

Assessment of Canada's International Human Rights Obligations and Violations

**Submission to the UPR Working Group of the United Nations Human Rights Council
In anticipation of the 2023 Universal Periodic Review (UPR) of Canada**

April 4, 2023

Submitted by the Canadian Lawyers for International Human Rights (CLAIHR)
CLAIHR is a non-profit, non-governmental organization, established in 1992 to promote international human rights, within and in connection to Canada, through legal education and advocacy.

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1. The Canadian Lawyers for International Human Rights (CLAIHR) makes this submission to assess Canada's progress on its international human rights commitments since the 2018 UPR cycle. The submission focuses on five areas that CLAIHR has identified based on our participation in recent legal proceedings: Canada's (1) ratification of human rights instruments; (2) corporate accountability mechanisms; (3) mental health detention system; (4) notwithstanding clause; and (5) contributions to climate change.

I. International Human Rights Instruments

2. In its last UPR, Canada accepted recommendations to consider becoming party to the Optional Protocols to the Convention Against Torture (OP-CAT) and the Convention on the Rights of Persons with Disabilities (OP-CRPD).ⁱ Canada noted recommendations to accede to numerous other international human rights instruments;ⁱⁱ it promised it was "analyzing" the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), but stated that the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), the Inter-American Convention on Human Rights (IACHR), and the Optional Protocol to the International Covenant for Economic, Social and Cultural Rights (OP-ICESCR) were "not currently under consideration."ⁱⁱⁱ
3. Canada accepted recommendations to implement Canada's Truth and Reconciliation Commission's (TRC) Calls to Action^{iv}, including full implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and developing a national action plan to achieve its goals.^v In 2019, the National Inquiry into Missing and Murdered Indigenous Women and Girls (NIMMIWG) called on Canada to ratify the IACHR, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (IACVAW), the Optional Protocol on the Convention on the Rights of the Child (OP-CRC), the OP-ICESCR, and for the full implementation of the International Convention on the Elimination of all forms of Racial Discrimination (ICERD).^{vi}
4. Canada acceded to the OP-CRPD in 2018, a welcome development that provides access to both inquiry and individual complaint mechanisms. However, Canada has not extended access to these important mechanisms as they pertain to the ICESCR, the CRC, and the ICERD, and has broken previous promises that it would ratify the OP-CAT. Canada has also failed to ratify the ICPPED, the ICRMW, and the IACHR.

Recommendations:

5. Canada should become a party to the ICPPED, ICRMW, OP-CAT, OP-ICESCR, and OP-CRC, and accept individual communications under the ICERD.
6. Canada must uphold its commitments to reconciliation with Indigenous Peoples, including by adopting the international human rights calls to action emerging from the TRC and the NIMMIWG. These calls include becoming a party to the IACHR, IACVAW, OP-CRC and OP-ICESCR, and the adoption and implementation of UNDRIP by all governments.

II. Corporate Violations of Human Rights

7. Canada has an obligation to ensure that corporations under its jurisdiction, including those incorporated, headquartered, or with a principal place of business in Canada, do not violate the human rights that Canada is treaty-bound to respect and protect.^{vii} Accordingly, Canada

must “take all necessary, appropriate and reasonable measures to prevent business enterprises from causing or contributing” to human rights abuses,^{viii} including by regulating the extraterritorial activities of businesses to ensure “effective protection” against rights violations.^{ix} “A voluntary system is not a substitute for State regulation of businesses.”^x If such entities allegedly violate human rights, Canada has a duty to investigate and hold those entities accountable.^{xi}

8. In Canada’s last UPR, it accepted recommendations to, for instance, “prevent human rights impacts by Canadian companies operating overseas,” and “[a]dopt additional measures to guarantee the accountability of transnational corporations ... [for] human rights abuses in third countries throughout their chain of production and operation.”^{xii}
9. Canada has continually failed to meet these obligations, instead implementing voluntary programs and maintaining a court system that prevents effective remedies. This failure has serious consequences; numerous reports document human rights violations connected to the global operations of Canadian corporations, including forced labor, sexual assault, murder, land grabbing, and environmental destruction.^{xiii} Indeed, the U.N. Special Rapporteur on the Rights of Indigenous Peoples recently reiterated his “concern that Indigenous Peoples around the world are suffering negative, sometimes devastating consequences from Canadian extractive industries.”^{xiv}

