



IMPLEMENTING THE PARIS AGREEMENT: THE RELEVANCE OF HUMAN RIGHTS TO CLIMATE ACTION

FEBRUARY 29, 2016
TORONTO, CANADA

CONFERENCE REPORT



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CONFERENCE REPORT

By Oonagh Fitzgerald and Basil Ugochukwu

ACRONYMS

ATIA	Access to Information Act
CDR	carbon dioxide removal
CEPA	Canadian Environmental Protection Act
INDCs	intended nationally determined contributions
NDCs	nationally determined contributions
OIF	ocean iron fertilization
SAI	stratospheric aerosol injection
SCC	Supreme Court of Canada
SDGs	Sustainable Development Goals
SRM	solar radiation management
UNFCCC	United Nations Framework Convention on Climate Change

EXECUTIVE SUMMARY

The main objectives of this meeting were, first, to discuss how domestic and international implementation of Canada's commitments under the 2015 Paris Climate Agreement might implicate human rights, and, second, to consider how CIGI's International Law Research Program could contribute to developing guidance for government decision makers on how to integrate human rights analysis into climate-related policy making.

The meeting was organized as a round table with participants' introductory comments identified beforehand on each of the subtopics for discussion. There were 40 participants from national, subnational and indigenous governments; Inuit, indigenous and Métis communities; and academic, private and non-governmental sectors. After an introductory session devoted to the indigenous understandings of the word "sustainability," and the relationship among sustainability, responsibility, law and rights, the discussion proceeded on these broad topics:

- overall implications for Canada of the Paris Agreement;
- Canadian action at the international level;
- human rights and governance aspects of climate geoengineering;
- actors and activities at the domestic level; and
- next steps for further activities and research.

At the conclusion of this discussion, participants identified the following key ideas for moving forward with this project:

- Participants were interested in CIGI and other partners organizing future events where these issues could be brought to the general public and citizens could be directly engaged. Suggested ideas included public conferences, webcasts, student or professional mock trials, and online essays on topics where human rights and climate change intersect.
- They suggested it would be useful to hold a workshop and public event on this topic in Ottawa to engage with federal officials from various departments that will be involved in implementing the Paris Agreement.
- There was real interest in finding practical ways for Inuit, indigenous and Métis knowledge and perspectives to be better integrated into the development of government climate change strategies, in the spirit of national reconciliation.
- Participants were interested in CIGI developing, following the release of this initial meeting report, a more comprehensive compendium analysis and guidance for policy makers on how human rights could be impacted by climate change and by actions taken to mitigate or adapt to climate change.

INTRODUCTION

Forty passionate leaders and experts — from national, subnational and indigenous governments; Inuit, indigenous, and Métis communities; and academic, private and non-governmental sectors — came together to brainstorm the climate change-related human rights obligations of government and corporations acting within and beyond Canada. Their aim was to produce a compendium analysis for Canadian decision makers to ensure human rights are taken into account in implementing Canada's obligations under the December 2015 Paris Agreement on Climate Change.¹

The day-long discussion, propelled by brief commentaries from 25 of the participants, considered the various actors — whether governmental, non-governmental, corporate or individual — who could have an impact on human rights in Canada and abroad through their climate-related conduct. The meeting's ultimate objective was to produce guidance for Canadian decision makers on how to integrate human rights analysis into climate-related policy making and operations.

¹ *Adoption of the Paris Agreement*, United Nations Framework Convention on Climate Change, 12 December 2015, FCCC/CP/2015/L.9, online: <<https://unfccc.int/resource/docs/2015/cop21/eng/109.pdf>>.

The meeting was held under the Chatham House Rule,² such that participants were not obliged to speak and there should be no attribution of any participant's comments in any future report of the round table.

The meeting at the Royal York Hotel in Toronto commenced with smudging and prayer led by a representative of the Mississaugas of New Credit First Nation, on whose traditional lands the gathering took place. Opening speakers explained how there is no word for “sustainability” in the language of the Anishinaabe people, that responsibility and roles are as important as law and rights, that indigenous knowledge should be the foundation of the climate change strategy and that there had to be a true, long-term partnership with indigenous peoples to build capacity to address climate change. Participants were urged to take individual responsibility, look critically at processes embedded in assumptions of law, and consider and respect shared sovereignty between federal and provincial levels of government and indigenous peoples.

SESSION I: IMPLICATIONS FOR CANADA OF THE PARIS AGREEMENT

The substantive discussion of the round table commenced with an overview of the Paris Agreement. It establishes the future global agenda for climate action in a manner founded on the principles of equity, solidarity and sustainability, and which incorporates and advances the Sustainable Development Goals (SDGs) adopted by the United Nations General Assembly in September 2015. The agreement contains both legally binding and non-legally binding components. It provides a pledge and review mechanism whereby a state submits its voluntary pledge (“greenhouse gas emissions limiting ambition”), which is then subject to a legally binding process to monitor and review the extent of fulfillment of that pledge. The combination of

binding and non-binding elements is expected to make it easier for a greater number of states to join the agreement.³

Some participants considered the Paris Agreement to be a masterpiece of diplomacy in the way it combines climate science and principles of equity, solidarity and sustainability in a gently persuasive legal framework binding states to work together to solve climate change. As one participant commented, after the failures of the Kyoto Protocol — where top-down targets did not produce results — the legally binding Paris Agreement and accompanying decision document provide “all you need, all you can expect.” It is a significant breakthrough in the lengthy and often frustrating climate negotiations because it sets a long-term goal; globalizes the obligations to take action; provides nuanced differentiation, instead of bright-line distinctions; provides for transparency and compliance; and includes loss and damage.

The weaknesses of the agreement were also noted. While the nationally determined contributions (NDCs) pledged thus far by states (including Canada) are clearly insufficient, it is not certain even these unambitious commitments will be met, and the year of peak emissions needs to be earlier than 2030, which is the year suggested by the Paris Agreement and decision document. It was suggested that Canadians must hold a forthright conversation about what is a fair contribution for Canada, how to achieve it and how to increase its ambition over time. One participant expressed concern about the agreement's lack of clear enforcement mechanisms.

It was noted that many of the intended nationally determined contributions (INDCs) submitted to the United Nations Framework Convention on Climate Change (UNFCCC) ahead of the Paris Agreement did not specifically mention

² When a meeting, or part thereof, is held under the Chatham House Rule, those present, including media, “are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.” For a full explanation of the Chatham House Rule, see: www.chathamhouse.org/about-us/chathamhouserule.

