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## The Human Rights-Based Approach to Carbon Finance, by Damilola S. Olawuyi

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Book Review



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# The Human Rights-Based Approach to Carbon Finance, by Damilola S. Olawuyi

Abstract

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***The Human Rights-Based Approach to Carbon Finance by Damilola S. Olawuyi***<sup>1</sup>  
Christie McLeod<sup>2</sup>

Rising sea levels, changing rainfall patterns, annual average temperature increases, and other impacts of climate change threaten the security and livelihood of individuals around the world today.<sup>3</sup> Projects intended to mitigate greenhouse gas emissions and lessen future impacts of climate change (“carbon projects”), however, can also cause significant harm.

The Aguan biogas project in Honduras was forecast to reduce approximately twenty-three thousand tonnes of carbon dioxide each year.<sup>4</sup> However, this carbon project has been highly criticized for its association with human rights violations, which include “mass displacements of people from their ancestral lands, violent repressions of protesters and the killing of about twenty-three local farmers and human rights defenders.”<sup>5</sup> A coalition of over seventy international human rights groups advocated against this project being registered under the Kyoto Protocol’s trading instrument, the Clean Development Mechanism.<sup>6</sup> Despite these efforts, the UK government maintained its support of the project, the Honduras government approved it, and the project was subsequently registered under the Clean Development Mechanism.<sup>7</sup>

Without adequate consideration of human rights risks throughout the lifespan of a carbon project, works that are intended to mitigate emissions, such as the Aguan project, may cause significant harm. For instance, large infrastructure projects may relocate entire communities;<sup>8</sup> Indigenous peoples may be forcibly displaced from ancestral lands, which can also result in the loss of cultural life and subsistence rights;<sup>9</sup> both chemicals and pesticides used in biofuel projects and the noise generated from wind power projects threaten the right to health of nearby residents;<sup>10</sup> and poor communities are disproportionately targeted for project locations while vulnerable groups within these communities (such as women or minority groups) are routinely excluded from consultations. Such actions often exacerbate existing inequalities.<sup>11</sup>

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<sup>1</sup> (Cambridge University Press, 2016).

<sup>2</sup> Christie McLeod is an environmental lawyer at Miller Thomson LLP in Vancouver, BC, and serves as a policy advisor for the global Fossil Fuel Non-Proliferation Treaty Steering Committee. Christie graduated from the Juris Doctor/Master in Environmental Studies program at Osgoode Hall Law School and York University, where her master’s research focused on Canadian climate accountability.

<sup>3</sup> IPCC, “Summary for policy makers” in Christopher B Field et al, eds, *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, 2014) 1 at 4, 6.

<sup>4</sup> Carbon Market Watch, “Aguan-Biogas project, Honduras” (last visited 20 September 2021), online: <archive.carbonmarketwatch.org/campaigns-issues/aguan-biogas-project-honduras>.

<sup>5</sup> Olawuyi, *supra* note 1 at 76.

<sup>6</sup> *Ibid*; See *Report of the Conference of the Parties on its Third Session, Held at Kyoto from 1 to 11 December 1997*, UNFCCC, 25 March 1998, UN Doc FCCC/CP/A/997/7/Add.1.

<sup>7</sup> Olawuyi, *supra* note 1 at 76-77.

<sup>8</sup> *Ibid* at 16.

<sup>9</sup> *Ibid* at 39, 95.

<sup>10</sup> *Ibid* at 105.

<sup>11</sup> *Ibid* at 107.

These examples demonstrate the importance of considering the protection of human rights throughout the planning, design, and implementation of carbon projects; in recent years, this has received affirmation in the international community. Since 2008, the United Nations Human Rights Council has adopted ten resolutions on human rights and climate change.<sup>12</sup> In 2015, the *Paris Agreement on Climate Change* was the first international environmental treaty to explicitly recognize the importance of protecting human rights, including women’s rights and children’s rights, in the context of the international response to climate change.<sup>13</sup> Recent grassroots campaigns have also called for governments to carry out a “just transition” that ensures the disproportionate impacts of climate efforts on particular individuals, workers, communities, and industries are considered.<sup>14</sup>

Through both theoretical considerations and practical structures suggesting how the international climate change regime could be reformed to address human rights risks and violations resulting from carbon projects, Damilola S. Olawuyi’s book, *The Human Rights-Based Approach to Carbon Finance*,<sup>15</sup> tackles this issue head-on.

Although the subject area is specialized, Olawuyi makes no assumptions regarding the reader’s level of knowledge of climate change or human rights theories. In addition to extensively defining key terms at the outset of the book,<sup>16</sup> part two caters to readers who may be less familiar with human rights terminology or the concept of mainstreaming human rights. Here, Olawuyi moves seamlessly between the theoretical and the tangible, documenting examples of human rights violations, and grounding these rights in legal obligations and treaties.<sup>17</sup> Together, these sections ensure the book’s accessibility for a wide audience.

