

**Submission to the Special Rapporteur on the human rights to safe drinking water and sanitation**

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Dear Special Rapporteur,

Canada's record on climate action has been the object of a long line of criticism. Your visit and ongoing engagement with Canada provide a momentous opportunity to 1) highlight how this inadequate climate action threatens the human rights to safe drinking water and sanitation in Canada, in particular insofar as disadvantaged groups are concerned, 2) highlight how this inadequate climate action also threatens the human rights to safe drinking water and sanitation outside of Canada, also with a differential impact on disadvantaged groups, and 3) call for effective mitigation and adaptation action aligned with Canada's international obligations. After providing an overview of Canada's climate record, I discuss all three issues.

**Canada's record on climate action has been the object of a long line of criticism.**

Canada has a long record of failing to achieve its international climate commitments. These include the *UN Framework Convention on Climate Change* (UNFCCC) collective goal of returning to 1990 levels of greenhouse gas emissions by 2000, Canada's legally binding *Kyoto Protocol* target of 6% under 1990 levels by 2012, and its political target announced at the Copenhagen conference of achieving a 17% reduction in emissions from 2005 levels by 2020. Rather, national emissions of greenhouse gases (GHGs) rose 21% between 1990 and 2020, from 602 to 730 megatons of carbon dioxide equivalent (MtCO<sub>2</sub>e) per year.<sup>1</sup> More recently, both the [Canadian Climate Institute](#) and the [Commissioner of the Environment and Sustainable Development](#) have raised alarming concerns regarding the lack of progress Canada has made towards the 2030 target, namely a 40-45% reduction under 2005 levels by 2030.

Beyond a chronic failure to achieve its international climate commitments, Canada's 2030 pledge under Article 4(2) of the *Paris Agreement*, or Nationally Determined Contribution (NDC), also raises concerns from the perspective of "fair shares". The *Paris Agreement* leaves it open to states to define ambition, fairness, and equity in their own terms. However, there is a [growing consensus](#) that Canada's efforts are "highly insufficient." [One study of a range of NDCs \(including Canada's\)](#) points out that defining

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<sup>1</sup> Christopher Campbell-Duruflé, "The Canadian Net-Zero Emissions Accountability Act: A Tepid Response to the Paris Agreement" (2023) 56:2 UBC Law Review 339 at 340.

fair shares in comparison with current emissions, or business-as-usual projections, is contrary to international environmental law as such a framework “grandfathers” in existing emissions — unfortunately, [Canada’s NDCs does exactly this](#). By contrast, [calculators](#) do exist which allow modelling fair shares based on different assumptions about historical responsibilities and current capacity to act.<sup>2</sup>

**1) Canada’s inadequate climate action threatens the human rights to safe drinking water and sanitation on its territory.**

The gravity of the human rights risk created by inadequate climate action is well understood. Recently, the UN Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change warned: “The overall effect of inadequate actions to reduce [greenhouse gas] emissions is creating a human rights catastrophe.”<sup>3</sup>

In Canada, in its reference on constitutional jurisdiction over greenhouse gas pollution pricing, the Supreme Court of Canada found: “All parties to this proceeding agree that climate change is an existential challenge. It is a threat of the highest order to the country, and indeed to the world.”<sup>4</sup> It went on to observe the following insofar as the right to water is concerned:

[10] The effects of climate change have been and will be particularly severe and devastating in Canada. Temperatures in this country have risen by 1.7°C since 1948, roughly double the global average rate of increase, and are expected to continue to rise faster than that rate. Canada is also expected to continue to be affected by extreme weather events like floods and forest fires, changes in precipitation levels, degradation of soil and water resources, increased frequency and severity of heat waves, sea level rise, and the spread of potentially life-threatening vector-borne diseases like Lyme disease and West Nile virus.

