



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 132nd Session
28 June – 23 July 2021

Submitted 21 May 2021

About the submitting organizations:

*The **Center for International Environmental Law (CIEL)** uses the power of law to protect the environment, promote human rights, and ensure a just and sustainable society. CIEL seeks a world where the law reflects the interconnection between humans and the environment, respects the limits of the planet, protects the dignity and equality of each person, and encourages all of earth's inhabitants to live in balance with each other.*

***Above Ground** works to ensure that companies based in Canada or supported by the Canadian state respect human rights and the environment wherever they operate.*

Canada recognizes that “climate change is the challenge of our times,”¹ and has committed to “taking bold climate action,”² and “supporting a just transition,”³ in order “to avoid the worst effects of climate change and build a healthier and cleaner future.”⁴ As this Committee has recognized, climate change is one of “the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.”⁵ The scientific community has concluded for decades that human activity – particularly the combustion of fossil fuels – is the main driver of anthropogenic climate change.⁶ Research reveals that there is already enough oil, gas and coal under production globally to exhaust the world’s remaining carbon budget.⁷ The United Nations Environment Programme’s 2020 Production Gap Report found that States around the world are planning to produce twice as much oil and gas as is consistent with a 1.5°C limit.⁸ U.N. independent experts appointed by the Human Rights Council⁹ and a number of U.N. Treaty Bodies¹⁰ have called on States to limit fossil fuel use and eliminate financial support for fossil fuel projects in order to mitigate the negative human rights impacts of climate change. And in May 2021, the International Energy Association declared that “there is no need for investment in new fossil fuel supply in [its] net zero pathway,”¹¹ strengthening the case that fossil fuel expansion is incompatible with global climate goals.

¹ *Budget 2011: A Healthy Environment for a Healthy Economy*, Department of Finance Canada, April 19, 2021.

² Press Release, Prime Minister of Canada, Justin Trudeau, [Prime Minister Trudeau announces increased climate ambition](#) (April, 22, 2021).

³ Press Release, Environment and Climate Change Canada, [Canada’s Enhanced Nationally Determined Contribution](#) (Apr. 23, 2021).

⁴ Press Release, Prime Minister of Canada, Justin Trudeau, [Prime Minister announces Canada’s strengthened climate plan to protect the environment, create jobs, and support communities](#) (Dec. 11, 2020).

⁵ U.N. Human Rights Comm, General Comment No. 36, U.N. Doc. CCPR/C/GC/36, para. 62 (2019) [HRC, General Comment No. 36].

⁶ IPCC, *Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, Summary for Policy Makers*, p. 5 (2014) [IPCC AR5] (stating “Emissions of CO₂ from fossil fuel combustion and industrial processes contributed about 78% of the total GHG emissions increase from 1970 to 2010, with a similar percentage contribution for the increase during the period 2000 to 2010 (high confidence)”); Heede, R., *Tracing Anthropogenic carbon dioxide and methane emissions to fossil fuel and cement producers*, 122 *Climatic Change* 229 (2014).

⁷ See Center for International Environmental Law, [Oil, Gas and the Climate: An Analysis of the Oil and Gas Plans for Expansion and Compatibility with Global Emission Limits](#) (2019).

⁸ [The Production Gap: The discrepancy between countries’ planned fossil fuel production and global production levels consistent with limiting warming to 1.5°C or 2°C](#), SEI, IISD, ODI, E3G, and UNEP, vii, 3-4 (2020).

⁹ Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, U.N. Doc. A/74/161, paras. 73, 77(a) (July 15, 2019).

¹⁰ Joint Statement by Comm. on the Elimination of Discrimination against Women (CEDAW), Comm. Eco. Soc. and Cultural Rights [CESCR], Comm. on the Protection of the Rights of All Migrant Workers and Members of Their Families, Comm. on the Rights of the Child and Comm. on the Rights of Persons with Disabilities, Statement on Human Rights and Climate Change, U.N. Doc. HRI/2019/1, para. 3 (Sept. 16, 2019) [hereinafter “Joint Statement on Human Rights and Climate Change”]; CEDAW, General Recommendation No. 37 on Gender-Related Dimensions of Disaster Risk Reduction in the Context of Climate Change, U.N. Doc. CEDAW/C/GC/37, at para. 14 (Feb. 7, 2018).

¹¹ International Energy Association, [Net Zero by 2050: A Roadmap for the Global Energy Sector](#), p. 21 (2021).

Canada is the world's fourth-largest oil and gas producer,¹² and is home to many companies operating internationally.¹³ Canada provides tremendous support to the oil and gas sector, including through financing from Export Development Canada and subsidies. This continued support is inconsistent with Canada's stated commitments to take bold climate action and its obligations under the International Covenant on Civil and Political Rights (ICCPR) to take all reasonable action to prevent foreseeable threats to life.¹⁴ Moreover, to fulfill its obligations under the ICCPR, Canada must do more to regulate its companies operating outside its territory, to prevent their activities from being threats to life.

In light of these considerations, we urge the Human Rights Committee to request the State Party to provide information regarding the compatibility of its Climate Plan with its Article 6 obligations, specifically:

What steps is Canada taking to ensure that public and private financial institutions, including Export Development Canada, and corporations subject to its jurisdiction, do not cause or contribute to risks to the right to life and other human rights posed by fossil fuel production? (a) What measures is the Canadian government taking to ensure that corporations benefiting from Canadian registration and/or from Canada's public finance and/or having access to Canadian financial markets do not endanger the right to life through investments in the exploration and development of new oil and gas reserves? (b) How does Canada's Climate Plan aim to reduce the greenhouse gas emissions from the extraterritorial operations of companies subject to Canadian jurisdiction or control, including emissions from upstream oil and gas developments?