³ This was critical for the United States, for example. Dan Bodansky from the Sandra Day O'Connor College of Law, Arizona State University, has written a paper entitled “Legal Options for U.S. Acceptance of a New Climate Change Agreement” (May 2015, Center for Climate and Energy Solutions, online: www.c2es.org/docUploads/legal-options-us-acceptance-new-climate-change-agreement.pdf), which suggests that in certain circumstances the US president “would be on relatively firm legal ground” to accept a new climate agreement with legal force, even without submitting it to the Senate or Congress for approval. Bodansky suggests it would have to be a treaty that was procedurally oriented, rather than one that sets precise legally binding emissions limits or financial commitments. If the agreement contained the latter provisions, Senate or Congress would likely have to approve it. There is an element of uncertainty about the extent of this authority, such that the president's decision to proceed on executive authority might turn on his/her informed assessment of the political acceptability of that course of action. According to this paper, there are several ways for the United States to enter into international agreements. The most well known is Article II of the US Constitution, which requires that the president obtain the advice and consent of two-thirds of the Senate. US practice has developed such that most international treaties are made through other means, such as congressional-executive agreements, where approval is given by both houses of Congress, and presidential-executive agreements, where it is solely the president who approves. See also Marlo Lewis, “Is the Paris Climate Agreement a Treaty?” *Global Warming.org* (16 December 2015), online: www.globalwarming.org/2015/12/16/is-the-paris-climate-agreement-a-treaty/.

indigenous peoples or their concerns. Canada's INDC, for example, mentions the federal, provincial and territorial governments, but not the indigenous governments. This significant omission needs to be remedied because indigenous peoples live in closer harmony with their environment, and they are seeing and experiencing the effects of climate change more quickly and directly than other communities. Indigenous knowledge must be taken into account in understanding climate change and developing mitigation and adaptation strategies. Around the world there are countless examples of indigenous people suffering a double burden from climate change: first, its immediate impact on their traditional ways of life; and second, government actions to build mega-energy projects that displace them, ignore their concerns and destroy the natural environment. The 2007 UN Declaration on the Rights of Indigenous Peoples is relevant and provides a framework for indigenous peoples' participation in climate change action. The standard of free, prior and informed consent should require indigenous peoples' participation and collaboration from the earliest stages of strategic planning of climate action. It was suggested that consent is not to be understood as mere consultation nor as a veto, but as a requirement to have consensus with affected indigenous peoples. It was argued that participation requires that indigenous communities be represented in negotiations by persons they freely choose.

SESSION II: CANADIAN ACTION AT THE INTERNATIONAL LEVEL

The relationship between climate change and human rights was one of the more hotly debated issues during negotiations for the 2015 Paris Agreement, and appears to have been a factor in the extended nature of the final deliberations. The Canadian delegation not only advocated for enshrining human rights language in the agreement, but also played an important role in convincing other state parties to accept the compromise provisions on the issue.

One participant observed that the human being is at the centre of climate change, both as cause and victim. Placing the human at the centre of the environment is not new. States have human rights obligations, which they need to comply with when dealing with climate change as well as when tackling other challenges, whether we explicitly state these obligations or not. Making the link explicit between human rights and climate change, thereby reminding states of their human rights obligations, might help ensure that respect for human rights happens in practice, especially vis-à-vis the most vulnerable members of our societies. This is key when states are taking measures to adapt to or mitigate climate change. They should take a human rights-based approach to addressing climate change in their implementation of the Paris Agreement at the international and domestic levels.

It was pointed out that there are no specific human rights provisions within the body of the agreement. The reference to human rights was initially proposed for the operative part of the agreement (Article 2), but in the end this was rejected by states. Nonetheless, the text as a whole seems imbued with human rights concepts, starting with the extraordinary preambular language:

Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity....

Noting the importance of ensuring the integrity of all ecosystems, including oceans, and the protection of biodiversity, recognized by some cultures as Mother Earth, and noting the importance for some of the concept of "climate justice," when taking action to address climate change....

The preamble must be taken into account in the interpretation of a treaty. Round table participants noted that John Knox recently observed, "the Paris Agreement signifies the recognition by the international community that climate change poses unacceptable threats to the full enjoyment of human rights and that actions to address climate change must comply with human rights obligations."⁴ In his view, by virtue of Articles 55 and 56 of the UN Charter, the United Nations' founding document, states are duty-bound to cooperate with other states in protecting and promoting human rights.⁵ This means that the threat to the human rights of climate-vulnerable states' inhabitants (such as those in low-lying island nations) is a collective responsibility. Knox considers climate change to be "a paradigmatic example of a global threat that is impossible to address effectively without coordinated international action."⁶

Human rights are a good addition to the climate change toolbox, especially since climate change can have adverse effects on the enjoyment of human rights and exacerbates existing vulnerabilities. It was noted, however, that human

4 United Nations General Assembly, Human Rights Council, *Report of the United Nations Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN Doc A/HRC/31/52, 1 February 2016.

5 *Ibid.*, at para 43.

6 *Ibid.*, at para 44.

rights analysis does not provide a complete answer to climate change, as it requires a causal connection between the human rights violation and a state actor causing or permitting the harm to be committed.

Climate change produces human rights impacts in two main ways and at two levels. First, there are extreme climate events that produce direct human rights consequences, such as when flooding or ocean surges lead to injury or loss of life, loss of land, or damage to homes and property; when rising temperatures produce changes in disease vectors, cause forest fires or affect fisheries; and when changes in precipitation cause unreliable weather patterns with severe impacts on farming cycles. Second, mitigation and adaptation activities by government, corporate or individual actors can cause human rights consequences, such as when the establishment of a hydro dam leads to displacement of indigenous communities or ethnic minorities; when harvesting biofuels for power generation harms wildlife essential for subsistence hunting and fishing; and when Reducing Emissions from Deforestation and Forest Degradation and Clean Development Mechanism activities change land use, depriving local communities of subsistence farming.

The first type of human rights consequences is outside of direct governmental control, but where such harms are foreseeable, state actors should take action to warn affected populations and assist them in escaping or recovering from the harm. As well, states' collective action to mitigate climate change is aimed at reducing the risk of these harms. Thus, a state's failure to make and meet appropriate climate action commitments might be viewed as giving rise to responsibility for human rights consequences, as occurred in the *Urgenda* case.⁷ In the second type of human rights consequences, states clearly do have the power to address these risks before they occur through appropriate project assessment and design. States can design climate-related policies that are protective of, and do not adversely affect, human rights, and can control the conduct of private actors through law and regulation. If a state fails to take such measures, there is an even stronger link to liability for the human rights consequences.

One participant suggested that courts around the world may not be ready to engage in the precise regulatory exercise seen in the *Urgenda* case. As well, even if international human rights law is "hard law," the obligations are territorially based and states have a wide margin of appreciation in balancing various interests. Thus, current understandings of international human

rights law may not be able to directly address harms caused by one state that affect another. Even territorially limited compliance with human rights obligations, especially by large-emitter states, would benefit the planet as a whole. The Paris Agreement has removed bright-line distinctions between developed and developing states, beginning an evolution of the notion of "common but differentiated responsibilities," but it is not clear how or if international human rights law will affect this. States must respect their human rights obligations when taking action to mitigate and adapt to climate change, but this does not mean that human rights law provides all the answers. Customary international law and other principles of international environmental law remain critically important to address climate change, so human rights should not be allowed to become a distraction for the UNFCCC.