For readers already familiar with this field, however, the remaining chapters are sufficiently self-contained to serve as a manual for implementing specific components of a human rights-based approach. While such self-containment inevitably leads to repetition of key

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<sup>12</sup> See United Nations Human Rights: Office of the High Commissioner, “Human Rights Council Resolutions on Human Rights and Climate Change,” online: <[www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/Resolutions.aspx](http://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/Resolutions.aspx)>; Human Rights Council, *Human Rights and Climate Change*, GA Res 7/23, UNHRC, 7th Sess, A/HRC/7/L.21/Rev.1 (2008); Human Rights Council, *Human Rights and Climate Change*, GA Res 10/4, UNHRC, 10th Sess, A/HRC/10/L.30 (2009); Human Rights Council, *Human Rights and Climate Change*, GA Res 18/22, UNHRC, 18th Sess, A/HRC/18/L.26/Rev.1 (2011); Human Rights Council, *Human Rights and Climate Change*, GA Res 26/27, UNHRC, 26th Sess, A/HRC/26/L.33/Rev.1 (2014); Human Rights Council, *Human Rights and Climate Change*, GA Res 29/15, UNHRC, 29th Sess, A/HRC/29/L.21 (2015); Human Rights Council, *Human Rights and Climate Change*, GA Res 32/33, UNHRC, 32nd Sess, A/HRC/32/L.34 (2016); Human Rights Council, *Human Rights and Climate Change*, GA Res 35/20, UNHRC, 35th Sess, A/HRC/35/L.32 (2017); Human Rights Council, *Human Rights and Climate Change*, GA Res 38/4, UNHRC, 38th Sess, A/HRC/38/L.5 (2018); Human Rights Council, *Human Rights and Climate Change*, GA Res 42/21, UNHRC, 41st Sess, A/HRC/41/L.24 (2019); Human Rights Council, *Human Rights and Climate Change*, GA Res 44/7, UNHRC, 44th Sess, A/HRC/44/L.5 (2020).

<sup>13</sup> See Framework Convention on Climate Change, *Adoption of the Paris Agreement*, UNFCCC, 21st Sess, FCCC/CP/2015/L.9/Rev.1 (2015).

<sup>14</sup> See *e.g.* Sunrise movement, “Our Plan for the future: What is the Green New Deal?” (2021), online: <[www.sunrisemovement.org/green-new-deal/?ms=WhatistheGreenNewDeal%3F](http://www.sunrisemovement.org/green-new-deal/?ms=WhatistheGreenNewDeal%3F)>; See *e.g.* 350 Canada, “Green New Deal” (2021), online: <[350.org/canada/gnd](http://350.org/canada/gnd)>.

<sup>15</sup> See Olawuyi, *supra* note 1.

<sup>16</sup> *Ibid* at 25-57.

<sup>17</sup> *Ibid* at 141-238.

concepts throughout the book, this repetition serves as a helpful reinforcement of the main ideas. Additionally, the robust citations provided are a rich resource for readers interested in particular areas within the field..

### **I. A Toolkit for the International Community**

In part three of the book, Olawuyi provides three distinct sets of practical tools to aid in implementing a human rights-based approach to carbon finance—herein lies the book’s preeminent contribution to the international community. First, Olawuyi identifies a six-part legal threshold to suggest standards for a rights-based international climate change regime on carbon finance.<sup>18</sup> These benchmarks contain practical measures to protect the human rights of community members affected by carbon projects, shifting the focus on human rights from an afterthought to a key component that is considered throughout the lifespan of a project. This adjustment directly responds to key concerns surrounding existing projects that have caused immense human rights risks and violations, such as the Aguan project. The six-part threshold is as follows:

#### *(i) A pre-project eligibility screen*

Presently, projects seeking to be registered under the Clean Development Mechanism of the *Kyoto Protocol* only require an environmental impact assessment if the project is considered to have a potential negative impact.<sup>19</sup> Problematically, however, the decision of what constitutes such an impact is made by state authorities.<sup>20</sup> Olawuyi advocates for detailed project proposals to identify projects’ aims and likely impacts, including potential conflicts with local communities or possible environmental harm, serving to identify relevant stakeholders.<sup>21</sup> Olawuyi specifically proposes that environmental impact assessments occur early in order to better assess both immediate and long-term human rights risks.<sup>22</sup>

#### *(ii) A sustainable development screen*

The most cost-effective solutions are not always the most sustainable options. As such, Olawuyi emphasizes the importance of balancing “the goals of emission reduction and sustainable development” in planning and implementing carbon projects,<sup>23</sup> noting that sustainable development includes economic, social, and environmental considerations.<sup>24</sup>

#### *(iii) Human rights impact assessment*

As carbon projects can take many forms, it is imperative to identify the human rights most likely to be affected by a specific project, as well as the measures to be taken to mitigate negative

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<sup>18</sup> *Ibid* at 312.

<sup>19</sup> *Ibid* at 313.

<sup>20</sup> *Ibid*.

<sup>21</sup> *Ibid* at 313-14.

<sup>22</sup> *Ibid* at 313.

<sup>23</sup> *Ibid* at 315.