To explain the basis for these questions, this submission will: (1) outline Canada's obligations under the ICCPR in the context of climate change; (2) highlight scientific findings that show climate change is already threatening the right to life; and (3) show how Canada's support for the fossil fuel industry does not align with its ICCPR Article 6 obligations.

A. States' obligations under the ICCPR in the context of climate change

The right to life is recognized as a fundamental human right, "basic to all human beings."¹⁵ Article 6 of the ICCPR provides that "[e]very human being has the inherent right to life. This right shall be protected by law."¹⁶ This Committee has recognized that "[e]nvironmental degradation, climate change and non-sustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life."¹⁷ The Committee has also addressed State obligations in the context of climate change in

¹² News Release, Natural Resources Canada, [Canada Joins U.S. in Establishing Net-Zero Producers Forum](#) (Apr. 23, 2021).

¹³ See Braeden Larson, [Where in the World are Canadian Oil and Gas Companies? 2017](#), 12:21 SPP Briefing Paper (2019).

¹⁴ HRC, General Comment No. 36, at para. 18.

¹⁵ UN Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, U.N. Doc. A/HRC/10/61, para 8 (Jan. 15, 2009).

¹⁶ International Covenant on Civil and Political Rights, art. 6, Dec. 16, 1966, 999 U.N.T.S. 171.

¹⁷ HRC, General Comment No. 36, para. 62; *Ioane Teitota v. New Zealand*, HRC, Comm. No. 2728/2016, U.N. Doc. CCPR/C/127/D/2728/2016, para. 9.4 (Jan. 7, 2020).

its recommendations and/or lists of issues to at least five States, namely Cabo Verde,¹⁸ the United States,¹⁹ Dominica,²⁰ Philippines,²¹ and Kenya.²² In all of those, it highlighted the impacts of climate on the right to life.

The right to life requires States to 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” and that “these general conditions may include ... degradation of the environment.”²³ The Committee has emphasized that the right to life, which entitles individuals to be free from both acts and omissions that cause, or may be expected to cause, death or impair the enjoyment of a life with dignity, gives rise to a broad range of corresponding State obligations.²⁴

A State’s obligation to protect life applies to the conduct of all actors and conduct within the State’s jurisdiction and control that contribute to the threat to life, both public and private, domestic and extraterritorial. As the Committee has specified “[t]he duty to protect the right to life by law also includes an obligation for States parties to take appropriate legal measures in order to protect life from all foreseeable threats, including from threats emanating from private persons and entities.”²⁵ States must “take appropriate legislative and other measures to ensure that all activities taking place in whole or in part within their territory and in other places subject to their jurisdiction, but having a direct and reasonably foreseeable impact on the right to life of individuals outside their territory, including activities taken by corporate entities based in their territory or subject to their jurisdiction, are consistent with article 6.”²⁶ In fact, in its Concluding Observations to Canada in 2015, this Committee expressed concern “about allegations of human rights abuses by Canadian companies operating abroad, in particular mining corporations, and about the inaccessibility to remedies by victims of such violations.”²⁷ The Committee recommended that Canada should “enhance the effectiveness of existing mechanisms to ensure that all Canadian corporations under its jurisdiction, in particular mining corporations, respect human rights standards when operating abroad.”²⁸

In General Comment No. 36 concerning the Right to Life, the Committee noted that “[o]bligations of States parties under international environmental law should thus inform the

¹⁸ HRC, List of Issues in relation to the initial report of Cabo Verde, U.N. Doc. CCPR/C/CPV/Q/1/Add.1, para. 7 (Apr. 25, 2019); HRC, Concluding observations on the initial report of Cabo Verde, U.N. Doc. CCPR/C/CPV/CP/1/Add.1, paras. 17-18 (Dec. 3, 2019).

¹⁹ HRC, List of issues prior to submission of the fifth periodic report of the United States of America, U.N. Doc. CCPR/C/USA/QPR/5, para. 15 (Apr. 18, 2019).

²⁰ HRC, List of issues in the absence of the initial report of Dominica, U.N. Doc. CCPR/C/DMA/Q/1/Add.1, para. 11 (Apr. 25, 2019); HRC, Concluding observations in the absence of the initial report of Dominica, U.N. Doc. CCPR/C/DMA/COAR/1, paras. 24-25 (Apr. 24, 2020).

²¹ HRC, List of issues in relation to the fifth periodic report of the Philippines, U.N. Doc. CCPR/C/PHL/Q/5, para. 12 (June 30, 2020).

²² HRC, List of issues in relation to the fourth periodic report of Kenya, U.N. Doc. CCPR/C/KEN/Q/4, para. 13 (July 1, 2020).

²³ HRC, General Comment 36, at para. 22.

²⁴ *Ibid.*, at para. 3.

²⁵ *Ibid.*, at para. 18.

²⁶ *Ibid.*, at para. 22.

²⁷ HRC, Concluding Observations on the Sixth Periodic Report of Canada, U.N. Doc. CCPR/C/CAN/CO/6, para. 6 (Aug. 13, 2015).