Government Oversight:

10. Civil society organizations have documented concerns over the National Contact Point (NCP) process’s effectiveness and ability to offer an effective remedy.^{xv} The U.N. Working Group on the issue of human rights and transnational corporations found that the Canadian NCP had a lack of trust, resources, and perceived independence from civil society.^{xvi}
11. Civil society campaigned for years for Canada to establish an effective, independent Ombudsperson; Canada failed to do so. Canada established an office that cannot compel companies to participate in investigations, levy fines or otherwise punish wrongdoers, is not independent from government and businesses, and does not have adequate safeguards to protect complainants.^{xvii} This was contrary to the Canadian government’s own recommendations and commitments, as well as the recommendation in the last UPR to make the Ombudsperson’s “independent and broaden its mandate.”^{xviii}
12. Civil society has documented the Ombudsperson’s failure to seriously investigate or remedy any allegations of human rights violations by Canadian companies since its inception.^{xix}

Regulation:

13. In its last UPR, Canada noted a recommendation to “[a]dopt legislation governing the conduct of corporations under its jurisdiction in relation to their activities abroad.”^{xx}
14. Canada is considering passing an inadequate mandatory human rights due diligence law, Bill S-211. The bill requires large companies to report annually on the steps they have taken “to prevent and reduce the risk” that forced or child labour is used in their supply chains; it does not require companies to *actually* prevent or reduce forced or child labour, or address other human rights violations.
15. Another proposed law establishes liability for companies that contribute to human rights violations abroad, but it has received less support from Parliament.

Access to Remedies:

16. Where legal frameworks for criminal prosecution exist, the Canadian government has failed to hold corporations to account through criminal law. For instance, the Canadian government has failed to enforce a law prohibiting the import of goods made with forced labour,^{xxi} and has not criminally prosecuted Canadian corporations for their human rights violations.
17. This places the onus on victims to pursue a remedy through civil courts. Finding legal representation is challenging as legal aid is unavailable.^{xxii} The Supreme Court of Canada recently allowed a common law tort action based on customary international law against a Canadian corporation for its overseas operations.^{xxiii} However, many such cases are dismissed based on *forum non conveniens*, a doctrine which allows a court to decline jurisdiction if there is an alternative adequate forum.^{xxiv} In these situations, Canada is not fulfilling its obligations to offer an effective remedy.
18. Moreover, Canadian courts generally impose costs on the losing party.^{xxv} In addition, most provinces can require out-of-province litigants to pay a bond to the court before proceeding with litigation. This costs regime deters victims.

Government Support for Businesses:

19. Canadian government offices actively support corporations that commit human rights abuses. For instance, civil society reports show that Export Development Canada (EDC) provides significant funding to extractive sector corporations, including those associated with alleged human rights violations.^{xxvi}
20. Canada's support for oil pipelines is particularly troubling. Despite reported human rights violations and CERD's interventions, Canada has actively supported the Trans Mountain, Coastal GasLink, Line 3, and Line 5 Pipelines.^{xxvii}

Recommendations:

21. Canada must regulate corporations by:
 - a. Adopting binding measures to ensure that Canadian corporations do not violate human rights in their operations outside of Canada and exercise human rights due diligence; and
 - b. Making access to public support conditional on businesses preventing negative impacts on human rights in their overseas operations, and withdrawing support if the company fails to do so.
22. Canada must provide an effective remedy when corporations violate human rights by:
 - a. Investigating credible allegations of human rights violations and prosecuting cases;
 - b. Passing legislation recognizing a civil cause of action based on human rights law, affirming parent company liability, and ensuring that Canadian courts provide a venue for cases brought against Canadian corporations;
 - c. Ensuring that impecunious victims can bring actions without posting a bond for costs and paying the defendant's fees; and
 - d. Making legal aid available to individuals who want to bring civil actions.