[11] The Canadian Arctic faces a disproportionately high risk from climate change. There, the average temperature has increased at a rate of nearly three times the global average, and that increase is causing significant reductions in sea ice, accelerated permafrost thaw, the loss of glaciers and other ecosystem impacts. Canada’s coastline, the longest in the world, is also being affected disproportionately by climate change, as it experiences changes in relative sea level and rising water temperatures, as well as increased ocean acidity and loss of

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<sup>2</sup> This paragraph draws from: Christopher Campbell-Durufié, “The stakes could not be higher as Canada sets its 2035 emissions target”, (21 March 2024), online: *The Conversation* <<http://theconversation.com/the-stakes-could-not-be-higher-as-canada-sets-its-2035-emissions-target-224448>>.

<sup>3</sup> Report of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change, *Promotion and Protection of Human Rights in the Context of Climate Change Mitigation, Loss and Damage and Participation*, 26 July 2022, UN Doc A/77/226, at para 7.

<sup>4</sup> Supreme Court of Canada, *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11 at para 167.

sea ice and permafrost. Climate change has also had a particularly serious effect on Indigenous peoples, threatening the ability of Indigenous communities in Canada to sustain themselves and maintain their traditional ways of life. (emphasis added)

In Ontario, the Superior Court of Justice recently ruled on a climate challenge invoking the rights to life and to equality.<sup>5</sup> Although the Court ultimately found that Ontario's downward revision of its climate targets in 2018 (to 30% below 2005 levels by 2030) did not amount to an *arbitrary* deprivation of the right to life of the young applicants under the *Canadian Charter of Rights and Freedoms*, it did make the following findings relevant to the present visit:

- “Based on the evidence before me, it is indisputable that, as a result of climate change, the Applicants and Ontarians in general are experiencing an increased risk of death and an increased risk to the security of the person.” (para. 120)
- “In my view, section 7 is engaged in this case, more particularly the right to life and the right to the security of the person. While, as stated above, it is not this Court's role to determine how Ontario's “fair” share of the remaining carbon budget should be calculated, this Court can rely on the scientific consensus that GHG must be reduced by approximately 45% below 2010 levels by 2030, and must reach “net zero” by 2050 in order to limit global average surface warming to 1.5oC and to avoid the significantly more deleterious impacts of climate change.” (para. 144)
- “I find that Ontario's decision to limit its efforts to an objective that falls severely short of the scientific consensus as to what is required is sufficiently connected to the prejudice that will be suffered by the Applicants and Ontarians should global warming exceed 1.5oC. By not taking steps to reduce GHG in the province further, Ontario is contributing to an increase in the risk of death and in the risks faced by the Applicants and others with respect to the security of the person.” (para. 147)

In making these legal findings, the Ontario Superior Court of Justice considered expert evidence directly relevant to the fulfilment of the human rights to safe drinking water and sanitation:

“d. The general view of scientists is that flooding frequency and magnitude is increasing with climate change. Climate change will increase the frequency of what were previously once in 100-year or 250-year floods in many Ontario cities. Although floods rarely lead to deaths in Canada, they can cause many impacts on physical health in the short, medium and long term, including health risks associated with the contamination of drinking water and food, exposure to mold and carbon monoxide poisoning. Individuals exposed to floods are significantly

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<sup>5</sup> Ontario Superior Court of Justice, *Sophia Mathur et al. v His Majesty the King in Right of Ontario*, 2023 ONSC 2316 at para 106. Appealed.

more likely to develop mental health issues, including depression, phobias, and generalized anxiety disorder.

e. Climate change will lead to further increases in the incidence, frequency, and severity of harmful cyanobacterial (previously called blue-green algae) blooms in Ontario. Cyanobacterial blooms can be harmful principally because of their propensity to produce toxins that can have negative effects on human and wildlife health. They threaten water quality and fish stocks.

f. Current projections suggest that at >2°C warming, climate change will lead to increased atmospheric inputs of mercury to aquatic ecosystems in Ontario. In the absence of countervailing ecosystem changes and all else being equal, increased inputs of mercury would lead to increased mercury concentrations in fish. Any increased mercury contamination in fish from climate change could pose risk for food security and food sovereignty for communities that rely on fish, including many Indigenous communities in Ontario. Even at low to modest doses, mercury exposure has been linked to a range of neurodevelopmental, cardiovascular and immunologic effects.” (para. 23) (emphasis added)

A third, ongoing case, is of note. In the Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations of the Rights of Arctic Athabaskan Peoples Resulting from Rapid Arctic Warming and Melting Caused by Emissions of Black Carbon by Canada (23 April 2013), the Arctic Athabaskan Council makes multiple allegations with regard to the right to water. Specifically, the petitioner alleges multiple violations of the *American Declaration of the Rights and Duties of Man* as a result of Canada’s climate inaction, including the right to culture, the right to property, the right to means of subsistence, and the right to health.