²⁸ *Ibid.*

contents of article 6 of the Covenant, and the obligation of States parties to respect and ensure the right to life must reinforce their relevant obligations under international environmental law.”²⁹ Such relevant obligations include commitments under the U.N. Framework Convention on Climate Change and the Paris Agreement. Under the Paris Agreement, each State party—including Canada—has committed to undertake emission reductions (in its nationally determined contribution) reflecting its “highest possible ambition.”³⁰ Under both the UNFCCC and Paris Agreement States have committed to creating plans under a “common but differentiated responsibilities and respective capabilities”³¹ framework wherein “the developed country Parties should take the lead in combating climate change and the adverse effects thereof.”³² Moreover, the Paris Agreement acknowledges that “when taking actions to address climate change,” States should “respect, promote and consider their respective obligations on human rights,”³³ and directs Parties to “mak[e] finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.”³⁴

Additional relevant and complementary environmental principles that should inform States’ obligations under Article 6 include the precautionary principle and the principle of prevention. The former requires States to take precautionary measures to prevent threats even if there is a lack of scientific certainty.³⁵ Under the duty of prevention, States must exercise due diligence to ensure that activities within their jurisdiction or control do not cause environmental damage to other States.³⁶

Interpreting States’ human rights obligations to prevent climate change in line with international environmental law obligations is consistent with interpretations by other treaty bodies. In their joint statement, five human rights treaty bodies emphasized that a “[f]ailure to take measures to prevent foreseeable human rights harm caused by climate change, or to regulate activities contributing to such harm, could constitute a violation of States’ human rights obligations.” Moreover, the treaty bodies expounded that complying with these obligations includes adopting and implementing emissions reduction policies that “reflect the highest possible ambition,” shifting investments, and regulating private actors.³⁷

²⁹ HRC, General Comment 36, at para. 62.

³⁰ *Paris Agreement to the United Nations Framework Convention on Climate Change*, art. 3, Dec. 12, 2015, T.I.A.S. No. 16-1104 [Paris Agreement].

³¹ *United Nations Framework Convention on Climate Change*, art. 1, May 9, 1992, 1771 U.N.T.S. 107 [UNFCCC]. Paris Agreement, at art. 3.

³² UNFCCC, at art. 1.

³³ Paris Agreement, at preamble.

³⁴ Paris Agreement, at art. 2(c).

³⁵ UNFCCC, art. 3; 1992 Rio Declaration on Environment and Development, principle 15, U.N. Doc. A/CONF.151/26 (vol. I), 31 ILM 874 (1992). See also Advisory Opinion OC-23/18, Inter-Am. Ct. H.R. (ser. A) No. 23, paras. 175-80 (Nov. 15, 2017).

³⁶ Stockholm Declaration on the Human Environment, United Nations Conference on the Human Environment, Stockholm, June 5 to 16, 1972, UN Doc. A/CONF.48/14/Rev.1, Principle 2; Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, 2010 I.C.J. 14, para. 101 (Apr. 20); Certain Activities and Construction of a Road (Costa Rica v. Nicaragua), 2015 I.C.J. 665, para. 104 (Dec. 16); International Law Commission Special Rapporteur on the protection of the atmosphere, Sixth Report on the protection of the atmosphere, U.N. Doc. A/CN.4/736, Guideline 3, paras. 45-52 (Feb. 11, 2020). See also Advisory Opinion OC-23/18, Inter-Am. Ct. H.R., paras. 130-33, 140, 142.

³⁷ Joint Statement on Human Rights and Climate Change, at paras 10-12.

In 2021, all States are aware that climate change presents a real and immediate risk of foreseeable harm to human rights, including the right to life. In the context of climate change, States' obligations to respect and protect the right to life mean they have a duty to take all reasonable measures within their power, including through regulation and other means necessary and sufficient to protect individuals against the adverse impacts of climate change. This means States must adopt policies and regulations domestically that reflect their highest possible ambition to keep warming below 1.5°C. Moreover, their policies and actions must also look beyond their borders to foreseeable impacts of their actions or those of private entities operating in their jurisdiction, which exacerbate climate change and violate human rights by threatening the right to life.

**States' Duty to Regulate Financial Actors:
Statements and Findings from UN Human Rights Treaty Bodies**

Recent statements by UN Human Rights Treaty Bodies have elucidated the need for States to regulate the impact of high-emission investments by financial actors within their jurisdictions.

In September 2019, five Human Rights Treaty Bodies issued a joint statement on human rights and climate change. Regarding States' obligations on human rights, the statement explicitly provides that parties should discontinue "financial incentives for investments in activities and infrastructure which are not consistent with low greenhouse gas emissions pathways" regardless if undertaken by public or private actors, as a mitigation measure to prevent further damage and risk.³⁸ This underscores the existing recognition of financial actors' relationship to greenhouse gas emissions and their mitigation.

The Committee on Economic, Social, and Cultural Rights (CESCR) has highlighted the specific impact of financial actors on climate change - and consequently on fundamental human rights. In its Concluding Observations (COB) to Sweden in 2016, CESCR stated its concern about "the lack of systematic control by the State party of the investments made abroad by enterprises domiciled under its jurisdiction, including by the Swedish National Pension Funds, which weakens the ability of the State party to prevent negative impacts from such investments."³⁹ Likewise, in 2019, CESCR noted with concern in its COB regarding Switzerland that "public and private financial institutions, including pension funds, maintain significant investments in the fossil fuel industry, despite its adverse impacts on the climate."⁴⁰ Additionally, the Committee recommended that the State Party take the "necessary measures to reduce public and private investments in the fossil fuel industry and ensure that they are compatible with the need to reduce greenhouse gas emissions."⁴¹ These observations

³⁸ *Ibid.*, at para 12.