III. Mental Health Detention

23. The CRPD enshrines the rights of persons with disabilities, including the rights to: 1) exercise equal legal capacity; 2) liberty and security; 3) live independently and be included in the

- community; and 4) an adequate standard of living and social protection.^{xxviii} Canada has ratified the CRPD, and is not meeting the obligations to ensure and protect these rights.
24. CRPD Article 12 requires States Parties to shift from substitute decision-making, where a substitute makes treatment decisions for a person who is assessed as lacking decision-making capacity, to one of supported decision-making where the patient retains the autonomy to make free choices relating to treatment, guided by a support network of trusted advisers.^{xxix}
 25. Canada has expressed a reservation to Article 12 with respect to the use of substitute decision-making arrangements for personal care, but only in appropriate circumstances and subject to appropriate and effective safeguards. The Committee on the Rights of Persons with Disabilities has urged Canada to withdraw this reservation;^{xxx} it has not done so.
 26. Irrespective of the reservation, legislation in Canada often violates its obligations under Article 12 and other provisions by imposing involuntary treatment and detention on persons with disabilities in a manner which is not the least restrictive and intrusive, or restricted only to “appropriate circumstances and subject to appropriate and effective safeguards.”
 27. For instance, section 31(1) of the British Columbia *Mental Health Act* authorizes treatment providers to administer forced psychiatric treatment to involuntary patients. This is not the least restrictive or intrusive option; indeed, there is not even the safeguard of a substitute decision-maker to make decisions in the best interests of the patient. There is an ongoing legal proceeding to challenge section 31(1) on constitutional grounds. Unfortunately, the provincial government stalled the challenge for four years on procedural grounds.

Recommendations:

28. Canada should withdraw its declaration and reservation to article 12 (4) of the Convention.
29. Canada should ensure that legislation that allows for the deprivation of legal capacity of persons with disabilities complies with the Convention.^{xxxi}

IV. Notwithstanding Clause

30. The Canadian Charter of Rights and Freedoms (Charter) guarantees fundamental constitutional rights. The Charter is one means through which Canada implements its international human rights obligations to respect and ensure the rights enshrined in the international human rights treaties it has ratified.^{xxxii}
31. However, Section 33 of the Charter (“Notwithstanding Clause”) expressly allows governments to enact legislation that will operate, notwithstanding its violation of certain rights.^{xxxiii} After a government invokes the Notwithstanding Clause, Canadian courts cannot review or strike legislation that violates these rights.
32. By allowing governments to enact legislation that violates Canada’s human rights obligations, the Notwithstanding Clause violates Canada’s obligations under human rights treaties to respect human rights, and to only allow derogation from certain rights and only in certain circumstances.
33. For instance, while the International Covenant on Civil and Political Rights (ICCPR) prohibits states from derogating from certain rights, such as the right to life and freedom from cruel and unusual punishment,^{xxxiv} the Notwithstanding Clause expressly permits such derogations. The ICCPR only allows for derogations “[i]n time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed,” “to the extent strictly required by the exigencies of the situation.”^{xxxv} Canada’s Notwithstanding Clause contains no such limitations. Such derogations must also not “involve discrimination

- solely on the ground of race, colour, sex, language, religion or social origin”^{xxxvi} – the Notwithstanding Clause allows derogations of the right to freedom from discrimination.
34. Furthermore, by eliminating judicial review of these rights, the Notwithstanding Clause removes the right to “an effective remedy” “determined by competent” authorities for state violations of human rights.^{xxxvii}
 35. Canada has claimed that the Notwithstanding Clause does not “*per se*” violate its human rights obligations and has told the Human Rights Committee that its Supreme Court held that “Canada’s international human rights obligations” should govern Charter interpretation and that “Canada’s obligation is to ensure that section 33 is never invoked in circumstances which are contrary to international law.”^{xxxviii}
 36. Despite its acknowledgement of this obligation, Canada has not prevented provincial governments from using the clause to contravene its international human rights obligations. For example, the province of Quebec in 2019 used the clause to shield its ban on religious symbols for certain public figures, violating freedoms of religion and expression and prohibition of discrimination.^{xxxix} In 2022, the provincial government in Ontario introduced legislation that used the clause to pre-emptively remove workers’ freedom of association rights.^{xl} Canadian courts and the federal government have not prevented these violations of international obligations. There is also nothing preventing future federal governments from invoking the clause in ways that would violate Canada’s human rights obligations.