Round table participants considered how human rights analysis is relevant to implementing the Paris Agreement at the international level, and discussed the relevant actors involved in implementation, such as the federal government, Canadian corporations abroad, civil society and indigenous peoples. They considered the various activities envisioned by the Paris Agreement, which have human rights dimensions, including:

- Article 2: achieving the common goals of global average temperature control, adaptation, mitigation and finance flows;
- Article 3: increasing each state's climate ambition over time;
- Article 4: periodic reporting of each state's NDCs and progress against the commitments;
- Article 5: enhancing nature conservation;
- Article 6: voluntary cooperation between states for climate action;
- Article 7: enhancing adaptation;
- Article 8: preventing and addressing loss and damage from climate change;
- Article 9: assisting developing countries by financing climate action;
- Article 10: developing and sharing clean technology;
- Article 11: building capacity for climate action;
- Article 12: raising public awareness and engagement; and
- Article 13: creating a transparency framework for monitoring global climate action.

It would seem that when the Canadian government is contributing to the international implementation of the Paris Agreement by, for example, participating in the establishment

⁷ See Urgenda Foundation, "Urgenda Climate Case Against the Dutch Government", online: <www.urgenda.nl/en/climate-case/>. See also Roger Cox, *A Climate Change Litigation Precedent: Urgenda Foundation v The State of the Netherlands* (2015) Centre for International Governance Innovation (CIGI) Papers No 79, online: <www.cigionline.org/sites/default/files/cigi_paper_79web.pdf> and David Estrin, *Limiting Dangerous Climate Change: The Critical Role of Citizen Suits and Domestic Courts — Despite the Paris Agreement* (2016) CIGI Papers No 101, online: <www.cigionline.org/sites/default/files/paper_no.101.pdf>.

and strengthening of its various mechanisms, Canada should take a human rights-based approach to ensure that decision making protects the human rights of the planet's most vulnerable people. For example, Articles 5 (conservation), 6 (voluntary cooperation) and 9 (financing) envision cooperation between developed and developing countries, and Articles 7 (adaptation), 8 (loss and damage), 10 (clean technology) and 11 (capacity building) envision mechanisms to share and transfer knowledge, technical and financial assistance, and resources from the developed to the developing world. Canada's participation in all these activities should be founded on a human rights-based approach.

A number of participants from the environmental non-governmental organization community remarked how climate change has been viewed as only an environmental issue, but recently a link has been developed between climate change and human rights. This link could no longer be ignored when Greenpeace and Amnesty International issued their first-ever joint statement, locating climate change squarely as a human rights issue. Various domestic legal regimes are increasingly recognizing the link between climate change and human rights. It was noted that Greenpeace filed a complaint before the Commission on Human Rights in the Philippines against major carbon polluters. Four Canadian companies were named as defendants. One motivation behind the complaint was to see the extent that its resolution might expand opportunities for implementing an international duty to cooperate in resolving climate change because of the global nature of the problem. It was noted that Canada played an important role in negotiating the human rights provisions of the Paris Agreement; therefore, the federal government should take concrete steps to operationalize the human rights elements of the agreement at the international level, for example, by cooperating with the Philippines Commission on Human Rights and by sharing information. Further, the federal government should examine current regulation of fossil fuel companies and improve them such that those companies do not cause more climate damage. As well, it was suggested that Canadian corporations, including those named as defendants in the Philippines complaint, should cooperate with foreign institutions investigating these cases by volunteering information. This will enable those institutions to reach well-considered decisions. When corporations take active roles in providing information on climate change risks, they improve their standing as good corporate citizens. Otherwise, they risk their reputation and public standing.

Indigenous Peoples and Climate Change

One participant contributed reflections on the *Tsilhqot'in* decision⁸ of the Supreme Court of Canada (SCC) in 2014, suggesting that the decision on Aboriginal title would have far-reaching effects in the way we understand indigenous peoples' rights, Aboriginal title, economic development and sustainability, in Canada as well as globally. It was noted that the *Tsilhqot'in*⁹ case offers the idea of indigenous legal regimes.

Citing *Western Australia v Ward*,¹⁰ Chief Justice Beverley McLachlin wrote: "[T]he court must be careful not to lose or distort the Aboriginal perspective by forcing ancestral practices into the square boxes of common law concepts, thus frustrating the goal of faithfully translating pre-sovereignty Aboriginal interests into equivalent modern legal rights. Sufficiency, continuity and exclusivity are not ends in themselves, but inquiries that shed light on whether Aboriginal title is established."¹¹

She summarized the approach as follows:

The claimant group bears the onus of establishing Aboriginal title. The task is to identify how pre-sovereignty rights and interests can properly find expression in modern common law terms. In asking whether Aboriginal title is established, the general requirements are: (1) "sufficient occupation" of the land claimed to establish title at the time of assertion of European sovereignty; (2) continuity of occupation where present occupation is relied on; and (3) exclusive historic occupation. In determining what constitutes sufficient occupation, one looks to the Aboriginal culture and practices, and compares them in a culturally sensitive

8 *Tsilhqot'in Nation v British Columbia*, 2014 SCC 44, [2014] 2 SCR 256. "The nature of Aboriginal title is that it confers on the group that holds it the exclusive right to decide how the land is used and the right to benefit from those uses, subject to the restriction that the uses must be consistent with the group nature of the interest and the enjoyment of the land by future generations" (para 75) "To justify under s.35 of the Constitution Act, overriding the Aboriginal title-holding group's wishes on the basis of the broader public good, the government must show: (1) that it discharged its procedural duty to consult and accommodate; (2) that its actions were backed by a compelling and substantial objective; and (3) that the governmental action is consistent with the Crown's fiduciary obligation to the group: *Sparrow*" (para 77).

9 See also, more recently, *Daniels v Canada (Indian Affairs and Northern Development)*, 2016 SCC 12.

10 [2002], 213 CLR 1 (Australian High Court) at para 89, that the relevant task is not to determine whether the common law concept of possession has been met, but "to identify how rights and interests possessed under traditional law and custom can properly find expression in common law terms."

