> Anthropogenic emissions of greenhouse gases have increased the frequency and intensity of extreme weather events,<sup>8</sup> which in turn increases risks to health, poverty, displacement, and loss of life.<sup>9</sup> The UN Human Rights Committee thus recognizes that the right to life under Article 6 should be informed by a State’s obligations under international environmental law. Specifically, whether Canada has met its obligation to respect and ensure the right to life depends on what measures it has taken to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors.<sup>10</sup>

#### b) Canada’s obligations under the International Covenant on Economic, Social and Cultural Rights

As a State party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), Canada must recognize the right of everyone to an adequate standard of living and to the enjoyment of the highest attainable standard of physical and mental health. These obligations include a requirement to take steps to achieve the full realization of these rights.<sup>11</sup>

The right to an adequate standard of living under Article 11 of ICESCR encompasses a catalogue of rights, including rights to food, water, and housing.<sup>12</sup> The Intergovernmental Panel on Climate Change has noted that “all aspects of food security are potentially affected by climate change, including food access, utilization, and price stability.”<sup>13</sup> It is also very likely that climate change will adversely affect water resources and the production of major crops.<sup>14</sup> Moreover, both extreme weather events and slow on-set events that are linked to climate change severely impact the right

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<sup>6</sup> Human Rights Committee [HRC], *General Comment No. 36: Article 6 (Right to Life)*, 124th Sess, adopted 3 September 2019, UN Doc CCPR/C/GC/36 at para 26 [HRC General Comment No. 36].

<sup>7</sup> National Aeronautics and Space Administration [NASA], *Extreme Weather and Climate Change*.

<sup>8</sup> Intergovernmental Panel on Climate Change [IPCC], *Climate Change 2021: The Physical Science Basis*.

<sup>9</sup> United Nations Climate Action, *Science, Solutions, Solidarity for a Livable Planet*.

<sup>10</sup> HRC General Comment No. 36, *supra* at para 62.

<sup>11</sup> United Nations General Assembly [UNGA], *International Covenant on Economic, Social and Cultural Rights*, UN Treaty Series, vol. 993, p. 3 (entered into force 3 January 1976) Arts. 11 and 12 [ICESCR].

<sup>12</sup> *Ibid* at Art. 11; Committee on Economic, Social and Cultural Rights [ESCR Committee], *General Comment No. 15: Arts. 11 and 12 (Right to Water)*, 29th Sess, adopted 20 January 2003, UN Doc E/C.12/2002/11 at para 3 [ESCR General Comment No. 15].

<sup>13</sup> Knox, John H., *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, UN Doc A/HRC/31/52 (1 February 2016) at para 26.

<sup>14</sup> *Ibid*; OHCHR, *Climate Change and the Human Rights to Water and Sanitation: Position Paper*.

to adequate housing. Of the 40.4 million persons displaced in 2020, 30 million were displaced due to weather-related events. Many moved to cities, which are often overburdened and unable to provide adequate housing.<sup>15</sup>

The right to health is similarly affected by climate change. Climate change and climate-related hazards both directly and indirectly impact a population's health outcomes, including but not limited to increased chances of respiratory illness, water-borne and vector-borne diseases, malnutrition and food-borne diseases, heat-related illness, zoonoses, and mental and psychosocial conditions.<sup>16</sup> The UN Committee on Economic, Social and Cultural Rights (ESCR Committee) has acknowledged that the right to health embraces a "wide range of socio-economic factors that promote the conditions in which people can lead a healthy life and extends to the underlying determinants of health, such as [...] a healthy environment."<sup>17</sup> Additionally, the ESCR Committee has found that the state duty to improve all aspects of environmental and industrial hygiene, under Article 12.2(c) of ICESCR, carries with it obligations to prevent and reduce the population's exposure to harmful substances, such as detrimental environmental conditions that directly or indirectly impact upon human health.<sup>18</sup> The failure to take steps to mitigate climate change is thus a failure to take steps to ensure the full realization of the right to health.

#### c) Canada's obligations under other international human rights instruments

It is worth noting that the adverse effects of climate change on the enjoyment of human rights are heightened for vulnerable and at-risk populations whom Canada has a duty to respect and protect.

#### *Children and Future Generations*

Children are more vulnerable to climate-related hazards, such as heat and poor air quality, due to their bodies being in a state of physical development.<sup>19</sup> Children are also the most vulnerable to diseases that will become more widespread as a result of climate change. According to UNICEF, close to 90 per cent of the burden of diseases attributable to climate change is borne by children under the age of five.<sup>20</sup> As a party to the Convention on the Rights of the Child, Canada is obligated to recognize the right of the child to the enjoyment of the highest attainable standard of health under Article 24.<sup>21</sup> This right has been interpreted by the UN Committee on the Rights of the Child

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<sup>15</sup> Rajagopal, Balakrishnan, *Towards a just transformation: climate crisis and the right to housing: Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*, UN Doc A/HRC/52/28 (23 December 2022) at para 11.

<sup>16</sup> World Health Organization, *Climate Change Fact Sheet* (12 October 2023).

<sup>17</sup> ESCR Committee, *General Comment No. 12: Article 12 (Right to the Highest Attainable Standard of Health)*, 22nd Sess, adopted 11 August 2000, UN Doc E/C.12/2000/4 at para 4 [*ESCR General Comment No. 12*].

<sup>18</sup> *Ibid* at para 15.

<sup>19</sup> United States Environmental Protection Agency, *Climate Change and Children's Health*.

<sup>20</sup> United Nations Children's Fund [UNICEF] Canada, *Climate Change and Children's Rights*.

