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## Consejo de Derechos Humanos

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**Promoción y protección de todos los derechos humanos,  
civiles, políticos, económicos, sociales y culturales,  
incluido el derecho al desarrollo**

## Visita al Canadá

### **Informe del Relator Especial sobre los derechos humanos al agua potable y al saneamiento, Pedro Arrojo Agudo\* \*\***

#### *Resumen*

El Relator Especial sobre los derechos humanos al agua potable y al saneamiento, Pedro Arrojo Agudo, realizó una visita al Canadá del 8 al 19 de abril de 2024. En el presente informe figuran sus conclusiones y sus recomendaciones dirigidas al Canadá.

\* El resumen del presente informe se distribuye en todos los idiomas oficiales. El informe propiamente dicho, que figura en el anexo, se distribuye únicamente en el idioma en que se presentó y en francés.

\*\* Este informe se presentó a los servicios de conferencias para su tramitación fuera del plazo establecido a fin de incluir en él la información más reciente.



## Anexo

# Informe del Relator Especial sobre los derechos humanos al agua potable y al saneamiento, Pedro Arrojo Agudo, acerca de su visita al Canadá

## I. Introduction

1. Pursuant to Human Rights Council resolution 51/19, the Special Rapporteur on the human rights to safe drinking water and sanitation officially visited Canada from 8 to 19 April 2024, at the invitation of the Government.
2. During his two-week visit, the Special Rapporteur engaged with various stakeholders, including representatives from various tiers of government, international organizations, civil society, Indigenous Peoples and residents. He visited three provinces, one territory and six cities and towns across the country.<sup>1</sup>
3. The Special Rapporteur thanks the Government for having invited him and organized his visit. He would especially like to thank the Indigenous Peoples who travelled long distances to meet with him or opened their communities to share their concerns and, often, difficult experiences and struggles.

## II. General considerations

4. Canada has 7 per cent of the world's renewable supply of fresh water, and has the most renewable fresh water per capita globally.<sup>2</sup> This abundance of fresh water, combined with the level of development of Canada, ensures that most of the country's population has safe drinking water. However, the Special Rapporteur has observed that colonialism's legacy continues to affect the human rights to safe drinking water and sanitation. Notably, most of the contributions received in response to the country visit highlighted the struggles of Indigenous Peoples to secure their rights to safe drinking water and sanitation and the Government's recent efforts on this matter.
5. In this regard, the recognition by the House of Commons in 2022 of the Indian residential schools system as genocide,<sup>3</sup> the adoption in 2021 of the United Nations Declaration on the Rights of Indigenous Peoples Act, which affirmed the United Nations Declaration on the Rights of Indigenous Peoples as a universal international human rights instrument with application in Canadian law,<sup>4</sup> and the commitment to end water advisories in First Nations communities indicate a willingness towards reconciliation.
6. Despite undeniable progress towards guaranteeing the rights to water and sanitation, fragmented responsibilities remain a significant challenge, risking the rights of Indigenous Peoples and other vulnerable populations. This challenge is compounded by the absence of national laws recognizing the human rights to water and sanitation.

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<sup>1</sup> The Special Rapporteur visited Ottawa, Iqaluit, Toronto, Fort McMurray, Vancouver and Smithers.

<sup>2</sup> Environment and Climate Change Canada, "Water: frequently asked questions", 13 August 2018 (available at <https://www.canada.ca/en/environment-climate-change/services/water-overview/frequently-asked-questions.html>); and Statistics Canada, "Environment", 17 January 2018 (available at <https://www150.statcan.gc.ca/n1/pub/11-402-x/2011000/chap/env/env-eng.htm>).

<sup>3</sup> House of Commons, *House of Commons Debates*, vol. 151, No. 119, forty-fourth Parliament, 1st session, 27 October 2022. Available at <https://www.ourcommons.ca/documentviewer/en/44-1/house/sitting-119/hansard#Int-11887321>.

<sup>4</sup> See <https://laws-lois.justice.gc.ca/eng/acts/U-2.2/>.

### III. Political organization

7. Canada is a federation of 10 provinces and 3 territories. There are therefore two orders of government: the federal Government, which has national jurisdiction, and the provinces and territories, with jurisdiction over their lands. Notably, First Nations reserves fall under federal jurisdiction.