11 *Ibid*, at para 32.

way with what was required at common law to establish title on the basis of occupation. Occupation sufficient to ground Aboriginal title is not confined to specific sites of settlement but extends to tracts of land that were regularly used for hunting, fishing or otherwise exploiting resources and over which the group exercised effective control at the time of assertion of European sovereignty.¹²

She also stated that, “Aboriginal title gives ‘the right to exclusive use and occupation of the land...for a variety of purposes,’ not confined to traditional or ‘distinctive’ uses.... In other words, Aboriginal title is a beneficial interest in the land....In simple terms, the title holders have the right to the benefits associated with the land — to use it, enjoy it and profit from its economic development. As such, the Crown does not retain a beneficial interest in Aboriginal title land.”¹³

Some of the language in the decision is highly relevant to sustainable development. For example:

Aboriginal title, however, comes with an important restriction — it is collective title held not only for the present generation but for all succeeding generations. This means it cannot be alienated except to the Crown or encumbered in ways that would prevent future generations of the group from using and enjoying it. Nor can the land be developed or misused in a way that would substantially deprive future generations of the benefit of the land. Some changes — even permanent changes — to the land may be possible. Whether a particular use is irreconcilable with the ability of succeeding generations to benefit from the land will be a matter to be determined when the issue arises.¹⁴

She also stated, “First, the Crown’s fiduciary duty means that the government must act in a way that respects the fact that Aboriginal title is a group interest that inheres in present and future generations. The beneficial interest in the land held by the Aboriginal group vests communally in the title-holding group. This means that incursions on Aboriginal title cannot be justified if they would substantially deprive future generations of the benefit of the land.”¹⁵

Justice McLachlin’s use of the word “sustain” was noted: “it is to be hoped that Aboriginal groups and the provincial government will work cooperatively to sustain the natural

environment so important to them both. This said, when conflicts arise, the foregoing template serves to resolve them.”¹⁶

The SCC ruled intra-jurisdictional immunity inapplicable, and that both federal and provincial legislation that infringed on Aboriginal title should be judged against the test in section 35 of the Constitution Act; i.e., Aboriginal title or claims for Aboriginal title must be respected by the government, unless the government can justify incursion on them for a compelling purpose and in conformity with its fiduciary duty to affected Aboriginal groups: “The result is to protect Aboriginal and treaty rights while also allowing the reconciliation of Aboriginal interests with those of the broader society.”¹⁷

From this review of the decision, it was observed that *Tsilhqot’in* addresses the topic of law for indigenous peoples. Now the SCC is comfortable talking about indigenous people having laws that are separate from Canadian law. *Tsilhqot’in* was the first decision in which judges attached a map, thereby acknowledging the importance of talking about territoriality to provide broader understanding. This decision is important because it provides Canada and its indigenous communities with case law that puts certain international demands on Canada.

Sustainable Development and Climate Change

Another participant picked up the discussion of sustainable development as a crosscutting issue incorporated in the Paris Agreement and expected to influence how human rights will feature in the implementation of the post-2020 climate regime. Several months earlier, the UN General Assembly, via Resolution 70/2015, adopted the 2030 Agenda for Sustainable Development, wherein more than 150 countries, including Canada, committed to working toward the national implementation of 17 SDGs and their accompanying 169 targets. The SDGs are as follows:¹⁸

Goal 1: End poverty in all its forms everywhere.

Goal 2: End hunger, achieve food security and improved nutrition, and promote sustainable agriculture.

Goal 3: Ensure healthy lives and promote well-being for all, at all ages.

Goal 4: Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.

¹² *Ibid*, at para 50.

¹³ *Ibid*, at para 70.

¹⁴ *Ibid*, at para 74.

¹⁵ *Ibid*, at para 86.

¹⁶ *Ibid*, at para 105.

¹⁷ *Ibid*, at para 139.

¹⁸ United Nations General Assembly, *Transforming Our World: The 2030 Agenda for Sustainable Development*, UN Doc A/RES/70/1, 21 October 2015, online: <www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E>.

Goal 5: Achieve gender equality and empower all women and girls.

Goal 6: Ensure availability and sustainable management of water and sanitation for all.

Goal 7: Ensure access to affordable, reliable, sustainable and modern energy for all.

Goal 8: Promote sustained, inclusive and sustainable economic growth, full and productive employment, and decent work for all.

Goal 9: Build resilient infrastructure, promote inclusive and sustainable industrialization, and foster innovation.

Goal 10: Reduce inequality within and among countries.

Goal 11: Make cities inclusive, safe, resilient and sustainable.

Goal 12: Ensure sustainable consumption and production patterns.

Goal 13: Take urgent action to combat climate change and its impacts.

Goal 14: Conserve and sustainably use the oceans, seas and marine resources for sustainable development.

Goal 15: Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, halt and reverse land degradation, and halt biodiversity loss.

Goal 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.

Goal 17: Strengthen the means of implementation and revitalize the global partnership for sustainable development.

It was noted that there are strong interconnections between the SDGs, human rights and the post-2020 climate regime under the Paris Agreement.

Policy coherence among different international regimes may be challenging because usually agreements under one regime only “recognize” other regimes in their preambles, as is the case with the references to human rights in the Paris Agreement. The SDGs include one goal specifically targeted at climate action — Goal 13, Take urgent action to combat climate change and its impacts — foreshadowing in many respects the agreement reached at Paris. The main six targets of this goal are to: strengthen resilience and adaptive capacity; integrate climate change measures into national development policies, strategies and planning; improve education, awareness-raising, and human and institutional capacity; implement developed countries’ commitment to mobilize US\$100 billion annually by 2020; fully operationalize the Green Climate Fund through

its capitalization as soon as possible; and promote mechanisms for capacity building in least developed countries and small island developing states, focusing on women, youth and local and marginalized communities.

There is a strong relationship between climate change and sustainable development. On the one hand, climate change influences natural and human living conditions and socioeconomic development, disproportionately affecting poor and marginalized communities and the least developed countries. On the other hand, climate change exacerbates existing vulnerabilities and inequalities. As such, the choice of SDGs influences the drivers of both climate change and action to combat climate change. The inclusion of Goal 13 in the SDGs helped to ensure the gap that has long existed between the development agenda and action on climate change could be bridged.

The principle of sustainable development has been considered by many as a customary principle of international law, and therefore binding. While there was no hard consensus on the exact definition, sustainable development appears to be embedded in human rights principles. See, for example, Principle 3 of the Rio Declaration, “The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.”¹⁹ The 2015 SDGs include several with a human rights focus. For example, goals 1 through 5 focus on basic human rights issues long enshrined in the UN Declaration on Human Rights and subsequent conventions. Goals 4 through 10 speak to the need both to help and empower all people to share in the opportunities of sustainable development, innovation and prosperity. Goal 16 acknowledges that rights are empty unless citizens can participate in decisions affecting them and can enforce their rights through an accessible system of justice. The language of the last six goals (11 through 17) envisions a new global partnership of cooperation and solidarity to address the shared challenge of protecting our environment.