Recommendations:

37. Canada must amend its Constitution to repeal the Notwithstanding Clause.
38. The federal government must limit the use of the clause by:
 - a. Submitting a reference question asking the Supreme Court of Canada to restrict the parameters of the use of the clause.
 - b. Passing legislation explicitly prohibiting the clause’s use in any way that violates Canada’s international human rights obligations.
 - c. Using its power of disallowance^{xli} to prevent provincial legislation from coming into effect when it would violate Canada’s international obligations.

V. Climate Change

39. Climate change poses significant risks to the enjoyment of human rights, including the right to life, adequate food and housing, health, water, and culture.^{xlii} In its last UPR, Canada supported recommendations to engage actively with the international community to promote and protect human rights in the context of climate change.^{xliii} Canada’s actions since its last UPR are to the contrary.
40. As the latest IPCC Report makes clear, keeping global temperature rise below 1.5°C requires an immediate shift away from fossil fuels.^{xliv} Canada is the world’s fourth-largest oil and gas producer, and home to many companies that operate internationally.^{xlv}
41. Canada provides enormous support to the oil and gas sector, including financing from EDC, subsidies, and negative emissions technologies.^{xlvi} Between 2019 and 2021, Canada provided \$8.5 billion in direct international public finance for fossil fuels, the second largest in the world behind Japan’s \$10.6 billion,^{xlvii} and the highest in the world on a per-capita basis. In 2022, Canada provided an astounding \$20 billion in financing for fossil fuel projects, including \$12 billion on the TransMountain expansion pipeline and \$500 million on the Coastal GasLink Pipeline.^{xlviii}

42. Canada recently released a policy to implement its commitment to end direct international public finance support for fossil fuels and prioritize public finance for clean energy.^{xlix} While a necessary step, Canada’s commitment contains exceptions and loopholes for national security, natural gas power, carbon capture and storage (CCS), and blue hydrogen.^l Canada’s support^{li} for CCS and blue hydrogen will only prolong dependence on fossil fuels^{lii} and is inconsistent with its obligations to mitigate climate change.^{liii} CCS projects, for example, are costly, have significant technical limitations and environmental health risks, and require use of fossil fuels to power the technology, entrenching the use of fossil fuels and delaying the energy transition.^{liv} Indeed, the IPCC has recognized carbon removal technologies require a large network of pipelines that will pose similar risks to fossil fuel pipelines.^{lv}
43. Canada must do its part to urgently phase out fossil fuels and 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.^{lvi} If climate goals are to be achieved, climate finance, especially to countries most affected by climate change, needs to increase.^{lvii}
44. The IPCC recognizes that “historical and ongoing patterns of inequity such as colonialism, and governance” drive vulnerability to climate change.^{lviii} In order to avoid exacerbating existing inequalities, climate responses must involve vulnerable communities throughout design planning and implementation decision-making. As the IPCC states, “[e]mbedding effective and equitable adaptation and mitigation in development planning can reduce vulnerability, conserve and restore ecosystems, and enable climate resilient development” and “[i]ntegrated and inclusive system-oriented solutions based on equity and social and climate justice reduce risks and enable climate resilient development.”^{lix}

Recommendations:

45. Canada must phase out fossil fuels immediately, including by:
 - a. Implementing its commitment to end direct international public finance for fossil fuels, without loopholes or false solutions like carbon capture and storage and blue hydrogen.
 - b. Ending domestic public finance and subsidies for fossil fuels, without loopholes for false solutions.
46. Canada must increase public finance for clean energy in line with a 1.5°C pathway by:
 - a. Increasing its climate finance in line with its fair share and historic responsibility.
 - b. Promoting inclusive, participatory, rights-based, and gender-just finance and provide finance in the form of grants, not loans.
47. Canada’s climate policies must center communities.