<sup>21</sup> United Nations Commission on Human Rights, *Convention on the Rights of the Child*, UN Treaty Series, vol. 1577, p. 3 (entered into force 2 September 1990) at Art. 24 [CRC].

as including the right of a child “to grow and develop to their full potential and live in conditions that enable them to attain the highest standard of health through the implementation of programmes that address the underlying determinants of health,” including environmental pollution and climate change.<sup>22</sup>

Moreover, experts contend that future generations must be considered in the application of international human rights law with respect to climate change. Specifically, international law recognizes the human rights for all people without limiting these rights to present generations.<sup>23</sup> Although future generations will have contributed to climate change the least, they will bear the greatest impacts of climate change, including the enjoyment of their human rights. Thus, States should take measures to protect future generations from this disproportionate burden by averting, minimizing and addressing loss and damage associated with the adverse effects of climate change.<sup>24</sup>

### Women

Women face increased risks of adverse human rights impacts as a result of climate change. During and following disasters, there are higher levels of mortality and morbidity among women due to existing inequalities they face in gaining access to adequate health care, food and nutrition, water and sanitation, education, technology, and information.<sup>25</sup> Women and girls also face a heightened risk of gender-based violence during and following disasters.<sup>26</sup> The disproportionate impact of climate change and related disasters on women necessitate gender-responsive actions from State parties under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). In particular, CEDAW requires States to take all appropriate measures to protect the rights of women and guarantee the full development and advancement of women on an equal basis with men.<sup>27</sup> To this end, all policies, legislation, plans, strategies, and programs relating to disaster risk reduction and climate change adopted by States should be gender-responsive.<sup>28</sup> The failure to engage in gender-responsive disaster planning and implementation, according to the UN Committee on the Elimination of Discrimination Against Women, often results in protective

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<sup>22</sup> Committee on the Rights of the Child [CRC Committee], *General Comment No. 15: Article 24 (Right of the Child to the Highest Attainable Standard of Health)*, 62nd Sess, adopted 17 April 2013, UN Doc CRC/C/GC/15 at paras 2 and 50 [CRC General Comment No. 15].

<sup>23</sup> Liebenberg, Sandy et al., *Maastricht Principles on the Human Rights of Future Generations* (adopted 2 February 2023) at Art. 2.1.

<sup>24</sup> *Ibid* at Art. 19 (c).

<sup>25</sup> Committee on the Elimination of Discrimination Against Women [CEDAW Committee], *General Recommendation No. 37: Gender-related dimensions of disaster risk reduction in a changing climate*, UN Doc DECAW/C/GC/37 (13 March 2018) at para 4 [CEDAW General Recommendation No. 37].

<sup>26</sup> *Ibid* at para 5.

<sup>27</sup> UNGA, *Convention on the Elimination of All Forms of Discrimination Against Women*, UN Treaty Series, vol. 1249, p. 13 (entered into force 3 September 1981) at Arts. 2, 3 and 24.

<sup>28</sup> CEDAW General Recommendation No. 37, *supra* at paras 26 and 28.



facilities and infrastructure that neglect the specific accessibility needs of diverse groups of women, including women with disabilities, older women, and Indigenous women.<sup>29</sup>

### **Indigenous Peoples**

Indigenous Peoples have contributed least to the problem of climate change but are often left to suffer the worst of its impacts. Many Indigenous communities depend on ecosystems that are particularly prone to the effects of climate change and extreme weather events.<sup>30</sup> They are heavily dependent on lands and natural resources for food and medicine, including vital medicinal plants, animals, and minerals that are necessary for the full enjoyment of Indigenous peoples' health.<sup>31</sup> However, global warming has increased changes to animal migration routes, reduced biodiversity, and caused saltwater inundation of fresh water,<sup>32</sup> all of which break the symbiotic relationship between many Indigenous peoples' and their lands and water and have a deleterious effect on their health and other human rights.<sup>33</sup>

Former UN Special Rapporteur on the Rights of Indigenous Peoples, Dr. Rodolfo Stavenhagen, noted that extractive activities, cash crops and unsustainable consumer patterns, which generate climate change, have had a "particularly serious impact on [I]ndigenous people, whose way of life is closely linked to their traditional relationship with their lands and natural resources, and has become a new form of forced eviction of [I]ndigenous peoples from their ancestral territories, while increasing the levels of poverty and disease."<sup>34</sup> Climate change not only threatens Indigenous peoples' natural resources and livelihoods, but also their cultural identity and survival.<sup>35</sup>

The inextricable connection between the rights of Indigenous peoples and the protection of the environment and natural resources is affirmed in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which provides that Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources."<sup>36</sup> Notably, Canada affirmed the applicability and implementation of UNDRIP in its domestic law by passing the *United Nations Declaration on the Rights of Indigenous Peoples Act* in June 2021.<sup>37</sup> Among other things, the Government of Canada is obligated to take all measures

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<sup>29</sup> *Ibid* at para 4.

<sup>30</sup> Corpuz, Victoria Tauli, *Report of the UN Special Rapporteur on the Rights of Indigenous Peoples*, UN Doc A/HRC/36/46 (1 November 2017) at para 6.

<sup>31</sup> *Ibid* at para 7.

<sup>32</sup> *Ibid* at para 6.

<sup>33</sup> *Ibid* at para 27.

<sup>34</sup> *Ibid* at para 9.

<sup>35</sup> *Ibid*.

<sup>36</sup> UNGA, *United Nations Declaration on the Rights of Indigenous Peoples*, 61st Sess, adopted 2 October 2007, UN Doc A/RES/61/295 at Art. 29 [UNDRIP].

<sup>37</sup> *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14, s. 4.

necessary to ensure that the laws of Canada are consistent with UNDRIP,<sup>38</sup> and this must include measures to prevent and mitigate the adverse impacts of climate change on Indigenous peoples.

## **B. Canada's obligations in respect of climate change under international human rights law**

The strong connection between climate change and human rights and the commitments made by Canada under international human rights law give rise to a number of obligations in respect of climate change.