Since its inception in 1992, the UNFCCC climate regime has always made references to sustainable development. For example, it mentions sustainable development in its preamble, in Article 2 on objectives and in Article 3 on principles. At that time, however, the policy focus was strongly centred on ensuring climate action would not undermine economic growth, especially in developing countries. The language of the UNFCCC strongly emphasizes economic development, and science-driven literature on climate change paid scant attention to equity and human rights implications of development. As the concept of sustainable development expanded beyond the economic elements to include equity and human rights concerns, this has been progressively reflected in

¹⁹ United Nations General Assembly, *Report of the United Nations Conference on Environment and Development, Annex I: Rio Declaration on Environment and Development*, UN Doc A/CONF.151/26 (Vol. I), 12 August 1992, online: <www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>.

legal instruments of the climate regime. The Paris Agreement mentions sustainable development at least 15 times, both in the preamble and in its operational provisions. Since the SDGs have integrated human rights into sustainable development, one can argue that although the Paris Agreement has only expressly mentioned human rights in the preamble, human rights are nonetheless integrated throughout the agreement through the principle of sustainable development.

Because the SDGs are universal in nature and applicable to all countries, they will not only guide Canadian international cooperation efforts with developing countries, but must also guide how Canada will address its own domestic sustainable development challenges, including in relation to climate action. Human rights should inform these efforts. In the Canadian context, this will mean tackling the specific concerns of indigenous groups and communities as well as other vulnerable groups, such as women, when implementing climate change mitigation and adaptation actions. When offering assistance to other countries, Canada has a responsibility to consider its human rights obligations both in realizing the SDGs and in taking other climate change-related actions. There is a need to redesign how Canada engages with developing countries and how international cooperation, including aid, can best support countries to realize their sustainable development and climate change ambitions. Canada came out strongly in favour of including the language of human rights and indigenous peoples in the preamble of the Paris Agreement. This indicates that at least there is a political will in this regard. The challenge is to translate this political gesture into implementation.

Loss and Damage Related to Climate Change

International human rights obligations exist for states, irrespective of the Paris Agreement on Climate Change. Inclusion of these obligations in the preamble signals their importance in addressing climate change. The question is whether Canadian legislators and courts will demonstrate the creativity and take the necessary steps to protect and promote climate justice, as the Philippines Commission on Human Rights is doing, in inquiring into the human rights impacts of the world's major greenhouse gas emitters.

Climate change-related loss and damage has been given formal recognition in the Paris Agreement, although the details of the mechanism to prevent and mitigate loss and damage referred to in Article 8 of the agreement have yet to be determined. Previously, developed countries were reluctant to recognize this issue because of the potential implications for liability and compensation. The phrase “loss and damage” refers to consequences that cannot be adapted to and those that mitigation will not help. Loss and damage is already occurring in Canada, as evidenced by concerns expressed by Aboriginal leaders about their changing environment. Loss and damage is also happening in developing countries, such as Bangladesh, where it is a major focus of emergency response planning.

Something significant needs to be done at an international level, as acknowledged by the Paris Agreement, but the specific or concrete details have yet to be determined. The human rights impacts of loss and damage are not only a matter for governments, but also for private sectors. The insurance industry can make a contribution in terms of assessing and insuring against new kinds of risks and pricing mitigation measures. Major oil companies have contributed 65 percent of the CO₂ in the atmosphere but are not paying for the damage. There are precedents in domestic and international law, where risks and liability are apportioned between the public and the private sector, which could be adapted to addressing this new problem.

Another participant noted that the Canadian approach to the 1976 International Covenant on Economic, Social and Cultural Rights needs to be reformed. Until now, Canada has not recognized these rights as having content independent of what governments chose to provide through legislation. The covenant has the potential to support implementation of the SDGs and the Paris Agreement, including addressing loss and damage, if given renewed scope and more generous interpretation.

Access to Climate Change Information

Participants then considered Article 12 of the Paris Agreement, which states that “Parties shall cooperate in taking measures, as appropriate, to enhance climate change education, training, public awareness, public participation and public access to information, recognizing the importance of these steps with respect to enhancing actions under this Agreement.”

One participant explained that freedom of information was a long-recognized fundamental human right relevant to implementing the Paris Agreement at the international level. On December 14, 1946, in its very first session, the United Nations General Assembly adopted Resolution 59 (1) stating that “freedom of information is a fundamental human right and that it is the touchstone of all the freedoms to which the United Nations is consecrated.”²⁰ The expression “freedom of information” means the right to gather, transmit and publish news anywhere and everywhere without fetters.

On the right of access to information, Abid Hussain, then UN Special Rapporteur on Freedom of Opinion and Expression, stated in his 1995 report to the UN Commission on Human Rights: “Freedom will be bereft of all effectiveness if the people have no access to information. Access to information is basic to the democratic way of life. The tendency to withhold

²⁰ United Nations General Assembly, 14 December 1946, online: <<https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/033/10/IMG/NR003310.pdf?OpenElement>>.

information from the people at large is therefore to be strongly checked.²¹

The right to access to environmental information was first stated in Principle 10 of the 1992 Rio Declaration:

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.²²

The Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters aimed to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being. It defined “environmental information” as:

3. “Environmental information” means any information in written, visual, aural, electronic or any other material form on:

(a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making;

(c) The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by

the factors, activities or measures referred to in subparagraph (b) above.²³

Canada signed the Rio Declaration but, although belonging to the UN Economic Commission for Europe, did not ratify the Aarhus Convention, arguing against the explicit recognition of a right to a healthy environment. As well, while Canada’s Charter of Rights and Freedoms does not explicitly recognize the right to a healthy environment,²⁴ it provides every Canadian with freedom of expression. Some countries have adopted special rules regulating access to environmental information, but in Canada the main law about access to information is of general application and does not deal specifically with access to environmental information. The federal Access to Information Act (ATIA)²⁵ articulates the right of access to information in records under the control of a government institution, following the principle that government information should be available to the public (section 2).²⁶ The ATIA generally applies to any record under the control of a government institution, therefore applying to environmental information, and defines a record as “any documentary material, regardless of medium or form.” The Canadian Environmental Protection Act (CEPA)²⁷ begins with a declaration “that the protection of the environment is essential to the well-being of Canadians and that the primary purpose of this Act is to contribute to sustainable development through pollution prevention.” Section 2(1) provides that “the Government of Canada shall... (h) provide information to the people of Canada on the state of the Canadian environment.” Thus, one participant suggested that the combination of

21 Commission on Human Rights, *Question of the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment*, UNESC, 51st Sess, UN Doc E/CN.4/1995/32 (14 December 1994), at para 35, online: < <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G94/750/76/PDF/G9475076.pdf?OpenElement>>.

22 *Supra* note 18.

23 Aarhus, Denmark, 25 June 1998, online: <www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>.

24 The right to environmental protection was not included in the body of human rights law until 1976, when Portugal was the first country to adopt a constitutional right to a healthy and ecologically balanced human environment.

25 *Access to Information Act*, RSC 1985, c A-1.

26 **Purpose**

2(1) The purpose of this Act is to extend the present laws of Canada to provide a right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public, that necessary exceptions to the right of access should be limited and specific and that decisions on the disclosure of government information should be reviewed independently of government.