8. The Special Rapporteur observed how the country's political organization has a deep impact on human rights implementation. During meetings, it was stated that the federal, provincial and territorial governments shared responsibility for implementing international human rights, which could leave rights holders without the protection necessary to realize their rights. The Special Rapporteur recalls that human rights mechanisms have consistently stated that the State should ensure sufficient coordination between the national, regional and local authorities to protect and promote human rights. Regardless of whether the competencies related to the rights to water and sanitation are held at the federal, provincial or local level, the State party still retains the responsibility to comply with its international obligations.

### IV. Indigenous Peoples

#### A. Socioeconomic figures

9. In 2021, Indigenous Peoples in Canada made up approximately 5 per cent of the population, a total of 1,807,250 persons identifying as Indigenous, including 1,048,400 First Nations, 624,220 Métis and 70,540 Inuit.<sup>5</sup> All three Indigenous Peoples are recognized under the Constitution as being culturally and legally distinguished.<sup>6</sup>

10. However, there is an economic and social gap between Indigenous persons and the rest of the population in Canada. For instance, life expectancy is estimated to be 10 to 15 years less for an Indigenous person, and infant mortality rates two to three times higher.<sup>7</sup> Regarding food security, 48 per cent of First Nations households on reserves do not have sufficient income to pay for their food expenses, compared to 12 per cent for the rest of the country.<sup>8</sup>

#### B. First Nations treaties and reserves

11. Section 35 of the 1982 Constitution recognizes and affirms the Aboriginal and treaty rights of Indigenous Peoples. Between 1701 and 1923, the Crown entered 70 historic treaties, covering 364 First Nations and representing nearly 800,000 people. Since 1975, the Crown has entered 72 modern treaties, recognizing Indigenous peoples' rights to more than 600,000 square kilometres of land.

12. The Special Rapporteur met with First Nations holding treaty rights. They explained that treaties were a practice among Indigenous Peoples to facilitate understanding and respect of each nation's culture, laws and way of life. It was clarified that treaties did not imply land

<sup>5</sup> Statistics Canada, "Indigenous population", Census Profile, 2021 Census of Population, 15 November 2023. Available at <https://www12.statcan.gc.ca/census-recensement/2021/dp-pd/prof/details/page.cfm?LANG=E&GENDERlist=1,2,3&STATISTIClist=1&HEADERlist=19&SearchText=Canada&DGUIDlist=2021A000011124>.

<sup>6</sup> Constitution Act, 1982, sect. 35. See also <https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html>.

<sup>7</sup> Patrice Dion and others, "Life expectancy at birth and infant mortality rates of Indigenous populations in Canada from 2004 to 2016", *Canada Studies in Population*, vol. 51, No. 2 (June 2024).

<sup>8</sup> Malek Batal and others, "First Nations households living on-reserve experience food insecurity: prevalence and predictors among ninety-two First Nations communities across Canada", *Canadian Journal of Public Health*, vol. 112, supplement 1 (2021).

severance. Likewise, First Nations explained that reserves were created to maintain their way of life without settler interference, but did not restrict the use of the complete territory.

13. The Special Rapporteur observed that, over time, settlers had compelled First Nations to leave their ancestral lands and relocate to reserves. In Wet'suwet'en territory, First Nations recounted how their homes and lands had been set on fire just a few decades previously, which had led them to seek refuge in the woods or in reserves during what they referred to as "the time of the fog", owing to limited visibility caused by smoke. They showed the Special Rapporteur how their lands were now fenced off and used for agriculture or tourism by non-Indigenous persons. As a result, Indigenous Peoples have lost effective control over their water sources, many of which are located outside the reserves. Additionally, many reserves are in remote areas with access routes restricted to air and ice roads.

14. The relationship between the lack of water or lack of trust in water sources and mental health in First Nations is of utmost concern. According to many testimonies, the lack of water carries a feeling of being second-class citizens because of being Indigenous, leading to depression, isolation and hopelessness. Grassy Narrows and Neskantaga First Nations, in Ontario, are remarkable examples.<sup>9</sup> In Alberta, according to testimonies received, following the tailings spill from the Kearl oil sands mine, the Mikisew Cree First Nation called a state of local emergency owing to suicides and mental health issues.

### C. Inuit and the legacy of forced settlement

15. The Special Rapporteur visited Nunavut, one of the four regions comprising Inuit Nunangat. He witnessed the challenges faced by the Inuit and their valuable knowledge.

16. In the 1940s, the Government compelled the Inuit to settle in communities, abandoning their traditional nomadic lifestyle. Inuit representatives informed the Special Rapporteur that the Government had determined the settlement locations based on military, political and commercial considerations, failing to take account of Inuit way of life and cultural and climatic conditions and leading to unsuitable water infrastructure.