In the Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, Professor John H. Knox explains that substantive obligations of States involve taking measures that aim to “protect against and respond to environmental harm that may or does interfere with the enjoyment of human rights”, such as the adoption of legal and institutional frameworks.<sup>39</sup> The content of the obligations of States to protect against environmental harms depends on the content of the State's duties in respect of the particular rights threatened by environmental harm.<sup>40</sup> For example, Canada's obligations with respect to climate change where the relevant human rights harms involve violations of Indigenous rights would include taking measures to: a) assist Indigenous peoples' conservation and protection of the environment; b) mitigate adverse environmental, economic, social, cultural, or spiritual impact; and c) provide just and fair redress, as provided in UNDRIP.<sup>41</sup> In the context of the rights to health, food, water, and housing, obligations may range from enacting climate policies that aim to reduce emissions in line with the best available science<sup>42</sup> - with the goal of slowing or mitigating the impacts of climate change on these rights - to policies that address housing shortage, access to food and clean water, and health care.

The human right to a clean, healthy and sustainable environment carries with it additional substantive obligations on the part of states. Canada was among the 161 States who voted in favour

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<sup>38</sup> *Ibid* at s. 5.

<sup>39</sup> Knox, *supra* at para 65.

<sup>40</sup> *Ibid*.

<sup>41</sup> UNDRIP, *supra* at Arts. 32 and 29.

<sup>42</sup> International law obliges States to apply the “best available science” to fulfil their duty to prevent, minimise, and remediate environmental harm. See Cancun Agreements (FCCC/CP/2010/7/Add.1), Decision 1/CP.16 at para 4, recognising: “the need to consider (...) strengthening the long-term global goal on the basis of the best available scientific knowledge, including in relation to a global average temperature rise of 1.5°C.”; see further UNGA, Convention on the Law of the Sea, UN Treaty Series, vol. 1833, p. 397 (entered into force 16 November 1994) at Arts. 61(2) and 119, which require States to be guided by the “best scientific evidence available” in formulating measures for conserving living marine resources; and see United Nations, Convention for the Protection of the Marine Environment of the North-East Atlantic, UN Treaty Series, vol. 2354, p. 67 (entered into force 25 March 1998) at Art. 2 and Annex I; and see United Nations, Convention on Biological Diversity, UN Treaty Series, vol. 1750, p. 79 (entered into force 29 December 1993) at Art. 12 (c), requiring States to: “promote and cooperate in the use of scientific advances in biological diversity research in developing methods for conservation and sustainable use of biological resources”; United Nations, Convention on the Conservation of Migratory Species of Wild Animals (entered into force 1 November 1983) at Art. III(2), providing that the “best scientific evidence available” should inform decisions on whether to list a migratory species as endangered and thus subject to special protections under the Convention.

of the UN General Assembly resolution to recognize the human right to a clean, healthy and sustainable environment on July 26, 2022.<sup>43</sup> On June 13, 2023, the government made amendments to the *Canadian Environmental Protection Act*, which, among other things, expressly recognizes that every individual in Canada has the right to a clean, healthy, and sustainable environment.<sup>44</sup> Human rights bodies have made clear that the obligations of States relating to this right include the protection against foreseeable environmental impairment of human rights, whether or not the environmental harm itself violates human rights law, and whether or not the States directly cause the harm.<sup>45</sup> These obligations apply not only to decisions about how much climate protection to pursue, but also to the mitigation and adaptation measures through which the protection is achieved, such as moving rapidly and steadily towards an economy that no longer obtains energy from fossil fuels.<sup>46</sup> Additionally, once Canada has adopted measures to protect human rights from environmental and climate harm, it must implement those measures.<sup>47</sup>

State obligations are also dependent on the actor causing the environmental and/or human rights harm, whether the actor is a private individual or entity or a governmental entity. Where the relevant actor is a corporation, Canada is required to protect against human rights abuse by corporations, as well as take “appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.”<sup>48</sup> In accordance with Guiding Principles on Business and Human Rights, endorsed by the UN Human Rights Council in 2011, Canada also has an obligation to provide for remedies for human rights abuses caused by corporations.<sup>49</sup>

In addition to the above substantive obligations, Canada has, among others, the following procedural obligations:

- Duty to assess environmental impacts and make environmental information public.<sup>50</sup>
- Duty to facilitate public participation in environmental decision-making, including by protecting the rights of expression and association.<sup>51</sup>

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<sup>43</sup> UNGA, *The Human Rights to a Clean, Healthy and Sustainable Environment*, A/RES/76/300 (26 July 2022).

<sup>44</sup> Bill S-5, *An Act to amend the Canadian Environmental Protection Act, 1999*, 1st Session, 44th Parliament, 2023.

<sup>45</sup> Knox, *supra* at para 37.

<sup>46</sup> *Ibid* at paras 33 and 78.

<sup>47</sup> *Ibid* at para 68.

<sup>48</sup> United Nations, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, UN Doc HR/PUB/11/04 (2011) [UNGP].

<sup>49</sup> *Ibid*.

<sup>50</sup> Knox, *supra* at para 50.

<sup>51</sup> *Ibid*.

- Duty to provide access to remedies for harm.<sup>52</sup>
- Duty to develop policies, legislation, plans, strategies, assessments, and/or programmes relating to environmental impacts and climate change in a manner that is considerate of and responsive to the special circumstances of people in vulnerable situations, including women, children, future generations, and Indigenous peoples.<sup>53</sup>

Some of these obligations have bases in internationally-recognized human rights, but they have been clarified and extended in the environmental context on the basis of the entire range of human rights at risk from environmental harm.<sup>54</sup> They are also supported by provisions in international environmental instruments, including principle 10 of the 1992 Rio Declaration on Environment and Development.<sup>55</sup>

### **C. Canada is failing to fulfill its obligations in respect of climate change**

The examples below are intended to be illustrative, rather than an exhaustive list of all of the ways that Canada is falling short.