ⁱ Human Rights Committee (HRC), *Report of the Working Group on the Universal Periodic Review - Canada*, U.N. Doc. A/HRC/39/11, paras. 142.8, 142.10, 142.11, 142.21, 142.22 (July 11, 2018) (hereinafter Canada 2018 UPR report); *see also* HRC, *Report of the Working Group on the Universal Periodic Review - Canada - Addendum - Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/39/11/Add.1, para. 5 (Sept. 18, 2018) (hereinafter Canada 2018 UPR – State Views).

ⁱⁱ Canada 2018 UPR Report, paras. 142.1-142.32; Canada 2018 UPR - State Views, para. 6; *See also* Tables for UN Compilation on Canada, I. Scope of international obligations, U.N. Doc. A/HRC/WG.6/30/CAN/2Annex1 (listing Canada’s accession to international human rights treaties).

ⁱⁱⁱ Canada 2018 UPR - State Views, para. 6.

^{iv} Truth and Reconciliation Commission of Canada, *Calls to Action*, 2015, paras 43, 44.

^v Canada’s 2018 UPR report, para. 142.249, 142.250, Canada 2018 UPR - State Views, para. 9.

^{vi} Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, Volume 1(b), pp 176-177.

^{vii} See UNOHCHR, Human Rights Handbook for Parliamentarians No 26, HR/PUB/16/4, 2016 at 32; 42 UNCESCR, GC 24 at para 14; Comm. on Economic, Social and Cultural Rights, *General Comment 24 (2017) on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities*, U.N. Doc E/C.12/GC/24 (23 June 2017) at para. 10.

^{viii} CRC, *General Comment No. 16* at para. 28; CESCR, *General Comment 24* at paras. 14-19, 30-32; CRC, GC No. 16, para. 28; See also, HRC, GC No. 36, paras. 18, 21-22 (States must adopt measures or laws protecting life from all “reasonably foreseeable threats” including those from “private persons,” “entities ... not attributable to the State,” and “other States and foreign corporations”); CEDAW, GC No. 34, para. 13; CESCR, GC No. 24, UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples, U.N. Doc. A/RES/61/295 (Oct. 2, 2007), art. 8(2)(b) (hereinafter UNDRIP); See generally U.N. Office of the High Commissioner for Human Rights (OHCHR), *Guiding Principles on Business and Human Rights* (2011), (adopted by the UN Human Rights Council, A/HRC/RES/17/4, July 6, 2011), https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf.

^{ix} HRC, GC No. 36, para. 2; see also CESCR, GC No. 24, paras. 14-17; CEDAW, GC No. 34, para. 13; CEDAW, *General recommendation No. 39 on the rights of Indigenous women and girls*, U.N. Doc. CEDAW/C/GC/39, para. 57 (2022); CEDAW, GC No. 34, para. 13; CESCR, GC No. 24, paras. 30-32; Letter from Anastasia Crickley, Chair, Comm. Elimination of Racial Discrimination to H.E. Ms. Rosemary McCarney, Permanent Representative of Canada to the United Nations Office, Reference CERD/89th/EWUAP/GH/MJA/ks (May. 27, 2016), https://tbineternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=INT/CERD/ALE/CAN/8030&Lang=en; CERD, 2012 Canada COB, para. 14; CRC, *Concluding observations on the combined third and fourth periodic report of Canada, adopted by the Committee at its sixty-first session (17 September – 5 October 2012)*, U.N. Doc. CRC/C/CAN/CO/3-4, paras. 28-29 (2012); HRC, *Concluding Observations On The Sixth Periodic Report Of Canada*, U.N. Doc. CCPR/C/CAN/CO/6, para. 6 (2015).

^x CRC, *General Comment No. 16* at para. 10.

^{xi} UNHRC, GC 31, para 10; UNHRC, General Comment No. 34: Article 19: freedoms of opinion and expression, UN Doc. CCPR/C/GC/34 (12 September 2011), para 7.