<sup>24</sup> *Ibid* at 318-22.

impacts.<sup>25</sup>

(iv) *Information disclosure system*

This criterion requires government authorities, project developers, and other stakeholders to make relevant project information publicly available. Olawuyi states this will work to “reduce the culture of secrecy in governance and...ensure that the right to information is not only reactive but also proactive.”<sup>26</sup>

(v) *Stakeholder identification and consultation*

Key stakeholders may include both specific concerned members of the public, such as landowners, as well as interested individuals and entities, such as representatives from non-profit organizations.<sup>27</sup> After identifying all key stakeholders, this threshold requires project proponents to consider whether adequate consultation has taken place, and whether free, prior, and informed consent has been obtained from each of the stakeholders.<sup>28</sup>

(vi) *Project review mechanism*

The final benchmark calls for the creation of a project review committee or panel, as well as a project appeal committee to address human rights issues and complaints that arise regarding approved or registered carbon projects.<sup>29</sup>

The second set of tools Olawuyi details are possible institutional reforms that could assist in implementing the legal thresholds and elements of a human rights-based approach to carbon finance: a specific unit within the international climate change regime devoted to mainstreaming human rights into climate efforts; increased power and scope of supervisory boards; a compliance team that ensures registered carbon projects meet appropriate standards; and the establishment of a public complaints branch to address appeals raised by stakeholders who may have been negatively impacted by a climate project.<sup>30</sup>

Finally, Olawuyi’s third set of tools uses the five elements of a human rights-based approach as identified by the *UN Common Understanding*—access to information, participation and inclusion, accountability, equality and non-discrimination, and access to justice—to prescribe requirements to fulfill these elements within the context of carbon project schemes.<sup>31</sup> The following section considers whether these elements would be fulfilled in Canada.

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<sup>25</sup> *Ibid* at 323.

<sup>26</sup> *Ibid* at 328.

<sup>27</sup> *Ibid* at 330.

<sup>28</sup> *Ibid* at 331.

<sup>29</sup> *Ibid* at 333.

<sup>30</sup> *Ibid* at 337.

<sup>31</sup> *Ibid* at 241; See HRBA Portal, “The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies” (last visited 20 September 2021), online: <[web.archive.org/web/20130124092915/hrbaportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies](http://web.archive.org/web/20130124092915/hrbaportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies)>.

## II. Applying the Elements of a Human Rights-Based Approach to Climate Plans in a Canadian Context

While Olawuyi's book focuses largely on the international climate change regime, his closing words call for further examination of national climate efforts. As he states:

Specifically, there is a need to consider the potentials and paradoxes of adopting a human rights-based approach to carbon finance at the national level. What are the web of laws, regulations and policies that could be adopted at the national level to coordinate national mitigation plans with human rights law and institutions; what national institutions, departments and ministries would foster the linkages between human rights and climate change communities; what are the potentials for success; and what are the practical limitations and challenges of adopting a rights-based approach to mitigation at the national level.<sup>32</sup>

Olawuyi's call for a human rights-based approach to climate plans surfaces at a particularly salient time in Canada, with the recent Supreme Court of Canada decision upholding the constitutionality of the *Greenhouse Gas Pollution Pricing Act*.<sup>33</sup> This decision confirmed that the federal government has jurisdiction to establish minimum national standards of greenhouse gas price stringency to reduce emissions; any province or territory whose plan does not meet the benchmarks prescribed by the federal government will have the federal carbon tax imposed in their jurisdiction.<sup>34</sup>

While ample discussions have ensued around the development, constitutionality, and sufficiency of the various carbon pricing schemes implemented in Canada, there has been less dialogue about the disproportionate impact of carbon pricing on lower-income populations and the utility of a human rights-based lens to mitigate such impacts.<sup>35</sup> The next section elaborates on the five elements described by Olawuyi and considers each element within a Canadian context.

### (i) Access to Information

Olawuyi utilizes British non-profit organization article 19's exhaustive definition of access to information, which includes "maximum disclosure of information, limited scope of exceptions, obligation to publish, process to facilitate timely access, affordable cost of access and public education and awareness."<sup>36</sup>

Historically, Canada was at the vanguard of freedom of information legislation, becoming only the eighth country to enact such legislation with the passing of the federal *Access*

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<sup>32</sup> *Ibid* at 396.

<sup>33</sup> See *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11.

<sup>34</sup> *Ibid*.

<sup>35</sup> See Sustainable Prosperity, *Carbon pricing, social equity and poverty reduction* (Smart Prosperity Institute, May 2011), [online](https://www.smartprosperity.ca/sites/default/files/publications/files/Carbon%20Pricing%2C%20Social%20Equity%20and%20Poverty%20Reduction.pdf) (pdf): <[institute.smartprosperity.ca/sites/default/files/publications/files/Carbon%20Pricing%2C%20Social%20Equity%20and%20Poverty%20Reduction.pdf](https://www.smartprosperity.ca/sites/default/files/publications/files/Carbon%20Pricing%2C%20Social%20Equity%20and%20Poverty%20Reduction.pdf)>.