³⁹ CESCR, Concluding observations on the sixth periodic report of Sweden, U.N. Doc. E/C.12/SWE/CO/6, para. 11 (July 14, 2016).

⁴⁰ CESCR, Concluding observations on the fourth periodic report on Switzerland, U.N. Doc. E/C.12/CHE/CO/4, para. 18 (Nov. 18, 2019).

⁴¹ *Ibid.*, at para. 19.

crystallize the necessity of States to take into account public and private financial institutions in reviewing their international human rights obligations.

The Committee on the Rights of the Child (CRC) has likewise specifically addressed the impact of financial actors on climate change. In its List of Issues (LOI) Prior to Reporting to Luxembourg (2019), the CRC required that the State “provide information regarding policies implemented by the State party to ensure that private and publicly owned financial institutions (...) take into consideration the implications for climate change of their investments and the resulting harmful impact on children.”⁴² This point was echoed in the Committee’s LOI prior to reporting to Switzerland, requesting that the State Party “ensure that private and publicly owned financial institutions take into consideration the impact of climate change on the rights of the child of their investments, in particular in the fossil fuel industry.”⁴³

Finally, the Committee on the Elimination of Discrimination Against Women (CEDAW) has also recognized the obligation of State parties to regulate financial actors in order to comply with the duties under the Convention. In its LOI prior to reporting to Sweden, the Committee highlighted that Sweden’s extraterritorial obligations include ensuring that the activities of companies registered in the State party, “including their financial flows and investments”, do not “negatively affect human rights or endanger environmental, labour and other standards.”⁴⁴

B. Climate change is already threatening the right to life

The Intergovernmental Panel on Climate Change (IPCC) 2018 Special Report on 1.5°C found that warming of 1.5°C or higher above pre-industrial levels constitutes “dangerous anthropogenic interference with the climate system.”⁴⁵ The 195 IPCC Member States, which includes Canada, endorsed the Report’s Summary for Policy Makers.⁴⁶ This report explicitly states that “warming of 1.5°C is not considered ‘safe’ for most nations, communities, ecosystems and sectors and poses significant risks to natural and human systems as compared to the current warming of 1°C (high confidence),” especially for “disadvantaged and vulnerable populations.”⁴⁷

Already having reached 1°C warming at the time of its report, the IPCC warned that the world was experiencing sea-level rise induced flooding, as well as heatwaves, droughts, hurricanes and other forms of extreme weather that claim lives and destroys property and homes.⁴⁸ At 1.5°C warming, society at large will experience significantly greater “climate-related risks to health,

⁴² CRC, List of issues prior to submission of the combined fifth and sixth periodic reports of Luxembourg, U.N. Doc. CRC/C/LUX/QPR/5-6, para. 23 (Mar. 5, 2019).

⁴³ CRC, List of issues prior to submission of the combined fifth and sixth periodic reports of Switzerland, U.N. Doc. CRC/C/CHE/QPR/5-6, para. 25(C) (Nov. 11, 2019).

⁴⁴ CEDAW, List of issues and questions prior to the submission of the tenth periodic report of Sweden, U.N. Doc. CEDAW/C/SWE/QPR/10, para. 8 (Mar. 20, 2019).

⁴⁵ UNFCCC, at art. 2.

⁴⁶ Press release, IPCC, 2018/24/PR: [Summary for Policymakers of IPCC Special Report on Global Warming of 1.5°C approved by governments](#) (Oct. 2018).

⁴⁷ IPCC, Global Warming of 1.5°C: An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty, Technical Summary and Chapter 5, pp. 44. 447 (2018) [IPCC 1.5SR].

⁴⁸ See IPCC 1.5SR, *Summary for Policymakers*, at pp. 4-6, sec. A.

livelihoods, food security, water supply, human security, and economic growth.”⁴⁹ And warming above 1.5°C runs the risk of triggering irreversible, catastrophic impacts.⁵⁰ To prevent warming above 1.5°C, the IPCC determined that global CO₂ emissions must decrease by 45% (or nearly half) from 2010 levels by 2030 and reach net zero around 2050.⁵¹ The measures most likely to achieve these targets involve near-term, comprehensive, and reliable emissions reductions⁵² coupled with some carbon removal by *natural sources* such as reforestation and enhanced soil carbon uptake, but *limited to no* use of engineered carbon dioxide removal (CDR) technologies (“negative emissions technologies”).⁵³ In light of the above—the known and foreseeable risks of further warming to human rights, including the right to life, and the State duty to take preventive measures to mitigate such risks, including by regulating the conduct of private corporations and financial institutions subject to its jurisdiction that contributed to climate change – Canada’s continued support for fossil fuel production is at odds with its Covenant obligations.

C. Canada’s support for the fossil fuel industry does not align with its ICCPR Article 6 obligations

In April 2021, Canada announced a revised climate action plan with a target of 40-50% reductions below 2005 levels by 2030, with a commitment to reach net-zero emissions by 2050.⁵⁴ Beyond criticisms that the overall emissions reduction target was insufficiently ambitious and not commensurate with Canada’s fair share,⁵⁵ a primary concern with the plan—and the focus of this submission—is its failure to include a phase out of support for Canada’s fossil fuel industry. Canada provides significant support to its fossil fuel industry through Export Development Canada, subsidies and support for negative emissions technologies. Canada is also home to many fossil fuel companies that operate abroad, including by exploring for new oil and gas developments. In light of these concerns, we encourage the Committee to ask Canada to explain how its ongoing support to the fossil fuel industry is consistent with its Covenant obligations.