While the *American Declaration* is not a treaty, the Inter-American Court of Human Rights has clarified its role in defining the obligations contained in the *Charter of the Organization of the American States*, to which Canada is a party since 1990:

45. For the member states of the Organization, the Declaration is the text that defines the human rights referred to in the Charter. Moreover, Articles 1(2)(b) and 20 of the Commission’s Statute define the competence of that body with respect to the human rights enunciated in the Declaration, with the result that to this extent the American Declaration is for these States a source of international obligations related to the Charter of the Organization.<sup>6</sup>

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<sup>6</sup> Inter-American Court of Human Rights, Advisory Opinion Oc-10/89, “Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights”, July 14, 1989. See also: Bernard Duhaime, “Canada and the Inter-American Human Rights System: Time to Become a Full Player” (2012) 67:3 International Journal 639.

Allegations by the Arctic Athabaskan Council relevant to the fulfilment of the human rights to safe drinking water and sanitation under the *International Covenant on Economic, Social and Cultural Rights* include the following:

“Water quality is also affected by permafrost melt and erosion. Aboriginal and Northern Affairs Canada has acknowledged that rising temperatures are causing higher risk of contamination of freshwater sources in the NWT, and that erosion is a primary concern, with entire riverbanks crumbling into rivers. Environment Canada has warned that Arctic warming and permafrost melt will deepen the active soil layer, increase geochemical weathering of soils, and increase release of sediments, contaminants, and nutrients into springs, streams and rivers, with major implications for biological processes, including food web structure.” (p. 34)

“As Chief James Allen of Haines Junction, Yukon, observed, new diseases in the water mean Arctic Athabaskans can no longer drink from streams: We can’t drink the water out on the land anymore. People are afraid they’ll get beaver fever. Our waters are not as safe as they used to be. You’d walk along and if you’re walking along a trail you’d come across a creek you would grab a cup and drink it, drink a few cups and then keep going. But now you have to pack your own water.” (p. 47)

“Belinda Northway Thomas of Northway, Alaska, also noted that permafrost melt is causing drinking water contamination from an old military waste site: There is old military contamination around here.... with the thawing out there are thaw bulbs underground through the water process; the point of contamination becomes diluted but the thaw bulbs have the ability to flow water underneath the ground which spread out the area of contamination, which impacts more of our people.” (p. 48) (emphasis added)

These three examples make it clear that Canada’s inadequate climate action threatens the human rights to safe drinking water and sanitation on its territory, as guaranteed by the *International Covenant on Economic, Social and Cultural Rights*, with a differential impact on vulnerable groups that are disadvantaged on grounds including the “intersection of gender with race, class, ethnicity, sexuality, indigenous identity, age, disability, income, migrant status and geographical location.”<sup>7</sup>

## **2) Canada’s inadequate climate action also threatens the human rights to safe drinking water and sanitation beyond territory.**

Climate change knows no borders. Similar impacts to those noted by the Supreme Court of Canada and the Ontario Superior Court of Justice will result from Canada’s inadequate climate action beyond its territory if no adequate measures are taken. Indeed, these

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<sup>7</sup> Report of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change, *Promotion and Protection of Human Rights in the Context of Climate Change Mitigation, Loss and Damage and Participation*, 26 July 2022, UN Doc A/77/226, at para 29.

impacts may be far worse in areas of the world with higher climate vulnerability and/or lesser adaptative capacity. The Arctic Athabaskan Council petition previously mentioned provides an example of this extraterritorial dimension, since it is brought on behalf of the Athabaskan peoples of the Arctic of both Canada and the United States (i.e., Alaska).