#### a) Failure to reduce emissions

In 2022, the Government of Canada published its 2030 Emissions Reduction Plan, which promised to reduce emissions by at least 40 per cent below 2005 levels by 2030.<sup>56</sup> This target was established as part of Canada’s commitments under the Paris Agreement to hold “the increase in the global average temperature to well below 2°C above pre-industrial levels” and pursue efforts “to limit the temperature increase to 1.5°C above pre-industrial levels.”<sup>57</sup> However, 2023 audit reports<sup>58</sup> from the Commissioner of the Environment and Sustainable Development found that Canada is unlikely to meet its emission reduction target by 2030, with Environment and Climate Change Canada expecting to reduce emissions by only 34 per cent below 2005 levels - lower than the 40 per cent target.<sup>59</sup>

Notably, Canada is ranked 11th in the world for total greenhouse gas emissions and has the second-highest greenhouse gas emissions per capita among the top 11 emitting countries and regions.<sup>60</sup>

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<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid* at para 81.

<sup>54</sup> *Ibid* at para 50.

<sup>55</sup> *Ibid.*

<sup>56</sup> Government of Canada, *2030 Emissions Reduction Plan: Clean Air, Strong Economy* (2 June 2022).

<sup>57</sup> *Paris Agreement, supra* at Art. 1.

<sup>58</sup> Office of the Auditor General of Canada, *2023 Reports 6 to 10 of the Commissioner of the Environment and Sustainable Development* (2023).

<sup>59</sup> *Ibid.*

<sup>60</sup> Environment and Climate Change Canada, *Global Greenhouse Gas Emissions: Canadian Environmental Sustainability Indicators* (2023).

Canada is also the only G7 nation with 2022 carbon emissions levels that are above its 1990 levels.<sup>61</sup> The oil and gas sector is Canada's highest-polluting industry, accounting for more than a quarter of the country's total emissions.<sup>62</sup>

#### b) Support for fossil fuel projects and corporations

Despite declaring a national climate emergency in June 2019,<sup>63</sup> Canada has continuously undermined this declaration through its support for fossil fuel projects. Immediately after its climate emergency declaration, the government approved the Trans Mountain pipeline expansion, an approximately 980 km new pipeline intended to carry nearly a million barrels of oil per day from near Edmonton, Alberta to Burnaby, British Columbia.<sup>64</sup> Part of the pipeline's route has been opposed by the Stk'emlúpsenc te Secwépemc Nation due to its construction on and disruption of traditional, unceded territory, which is described to have profound spiritual and cultural significance to the First Nation.<sup>65</sup> Failure to secure free, prior, and informed consent from Indigenous communities is a violation of Indigenous rights and contrary to Canada's commitments under UNDRIP.

Equally troubling is Canada's active support for the Line 5 pipeline, which transports up to 23 million gallons of crude oil and gas through Anishinaabe territories in Wisconsin, Michigan, and Ontario.<sup>66</sup> Tribes and First Nations in Canada and the U.S. have long demanded that Enbridge - the Canadian company that owns and operates the pipeline - shut down Line 5, as it poses direct threats to the ecosystems relied upon by Indigenous communities. The UN Committee on the Elimination of Racial Discrimination has raised concerns that Canada's support of Line 5 may violate Indigenous rights,<sup>67</sup> and both the UN Permanent Forum on Indigenous Issues and the UN Special Rapporteur on the Rights of Indigenous Peoples have called on Canada to cease construction or operation of Line 5, and other oil and gas pipeline projects, until free, prior, and informed consent of the Indigenous peoples is secured.<sup>68</sup> Despite these UN interventions and reported human rights violations, Canada has sought to shield Enbridge from having to shut down

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<sup>61</sup> Campbell, Bruce, *Canadian financial institutions are fueling the climate change crisis*, York University Faculty of Environmental and Urban Change (27 August 2023).

<sup>62</sup> Ecojustice, *Runaway oil and gas sector emissions undermining Canada's climate progress, must be capped* (23 October 2023).

<sup>63</sup> Canada, Parliament, *Government Business No. 29 (National climate emergency)*, Vote No. 1366, 42nd Parl, 1st Sess, Sitting No. 435 (17 June 2019).

<sup>64</sup> Transmountain, *Expansion Project*.

<sup>65</sup> Razavi, Kamyar, *Indigenous rights collide with \$35B Western Canada pipeline expansion*, Global News (22 November 2023).

<sup>66</sup> Enbridge, *About Line 5*.

<sup>67</sup> Committee on the Elimination of Racial Discrimination, *CERD/EWUAP/111thSession/2023/MJ/CS/ks* (8 December 2023).

<sup>68</sup> United Nations Permanent Forum on Indigenous Issues, *Report on the twenty-second session (17-28 April 2023)*, UN Doc E/2023/43-E/C.19/2023/7 (2023); Tzay, José Francisco Calí, *Visit to Canada: Report of the Special Rapporteur on the rights of Indigenous peoples*, UN Doc A/HRC/54/31/Add.2 (24 July 2023).

the Line 5 pipeline by invoking a 1977 Pipeline Treaty with the U.S. and making legal submissions in U.S. courts to keep the pipeline operating.<sup>69</sup>

The years-long campaign of violence, harassment, discrimination, and dispossession against Indigenous Wet'suwet'en land defenders for resisting the construction of Coastal GasLink (CGL) liquified natural gas pipeline through their unceded ancestral territory without their free, prior and informed consent must also be acknowledged. As documented by Amnesty International, the Royal Canadian Mounted Police (RCMP), its Critical Response Unit (CRU), and CGL's private security firm, Forsythe Security, have worked together to intimidate, harass and unlawfully surveil Wet'suwet'en land defenders.<sup>70</sup>

Despite experts urging that no new fossil fuel developments be approved in order to hold global warming to the Paris Agreement target of 1.5°C,<sup>71</sup> Canada is among 20 major fossil-fuel-producing countries that are planning to produce 110 per cent more fossil fuels in 2030 than is consistent with meeting the 1.5°C target.<sup>72</sup>

### c) Subsidies and public financing of the oil and gas sector

Civil society reports show that Canada provides enormous support to oil and gas companies, including those associated with alleged environmental and human rights harms, through financing, subsidies and negative emissions technologies.<sup>73</sup>

Fossil fuel subsidies to both consumers and producers are one of the ways Canada has supported oil and gas. While it is difficult to determine the exact amount in fossil fuel subsidies provided by Canada due to its lack of transparency, in 2020, estimates ranged from \$4.5 billion (according to the OECD) to \$18 billion (according to Environmental Defence).<sup>74</sup> Examples of federal subsidies include research and development support programs and tax breaks, which incentivize oil, gas, and mining exploration. Provincial subsidies have included crown royalty reductions in Alberta and deep drilling and infrastructure credits in British Columbia.<sup>75</sup>

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<sup>69</sup> EarthRights International, *Indigenous Leaders Urge Canada to Pull Support of Line 5 Pipeline* (29 August 2023).