17. The Special Rapporteur met with Inuit elders, who described the Inuit way of life and traditional systems for obtaining drinking water before they had been forced to settle. The Special Rapporteur emphasizes the importance of recognizing and protecting this knowledge. He commends the Inuit authorities for the work done to promote the transmission of this knowledge to the younger generations, work which he witnessed during the visit.

### D. Indigenous women's role as water caretakers

18. Indigenous women play important roles as water carriers and caretakers of waterways. They possess vital knowledge for protecting the environment for future generations and healing from colonization and intergenerational trauma. The fundamental role of water in spiritual life and the intergenerational transmission of culture and knowledge was emphasized in all the meetings that the Special Rapporteur held with Indigenous women in the country.

19. Indigenous women play a crucial role in water-centred ceremonies to protect the community, and they organize "water walks" to pass on their knowledge.<sup>10</sup> The loss of water sources due to contamination or restrictions on access to rivers or lakes significantly affect women's lives and health, as the Special Rapporteur observed during his visit to

<sup>9</sup> See Donna Mergler and others, "The contribution across three generations of mercury exposure to attempted suicide among children and youth in Grassy Narrows First Nation, Canada: an intergenerational analysis", *Environmental Health Perspectives*, vol. 131, No. 7 (2023); and Jeffrey Ansloos, "Nibi onje biimaadiiwiwin is not a metaphor: the relationship between suicide and water insecurity in First Nations in Ontario", Yellowhead Institute, 3 May 2023.

<sup>10</sup> Ontario Native Women's Association, "Ontario Indigenous Women's Water Commission toolkit", November 2014. Available at [https://www.onwa.ca/\\_files/ugd/4eaa9c\\_cbe510471ad44aebbcfb4f5451524cab.pdf](https://www.onwa.ca/_files/ugd/4eaa9c_cbe510471ad44aebbcfb4f5451524cab.pdf).

Wet'suwet'en territory and in a meeting with representatives from Grassy Narrows First Nation.

20. It is noteworthy that the 2030 Emissions Reduction Plan recognizes Indigenous women as leading participants in conserving their lands and waterways.<sup>11</sup>

## **E. Progress and pending challenges**

21. The Special Rapporteur welcomes the United Nations Declaration on the Rights of Indigenous Peoples Act, which provides a framework for implementing the Declaration in Canada as an important step towards fulfilling the human rights of Indigenous Peoples to safe drinking water and sanitation. Nonetheless, he believes the road ahead requires profound changes, particularly regarding infrastructure provision in the First Nations reserves and Inuit communities, and provision of funds to manage the water and sanitation services under regulatory standards. Likewise, the application of this Act should complement the treaties with First Nations, promoting their effective control over the waters in their traditional territories, as established in the Declaration.<sup>12</sup>

## **V. Human rights to safe drinking water and sanitation**

22. While Canada has committed internationally to the realization of the human rights to safe drinking water and sanitation, it has not recognized these rights in its national legal framework. The Province of Québec recognizes them in its legislation.

23. Civil society organizations have argued that, since the federal Government is committed, under section 36 of the 1982 Constitution, to providing essential public services of “reasonable quality” to all Canadians, there is an implicit mandate to protect and fulfil the rights to water and sanitation.

### **A. Complex framework for the protection of drinking water**

24. Freshwater management is the shared responsibility of the federal Government and the provincial, territorial and local governments. The federal Government oversees coastal fisheries, inland fish habitat, navigation and international boundary waters and manages drinking water and wastewater on federal lands and First Nations reserves. Provinces and territories handle water management, including allocation, use, pollution control, standards for water quality, land management and use, and watershed planning. Municipal governments may manage drinking and wastewater systems and local land-use planning.

25. The Constitution does not expressly assign responsibility for drinking water, the environment or public health to a specific order of government. As a result, there is shared jurisdiction, creating a complex framework for the protection of drinking water.<sup>13</sup>

#### **1. Canada Water Agency**

26. In 2023, the Canada Water Agency was established within Environment and Climate Change Canada. Currently, the agency is on track to becoming a stand-alone entity.<sup>14</sup>

27. The Canada Water Agency works to improve freshwater management in Canada by providing leadership and effective improved federal coordination and collaboration with

<sup>11</sup> Environment and Climate Change Canada, *2030 Emissions Reduction Plan: Canada's Next Steps for Clean Air and a Strong Economy* (Gatineau, 2022).

<sup>12</sup> Art. 26.