- a. Support for oil and gas production is inconsistent with the obligation to prevent foreseeable risks to life.

Export Development Canada provides significant support to the fossil fuel industry

Each year Canada’s export credit agency, Export Development Canada (EDC), provides significant levels of support to the oil and gas sector. EDC is a Crown corporation and was

⁴⁹ IPCC 1.5SR, *Summary for Policymakers*, at p. 9, para. B.5.

⁵⁰ *Ibid.* at p. 257, para. 3.5.2.5; IPCC AR5, *Technical Summary*, at pp. 68-72, Box. TFE.5.

⁵¹ IPCC 1.5SR, *Summary for Policymakers*, at p. 12, para. C.1.

⁵² See IPCC 1.5SR, *Summary for Policymakers*, at pp. 7-11, sec. B.

⁵³ IPCC 1.5SR, *Summary for Policymakers*, at pp. 7-11, 14, fig. SPM.3b (Pathway P1); IPCC 1.5SR, *Technical Summary*, at p. 34; see also IPCC 1.5SR, *Chapter 2*, at p.115, para. 2.3.3, p. 121-24, para. 2.3.4.1; IPCC 1.5SR, *Chapter 2-Supplementary Materials*, at p. 2A-28, Table 2.SM.12.

⁵⁴ Press Release, Prime Minister of Canada, Justin Trudeau, [Prime Minister Trudeau announces increased climate ambition](#) (April, 22, 2021).

⁵⁵ [Civil Society Reacts to Canada’s Newly Announced Federal Climate Target](#), Climate Action Network Canada, Apr. 22, 2021; [Canada’s Fair Share towards limiting global warming to 1.5°C](#), Climate Action Network Canada, Dec. 2, 2019; Marie-Christine Fiset, [Reaction: New GHG reduction target for Canada](#), Greenpeace Canada, Apr. 22, 2021; Rachel LaFortune, [Canada’s New Climate Target Falls Short: More Ambitious Measures Needed to Protect Human Rights](#), Human Rights Watch, Apr. 22, 2021.

established pursuant to federal legislation.⁵⁶ EDC provides loans, insurance, and other financial services to Canadian and foreign companies to support and develop Canadian trade.⁵⁷ Between 2016 and 2018, Canada provided an average of CAD 13.8 billion a year in support to oil and gas companies. This contributes to Canada ranking second highest among G20 countries in total public financing for fossil fuels, and highest on a per-capita basis.⁵⁸

EDC provides support to oil and gas companies for activities abroad and in Canada. For example, since 2016 EDC has provided Canadian company Parex Resources with six loans totaling up to CAD 475 million for its operations in Colombia.⁵⁹ Domestically, EDC has provided Suncor, a company involved in developing Canada's oil sands, with support totaling up to CAD 1 billion. Trans Mountain Corporation and Coast GasLink have received EDC support totaling roughly CAD 10 billion and CAD 500 million, respectively, for pipeline construction in Canada.⁶⁰ In addition, Canada's COVID-19 Economic Response Plan included new financial support to be delivered through EDC which prioritized the oil and gas sector. For example, Canada prioritized the oil and gas sector for programs that provide small and medium-sized companies with loans, loan guarantees, and credit insurance.⁶¹

In the current climate emergency, EDC's climate policy, which the agency released in 2019 and recently revised, is inadequate. The policy does not commit EDC to phasing out support for the oil and gas sector. Instead it pledges to "set targets to reduce the carbon intensity of its lending portfolio" and "integrate climate-related risks and opportunities [...] into EDC's risk assessment processes [...] to inform decision-making."⁶² In 2020 EDC set a modest target to decrease by 15% its financing to the six most carbon-intensive sectors in its lending portfolio by 2023.⁶³ This target was based on a 2018 baseline of CAD 22.2 billion, which equates to mere CAD 3.1 billion reduction in support.⁶⁴ EDC recently announced that it met its target and is now in the process of setting a new goal.⁶⁵ Given its unambitious first target, there's cause for concern that even a "strengthened" target would still miss the mark.

⁵⁶ *Export Development Act*, R.S.C., 1985 c. E-20.

⁵⁷ [About Us](#), Export Development Canada.

⁵⁸ [Crown Corporation EDC is Undermining Canada's Climate commitments. Will Ottawa step in and take action?](#) Above Ground, Jan. 13, 2021; [Letter](#) from Above Ground *et al.*, to Honourable Mary Ng, MP, Minister of Small Business, Export Promotion and International Trade *et al.*, (Dec. 21, 2020).

⁵⁹ Amount of support compiled from data retrieved from EDC website posting "Individual Transactions Information" for the years 2016-2021. See [Individual Transactions Information](#), Export Development Canada.

⁶⁰ Oil Change International, Above Ground, Environmental Defence, *Export Development Canada's Role in Bailing out the Oil and Gas Sector*, p.4 (2020); Above Ground, [Export Development Canada's fossil fuel backing undermines Canada's climate goals](#), p.2 (2021). The loan to Trans Mountain Corporation is made from an account called the Canada Account which is financed by general government revenue to facilitate loans or guarantees that the trade minister deems to be in Canada's national interest but that EDC would not normally support due to the high level of risk.

⁶¹ Oil Change International, Above Ground, Environmental Defence, *Export Development Canada's Role in Bailing out the Oil and Gas Sector*, pp. 2-3.

⁶² EDC, [Climate Change Policy](#), p. 6 (Jan. 2021).

⁶³ EDC, [Growing Canadian trade, responsibly: EDC 2019 annual report](#) (2020) at pp. 29-30.