Complementary procedures

(2) This Act is intended to complement and not replace existing procedures for access to government information and is not intended to limit in any way access to the type of government information that is normally available to the general public.

27 *Canadian Environmental Protection Act*, SC 1999, c 33.

CEPA, ATIA and the Charter establishes the right of access to environmental information at the federal level. A similar analysis would also need to be done for the provincial level, given the shared jurisdiction over the environment and human rights.

To bring Article 12 of the Paris Agreement to life in Canada, governments must proactively disclose climate-related information to the general public and the global community, as well as respond to specific requests from Canadians. The Paris Agreement prescribes a set of binding procedural commitments: to prepare, communicate and maintain an NDC; to provide information necessary for clarity and transparency; and to communicate a new NDC every five years. It also sets the expectation that each successive NDC will represent a progression beyond the previous one and reflect a party's highest possible ambition. NDCs will be recorded in a public registry maintained by the UNFCCC secretariat.

The Paris Agreement rests heavily on transparency as a means of holding countries accountable. It establishes a new transparency system, with common binding commitments for all parties and built-in flexibility to accommodate varying national capacities. All countries are required to submit emissions inventories and the information necessary to track progress made in implementing and achieving their NDCs. Information reported by countries on mitigation and support will undergo expert technical review, and each party must participate in a facilitative, multilateral consideration of progress in implementing and achieving its NDC (a form of peer review). Details of the new transparency system are to be negotiated by 2018 and formally adopted once the agreement enters into force. Effective environmental protection will depend on public access to a wide range of relevant climate change information, so the politicians, public servants, scientists, civil society and businesses can contribute to informed, transparent and effective policy decision making. Human rights and environmental protection are inherently interdependent.

Geoengineering

One participant observed that most efforts at the international level centred on the nexus of human rights and climate change had focused on the human rights implications of climatic impacts. One of the most striking aspects of the Paris Agreement's preambular language on human rights is that it departs from the previous focus on the human rights implications of climate change *impacts*. It is not clear, however, how the parties are to operationalize these human rights obligations.

This participant presented a possible approach, focusing on a group of emerging potential large-scale technological response measures to climate change known as "climate geoengineering." Geoengineering has been touted by proponents as an option that might help us avert crossing critical thresholds, or buy time to develop the will and technology for effective mitigation and

adaptation responses. Recent impetus for serious consideration of climate geoengineering options include National Academy of Science reports in 2015, an upcoming call by the United States Global Change Research Program for more research, and research initiatives in the European Union and China.

Climate geoengineering options are usually divided into two broad categories: solar radiation management (SRM) options, and carbon dioxide removal (CDR) strategies. Under the first category is stratospheric aerosol injection (SAI), which requires the dispersal of up to one million tons of sulfuric acid annually into the stratosphere. It could also be implemented as a form of "cloud brightening," resulting in the spraying of seawater in the area of low-level maritime clouds. SRM could also come in the form of planetary "sunshades." CDR could involve ocean iron fertilization (OIF), air capture or bioenergy with carbon capture and sequestration.

While geoengineering technologies might ameliorate climatic impacts, many of them would pose grave human rights risks, especially to the world's most vulnerable peoples. Under the SRM approaches, for example, some researchers predict substantial alteration of the hydrological cycle in the tropics, including large decreases in precipitation (as much as 30 percent in some studies) over vegetated surfaces as a consequence of reduced evaporation. Several studies have indicated this could result in the shutdown in some years of the monsoons in Southeast Asia or Africa, threatening the food supply of some two billion people.

OIF also produces significant human rights impacts. As marine systems are very complex, OIF may give rise to a plethora of different phytoplankton species, some of which might be undesirable or even toxic for the food web. This could also wreak havoc with critical supplies of fish and other marine species.

Bioenergy with carbon capture and sequestration also have damaging implications. Operationalizing them might require diversion of one-third of croplands for large-scale implementation, and could therefore result in significant increases in prices of food. They could also lead to the displacement of agricultural stakeholders. Further, these processes could severely deplete water supplies in many areas because they are water-intensive; they could also contaminate water supplies. These various impacts have the potential to violate human rights. The SAI, for instance, has implications for the rights to life, food and water. It would also have severe ozone impacts that could implicate the rights to life and health.

Should geoengineering options ever be deployed, parties to the UNFCCC/Paris Agreement could assert jurisdiction, identify the climatic implications of these options and try to coordinate with other climate policies. Under the UNFCCC, parties would have jurisdiction over geoengineering, which would bring the human rights language of the Paris Agreement into play. It was suggested that a human rights-based approach could be used to address human rights

implications of geoengineering and impacts of mitigation or adaptation responses, because this approach focuses not so much on rights and obligations, but more on how these rights can be addressed and integrated into policy making. The human rights-based framework has been utilized by local and federal governments, as well as inter-governmental and international organizations in the context of environmental, health and development issues. A human rights-based approach is designed to demarcate the obligations of duty bearers and rights holders and address potential disparities of power, which could be a critical consideration in the context of climate geoengineering, with large countries likely deploying, and impacts disproportionately meted, on the world's most vulnerable.

Applying a human rights-based approach to the geoengineering example of SAI, it would be important to identify who could be potentially adversely impacted by its deployment, and to what extent. It would be necessary to seek to eliminate or ameliorate potential threats to human rights. For example, several studies have indicated that reducing sulfur injections could substantially reduce potential threats of SAI geoengineering, although it would also reduce its effectiveness in terms of temperature reductions. It would be necessary to consider who would be most vulnerable to impacts of the chosen geoengineering approach. For example, in the case of ozone depletion, it would be important to identify countries with great exposure to ultraviolet radiation and/or limited medical care options. It would also be important to assess the capacity of those to manage the potential adverse impacts of the geoengineering option. Finally, it would be important to monitor the impacts of the geoengineering option, including the early stages of research and development, and to adjust programs in response as needed. The discussion highlighted how deployment of geoengineering techniques not only had the potential to impact human rights, but could also raise significant international security issues by risking catastrophic effects of experiments, conflict between states, and mass disasters such as drought, flooding or famine.

SESSION III: ACTORS AT THE DOMESTIC LEVEL

One participant illustrated the domestic dimension of climate change and human rights by referring to a petition,²⁸ directed at the government of Nova Scotia, protesting the destruction of the province's forests for biomass power generation, which has been promoted as carbon-neutral electricity. The petition argues that Nova Scotia's current "green energy" legislation must be amended because clear-cutting forests for biomass energy production is harmful to wildlife, wildlife habitat,

water cycles, soil nutrients, carbon storage and the chemistry of nearby waterways.