<sup>36</sup> Olawuyi, *supra* note 1 at 243.

to *Information Act*<sup>37</sup> and the *Privacy Act*<sup>38</sup> in 1983.<sup>39</sup> Today, however, these laws fall short; of the 35,000 requests filed in 2010, a dismal sixteen per cent led to a full disclosure of information.<sup>40</sup> More recently, a 2017 audit conducted by News Media Canada found that “performance was even worse than in the latter years of the former Stephen Harper government,” with only one-quarter of federal requests answered within the legal time limit (thirty days), while a full one-third of responses received no response during the audit timeframe (ranging from three to four months).<sup>41</sup>

According to the Centre for Law and Democracy, Canada ranked fifty-fifth in global freedom of information law rankings in 2018, and was beaten by such nations as Yemen, Pakistan, and Uganda.<sup>42</sup> Although Canada recently enacted an updated *Access to Information Act*,<sup>43</sup> many federal departments de-prioritized access-to-information requests over the last year due to the COVID-19 pandemic.<sup>44</sup>

### (ii) *Participation*

Drawing from article 7 of the *Aarhus Convention*<sup>45</sup>—a multilateral environmental agreement created by the UN Economic Commission for Europe—Olawuyi states “it is clear that in order to fulfil[] and protect the right to participation, a free, transparent and fair framework that allows the public to take part and influence the decision-making process must be put in place.”<sup>46</sup> Olawuyi notes that several international human rights and environmental instruments utilize the concept of free, prior, and informed consent as an archetype of authentic participation.<sup>47</sup>

Free, prior, and informed consent is an integral component of government relations with Indigenous peoples in Canada. This commitment is spelled out in article 19 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which says that “[s]tates shall consult and cooperate in good faith with the [I]ndigenous peoples concerned through their

<sup>37</sup> See *Access to Information Act*, RSC 1985, c A-1.

<sup>38</sup> See *Privacy Act*, RSC 1986, c P-21.

<sup>39</sup> See Canada’s Human Rights History, “Freedom of Information” (last visited 20 September 2021), online: <[historyofrights.ca/encyclopaedia/main-events/freedom-information](http://historyofrights.ca/encyclopaedia/main-events/freedom-information)>.

<sup>40</sup> See “Study ranks Canada’s freedom-of-information laws dead last,” *Toronto Star* (9 January 2011), online: <[www.thestar.com/news/canada/2011/01/09/study\\_ranks\\_canadas\\_freedomofinformation\\_laws\\_dead\\_last.html](http://www.thestar.com/news/canada/2011/01/09/study_ranks_canadas_freedomofinformation_laws_dead_last.html)>.

<sup>41</sup> News Media Canada, “2017 National Freedom of Information Audit” (2017) at 4, online (pdf): <[nmc-mic.ca/wp-content/uploads/2017/09/2017-National-Freedom-of-Information-Audit\\_final.pdf](http://nmc-mic.ca/wp-content/uploads/2017/09/2017-National-Freedom-of-Information-Audit_final.pdf)>.

<sup>42</sup> See Brent Jolly, “It’s Groundhog Day—again—for freedom-of-information reform in Canada,” *National Observer* (1 December 2020), online: <[www.nationalobserver.com/2020/12/01/opinion/canada-freedom-of-information-reform-commissioners-report](http://www.nationalobserver.com/2020/12/01/opinion/canada-freedom-of-information-reform-commissioners-report)>.

<sup>43</sup> See Bill C-58, *An Act to amend the Access to Information Act and the Privacy Act and to make consequential amendments to other Acts*, 1st Sess, 42nd Parl, 2019 (assented to 21 June 2019).

<sup>44</sup> Dylan Robertson, “Freedom of information requests languish in Ottawa,” *Winnipeg Free Press* (21 October 2020), online: <[www.winnipegfreepress.com/canada/freedom-of-information-requests-languish-in-ottawa-572824952.html](http://www.winnipegfreepress.com/canada/freedom-of-information-requests-languish-in-ottawa-572824952.html)>.

<sup>45</sup> *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*, 25 June 1998, 2161 UNTS 447, art 7 (entered into force 30 October 2001) [*Aarhus Convention*].

<sup>46</sup> Olawuyi, *supra* note 1 at 255.

<sup>47</sup> *Ibid* at 257.



own representative institutions in order to obtain their free, prior, and informed consent before adopting and implementing legislative or administrative measures that may affect them.”<sup>48</sup> Incorporating free, prior, and informed consent into the planning, design, and implementation of climate plans and carbon projects would help to mitigate disproportionately negative impacts of these undertakings on Indigenous peoples.