In its interpretation of the *American Convention on Human Rights*, the Inter-American Court of Human Rights has clearly recognized that the obligation to prevent significant harm or damage to the environment -such as causing dangerous climate change- applies to transboundary environmental harms. In its landmark Advisory Opinion “Environment and Human Rights”, the Court found that, “when transboundary damage occurs that affects treaty-based rights, it is understood that the persons whose rights have been violated are under the jurisdiction of the State of origin, if there is a causal link between the act that originated in its territory and the infringement of the human rights of persons outside its territory.”<sup>8</sup>

The Court also emphasized the prospective dimension of the prevention obligation in transboundary contexts in a way that is highly relevant to Canada’s response to climate change. Indeed, lack of due diligence in mitigating emissions in one state could deprive another state of the ability to guarantee human rights even before specific climate harm or damage occurs: “Activities undertaken within the jurisdiction of a State Party should not deprive another State of the ability to ensure that the persons within its jurisdiction may enjoy and exercise their rights under the Convention.”<sup>9</sup>

The same reasoning is likely to apply, *mutadis mutandi*, to Canada’s implementation of the *American Declaration of the Rights and Duties of Man* and appears well-suited to analyze Canada’s fulfilment of the human rights to safe drinking water and sanitation under the *International Covenant on Economic, Social and Cultural Rights*.

### **3) Canada must take effective mitigation and adaptation action, aligned with its international commitments with regards to both human rights and climate change.**

Canada has a momentous opportunity to address the urgent threat to the human rights to safe drinking water and sanitation identified in this submission, both within and beyond its territory, by taking effective mitigation and adaptation action aligned with its international commitments with regards to human rights and to climate change. Apart from the human rights instrument already identified here, the *Paris Agreement* establishes the following three objectives at Article 2:

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<sup>8</sup> Environment and Human Rights (Colombia) (2017), Advisory Opinion OC-23/17, Inter-Am Comm HR, (Ser A) No 23 at para 101.

<sup>9</sup> Idem. See also: Christopher Campbell-Durufflé & Sumudu Anopama Atapattu, “The Inter-American Court’s Environment and Human Rights Advisory Opinion: Implications for International Climate Law” (2018) 8 Climate Law 321.

- (a) Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;
- (b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production; and
- (c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development. (emphasis added)

Articles 4 and 7 are also directly relevant to the present matter. In particular, under Article 4(3), Canada's climate targets (NDCs) must "reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances."

Canada has accepted the serious risks that would result from inadequate climate action, including to Indigenous peoples, by ratifying the *Paris Agreement* and by adopting the *Canadian Net-Zero Emissions Accountability Act* in 2021.<sup>10</sup> The Preamble of the act reads:

Whereas the science clearly shows that human activities are driving unprecedented changes in the Earth's climate;

Whereas climate change poses significant risks to human health and security, to the environment, including biodiversity, and to economic growth;

Whereas, Canada has ratified the Paris Agreement, done in Paris on December 12, 2015, which entered into force in 2016, and under that Agreement has committed to set and communicate ambitious national objectives and undertake ambitious national measures for climate change mitigation;

[...]

Whereas the Government of Canada is committed to advancing the recognition-of-rights approach reflected in section 35 of the *Constitution Act, 1982* and in the United Nations Declaration on the Rights of Indigenous Peoples and to strengthening its collaboration with the Indigenous peoples of Canada with respect to measures for mitigating climate change, including by taking Indigenous knowledge into account when carrying out the purposes of this Act; (emphasis added)

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<sup>10</sup> *Canadian Net-Zero Emissions Accountability Act*, S.C. 2021, c. 22.

I thank you for your visit to Canada and for the attention dedicated to this submission. Together with my colleagues from the [International Law and Global Justice Initiative](#) (ILGJ) at the Lincoln Alexander School of Law, I am obviously interested in participating in your activities in the future, including making further submissions towards special reports. Please contact me whenever you feel that we could make a useful contribution to your important work.

With the expression of my highest consideration,

A handwritten signature in dark ink, reading "Christopher Campbell-Durufle". The signature is written in a cursive, flowing style.

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