⁶⁴ EDC, [2020 Annual Report: Business as Usual](#), p.63, (2021) [hereinafter "EDC, 2020 Annual Report"].

⁶⁵ EDC, 2020 Annual Report, at pp. 8, 63.

While other countries are phasing out public financial support to the fossil fuel industry, Canada is not. Canada recently announced it will work with EDC to “strengthen human rights considerations in export supports. ... [and] may propose amendments to the Export Development Act.”⁶⁶ In light of Canada’s ongoing support to the fossil fuel industry through EDC, the Committee should take this opportunity to ask Canada to explain how it plans to ensure that EDC does not finance and, in doing so, enable and contribute to foreseeable threats to the right to life.

Canada Provides Additional Federal Subsidies to the Fossil Fuel Industry

At the federal level, the Canadian government provides additional support to the fossil fuel industry through a range of subsidies. The subsidies include providing funding to companies for research, paying for infrastructure such as natural gas refueling stations, maintaining idled infrastructure, and tax breaks.⁶⁷ For example, the Bank of Canada Corporate Bond Purchasing Program, launched as a COVID-19 support program, is a CAD 10 billion program to purchase eligible corporate bonds in the second market which include 15 fossil fuel companies.⁶⁸ The federal government invested CAD 1 billion into cleaning up inactive oil and gas wells in Alberta, instead of compelling the companies, as required by regulations and under the polluter pays principles, to clean up their mess.⁶⁹ The federal government through its federal climate plan has launched funding to increase the production and use of low-carbon fuels and accelerate decarbonization projects with large carbon emitters. It is likely that a significant portion of the funding from these programs will go to oil and gas companies,⁷⁰ and could be used to subsidize technologies like carbon capture and storage (CCS) that purport to reduce carbon-intensity of fossil fuel combustion, but, as discussed below, prolong rather than replace dependence on fossil fuels. In providing this form of continued support, Canada is fueling the ongoing climate crisis, instead of working to achieve its international human rights and environmental law obligations to prevent foreseeable threats to life.

Canada’s support for carbon removal technologies further entrenches use of fossil fuels

Canada is a strong proponent of engineered carbon removal technologies, in particular carbon capture and storage. Canada’s support for carbon removal technologies is inconsistent with action needed to meet a 1.5°C pathway and prevent foreseeable risks to life. As set out above, keeping warming below 1.5°C—which is necessary to prevent foreseeable risks to life—depends on phasing out fossil fuels. But engineered carbon removal technologies entrench the use of fossil fuels, rather than their replacement by cleaner alternatives, delaying phase-out. And the energy intensity of the capture processes themselves means they may actually require additional use of fossil fuels to power the technology.⁷¹ Moreover, as the IPCC has cautioned, such technologies are currently unproven at scale, face feasibility constraints, and present risks of

⁶⁶ [Part 2: Creating Jobs and Growth](#), Department of Finance Canada, s.4.5, 2021.

⁶⁷ Environmental Defence, [Paying Polluters: Federal Financial Support to Oil and Gas in 2020](#) p.3, April 2020.

⁶⁸ *Ibid.*, at p. 9.

⁶⁹ *Ibid.*, at p. 4.

⁷⁰ *Ibid.*, at p.9.

⁷¹ See Dana Drugmand & Carroll Muffett, [Confronting the myth of carbon-free fossil fuels: Why carbon capture is not a climate solution](#), Environmental Working Group, Apr. 22, 2021; Carroll Muffett & Steven Feit, [Fuel to the Fire: How Geoengineering Threatens to Entrench Fossil Fuels and Accelerate the Climate Crisis](#), Center for International Environmental Law (2019).

adverse environmental and social impacts if deployed.⁷² Extensive carbon capture and storage technologies will, as the IPCC states, require a large network of pipelines that will pose risks similar to those associated with fossil fuel pipelines.⁷³

For many years, Canada has supported and provided billions of dollars in funding for initiatives involving carbon capture and storage.⁷⁴ In 2013 the Canadian government promoted itself as “a world leader in CCS and [...] committed to exploring this technology.” The government explained that “the development of CCS is one component of a broad suite of measures that the Government of Canada is pursuing to meet our GHG emission reduction targets,”⁷⁵ and “balance the importance of energy to our economy.”⁷⁶ Its current Climate Plan and budget continue to rely on the development of such technologies and to provide funding and other financial support for the fossil fuel industry.⁷⁷ For example, the government contends that net-zero can be achieved through “employing technologies that can capture carbon before it is released into the air.”⁷⁸ Canada and four other countries recently formed a Net-Zero Producers Forum, “a platform for oil and gas-producing countries to discuss how the sector can support the implementation of the Paris Agreement on climate change and the goal of achieving net-zero emissions by 2050.”⁷⁹ Early indications suggest that rather than address the managed phase-out of oil and gas production, as would be consistent with global climate goals and human rights imperatives, the Forum will prioritize measures such as “develop[ment] and deploy[ment of] ... carbon capture, use and storage technologies,”⁸⁰ which are designed to enable continued production and use of fossil fuels. Moreover, with the 2021 federal budget the government announced that it will introduce a tax credit for capital invested in carbon capture and storage projects.⁸¹

In light of the scientific evidence that avoiding dangerous levels of warming, which threaten the right to life, requires a phase out of fossil fuels, Canada’s ongoing support for oil and gas production is at odds with its obligation to protect the right to life.

