

Submission to Canada's public engagement on the 2035 greenhouse gas emissions reduction target

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Dear Environment and Climate Change Canada,

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_{2e}) per year.¹

The ongoing public engagement on the 2035 greenhouse gas emissions reduction target offers a momentous opportunity to that Canadian society cannot afford to ignore if it is ever going to close the gap between its international commitments and its actions. Building on my research at Toronto Metropolitan University as member of the [International Law & Global Justice Initiative \(ILGJ\)](#), my previous post-doctoral research at the [Cambridge Centre for Environment, Energy and Natural Resource Governance](#) (C-EENRG) and a recent piece that I published in [The Conversation](#), I would like to provide the following three submissions to your consultation.

Fair Shares

One of the main weaknesses of Canada's current NDC is its approach to 'fair shares'. The Paris Rulebook calls on each Party to the *Paris Agreement* to explain how its target 1) "is fair and ambitious in the light of its national circumstances," 2) "has been informed" by the outcomes of the Global Stocktake, 3) "contributes towards achieving the objective" of the UNFCCC, and 4) reflects "[f]airness considerations, including reflecting on equity."² The treaty's Adoption Decision also uses the dyad "fair and ambitious" to refer to NDCs.³

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

² UNFCCC, Decision 4/CMA.1, Further guidance in relation to the mitigation section of decision 1/CP.21, 15 December 2018, UN Doc FCCC/PA/CMA/2018/3/Add.1, Annex I, Information to facilitate clarity, transparency and understanding of nationally determined contributions, referred to in decision 1/CP.21, at para. 6.

³ UNFCCC, Decision 1/CP.21, Adoption of the Paris Agreement, 12 December 2015, UN Doc FCCC/CP/2015/10/Add.1, para. 27.

Although the *Paris Agreement* leaves it open to states to define ambition, fairness, and equity in their own terms, there is a growing consensus that Canada's efforts are "highly insufficient", as expressed by [Climate Action Tracker](#). One study of NDCs points out that defining fair shares in comparison with current or business-as-usual projections is contrary to international environmental law because it 'grandfathers' emissions,⁴ which is exactly what [Canada's NDC does at p. 21](#). By contrast, the [Climate Equity Reference Project](#) allows to model fair shares based on different assumptions about historical responsibilities and current capacity to act. Canada should explain its approach going forward and make a credible case that it is guided by CBDR-RCNC and displaying its highest possible ambition (Art. 4(3)).

Emissions Trading

Another major issue with the 2030 target is Canada's stance on emissions trading, since the current NDC "recognizes that internationally transferred mitigation outcomes (ITMOs) could complement domestic efforts". This statement makes it impossible to understand what part of the target will be achieved through systems transformation at home and what part will be compensated by emissions trading, and requires greater clarity in the 2035 target. Furthermore, while the *Paris Agreement* allows this approach, experts warn against backloading decarbonization pathways because they are riskier (they reduce future options) and more costly (they do not foster clean innovation and increase the risk of stranded assets).⁵ Article 6(2) of the *Paris Agreement* mandates that emissions trading be subjects to sustainable development, environmental integrity and transparency, three parameters with which the current NDC is not aligned.

Indigenous-led Climate Policy

A third and last issue is Canada's approach to Indigenous-led climate policy. A full section of the 2030 target is dedicated to Indigenous Climate Leadership and includes references to Indigenous rights and a nation-to-nation relationship. However, scholars recently observed a "clear unwillingness to recognise Indigenous jurisdiction" in the implementation of climate policy in Canada,⁶ thus separating political recognition from the recognition of Indigenous [decision-making powers](#) over land and its resources. Indigenous Climate Action expanded on this point before the Senate Committee during its study of Bill C-12:

[D]espite repeated mentions of the importance of Indigenous rights and knowledge, we were structurally excluded from the development of Canada's recent climate policies and plans. This exclusion is not just poor process. It violates Indigenous rights to self-determination and free, prior and informed consent as affirmed by the [UNDRIP]. Therefore, what we need is an improved and focused consent-based process with Indigenous peoples, including adequate resources for community participation to ensure

⁴ Rajamani, Lavanya et al, "National 'fair shares' in reducing greenhouse gas emissions within the principled framework of international environmental law" (2021) 21:8 *Climate Policy* 983 at 992.

⁵ Fankhauser, Sam et al, "The meaning of net zero and how to get it right" (2022) 12:1 *Nat Clim Chang* 15 at 17.

⁶ Reed, Graeme et al, "Toward Indigenous visions of nature-based solutions: an exploration into Canadian federal climate policy" (2022) 22:4 *Climate Policy* 514 at 528.

direct engagement with Indigenous Nations on this bill and other related climate legislation, regulations, policies and action plans.⁷

This also should be remedied, precisely when the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services [recognizes](#) that “Nature is generally declining less rapidly in indigenous peoples’ land than in other lands.”

Conclusion

As I argue in my recent article, the most important of all is that the *Net-Zero Act* delivers strong accountability and that Canadians reach their chosen target for 2035.⁸ Indeed, both the [Canadian Climate Institute](#) and the [Commissioner of the Environment and Sustainable Development](#) have raised alarming concerns about achieving the 2030 target. Despite the current surge in public concern regarding affordability, we must resist the temptation to go for a weak 2035 target and use the current process to think creatively about how it can be both transformative and fair. This, on the long run, will greatly the costs of climate change for all.

I thank you for your kind attention and invite you to contact me if I can be useful.

Sincerely,



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⁷ Senate, Standing Senate Committee on Energy, the Environment and Natural Resources, Evidence, (10 June 2021) (Ms. Eriel Tchekwie Deranger)

⁸ Campbell-Durufle, *supra* note 1.