^{xii} Canada 2018 UPR - State Views, para. 32

^{xiii} See Tavia Grant, *Hollow Core*, Globe and Mail (April 1, 2023),

<https://www.theglobeandmail.com/canada/article-core-ottawa-peru-corporate-abuse/> (“[T]he Globe has recorded more than 50 instances [of alleged human rights abuses] in 30 countries in the last five years alone, based on media reports, NGOs, academic reports and legal documents.”)

^{xiv} United Nations Special Rapporteur on the Rights of Indigenous Peoples, *Visit to Canada 1-10 March 2023, End of Mission Statement*, page 10,

<https://www.ohchr.org/sites/default/files/documents/issues/indigenouspeoples/sr/statements/eom-statement-canada-sr-indigenous-2023-03-10.pdf>.

^{xv} See, e.g., MiningWatch Canada, *Canada’s National Contact Point: Long Overdue for an Overhaul*, Oct. 2020, https://miningwatch.ca/sites/default/files/brief_on_ncp_reform_october_7_2020.pdf.

^{xvi} Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Canada, U.N. Doc. A/HRC/38/48/Add.1 (Apr. 23, 2018), para. 79(c).

^{xvii} *Five years after announcement of independent corporate human rights watchdog, Government continues to turn back on people harmed by Canadian businesses* (Jan. 2023), <https://cnca-rcrce.ca/2023/01/18/press-release-five-years-after-announcement-of-independent-corporate-human-rights-watchdog-government-continues-to-turn-back-on-people-harmed-by-canadian-businesses/>.

^{xviii} Report of the Standing Committee on Foreign Affairs and International Development, Mandate Of The Canadian Ombudsperson For Responsible Enterprise (June 2021); *Government conceals and ignores expert advice on CORE* (Feb. 2021), <https://cnca-rcrce.ca/2021/02/25/government-conceals-and-ignores-expert-advice-on-core-report-leaked-by-civil-society/>; Canada 2018 UPR - State Views, para. 33.

^{xix} Tavia Grant, *Hollow Core*, Globe and Mail (April 1, 2023), <https://www.theglobeandmail.com/canada/article-core-ottawa-peru-corporate-abuse/>.

^{xx} Canada 2018 UPR - State Views, para. 33.

^{xxi} Alexander Panetta, *2,398 for the U.S., 1 for Canada: That’s the lopsided record on targeting forced labour*, CBC (Dec. 16, 2022), <https://www.cbc.ca/news/world/canada-u-s-forced-labour-scorecard-1.6686977>.

^{xxii} Legal aid is not available for civil actions. See, e.g., Legal Aid Ontario, *Legal Aid Ontario can Help*, http://www.legalaid.on.ca/en/publications/brochures/LAO_canhelphandout.pdf?t=1475261127575.

^{xxiii} See *Nevsun Resources Ltd. v Araya*, 2020 SCC 5.

^{xxiv} 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.

^{xxv} H. Patrick Glenn, Professor of Law, McGill University, *Costs and Fees in Common Law Canada and Quebec*, p.1, http://www-personal.umich.edu/~purzel/national_reports/Canada.pdf

^{xxvi} See Letter from Above Ground et al., to Benoit Daignault, President and CEO Export Development Canada, p.1, (Sept. 21, 2016).

^{xxvii} See Amnesty International, *Canada: UN Special Rapporteur's visit must shift 'glacial progress' on Indigenous rights* (March 1, 2023), <https://www.amnesty.org/en/latest/news/2023/03/canada-un-special-rapporteurs-visit-indigenous-rights/>; John Paul Tasker, *Trudeau cabinet approves Trans Mountain, Line 3 pipelines, rejects Northern Gateway*, CBC (Nov. 29, 2016), <https://www.cbc.ca/news/politics/federal-cabinet-trudeau-pipeline-decisions-1.3872828>; *The Indigenous-led fight to stop the Line 3 oil pipeline expansion in Minnesota, explained*, VOX (Mar. 5, 2021), <https://www.vox.com/22333724/oil-pipeline-expansion-protest-minnesota-biden-climate-change>; 2022 CERD Letter.

^{xxviii} CRPD, article 12, 14, 19, 28.