In May 2016, Canada officially removed its objector status to UNDRIP.<sup>49</sup> While the government also introduced legislation that provides a mechanism to align existing legislation with the standards laid out in UNDRIP in April 2016, this Bill stalled during the approval process and ultimately was not passed before the 2019 federal election.<sup>50</sup>

(iii) *Non-Discrimination, Equality, and Prioritization of Vulnerable Groups*

Here, Olawuyi prescribes three elements to prevent the deliberate practice of situating carbon projects in poor and vulnerable communities—a tactic that can further exacerbate the already significant gap between rich and poor people globally.<sup>51</sup> First, the concept of equality of opportunity and treatment calls for all relevant stakeholders—including the most marginalized populations—to be provided equal opportunity to access both decision making processes and justice mechanisms, considering extra steps to rid barriers to participation as needed.<sup>52</sup> Second, the practices of impact assessment and burden sharing recognize that “[n]o person or group should suffer more societal harm from the project as a result of status or gender.”<sup>53</sup> The final element, data segregation and vulnerability proofing, includes taking action to reduce or eliminate the potential negative impacts that a carbon project may have on poor and vulnerable communities throughout its lifecycle.<sup>54</sup> This piece shifts the consideration from a reactive approach that addresses human rights harms, to a proactive approach that assesses human rights risks in the hopes of preventing harms.

There is much work that Canadian governments can—and should—undertake to vulnerability-proof their carbon pricing legislation to reduce disproportionately negative impacts of climate plans on Indigenous peoples. For example, one way that many Indigenous peoples are disproportionately impacted by carbon taxes is due to a lack of access to alternative goods, services, and transportation.<sup>55</sup> For Indigenous peoples who live either on reserves located far

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<sup>48</sup> *United Nations Declaration on the Rights of Indigenous People*, GA Res 295, UNGAOR, 61st Sess, Supp No 49, UN Doc A/Res/61/295 (2007) 1, art 19.

<sup>49</sup> Tim Fontaine, “Canada Removing Objector status to UN Declaration on the Rights of Indigenous Peoples,” *CBC News* (8 May 2016), online: <[www.cbc.ca/news/aboriginal/canada-position-un-declaration-indigenous-peoples-1.3572777?\\_vfz=medium%3Dsharebar](http://www.cbc.ca/news/aboriginal/canada-position-un-declaration-indigenous-peoples-1.3572777?_vfz=medium%3Dsharebar)>.

<sup>50</sup> Bill C-262, *An Act to Ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples*, 1st Sess, 42nd Parl, 2018 (as passed by the House of Commons 30 May 2018).

<sup>51</sup> Olawuyi, *supra* note 1 at 273-80.

<sup>52</sup> *Ibid* at 272-75.

<sup>53</sup> *Ibid* at 276.

<sup>54</sup> *Ibid* at 278.

<sup>55</sup> Karen Bubna-Litic & Nathalie J Chalifour, “Are Climate Change Policies Fair to Vulnerable Communities? The Impact of British Columbia’s Carbon Tax and Australia’s Carbon Pricing Proposal on Indigenous Communities” (2012) 35 Dal LJ 127.

from urban centres or in rural areas off-reserve, the lack of sustainable alternative options may lead to an increased reliance on energy-intensive products and services.<sup>56</sup>

Ironically, many of the policies intended to reduce impacts of carbon taxes are unavailable to vulnerable populations. While many provinces have created rebate programs to incentivize homeowners to install energy efficient appliances and make other home upgrades, these rebates are unavailable to most renters who lack the decision making power to make property improvements.<sup>57</sup> Although carbon pricing schemes may calculate the carbon tax credit based on a family's net income, individuals are required to file a tax return to obtain this credit.<sup>58</sup> Many low-income Canadians choose not to file a tax return for a variety of reasons, including the fear of paying back taxes or disbelief that they would receive money.<sup>59</sup> By choosing to administer this credit through the income tax system, many low-income Canadians—who are most in need of this offset—are left to shoulder the pass-through costs resulting from carbon pricing schemes.<sup>60</sup>

#### (iv) *Accountability*

Noting the difficulties scholars have had in creating a set of human rights-based indicators to measure accountability, Olawuyi defers to Paul Hunt, former United Nations Special Rapporteur on the Right to Health, who suggested that human rights accountability should be measured through structural conditions, processes, and outcomes.<sup>61</sup> Structural conditions involve both rules to prevent human rights violations, as well as relevant institutions to enforce these rules. Here, Olawuyi echoes his repeated urge for the international climate change regime to establish a mechanism to measure compliance.<sup>62</sup> Indications of process entail examining whether policies and tools are effective in practice, while outcomes are assessed by the level to which human rights are realized.<sup>63</sup>

Accountability is a highly relevant consideration within the context of Canadian climate planning. The Fall 2017 Reports of the Commissioner of the Environment and Sustainable Development noted that Environment and Climate Change Canada had not developed an

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<sup>56</sup> Karen Bubna-Litic & Nathalie J Chalifour, “Are Climate Change Policies Fair to Vulnerable Communities? The Impact of British Columbia’s Carbon Tax and Australia’s Carbon Pricing Proposal on Indigenous Communities” (2012) 35 Dal LJ 127 at 154.

<sup>57</sup> For an example of provincial rebate programs, see Save on Energy, “Energy-Efficiency Home Incentives & Programs” (last visited 20 September 2021), online: <[web.archive.org/web/20180627053221/saveonenergy.ca/Consumer/All-Incentives.aspx](http://web.archive.org/web/20180627053221/saveonenergy.ca/Consumer/All-Incentives.aspx)>.