The preamble to the Paris Agreement states that "parties should, when taking action to address climate change, *respect, promote and consider* their respective obligations on human rights" (emphasis added). The Nova Scotia petition offers some insights into the kinds of human rights issues that may arise from climate change mitigation and adaptation activities. On the one hand, power generation from biomass fuels reduces greenhouse gas emissions, while on the other it produces negative human rights results as identified in the petition. In order to reconcile these positive and negative impacts, policies aimed at mitigating and adapting to climate change have to incorporate human rights language.

Policies reviewed by this participant avoided using direct human rights language, employing instead alternative expressions ("vulnerable," "poverty," "well-being," etc.) that may be valuable, but not as effective as using explicit human rights language. Canada and California tend to follow the international pattern of imagining the human rights dimension of climate change only in procedural "participatory, consultative" dimensions. Procedural rights may be insufficient to address the substantive human rights impacts, especially for indigenous peoples, flowing from generating energy from biomass fuel, such as "mutilating our landscapes and reducing shelter and food resources," in the words of the Nova Scotia petition. One participant remarked that the risks of biomass production should be evaluated in the broader context of how climate change is already seriously disrupting Canadian flora and fauna, resulting in detrimental impacts on the traditions, culture and food supply of indigenous peoples.

Another participant suggested that it will be necessary to develop new norms in the tool kit for fighting climate change; for example, ensuring there is a thorough assessment of the impacts of climate change mitigation projects. Participatory, expressive and information rights should be expanded to ensure access to justice and to enforceable remedies on climate-related issues. Governments should regulate the conduct of private actors in their activities with implications for climate change. Businesses have a duty to respect human rights in their supply chains, including in relation to climate change activities or impacts. Research suggests that three industry sectors — food and agriculture, the insurance industry, and finance — already recognize the importance of climate change considerations. One participant argued that the Canadian government should provide the means by which foreign victims of climate change-related violations of human rights caused by Canadian corporations acting abroad could seek redress in Canada.

One participant commented on the changing but still tentative atmosphere for constructive discussion on climate change in Canada, noting that the federal government was a positive contributor to the negotiations at the Paris Conference of the Parties, but since then has not been unequivocally

²⁸ The petition can be found at www.friends-of-nature.ca/petition-on-biomass-stop-destroying-nova-scotias-forests-for-biomass-power-generation/ and www.change.org/p/premier-stephen-mcneil-stop-destroying-nova-scotia-s-forest-for-biomass-power-generation.

demonstrating a commitment to making a fair contribution to limiting greenhouse gas emissions. In particular, trust is fractured by the recent federal government advocacy for investment in pipelines to transport oil sands bitumen to global markets, despite the obvious and pressing need to de-invest in oil and gas extraction, to “keep it in the ground.” The government should provide protection for human rights defenders who face the risk of “slap suits” if they publicly discuss climate change and human rights issues. One participant commented that it will be important to ensure governments do not use human rights language to justify failing to take urgent action on climate change. Another responded that it is a trap to view human rights as a complicating factor in solving climate change. Rather, embedding a human rights-based approach into climate change policy and action will strengthen their acceptability and efficacy. It was noted that in Canada, there is the possibility of collaborating with indigenous peoples to share the benefits of climate change-related mega projects. The risk that opposition from local communities will undermine the success of such projects can be effectively addressed through collaboration.

SESSION IV: ACTIVITIES AT THE DOMESTIC LEVEL

One commentator suggested that the intersection of climate change and human rights presents a double-edged sword for two reasons: first, most vulnerable communities are most vulnerable to the impacts of climate change as well as the implications of climate policies; and two, it is essential to act quickly yet correctly, i.e., in a manner that is thoughtful, careful, inclusive, collaborative and respectful of human rights obligations. There is clearly a role for the judiciary to weigh in on these delicate issues, and it would be appropriate to leverage the momentum of the Dutch *Urgenda* decision. A more progressive interpretation of the Canadian Charter of Rights and Freedoms, section 7 (“right to life, liberty and security of the person”), and of section 15 (“right to equal protection and equal benefit of the law without discrimination”), could incorporate climate change awareness and perspectives of the most vulnerable populations and future generations.

It was emphasized that words and narratives are highly important and that the language of human rights needs to be brought into the Canadian discussion. Instead of focusing on the language of maximizing natural resource exploitation and economic growth, there should be discussion about collective well-being and how to provide safe and clean energy for all. The economic calculations about the costs and benefits of imposing a carbon tax need to consider social well-being and long-term sustainability dimensions. There is now an opportunity to pioneer a new way forward that reconciles any perceived dichotomy between environmental rights and human rights, and between advocates of a green economy and advocates of social justice.

One participant observed that steps to implement the Paris Agreement and impose carbon pricing carry both significant socioeconomic potential and risk. Carbon pricing and strong regulation are needed to start making polluters pay and to cause the structural change to disrupt carbon path dependencies (for example, building more pipelines would lock in a 30- to 50-year commitment to the carbon economy). Unless carbon tax revenues are used to smooth and soften the adverse effects of this structural adjustment there will be resistance to change. It would be optimal if the revenues generated through carbon taxation could be used to promote human rights and improve substantive equality.

It was suggested that human rights and substantive equality discussions should be introduced at the earliest stages of climate change strategy and policy development, to support implementation of the Paris Agreement. Environmental assessment of major climate change-related projects should incorporate all the relevant requirements of the agreement, embedding a human rights-based approach to: public information about climate change and public participation in the development of climate change strategy; developed country leadership in addressing climate change mitigation, and assisting less-developed countries to deal with climate change mitigation, adaptation and loss and damage; using evidence-based science in decision making, national commitment setting and transparent reporting of performance against commitments; and supporting capacity building, environmental sustainability and equitable sharing of knowledge, capacity and resources.

Existing environmental assessment tools should be strengthened for this purpose — called “climatizing” the assessment process by one participant. Strategic environmental assessment would ensure that all policies and plans with potential environmental impacts are evaluated before being allowed to proceed. Gender- and equality-based analysis could identify the impact of plans, policies and spending proposals before they are approved. Sustainable development assessment could ensure proposals are made compatible with the sustainable development goals before being allowed to proceed. For example, a policy could be established whereby applications for project permits that do not have built-in human rights safeguards are not allowed to come forward. Government decision makers could be required to consider whether the project advances sustainability, considers human rights impacts and is consistent with Canada’s international commitments. Carbon budgets could be allocated in order to meet emissions reduction ambitions. A duty could also be imposed on corporate directors, requiring them to keep carbon emissions within government allowed limits.

Participants discussed the importance of reporting transparently on metrics, from global performance in relation to the 1.5 percent emissions target (the periodic global stock-taking), to specific reporting of performance by national and subnational governments and by non-state actors, such as

cities and business corporations. As well, carbon budgets and carbon debt are useful concepts because decision making is responsive to numbers. Measuring and monitoring stimulate action and accountability. Environmental problems such as climate change arise in large part because public and private actors have not been required to systematically take a sustainable development approach to decision making. Such an approach would have to look for synergy and efficiency from co-benefits to inclusive costs and benefits, rather than conflicts and dichotomy.