^{xxix} CRPD, art. 20; Committee on the Rights of Persons with Disabilities, *General comment No. 1 (2014): Article 12: Equal recognition before the law*, UN Doc CRPD/C/GC/1, para. 26 (19 May 2014) (urging States Parties to “take action to develop laws and policies to replace regimes of substitute decision-making by supported decision-making, which respects the person’s autonomy, will and preferences.”)

^{xxx} Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Canada*, UN Doc CRPD/C/CAN/CO/1, para. 8 (8 May 2017) (urging the State Party to “withdraw its declaration and reservation to article 12 (4) of the Convention and carry out a process to bring into line with the Convention federal, provincial and territorial legislation that allows for the deprivation of legal capacity of persons with disabilities.”)

^{xxxi} Committee on the Rights of Persons with Disabilities, “Concluding observations on the initial report of Canada,” UN Doc CRPD/C/CAN/CO/1 (8 May 2017) at para. 8.

^{xxxii} See ICCPR, art. 2 (1) (establishing Canada’s obligation to respect and ensure the rights enshrined in the ICCPR); See Canada 2018 UPR - State Views, paras. 13 (“Avenues of legal recourse for alleged violations of economic, social and cultural rights are available in Canada, for example, equality rights claims under the Canadian Charter of Rights and Freedoms”); *id.* para. 25 (“Canada’s robust statutory scheme ensures regular, meaningful detention reviews by an independent decision-maker, coupled with the availability of judicial review of detention decisions and the constitutional safeguards contained in the Canadian Charter of Rights and Freedoms.”).

^{xxxiii} Constitution of Canada, art. 33 (referencing arts. 2, 7-15, which include the “fundamental freedoms” of “conscience and religion,” “expression,” “peaceful assembly,” equality rights, and “legal rights” to “life, liberty and security of the person,” and freedom from “unreasonable search and seizure,” “arbitrary detention,” and “cruel and unusual punishment,” among others.)

^{xxxiv} ICCPR, art. 4.

^{xxxv} ICCPR, art. 4.

^{xxxvi} ICCPR, art. 4.

^{xxxvii} ICCPR, art. 2.

^{xxxviii} *Ballantyne, Davidson, McIntyre v. Canada*, Communications Nos. 359/1989 and 385/1989, U.N. Doc. CCPR/C/47/D/359/1989 and 385/1989/Rev.1 (1993), paras 8.3-8.4.

^{xxxix} Jonathan Montpetit, *In Quebec religious symbols decision, Canada confronts consequences of controversial constitutional clause*, CBC, (April 21, 2021), <https://www.cbc.ca/news/canada/montreal/notwithstanding-clause-secularism-law-religious-symbols-ban-1.5995738>

^{xl} The Canadian Press, *Ontario is using the notwithstanding clause to stop a school strike. Here's what it is and how it works*, (October 31, 2022), <https://www.cbc.ca/news/canada/toronto/ontario-notwithstanding-cupe-strike-1.6635564>

^{xli} This provision is found in section 90 of the Constitution Act, 1867.

^{xlii} Committee on the Elimination of Discrimination Against Women; Committee on Economic, Social and Cultural Rights; Committee on the Protection of the Rights of All Migrant Workers and Members of their Families; Committee on the Rights of the Child; Committee on the Rights of Persons with Disabilities, *Joint Statement on “Human Rights and Climate Change”* (September 16, 2019), <https://www.ohchr.org/en/statements/2019/09/five-un-human-rights-treaty-bodies-issue-joint-statement-human-rights-and> (hereinafter Joint Statement on Human Rights and Climate Change).

^{xliii} Canada’s 2018 UPR report, para. 142.87.

^{xliv} IPCC, *Synthesis Report of the IPCC Sixth Assessment Report (AR6)*, https://report.ipcc.ch/ar6syr/pdf/IPCC_AR6_SYR_SPM.pdf, B. 6 at p. 21 (hereinafter IPCC AR6 SYR); IPCC, *Climate Change 2022: Mitigation of Climate Change, Working Group III (WGIII) contribution to the Sixth Assessment Report (AR6) of the IPCC*, pages 85, 89, 1742 (2022).