<sup>58</sup> For an example of how the provincial carbon tax credit is calculated, see Government of British Columbia, “Climate Action Tax Credit”, online: <[www2.gov.bc.ca/gov/content/taxes/income-taxes/personal/credits/climate-action](http://www2.gov.bc.ca/gov/content/taxes/income-taxes/personal/credits/climate-action)>.

<sup>59</sup> Gary Bloch & John Silver, “Opinion: It’s never too late for low-income Canadians to file their taxes,” *Vancouver Sun* (26 August 2016), online: <[vancouversun.com/opinion/opinion-its-never-too-late-for-low-income-canadians-to-file-their-taxes](http://vancouversun.com/opinion/opinion-its-never-too-late-for-low-income-canadians-to-file-their-taxes)>.

<sup>60</sup> Canadian Environmental Law Association, “Briefing Note: Fair and Equitable Carbon Pricing: Comments on Ontario’s Cap and Trade Program” (2 February 2016), online (pdf): <[cela.ca/wp-content/uploads/2019/07/Briefing-Note-Cap-and-Trade-Vulnerable-Communities.pdf](http://cela.ca/wp-content/uploads/2019/07/Briefing-Note-Cap-and-Trade-Vulnerable-Communities.pdf)> [CELA].

<sup>61</sup> Olawuyi, *supra* note 1 at 284.

<sup>62</sup> *Ibid* at 284-86.

<sup>63</sup> *Ibid* at 286-87.

adaptation action plan nor had they provided the necessary leadership to help other federal departments in their adaptation planning.<sup>64</sup> Thus, it is not surprising that the Commissioner’s office found that only five of the nineteen federal departments audited had assessed and addressed impacts of climate change.<sup>65</sup> If federal ministries are not fully assessing their climate change risks and identifying vulnerabilities, it is unlikely that they will be able to successfully mitigate such impacts and ensure that the human rights of those most vulnerable are protected.

Canada has recently introduced Bill C-12, the *Canadian Net-Zero Emissions Accountability Act*, which is slowly making its way through Parliament.<sup>66</sup> The current text of the Bill, however, provides minimal obligations and little recourse for failing to meet targets or carry through plans. Amongst many others, a coalition of Canadian civil society organizations have advocated for the proposed Act to impose a legal obligation to meet established targets, and to hold the government to account by setting minimum standards for planning and reporting.<sup>67</sup>

(v) *Access to Justice*

Olawuyi identifies four aspects of access to justice, the final element of a human rights-based approach: “a normative legal framework; legal awareness; access to appropriate forums; and the effective administration of justice.”<sup>68</sup> A normative legal framework is most often in question at the international level, where opportunities for individuals to seek remedies may be absent if the treaty does not adequately consider access to justice.<sup>69</sup> The second aspect of access to justice, legal awareness, involves both knowledge of the law and one’s protected rights, as well as available legal systems.<sup>70</sup> Third, amongst the considerations listed under article 9.4 of the *Aarhus Convention*, access to appropriate forums includes considerations of equity, fairness, timeliness, and financial accessibility.<sup>71</sup> Finally, effective administration of justice involves the elimination of numerous barriers, including delays and high costs that inhibit the fulfillment of rights.<sup>72</sup>

As carbon pricing schemes are designed and implemented in Canada, it is vital that such developments are accompanied by efforts to educate the public about new laws and relevant adaptation opportunities. For instance, are there avenues for members of communities located far from urban centres who require or desire assistance in filing a tax return?

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<sup>64</sup> Office of the Auditor General of Canada, “2017 Fall Reports of the Commissioner of the Environment and Sustainable Development” (2017), online: <[https://www.oag-bvg.gc.ca/internet/English/parl\\_cesd\\_201710\\_e\\_42475.html](https://www.oag-bvg.gc.ca/internet/English/parl_cesd_201710_e_42475.html)>.

<sup>65</sup> Office of the Auditor General of Canada, “Report 2—Adapting to the Impacts of Climate Change” (2017) at no 2.57, online: <[www.oag-bvg.gc.ca/internet/English/parl\\_cesd\\_201710\\_02\\_e\\_42490.html](http://www.oag-bvg.gc.ca/internet/English/parl_cesd_201710_02_e_42490.html)>.

<sup>66</sup> Bill C-12, *An Act respecting transparency and accountability in Canada’s efforts to achieve net-zero greenhouse gas emissions by the year 2050*, 2nd Sess, 43rd Parl, 2020 (first reading, 19 November 2020) [*Bill C-12*].

<sup>67</sup> “How to Strengthen Bill C-12: Canadian Net-Zero Emissions Accountability Act” (26 November 2020), online (pdf): *Eco Justice* <[ecojustice.ca/wp-content/uploads/2020/11/Briefing-Note-Strengthen-C-12-Updated-November-26-2020.pdf](http://ecojustice.ca/wp-content/uploads/2020/11/Briefing-Note-Strengthen-C-12-Updated-November-26-2020.pdf)>.