<sup>70</sup> Amnesty International, *Canada: "Removed from our land for defending it": Criminalization, Intimidation and Harassment of Wet'suwet'en Land Defenders* (11 December 2023).

<sup>71</sup> EIA, *Net Zero by 2050: A Roadmap for the Global Energy Sector*.

<sup>72</sup> Omstead, Jordan, *Canada, other countries failing to meet climate change targets: report*, Global News (8 November 2023).

<sup>73</sup> Center for International Environmental Law and Above Ground, *Joint Parallel Report submitted by the Center for International Environmental Law and Above Ground to the Human Rights Committee On the occasion of the consideration of the List of Issues Prior to Reporting for Canada during the Committee's 132 Session 28* (21 May 2021) at p. 2; Letter from Above Ground et al., to Benoit Daignault, President and CEO Export Development Canada (21 September 2016) at p.1.

<sup>74</sup> Chung, Emily, *How much are taxpayers really subsidizing Canada's fossil fuel industry?*, CBC News (9 March 2022).

<sup>75</sup> Corkal, Vanessa and Philip Gass, *Unpacking Canada's Fossil Fuel Subsidies*, IISD (11 December 2020).

Additionally, Canada provided \$8.5 billion in direct international public finance for fossil fuels between 2019 and 2021, the second largest in the world<sup>76</sup> and the highest in the world on a per-capita basis. Furthermore, despite concerns about the impact of oil and gas pipeline projects on the rights of Indigenous peoples, in 2022, Canada provided \$12 billion in financing for the Trans Mountain expansion pipeline and \$500 million for the Coastal GasLink Pipeline.<sup>77</sup>

In December 2022, the Government of Canada released new policy guidelines to end international public financing for fossil fuels and prioritize public finance for clean energy.<sup>78</sup> The government made a further announcement in October 2023 that it was eliminating subsidies to produce fossil fuels in Canada and that it has plans to end domestic public financing for fossil fuels by fall 2024.<sup>79</sup> While these are necessary steps forward, it is worth noting that Canada's commitment to end public financing contains exceptions and loopholes for national security, natural gas power, carbon capture and storage (CCS), and blue hydrogen.<sup>80</sup> Canada's support for CCS and blue hydrogen will only prolong dependence on fossil fuels and is inconsistent with its obligations to mitigate climate change.<sup>81</sup>

Furthermore, Canada's public financing of the fossil fuels sector continues to significantly outweigh the country's climate finance contributions. Despite being a top ten emitter of greenhouse gases, Canada contributed just over half of its fair share of bilateral climate finance and only one-third of its fair share of overall climate finance in 2020. This means that Canada contributed almost 20 times more to fossil fuels in 2020 than it did to bilateral climate finance.<sup>82</sup> Additionally, 80 per cent of Canada's bilateral climate finance between 2018-2020 was distributed as loans, increasing the debt burden on developing countries. It is imperative that Canada improve both the quantity and quality of its climate finance to address the critical funding gaps for climate change mitigation, adaptation, loss and damage.<sup>83</sup>

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<sup>76</sup> Oil Change International and Friends of the Earth US, *At a Crossroads: Assessing G20 and MDB International Energy Finance Ahead of Stop Funding Fossil Fuels Pledge Deadline* (November 2022) at p. 15.

<sup>77</sup> Levin, Julia, *Budget 2023: Will this be the budget to eliminate fossil fuel subsidies*, Environmental Defence (March 2023) at pg. 2.

<sup>78</sup> Government of Canada, *Government of Canada Delivers on Key International Climate Commitment to End New Public Support for the International Unabated Fossil Fuel Energy Sector*, Natural Resources Canada (8 December 2022).

<sup>79</sup> Government of Canada, *Inefficient Fossil Fuel Subsidies Government of Canada Guidelines*.

<sup>80</sup> *Ibid.*; Oil Change International, *Canada Delivers on Climate Promise, takes Significant Step Towards Ending Public Fossil Finance* (8 December 2022). If the policy is applied with integrity, it should not allow for the funding of any fossil fuel project, as it requires that projects receiving support must align with a 1.5°C pathway. However, the policy should not allow for the loopholes that prolong fossil fuel dependency, and there are no qualifiers on the exceptions for national security and humanitarian and compassionate grounds.

<sup>81</sup> Letter from scientists, academics and civil society organizations to Chrystia Freeland, Deputy Prime Minister and Minister of Finance, re: Prevent proposed hydrogen investment tax credit from becoming a fossil fuel subsidy (8 February 2023; Tervit, Trish, *Fueling Change: The journey to end fossil fuel subsidies in Canada*, IISD (13 October 2023).

<sup>82</sup> AidWatch Canada, *Canada's International Climate Finance: Summary of Climate Finance Data* (January 2024).

<sup>83</sup> Climate Action Network Canada, *New Analysis: Canada's climate finance falls far short of obligations despite recent progress* (14 November 2022).