^{xlv} 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 June - 23 July 2021*, May 21, 2021, https://aboveground.ngo/wp-content/uploads/2021/05/UNHRC-submission_Canada-and-

climate_CIEL-and-Above-Ground_May-2021.pdf, p. 2 (hereinafter CIEL and Above Ground Report).

^{xlvi} CIEL and Above Ground Report, p. 2.

^{xlvii} 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, <https://priceofoil.org/content/uploads/2022/11/G20-At-A-Crossroads.pdf>, p. 15.

^{xlviii} Julia Levin, Environmental Defence, *Budget 2023: Will this be the budget to eliminate fossil fuel subsidies*, March 2023, <https://environmentaldefence.ca/wp-content/uploads/2023/03/Backgrounder-Fossil-Fuel-Subsidies-Budget-2023-Environmental-Defence-Final.pdf>, pg. 2.

^{xlix} Government of Canada, *Guidelines for Canada's International Support for the Clean Energy Transition*, <https://natural-resources.canada.ca/home/guidelines-for-canadas-international-support-for-the-clean-energy-transition/24797> (last modified Feb. 6, 2023).

¹ *Ibid.*; Oil Change International, *Canada Delivers on Climate Promise, takes Significant Step Towards Ending Public Fossil Finance*, December 8, 2022, <https://priceofoil.org/2022/12/08/canada-takes-first-step-towards-ending-public-fossil-finance/>. 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.

^{li} See e.g. Natural Resources Canada, *Carbon Capture and Storage: Canada's Technology Demonstration Leadership*, 2013, p. 1; Angela Carter & Laura Cameron, International Institute for Sustainable Development, *Why Carbon Capture and Storage is Not a Net-Zero Solution for Canada's Oil and Gas Sector*, February 9, 2023, <https://www.iisd.org/articles/deep-dive/carbon-capture-not-net-zero-solution>.

^{lii} See *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*, February 8, 2023, https://environmentaldefence.ca/wp-content/uploads/2023/02/Letter-to-Min.-Freeland_-Hydrogen-Tax-Credit_Feb-2023.pdf; see also Joint Statement on Human Rights and Climate Change.

^{liii} See Joint Statement on Human Rights and Climate Change, paras. 10-12.

^{liv} Center for International Environmental Law, *Study of the government's commitments to accelerate Canada's G20 commitment to eliminate fossil fuel subsidies from 2025 to 2023 and to develop a plan to phase out public financing of the fossil fuel sector*, May 8, 2022, <https://www.ourcommons.ca/Content/Committee/441/ENVI/Brief/BR11765068/br-external/CenterForInternationalEnvironmentalLaw-e.pdf>, pp. 5-10 (hereinafter CIEL Study). See also Center for International Environmental Law, *Confronting the Myth of Carbon-Free Fossil Fuels: Why Carbon Capture Is Not a Climate Solution*, <https://www.ciel.org/wp-content/uploads/2021/07/Confronting-the-Myth-of-Carbon-Free-Fossil-Fuels.pdf>; Bruce Robertson and Miland Mousavian, Institute for Energy Economics and Financial Analysis, *The Carbon Capture Crucx: Lessons Learned*, September 1, 2022, <https://ieefa.org/resources/carbon-capture-crux-lessons-learned>.

^{lv} CIEL Study, p. 9.

^{lvi} IPCC AR6 SYR, C. 7 at p. 35.

^{lvii} IPCC AR6 SYR, C. 7 at p. 35.

^{lviii} IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability, Working Group II Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, 2022, https://report.ipcc.ch/ar6/wg2/IPCC_AR6_WGII_FullReport.pdf, SPM B.2 at SPM-12 (hereinafter IPCC WGII AR6 Report). See also United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, E. Tendayi Achiume - Ecological crisis, climate justice and racial justice*, A/77/549 Rights of Indigenous Peoples, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/651/88/PDF/N2265188.pdf?OpenElement>.

^{lix} IPCC WGII AR6 Report, SPM D.1.3 at SPM-29.