- b. Canada must regulate its oil and gas companies to ensure their activities do not create risks to life and are consistent with a pathway that keeps warming below 1.5°C.

As noted above, scientists and human rights experts have made it clear that exploration and development of new oil and gas projects are not consistent with a 1.5°C pathway, and States have a recognized human rights obligation to take all measures to prevent against foreseeable

⁷² See IPCC 1.5SR, *Chapter 2*, at p. 95. See also IPCC, *Special Report on Carbon Dioxide Capture and Storage*, [Chapter 4: Transport of CO₂](#), p. 181 (2005); Drugman & Muffett, *Confronting the myth of carbon-free fossil fuels*.

⁷³ IPCC, *Special Report on Carbon Dioxide Capture and Storage*, [Chapter 4: Transport of CO₂](#), p. 181 (2005); Drugman & Muffett, *Confronting the myth of carbon-free fossil fuels*.

⁷⁴ Natural Resources Canada, [Carbon Capture and Storage: Canada’s Technology Demonstration Leadership](#), p. 1 (2013).

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ News Release, Natural Resources Canada, [Canada Joins U.S. in Establishing Net-Zero Producers Forum](#) (Apr. 23, 2021); *Part 2: Creating Jobs and Growth*, Department of Finance Canada, s.5.2, 2021.

⁷⁸ [Net-Zero Emissions by 2050](#), Government of Canada (Apr. 29, 2021).

⁷⁹ News Release, Natural Resources Canada, [Canada Joins U.S. in Establishing Net-Zero Producers Forum](#) (Apr. 23, 2021).

⁸⁰ *Ibid.*

⁸¹ Carl Meyer, [Budget 2021 targets cleantech, funding for carbon capture](#), Canada’s National Observer, Apr. 19, 2021; *Part 2: Creating Jobs and Growth*, Department of Finance Canada, s.5.2.

risks to life. Yet, Canadian companies continue to explore for new oil and gas outside of Canada. Canada's Article 6 obligations require Canada to take all necessary and appropriate measures to prevent foreseeable risks to life that its corporations cause or to which they contribute. This includes the risks posed by new oil and gas projects and their contribution to climate change, which compounds other local environmental and social impacts. Canada must regulate companies incorporated, headquartered, and/or with a principal place of business in Canada to ensure their activities do not pose a threat to life.

Spotlight on Reconnaissance Energy Africa

Canadian company Reconnaissance Energy Africa Ltd. (hereinafter ReconAfrica), a junior oil and gas company incorporated in British Columbia, is currently exploring for oil in the Okavango region (or as the company refers to it, the Kavango Basin), which spans the Namibia-Botswana border.⁸² Reconnaissance Energy Namibia (Pty) Ltd., a wholly owned subsidiary of ReconAfrica, owns a 90% interest in the Namibian Petroleum Exploration License.⁸³ The Namibian state oil company, National Petroleum Corp of Namibia (NAMCOR) holds the remaining 10%. The license from Namibia is the first license in fifty years to allowing drilling for onshore exploratory wells.⁸⁴ Reconnaissance Energy Botswana (Pty) Ltd., also a wholly owned subsidiary of ReconAfrica, owns a 100% interest in the Botswana license.⁸⁵ Both agreements give ReconAfrica an entitlement to a 25-year production license after a declaration of commercial discovery.⁸⁶

Civil society groups and media report concerns that, if the company's exploration is successful, subsequent oil and gas development in the Okavango region would endanger one of the most diverse ecosystems, destroy the Indigenous San Peoples' way of life, and unlock a massive quantity of greenhouse gas emissions.⁸⁷ The Okavango region – which borders three national parks and covers 11 community conservancy concessions – is one of the most diverse ecosystems on the planet. Moreover, it is home to over 200,000 people in Namibia alone, including many San communities.⁸⁸ The license from Namibia is the first license in fifty years to allowing drilling for onshore exploratory wells.⁸⁹ The company estimates that their licensed

⁸² [Operations: Kavango Basin](#), ReconAfrica, [hereinafter “Operations: Kavango Basin, ReconAfrica”].

⁸³ *Ibid.*

⁸⁴ ReconAfrica, *Best Practices: Exploratory Drilling*, p.1, <https://reconafrika.com/wp-content/uploads/ReconAfrica-Fact-Sheet-Exploratory-Drilling.pdf> [hereinafter “ReconAfrica, Best Practices: Exploratory Drilling”].

⁸⁵ *Operations: Kavango Basin*, ReconAfrica; ReconAfrica, *Reconnaissance Energy Africa Ltd. Amended and Restated Annual Information Form for the Financial Year Ended December 31, 2020*, p.7 (May 19, 2021).

⁸⁶ *Operations: Kavango Basin*, ReconAfrica; News Release, ReconAfrica, ReconAfrica Announces a New Petroleum Licence Covering the Eastern Extension of the Deep Kavango Basin & Farm-Out Option Agreement (June 11, 2020).

⁸⁷ See e.g. Saving Okavango's Unique Life, *Written Submission to the Committee on the Elimination of Discrimination against Women Pre-sessional Working Group for the 80th Session (1-5 March 2021) on the Occasion of the Consideration of the List of Issues for Namibia*, p.2 [hereinafter SOUL, CEDAW Submission]; Jeffrey Barbee and Laurel Neme, [Oil drilling, possible fracking planned for Okavango region – elephants' last stronghold](#), National Geographic, Oct. 28, 2020; [San communities petition against Kavango drilling](#), The Namibian, Feb. 16, 2021; [Lisa Ossenbrink, Namibia: Indigenous leaders want big oil out of Kavango Basin](#), Al Jazeera, Apr. 22, 2021.