#### d) Failure to regulate transnational business and ensure corporate accountability

Canadian companies make up 75 per cent of the world's mining and exploration companies,<sup>84</sup> with over 1,000 Canadian oil and gas companies operating in over 100 countries. Canadian extractive companies are also some of the worst offenders in environmental, human rights and other abuses around the world. A 2023 report compiled through the collaboration of over 50 civil society organizations found that 32 Canadian projects in Latin America and the Caribbean were responsible for environmental rights infringements, including 105 oil spills, and that 26 projects were found to violate the right of free, prior, and informed consent of Indigenous peoples.<sup>85</sup> In Asia, the Commission on Human Rights of the Philippines determined that 4 Canadian oil companies among 47 investor-owned corporations could be found legally and morally liable for human rights harms resulting from climate change.<sup>86</sup>

In the finance sector, Canadian banks are among the top financiers of fossil fuels. Since the Paris Agreement was signed, the world's 60 largest banks invested more than US\$5.5 trillion into the fossil fuel industry and the Big Five Canadian banks - Royal Bank of Canada (RBC), Toronto-Dominion Bank (TD Bank), Bank of Nova Scotia (Scotiabank), Bank of Montreal (BMO), and the Canadian Imperial Bank of Commerce (CIBC) - were among the top 20 funders, investing more than \$1 trillion in fossil fuel companies since 2016.<sup>87</sup>

To date, Canada has failed to adequately regulate corporations under its jurisdiction to ensure that they do not violate or contribute to the violation of environmental and human rights that Canada is treaty-bound to respect and protect. The government has not passed any laws that require corporations to prevent human rights harms abroad. The *Fighting Against Forced Labour and Child Labour in Supply Chains Act*, enacted on May 3, 2023, requires certain Canadian companies and government departments to scrutinize their supply chains and file public annual reports on the steps they have taken "to prevent and reduce the risk" of forced or child labour in their supply chains.<sup>88</sup> However, this legislation does not require companies to actually prevent or reduce forced or child labour and it leaves out human and environmental rights violations beyond child and forced labour,<sup>89</sup> such as environmental destruction and emissions, land grabbing, and expropriation of Indigenous land and resources.

Individuals and communities abroad who have been harmed by the conduct of Canadian transnational corporations have few, if any, avenues for redress:

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<sup>84</sup> Human Rights Research Center, *Human Rights Abuses by Canadian-Owned Mining Corporations Abroad* (14 June 2022).

<sup>85</sup> Amazon Watch, *Unmasking Canada: Rights Violations Across Latin America* (21 August 2023).

<sup>86</sup> Firemong, Jesse, *4 Canadian companies named in decision holding fossil fuel companies accountable for climate-related human rights harms*, Greenpeace (9 December 2019).

<sup>87</sup> Banktrack et al., *Banking on Climate Chaos: Fossil Fuel Finance Report 2023* (2023).

<sup>88</sup> Bill S-211, *An Act to enact the Fighting Against Forced Labour and Child Labour in Supply Chains Act and to amend the Customs Tariff*, 1st Session, 44th Parliament, 2022.

<sup>89</sup> Celine Ng, et al., *New bill fails to address human rights abuses in supply chains*, Policy Options (20 March 2023).



- **National Contact Point (NCP):** Established to handle complaints relating to the OECD Guidelines for Multinational Enterprises,<sup>90</sup> Canada’s NCP has been criticized by civil society organizations for placing too high a threshold for accepting complaints, failing to accept and resolve disputes in a timely way, dismissing cases on dubious and non-transparent grounds, and failing to make findings on whether companies have breached the OECD Guidelines, only rarely helping the parties come to an agreement or putting forward recommendations.<sup>91</sup>
- **Canadian Ombudsperson for Responsible Enterprise (CORE):** Established in 2019 to investigate complaints of human rights abuses by Canadian companies operating abroad in the garment and extractive sectors,<sup>92</sup> CORE has been criticized for “lacking teeth”. Among other things, the office lacks adequate powers of investigation, as it cannot compel witnesses and documents; it cannot make binding decisions, and therefore cannot levy fines or otherwise punish wrongdoers; it is not structurally independent from government; and it does not have adequate safeguards to protect complainants.<sup>93</sup>
- **Judicial mechanism:** The Canadian government fails to hold corporations to account through criminal law and has not criminally prosecuted Canadian corporations for their human rights violations. This places the onus on victims to pursue a remedy through civil courts, where significant financial barriers exist in accessing the court system given that legal aid is unavailable, making finding legal representation challenging,<sup>94</sup> and Canadian courts generally impose costs on the losing party, which deters victims.<sup>95</sup> Most provinces can also require out-of-province litigants to pay a bond to the court before proceeding with litigation. When civil suits are brought, many transnational human rights cases are dismissed based on *forum non conveniens*, a doctrine which allows a court to decline jurisdiction if there is an adequate alternative forum.<sup>96</sup>

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<sup>90</sup> Government of Canada, *Canada’s National Contact Point*.

<sup>91</sup> See, e.g., MiningWatch Canada, *Canada’s National Contact Point: Long Overdue for an Overhaul* (October 2020). See also Simons, Penelope, “Developments in Canada on Business and Human Rights: One Step Forward Two Steps Back” in *Leiden Journal of International Law* at p. 14.

<sup>92</sup> Government of Canada, *Office of the Canadian Ombudsperson for Responsible Business*.

<sup>93</sup> Canadian Network on Corporate Accountability, *Five years after announcement of independent corporate human rights watchdog. Government continues to turn back on people harmed by Canadian businesses* (18 January 2023); See also Simons, *supra* at p. 16.

<sup>94</sup> Legal aid is not available for civil actions. See, e.g., Legal Aid Ontario, *Legal Aid Ontario can Help*.

<sup>95</sup> H. Patrick Glenn, *Costs and Fees in Common Law Canada and Quebec*, McGill University at p. 1.

<sup>96</sup> See *Bil’in (Village Council) v. Green Park Ltd.*, [2009] QCCS 4151, ¶ 145-190, 204-06 (Can. Qué. Sup. Ct.), *aff’d*, 2010 QCCA 1455 (Can. Qué. C.A.); *Piedra v. Copper Mesa Mining Corp.*, 2010 O.N.S.C. 2421, *aff’d*, 2011 ONCA 191.