<sup>68</sup> Olawuyi, *supra* note 1 at 297.

<sup>69</sup> *Ibid* at 298.

<sup>70</sup> *Ibid* at 307.

<sup>71</sup> *Aarhus Convention*, *supra* note 45, art 9.4.

<sup>72</sup> Olawuyi, *supra* note 1 at 308.

### III. Why a Human Rights-Based Approach to Climate Planning Matters

A 2020 global study conducted by Ipsos revealed that sixty-four per cent of Canadians polled believed that, in the long term, climate change is as serious an issue as the COVID-19 pandemic.<sup>73</sup> A 2017 poll conducted by Abacus Data asked more than 1,500 Canadians about political risk and climate action. Their findings revealed that more than eighty-five per cent of those surveyed believed that the consequences of climate inaction will be “severe, very severe, or catastrophic across a range of areas, from agriculture to human health, to the cost and availability of insurance, and to the cost of taxpayers.”<sup>74</sup>

While Prime Minister Justin Trudeau has taken strides to address climate change—including the notable creation of the Pan-Canadian Framework, the introduction of Bill C-12, and a strengthened 2030 emissions reduction target—Canada’s climate record remains wholly inadequate.<sup>75</sup> As a nation, Canada has failed to meet any of its numerous emissions reduction targets.<sup>76</sup> In fact, since setting its first target in 1992, Canada’s national annual emissions have increased by an astonishing sixteen per cent.<sup>77</sup> Canada is the only G7 country whose emissions have actually increased since the signing of the *Paris Agreement*.<sup>78</sup>

The impacts of insufficient climate action will be felt most greatly by those who are most vulnerable to the impacts of climate change. The Canadian Environmental Law Association notes that “of the 10 impacts that Ontarians can expect to see as climate change worsens, all of them represent pressures that will disproportionately affect seniors and those with pre-existing health problems, remote and First Nations communities, low-income individuals, and those marginalized within their communities.”<sup>79</sup> The Canadian Environmental Law Association also notes that, without careful consideration, carbon pricing schemes may serve to disproportionately

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<sup>73</sup> Jennifer McLeod Macey, “Two-Thirds of Canadians Think, Long Term, Climate Change is as Serious of a Problem as Coronavirus” (22 April 2020), online: *Ipsos* <[www.ipsos.com/en-ca/news-and-polls/Two-Thirds-Of-Canadians-Think--In-The-Long-Term-Climate-Change-Is-As-Serious-Of-A-Problem-As-Coronavirus](http://www.ipsos.com/en-ca/news-and-polls/Two-Thirds-Of-Canadians-Think--In-The-Long-Term-Climate-Change-Is-As-Serious-Of-A-Problem-As-Coronavirus)>.

<sup>74</sup> Bruce Anderson, “Political Risk & Climate Action” (9 November 2017), online: *Abacus Data* <[abacusdata.ca/political-risk-climate-action/](http://abacusdata.ca/political-risk-climate-action/)>.

<sup>75</sup> Government of Canada, *Pan-Canadian Framework on Clean Growth and Climate Change: Canada’s plan to address climate change and grow the economy* (Government of Canada, last modified 31 January 2018), online (pdf): <[publications.gc.ca/collections/collection\\_2017/eccc/En4-294-2016-eng.pdf](http://publications.gc.ca/collections/collection_2017/eccc/En4-294-2016-eng.pdf)>; *Bill C-12*, *supra* note 68; Stephanie Taylor, “Trudeau increases Canada’s 2030 emissions target to 40-45%” *Global News* (22 April 2021), online: <[<sup>76</sup> Julia Croome et al, “A New Canadian Climate Accountability Act” \(May 2020\) at 3, online \(pdf\): \*West Coast Environmental Law\* <\[www.wcel.org/sites/default/files/publications/a\\\_new\\\_canadian\\\_climate\\\_accountability\\\_act\\\_-\\\_detailed\\\_report\\\_compressed.pdf\]\(http://www.wcel.org/sites/default/files/publications/a\_new\_canadian\_climate\_accountability\_act\_-\_detailed\_report\_compressed.pdf\)>.](http://globalnews.ca/news/7779596/climate-change-emissions-targets-canada-2030-trudeau/#:~:text=Prime%20Minister%20Justin%20Trudeau%20is,set%20by%20its%20closet%20ally.></a>>.</p>
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<sup>77</sup> “Greenhouse gas emissions” (last modified 15 April 2021), online: *Government of Canada* <[www.canada.ca/en/environment-climate-change/services/environmental-indicators/greenhouse-gas-emissions.html](http://www.canada.ca/en/environment-climate-change/services/environmental-indicators/greenhouse-gas-emissions.html)>.