⁸⁸ SOUL, CEDAW Submission, p.2; [Namibia designates Bwibwata – Okavango](#), Ramsar, Jan. 16, 2014; Barbee and Neme, [Oil drilling, possible fracking planned for Okavango region – elephants' last stronghold; San communities petition against Kavango drilling](#), The Namibian.

⁸⁹ ReconAfrica, [Best Practices: Exploratory Drilling](#), p.1.

areas may contain over 100 billion barrels of crude oil,⁹⁰ though those estimates may significantly overstate actual reserves.⁹¹ Groups estimate that burning this amount of oil could release up to 51.6 Gigatonnes of CO₂, a significant portion of the world's remaining carbon budget.⁹² The climate impacts will be felt globally, but most significantly by the local communities, who are already threatened by climate change, and for whom the adverse effects of global warming will only be compounded by the impacts of oil and gas development on water resources, the local environment, and the global climate.⁹³

Moreover, civil society groups and media report concerns over the company's operating practices. For example, recent reports state that ReconAfrica did not carry out proper consultations for its initial environmental impact assessments and is operating in Namibia without the proper water-related permits.⁹⁴ On May 21, 2021, the media reported that a complaint was filed with the U.S. Securities and Exchange Commission alleging that ReconAfrica "may have fraudulently misled investors by misrepresenting its work on the project."⁹⁵ According to the coverage, the complaint alleges—among other things—that the company misled investors by making statements about its ability to procure oil in compliance with Namibian law; reportedly the company has not obtained all necessary permits.⁹⁶ Moreover, concerns over ReconAfrica's exploration activity and plans have been brought to the attention of the Canadian government through an e-petition calling on the government to investigate the complaints regarding ReconAfrica's project in the Kavango Basin and to explain how "the Kavango basin region and the people of Botswana and Namibia will be protected and respected by Canadian companies operating in the region."⁹⁷

This is but one example. As stated above, there are a number of Canadian fossil fuel companies operating outside of Canada. The Committee should take this opportunity to ask the State Party how its Climate Plan aims to reduce the greenhouse gas emissions from the extraterritorial

⁹⁰ ReconAfrica, *Newly Discovery Kavango Basin Namibia & Botswana*, Investor Presentation, p.8, May 2021; Dan Jarvie, *Petroleum Potential for Kavango Basin – ReconAfrica*, p.3.

⁹¹ See *ReconAfrica has to go to the high court*, Natur & Umwelt, May 10, 2021; Jeffrey Barbee and Laurel Neme, *Oil exploration company in Okavango wilderness misled investors, SEC complaint says*, National Geographic, May 21, 2021.

⁹² Press Release, Fridays for Future Windhoek, *Fridays for Future: ReconAfrica's Kavango oil and gas play is 'carbon bomb' with projected 1/ of the world's remaining CO₂ budget.* Mar. 31, 2021; Press Release, Extinction Rebellion Vancouver, *Protesters spill 'oil' outside ReconAfrica headquarters to demand withdrawal from Okavango region marking world water day.* Mar. 22, 2021.

⁹³ See Joint Statement on Human Rights and Climate Change, para. 3 (citing to the IPCC Special Report and stating "The adverse impacts identified in the report, threaten, among others, the right to life, the right to adequate food, the right to adequate housing, the right to health, the right to water and cultural rights. These negative impacts are also illustrated in the damage suffered by the ecosystems which in turn affect the enjoyment of human rights. The risk of harm is particularly high for those segments of the population already marginalised or in vulnerable situations or that, due to discrimination and pre-existing inequalities, have limited access to decision-making or resources, such as women, children, persons with disabilities, indigenous peoples and persons living in rural areas.")

⁹⁴ Jeffrey Barbee and Laurel Neme, *Oil company exploring in sensitive elephant habitat accused of ignoring community concerns*, National Geographic, May 11, 2021; SOUL, *ReconAfrica Fails to Place a Leak Proof Lining System in the Drilling Fluid Containment Pond, Drill Site 6-2 Kavango Namibia*, pp. 3-5 (May 2021); Jim Tan, *Growing concern over Okavango oil exploration as community alleges shutout*, Mongabay, Mar. 22, 2021.

⁹⁵ Barbee and Neme, *Oil exploration company in Okavango wilderness misled investors, SEC complaint says*.

⁹⁶ *Ibid.*; See also Barbee and Neme, *Oil company exploring in sensitive elephant habitat accused of ignoring community concerns*.

⁹⁷ Petition e-3256, Parliament of Canada, House of Commons, <https://petitions.ourcommons.ca/en/Petition/Details?Petition=e-3256>.

operations of companies that are subject to Canadian jurisdiction or control, including emissions from upstream oil and gas developments.

D. Conclusion

In light of all above, the submitting organizations respectfully request the Committee to ask Canada the following questions:

What steps is Canada taking to ensure that public and private financial institutions, including Export Development Canada, and corporations subject to its jurisdiction, do not cause or contribute to risks to the right to life and other human rights posed by fossil fuel production? Specifically: (a) What measures is the Canadian government taking to ensure that corporations benefiting from Canadian registration and/or from Canada's public finance and/or having access to Canadian financial markets do not endanger the right to life through investments in the exploration and development of new oil and gas reserves? (b) How does Canada's Climate Plan aim to reduce the greenhouse gas emissions from the extraterritorial operations of companies subject to Canadian jurisdiction or control including emissions from upstream oil and gas developments?