#### e) The clean energy transition and threats to human rights

Central to the shift away from fossil fuels and minimizing the harmful effects of climate change is the increasing development and use of renewable energy technologies, including rechargeable batteries. The clean energy transition has raised the demand for critical minerals, such as copper, lithium, cobalt, manganese, nickel and zinc, and will continue to do so.<sup>97</sup> However, to ensure that this transition is fair and accessible to everyone, civil society organizations have called on governments to invest in ‘just transition’.<sup>98</sup> Just transition requires, among other things, a shift from an extractive economy to a regenerative economy while ensuring the just, equitable, and fairly distributed costs and benefits of a green economy. This involves minimizing hardships for workers and communities and maximizing the benefits of climate policies.<sup>99</sup>

Canada has sought to position itself as a global leader in the responsible, inclusive, and sustainable production of critical minerals and secure value chains.<sup>100</sup> In January 2023, the Government of Canada released its ‘just transition plan’,<sup>101</sup> followed by the sustainable jobs bill<sup>102</sup> in June 2023, both of which focus primarily on the protection of jobs in Canada as the country seeks to transition to a clean-energy economy with an increased focus on critical minerals. Unfortunately, Canada’s just transition plans are glaringly deficient with respect to the protection of international human rights, especially with respect to global value chains.

Data published by the Business and Human Rights Resource Centre (BHRRC) reveals that over 500 human rights allegations have been linked to critical minerals over 10 years, including water pollution, underpaid wages, intimidation and threats, beatings, and killings. Human rights allegations linked to critical minerals have also been increasing over time.<sup>103</sup> Canada’s mining sector has investments, including in the critical minerals space, in over 100 countries worldwide, including in Africa, South America, Europe and Asia.<sup>104</sup> Thus, Canadian companies play a significant role in the responsible, inclusive, and sustainable extraction of critical minerals. However, BHRRC data tracking the human rights records of 63 Canadian mining companies

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<sup>97</sup> Reconciliation & Responsible Investment Initiative, *The just transition to a low carbon economy and its impact on Indigenous rights and local suppliers* (24 May 2023) [RRII].

<sup>98</sup> Amnesty International, *Recharge for Rights*.

<sup>99</sup> RRII, *supra*.

<sup>100</sup> Government of Canada, *Canada’s Hub for Critical Minerals*, Critical Minerals Centre of Excellence.

<sup>101</sup> Government of Canada, *Sustainable Job Plan* (2023).

<sup>102</sup> Bill C-50, *An Act respecting accountability, transparency and engagement to support the creation of sustainable jobs for workers and economic growth in a net-zero economy*, 1st Sess, 44th Parl (2021).

<sup>103</sup> Business and Human Rights Resource Centre, *Transitions Minerals Tracker*.

<sup>104</sup> Rabson, Mia, *Federal government releases ‘just transition’ plan to shift to clean energy economy*, Global News (17 November 2023) <https://globalnews.ca/news/9494850/just-transition-legislation-liberal-federal-government/>.

involved in extracting critical minerals shows that 59 of them have been accused of human rights violations.<sup>105</sup>

Mining companies' human rights due diligence is not keeping pace with expanding exploration, including the development of new extractive and energy projects operating on Indigenous lands.<sup>106</sup> Furthermore, the failure to adequately regulate Canadian companies operating abroad continues to be a barrier to just transition. Cobalt and lithium are two of the key minerals required to make lithium-ion batteries,<sup>107</sup> with almost 50% of the world's cobalt supply coming from the Democratic Republic of Congo (DRC) and more than 75% of the world's lithium supply held in the 'Lithium Triangle' of Argentina, Chile, and Bolivia.<sup>108</sup> In 2021, Canadian mining and exploration companies had \$195.9 billion in mining assets located abroad, with Chile, Argentina, and the DRC among the top 10 countries in which Canadian mining assets (CMAs) were present; 12.7% (\$24.9 billion) of the total value of CMAs abroad were in Chile, 4.4% (\$8.6 billion) in Argentina, and 3.6% (\$7.1 billion) in the DRC.<sup>109</sup> The significant presence of Canadian transnational operations in the critical minerals sector necessitates broader regulation - the Canadian government must legally require companies to respect human rights abroad and carry out human rights due diligence in their global value chains.

### III. LEGAL CONSEQUENCES FOR CANADA

The legal consequences that flow from the obligations discussed above in respect of climate change, as well as Canada's failure to fulfil such obligations, include a requirement upon Canada to ensure compliance with its commitments under international human rights law. Additionally with respect to emissions reductions, as recognised by the IPCC, multiple methodologies exist in determining the appropriate fair level of contribution of States considering these principles, but the essential element to retain is that States have obligations to reduce GHG emissions at different speeds, based on international law principles such as CBDR-RC and equity.<sup>110</sup>

The following are recommendations that Canada should adopt to meet its international obligations in respect of climate change:

1. Canada must phase out fossil fuels immediately. The government should not approve new fossil fuel projects, including the construction of oil and gas pipelines. Canada must revoke

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<sup>105</sup> *Ibid.*

<sup>106</sup> Energy Monitor, *Weekly data: how the rush for critical minerals threatens human rights* (22 May 2023).

<sup>107</sup> Amnesty International, *supra*.

<sup>108</sup> *Ibid.*

<sup>109</sup> Government of Canada, *Canadian Mining Assets* (January 2024).

<sup>110</sup> IPCC, *Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, ("AR5 WGIII"), p. 460 figure 6.28, p. 13 table SPM.1 and at. 459; It goes beyond the scope of this submission to elaborate further on the selection of appropriate fair share methodologies. However, this issue is central in the cases in front of the European Court of Human Rights of *Klimaseniorinnen v Switzerland*; *Agostinho et al v Portugal* and *32 other states and Carême v France*.

its support for the Line 5 pipeline and support Indigenous communities in shutting the pipeline down before it causes catastrophic damage to Indigenous territories and ecosystems on which First Nations and Tribes rely for their livelihoods, cultural identity, and survival.