<sup>78</sup> Ian Austen & Christopher Flavelle, “Trudeau Was a Global Climate Hero. Now Canada Risks Falling Behind.” *The New York Times* (21 April 2021), online: <[www.nytimes.com/2021/04/21/world/canada/trudeau-climate-oil-sands.html?smtyp=cur&smid=tw-nyclimate](http://www.nytimes.com/2021/04/21/world/canada/trudeau-climate-oil-sands.html?smtyp=cur&smid=tw-nyclimate)>.

<sup>79</sup> CELA, *supra* note 60 at 2. For a discussion of the ten expected impacts, see Ontario’s Climate Change Strategy. See Ontario, Ministry of Environment and Climate Change, *Ontario’s Climate Change Strategy* (17 November 2015), online (pdf): <[docs.ontario.ca/documents/4928/climate-change-strategy-en.pdf](http://docs.ontario.ca/documents/4928/climate-change-strategy-en.pdf)>.

impact vulnerable and low-income communities.<sup>80</sup>

*The Human Rights-Based Approach to Carbon Finance* provides an established and authoritative language in which to voice these concerns. Framing conversations about climate plans and carbon projects through a human rights lens encourages policy-makers to not only consider the environmental impacts of such undertakings, but also to assess how they may impact the human rights of affected individuals. While Olawuyi focuses predominantly on the international climate change regime, he notes that improving national democratic and accountability mechanisms is an indispensable component of overall effectiveness, and that human rights mainstreaming may be more effective if it occurs at all levels of decision making.<sup>81</sup>

Additionally, positing these conversations in existing human rights obligations could provide “a substantive basis for non-governmental organizations (NGOs), media, individuals and other constituencies beyond environmentalists to ‘name and shame’ projects, policies and governmental actions that do not reflect human rights considerations.”<sup>82</sup> Activists and representatives of NGOs seeking to advocate for a human rights-based approach to climate plans and carbon projects would be remiss not to familiarize themselves with the frameworks laid out by Olawuyi; similarly, policy-makers and government officials involved in shaping climate plans and carbon projects should look towards the practical steps that Olawuyi has described to begin incorporating elements of a human rights-based approach into their planning.

Finally, recognizing that the linkage between human rights and climate change “has the potential of giving climate change mitigation the moral urgency it deserves; it could also go a long way in emphasizing the seriousness of its direct and indirect threats to human existence and the need to act fast.”<sup>83</sup> The UN Environment Programme states that, without additional mitigation efforts, the current policies in place project global temperature increases ranging from 3.0–3.2°C above pre-industrial levels.<sup>84</sup> Recent reports from the UN Intergovernmental Panel on Climate Change suggest that tipping points could be exceeded even with warming of between 1 and 2°C.<sup>85</sup>

Given that the world has already warmed 1.1°C above pre-industrial levels,<sup>86</sup> it is crucial that governments, particularly those that are amongst the largest emitters of greenhouse gases, such as Canada, immediately prioritize climate action. Governments must also ensure their

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<sup>80</sup> CELA, *supra* note 60.

<sup>81</sup> Olawuyi, *supra* note 1 at 395.

<sup>82</sup> *Ibid* at 180.

<sup>83</sup> *Ibid* at 179.

<sup>84</sup> UN Environment Programme, “Emissions Gap Report 2020” (2020) at XXI, online: *UN Environment Programme* <[wedocs.unep.org/xmlui/bitstream/handle/20.500.11822/34426/EGR20.pdf?sequence=1&isAllowed=y](http://wedocs.unep.org/xmlui/bitstream/handle/20.500.11822/34426/EGR20.pdf?sequence=1&isAllowed=y)>.

<sup>85</sup> Ove Hoegh-Guldberg et al, “Impacts of 1.5°C of Global Warming on Natural and Human Systems” in Valerie Masson-Delmotte et al, eds, *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* (Intergovernmental Panel on Climate Change, 2018), 175 at 264, online (pdf): *IPCC* <[www.ipcc.ch/site/assets/uploads/sites/2/2019/06/SR15\\_Chapter3\\_Low\\_Res.pdf](http://www.ipcc.ch/site/assets/uploads/sites/2/2019/06/SR15_Chapter3_Low_Res.pdf)>.

<sup>86</sup> World Meteorological Organization, “WMO Statement on the State of the Global Climate in 2019” (2020) at 5, online: *World Meteorological Organization* <[library.wmo.int/doc\\_num.php?explnum\\_id=10211](http://library.wmo.int/doc_num.php?explnum_id=10211)>.

climate plans do not further burden vulnerable populations who are already facing the brunt of climate change impacts.

*The Human Rights-Based Approach to Carbon Finance* provides a long-awaited answer to the question of how the international climate change regime could be reformed to address human rights risks and violations that result from carbon projects and climate plans, while also informing the reader as to *why* mainstreaming human rights into these efforts is both an urgent and necessary reform. Echoing the words of the Right Honourable Lord Jonathan Hugh Mance, Justice of the Supreme Court of the United Kingdom, this book “will be an important stimulus for governments, peoples, industrial, commercial and non-governmental organizations worldwide involved in or affected by carbon and other environmental projects.”<sup>87</sup>

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<sup>87</sup> Olawuyi, *supra* note 1 at xv.