<sup>13</sup> See Richard D. Lindgren, *Tapwater on Trial: Overview of Ontario's Drinking Water Regime* (Toronto, Canadian Environmental Law Association, 2005).

<sup>14</sup> See <https://www.canada.ca/en/environment-climate-change/services/water-overview/canada-water-agency.html>.

provinces, territories and Indigenous Peoples to address national and regional transboundary freshwater challenges and opportunities.<sup>15</sup>

28. During the visit, officers explained that given the country's political organization, the Canada Water Agency could have these competencies only, concerning coordination and collaboration. The Special Rapporteur was left with the impression that no single entity was ultimately responsible for enforcing and effectively monitoring the elements of the human rights to water and sanitation.

29. The Special Rapporteur emphasizes that for the Canada Water Agency to be effective, its powers should be increased towards enforcing directives on fulfilling the human rights to water and sanitation, including care of ecosystems. This power is crucial given the country's existing industries, which pose a high risk of contaminating water sources.

30. Despite successful provincial cooperation, challenges regarding the allocation of power may hinder the use of an ecosystem approach to management of transboundary basins and aquifers. Such an approach is critical for addressing climate change risks.

## 2. Water and sanitation responsibilities

31. The Fisheries Act prohibits water pollution and regulates municipal and industrial effluents. The federal Government uses the Wastewater Systems Effluent Regulations, under the Fisheries Act, to set national standards for effluent quality that are achievable through secondary-level wastewater treatment.

32. Territories and provinces regulate public water supplies, manage water-use permits, regulate resource development and control pollution, delegating drinking water supply management to municipalities. In rural areas, most people rely on wells. Drinking water on First Nations reserves falls under federal jurisdiction.

33. The complex institutional framework makes it difficult for rights holders to determine who is responsible for ensuring the human rights to safe drinking water and sanitation and seek redress in case of complaints and human rights violations. This lack of clarity leaves certain population groups, such as Indigenous Peoples and rural residents, without adequate protection to monitor the quality of their water.

34. For instance, in Ontario, the regulations on water quality do not require source protection plans to cover the private wells and drinking water systems used by primarily Indigenous and rural communities that rely on non-municipal wells or whose systems lie outside of the source protection areas established under the regulations.<sup>16</sup>

35. Ontario has set water-use priorities, including with regard to drinking water.<sup>17</sup> The Special Rapporteur welcomes this decision, but notes contradictions in the approach of the government of Ontario. The government continues to grant licences for activities that affect water sources despite prioritizing the sustainability of aquatic ecosystems and water for human consumption.<sup>18</sup>

36. In British Columbia, the provincial government manages surface water, groundwater, sanitation and drinking water regulations. Local governments and community water suppliers provide drinking water and sanitation services. Regional health authorities oversee compliance with drinking water standards. Municipalities approve building permits and provide public sanitation facilities. Collaborative organizations and committees promote

<sup>15</sup> See Environment and Climate Change Canada, *Toward the Creation of a Canada Water Agency: Discussion Paper* (Gatineau, 2020).

<sup>16</sup> See Leslie Collins and others, "Source water protection planning for Ontario First Nations communities: case studies identifying challenges and outcomes", *Water*, vol. 9, No. 7 (July 2017).

<sup>17</sup> See Environmental Registry of Ontario, "Updating Ontario's water quantity management framework", 31 March 2021.

<sup>18</sup> See Mike Crawley, "Doug Ford government wants to speed up mining permits in Ontario", York University, Faculty of Environmental and Urban Change, 1 March 2023.

cooperation on water-related issues.<sup>19</sup> The Special Rapporteur emphasizes that voluntary collaboration cannot replace the need to establish who has ultimate responsibility.

37. The government of British Columbia and First Nations are working together to strengthen the province's watershed security by co-developing a strategy, intended to shape water and watershed management in British Columbia for the next 20 to 30 years.

38. The Special Rapporteur commends the First Nations Health Authority, in British Columbia, for its work.<sup>20</sup> This body, formed by First Nations and governmental authorities, is responsible for designing, managing and implementing federal Government health programmes for First Nations. This collaborative effort is unique and valuable. During discussions with authorities and First Nations, concerns were raised about addressing issues in off-reserve watersheds that seriously affected reserves' drinking water services.

39. The government of Alberta has a water protection system, including the Water Act and initiatives as part of the Water for Life strategy. However, feedback from affected communities in Alberta raises concerns about transparency and access to information, especially following incidents such as the tailings pond spill at the Kearl oil sands mine, owned by Imperial Oil. The fact that the companies themselves conduct environmental impact assessments contradicts policies. Increased government involvement may therefore be necessary in order to address the power imbalance between rights holders and the corporate sector.