2. Canada must implement its commitment to end international and domestic public finance for fossil fuels, without loopholes and false solutions like carbon capture and storage and blue hydrogen. The government must also implement its commitment to eliminate subsidies to produce fossil fuels in Canada.
3. Canada must support the transition to renewable energy and must meet its obligations to support climate action globally, including through climate finance. Climate finance is a critical enabler for accelerated climate action.<sup>111</sup> If climate goals are to be achieved, climate finance, especially to countries most affected by climate change, needs to increase, particularly through the issuance of grants to limit the debt burden on developing countries.<sup>112</sup> Additionally, Canada must adopt a just transition plan that protects international human rights in the critical minerals sector.
4. Canada must assess environmental impacts, facilitate public participation in environmental decision-making, and make environmental information public.
5. Climate change and energy transition policies, legislation, plans, strategies, assessments and programmes must centre communities. In order to avoid exacerbating existing inequalities, human rights and climate responses must involve the participation and consideration of vulnerable communities and the interests of future generations throughout design planning and implementation decision-making.
6. Canada must regulate the financial sector with respect to investments that undermine the phasing out of fossil fuels. This includes passing the *Climate-Aligned Finance Act*,<sup>113</sup> which seeks to hold financial institutions accountable for investments that increase climate risk.
7. Canada must regulate corporations by adopting binding measures to ensure that Canadian corporations do not violate environmental and human rights in their operations outside of Canada, including in the critical minerals sector.
8. Canada must hold the fossil fuel industry, in particular, accountable, as a result of Canada's obligations under customary international law and international human rights treaties,<sup>114</sup>

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<sup>111</sup> IPCC, *Synthesis Report of the IPCC Sixth Assessment Report (AR6)*, C. 7 at p. 35.

<sup>112</sup> IPCC, *Synthesis Report of the IPCC Sixth Assessment Report (AR6)*, C. 7 at p. 35.

<sup>113</sup> Bill S-243, *An Act to enact the Climate-Aligned Finance Act and to make related amendments to other Acts*, 1st Sess, 44th Parl (2021).

<sup>114</sup> James Crawford, "State Responsibility" (September 2006) in Anne Peters (2021–) and Professor Rüdiger Wolfrum (2004– 2020), *Max Planck Encyclopedia of Public International Law* (online edn), para. 12; Rajamani et al., *National*

which requires States that cause or allow their territories to be used<sup>115</sup> for activities that cause significant climate harm to make full reparations to States,<sup>116</sup> individuals and communities of present and future generations<sup>117</sup> who have been, or will be, harmed by their wrongful actions and omissions.<sup>118</sup>

9. Canada must provide an effective remedy when corporations violate environmental and human rights by investigating credible allegations of environmental and human rights violations and prosecuting cases. Canada must ensure public confidence in, and effective access to, non-judicial mechanisms, such as the NCP and CORE, through multi-stakeholder engagement, increased independence and transparency, and process improvements.
10. Canada must abide by its obligations under the Law on State Responsibility, requiring States that commit internationally wrongful acts against the climate system to make full reparations to States<sup>119</sup> that endure climate change induced harm.<sup>120</sup>
11. Canada must cease all internationally wrongful acts that drive climate change and offer appropriate assurances of non-repetition due to the obligation to refrain from contributing to the extinction of Small Island States and the ongoing nature of the harm.<sup>121</sup>
12. Canada must pass legislation recognizing a civil cause of action based on human rights law and ensuring that Canadian courts provide a venue for cases brought against

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‘fair shares’ in reducing greenhouse gas emissions within the principled framework of international environmental law, Climate Policy (2021) at pp. 983–1004; United Nations, *Framework Convention on Climate Change*, UN Treaty Series, vol. 1771 (entered into force on 21 March 1994) at Preamble and p. 1004.9 [UNFCCC]. (“Recalling also that States have, in accordance with the Charter of the United Nations and the principles of international law, ... the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction”); See *Paris Agreement*.

<sup>115</sup> *Corfu Channel (UK v Albania)*, Judgment on the Merits, 9 April 1949, [1949] ICJ Rep, 4, 22.

<sup>116</sup> International Law Commission, *Articles on the Responsibility of States for Internationally Wrongful Acts*, 53rd Sess (2001) at Art. 31 [ARSIWA].

<sup>117</sup> *HRC General Comment No. 36*, *supra* at para 62.

<sup>118</sup> ARSIWA, *supra* at Arts. 4, 5, 6, 8-12, and 16-19.

<sup>119</sup> *Ibid* at Art 31.

<sup>120</sup> *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation, Judgment, ICJ Reports 2018, p. 15, at para. 42; CRC, *Sacchi et al. v. Argentina*, 22 September 2021, CRC/C/88/D/104/2019, para. 10.10. Committee on the Rights of the Child, Decision on Communication No. 104/2019, Chiara Sacchi et al (represented by counsels Scott Gilmore et al (Hausfeld LLP) and Ramin Pejan et al (Earthjustice)) under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, UN Doc. CRC/C/OPAC/104/2019 (14 January 2020).

<sup>121</sup> Amicus brief submitted to the International Tribunal for the Law of the Sea by the UN Special Rapporteurs on Human Rights & Climate Change (Ian Fry), Toxics & Human Rights (Marcos Orellana), and Human Rights & the Environment (David Boyd) and submitted in, Case no. 31 (30 May 2023) at para 93; Inter-American Commission of Human Rights, Advisory Opinion OC-23/17 (15 November 2017) at para 244, points 5, 6, 7 and 8; IPCC AR6 SYR SPM, at A.2.5.

Canadian corporations. The government should ensure that impecunious victims can bring actions by making legal aid available and permitting actions without the requirement to post a bond for costs.

13. Canada must protect against foreseeable environmental impairment of human rights, including taking measures for climate protection and mitigation that responds to the particular rights threatened by environmental harm. This includes upholding, affirming and respecting the right of Indigenous peoples to free, prior, and informed consent to developments that impact them.