In this regard, one participant noted that one of the major challenges of using human rights in a climate change litigation context is determining whether human rights language is more useful than other arguments, such as shareholder disclosure, duty of care or atmospheric trust doctrine. As well, when victims settle for litigation, who should they be proceeding against — the companies themselves, the directors or the investors? Litigation was recently launched in the United Kingdom against a pension fund, in which members alleged the fund was breaching its fiduciary duty by not considering the potential impacts of climate change on its investments. It is a challenge to know how to frame the specific litigation. It could be directed against a particular decision or plan that has adverse climate change impacts, such as building pipelines or cutting down forests. It could also be against the entire legal regime in place for failing to make adequate provision to avoid contributing to climate change. The claim itself could be in the nature of a declaration against actual, ongoing or past harm, or an injunction prohibiting future harm. There were different variations of these approaches in the Dutch *Urgenda* case. It was suggested that focusing on duties may be more effective.

Governance will be a key dimension of implementing the Paris Agreement, with its emphasis on embedding a human rights approach to climate change action. The federal government has to engage the provinces and territories; Inuit, indigenous and Métis peoples; and the rest of civil society to develop Canada's national strategy on climate change. This will require bold leadership and inclusive processes that integrate human rights and climate change science with economic policy, and that are built on respect, trust, collaboration and openness.

SESSION V: NEXT STEPS FOR FURTHER RESEARCH AND WRAP-UP

Participants felt this discussion was useful in making the link between climate change action and human rights. While it was important to build confidence in an initial network of interested persons by holding a round table under the Chatham House Rule, participants were unanimous in wanting to see public events where these issues were discussed and citizens were directly engaged. There was keen interest in holding future events that would bring these issues to the

general public, such as: public conferences, webcasts, student or professional mock trials, and online essays on topics where human rights and climate change intersect. It was suggested that a deliberative public forum could be useful, wherein experts provide core information and participants would have an opportunity to break into thematic groups for discussion to generate actionable policy recommendations.

Participants agreed that, until now, separate worlds of human rights and climate change should be mutually supportive, in much the same way that climate change mitigation and adaptation need to reinforce each other. It was noted that government officials following the climate change file over the last decade or more were focused mainly on the environmental science and regulatory dimensions, and have not yet developed expertise on the human rights dimension of implementing climate change measures. They likely would welcome the opportunity to learn more about this. It was suggested that it would be useful to hold a workshop and public event on this topic in Ottawa to engage with federal officials from the various departments that will be involved in implementing the Paris Agreement.

There was real interest in finding practical ways for Inuit, indigenous and Métis perspectives to be better integrated into the development of government climate change strategies. It was suggested that, in the spirit of national reconciliation, indigenous knowledge education should be promoted in Canada. Lakehead University and the University of Winnipeg each have a policy that requires all students to take indigenous studies; this was noted as a leading example that might help shape approaches to public engagement and education relating to climate change and human rights.

Participants were interested in receiving a relatively quick report of the round table, as well as in developing a more comprehensive compendium analysis and guidance on how human rights could be impacted by climate change and by actions taken to mitigate or adapt to climate change. It was suggested that such guidance should take a holistic approach, identifying all the relevant international instruments and domestic tools that might contribute to better understanding how human rights and climate change may interface. Such a document would need to include a wide range of international and domestic human rights, indigenous rights and environmental instruments. The compendium could identify for policy makers where these instruments require action and what might be the human rights implications of taking specific actions.

ROUND TABLE AGENDA

February 29, 2016 — 8:00 a.m.–9:00 p.m.

Royal York Fairmont Hotel, 100 Front St W, Toronto, Ontario M5J 1E3

8:00 a.m. — Breakfast and Registration

9:00–9:45 a.m. — Welcome Remarks and Introductions

9:45–10:50 a.m. — Session I: Implications for Canada of the Paris Agreement

- Overview of the Paris Agreement
- Canadian implementation at the international level
- Implementation at the domestic level

10:50–11:05 a.m. — Health Break

11:05 a.m.–12:10 p.m. — Session II: Canadian Action at the International Level

- How is human rights analysis relevant to implementing the Paris Agreement at the international level?
- Actors: federal government, Canadian corporations abroad, civil society, indigenous peoples

Activities:

- Art. 2: common goals (temperature control, adaptation and mitigation, finance flows)
- Art. 3: ambition to progress over time
- Art. 4: periodic reporting of NDCs and progress
- Art. 5: enhance reservoirs and conservation
- Art. 6: voluntary cooperation
- Art. 7: adaptation committee
- Art. 8: loss and damage mechanism
- Art. 9: assistance to developing countries; financing mechanism
- Art. 10: technology mechanism
- Art. 11: capacity building
- Art. 12: public awareness
- Art. 13: transparency framework

12:10–1:10 p.m. — Lunch

Discussion: Human Rights and Governance Aspects of Geoengineering

1:10–2:30 p.m. — Session III: Actors at the Domestic Level

- How is human rights analysis relevant to the various actors implementing the Paris Agreement at the domestic level?
- Actors: federal government, provinces and territories, indigenous peoples, municipalities, civil society, Human Rights Commissions, Information Commissioners, corporations, courts

2:30–2:45 p.m. — Health Break

2:45–4:15 p.m. — Session IV: Activities at the Domestic Level

- How is human rights analysis relevant to the various activities involved in implementing the Paris Agreement at the domestic level?
- Consultation and participation
- Empowerment and voluntarism
- Coordination and harmonization
- Disincentives and incentives
- Monitoring, reporting and oversight
- Litigation
- Regulation and legislation
- Environmental assessment
- Infrastructure and procurement
- Export and import

4:15–5:30 p.m. — Session V: Next Steps for Further Research and Wrap-up

- Preparing a compendium analysis for Canadian decision makers; holding a public forum

6:00–8:30 p.m. — Private dinner for round table participants

ABOUT CIGI

The Centre for International Governance Innovation is an independent, non-partisan think tank on international governance. Led by experienced practitioners and distinguished academics, CIGI supports research, forms networks, advances policy debate and generates ideas for multilateral governance improvements. Conducting an active agenda of research, events and publications, CIGI's interdisciplinary work includes collaboration with policy, business and academic communities around the world.

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CIGI was founded in 2001 by Jim Balsillie, then co-CEO of Research In Motion (BlackBerry), and collaborates with and gratefully acknowledges support from a number of strategic partners, in particular the Government of Canada and the Government of Ontario.

Le CIGI a été fondé en 2001 par Jim Balsillie, qui était alors co-chef de la direction de Research In Motion (BlackBerry). Il collabore avec de nombreux partenaires stratégiques et exprime sa reconnaissance du soutien reçu de ceux-ci, notamment de l'appui reçu du gouvernement du Canada et de celui du gouvernement de l'Ontario.

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