### **3. Jurisdiction of Indigenous Peoples over water**

40. Reserves fall under federal jurisdiction, and Indigenous Peoples living in urban areas depend on the provinces and territories for water and sanitation. The water sources that provide First Nations communities with drinking water are not under their jurisdiction.

41. Under the natural resources transfer acts of 1930, provinces such as Alberta, Saskatchewan and Manitoba were granted jurisdiction over natural resources and Crown lands, which raised significant concerns about Indigenous rights to water.<sup>21</sup> In practice, under these acts, control of lands and legislation over resource extraction was handed to the provinces. Indigenous Peoples claim that as a treaty partner of First Nations and Métis in these provinces, the federal Government did not have jurisdiction to hand over control of these natural resources and that the acts created a jurisdiction paradox.

42. Recently, two provinces confirmed their jurisdiction over natural resources, through the Alberta Sovereignty within a United Canada Act and the Saskatchewan First Act.<sup>22</sup> Indigenous Peoples allege that these laws create a divide between provinces and their obligations to consult with First Nations, honour treaty commitments and respect Indigenous legal systems. In their experience, as a result, governments and companies often label First Nations as stakeholders concerning their lands and waters.

43. In a submission, a First Nation stated that while federal and provincial governments shifted responsibility onto each other for land, resource and water issues, Indigenous waters were being harmed with impunity, in violation of the treaties and the United Nations Declaration on the Rights of Indigenous Peoples.

### **4. First Nations clean water bill**

44. In 2019, Neskantaga First Nation, Curve Lake First Nation and Tataskweyak Cree Nation filed a national class action lawsuit against Canada, alleging that it had failed to ensure safe drinking water. In 2021, a settlement was reached, including a commitment by the

<sup>19</sup> See <https://www2.gov.bc.ca/gov/content/environment/air-land-water/water/water-planning-strategies>.

<sup>20</sup> See <https://www2.gov.bc.ca/gov/content/health/about-bc-s-health-care-system/partners/health-authorities/first-nations-health-authority>.

<sup>21</sup> For example, for information about the Alberta Natural Resources Act, see <https://open.alberta.ca/publications/natural-resources-transfer-agreement>.

<sup>22</sup> See <https://www.alberta.ca/alberta-sovereignty-within-a-united-canada-act> and <https://www.saskatchewan.ca/government/news-and-media/2022/november/01/province-introduces-the-saskatchewan-first-act>.

Government to repeal the Safe Drinking Water for First Nations Act, of 2013, and develop and introduce proposed replacement legislation in consultation with First Nations by December 2022.<sup>23</sup>

45. Following the settlement, in 2022 the federal Government undertook a process to replace the repealed legislation. According to officers, in 2022, Canada engaged with First Nation rights holders and organizations to develop legislation on drinking water and wastewater. Consultation drafts were shared for community review, and an updated draft was shared for feedback. In 2023, Bill C-61, on “An Act respecting water, source water, drinking water, wastewater, and related infrastructure on First Nations lands”, was introduced in the House of Commons.<sup>24</sup>

46. However, several representatives from First Nations expressed concerns that deserve to be considered. These concerns include the lack of clear recognition of the rights of First Nations and their jurisdiction over their lands and water sources, as required by United Nations Declaration on the Rights of Indigenous Peoples, and the need to include a binding requirement to guarantee the minimum national standards on water and sanitation.

47. Similarly, representatives from some First Nations conveyed their conviction that the proposed legislation violated their treaties, placing them in a position whereby they had full responsibility but lack funding or authority. Despite recognizing that the bill could help with water treatment on reserves, they maintained that it did not adequately safeguard the water sources or ensure sufficient water, and emphasized that the consultation undertaken by the Government did not entail their free, prior and informed consent, as required by United Nations Declaration on the Rights of Indigenous Peoples.

## **B. Intersection between the right to adequate housing and the rights to water and sanitation**

48. The right to adequate housing has been protected by Canadian law since 2019 with the adoption of the National Housing Strategy Act.<sup>25</sup> This right includes having access to services such as clean water and sanitation. Indigenous Peoples and other marginalized communities in Canada are more likely to be homeless or live in unstable housing.

49. The Special Rapporteur witnessed the existence of homeless encampments in Vancouver and Toronto. The Canadian Human Rights Commission stated that homeless encampments had grown across the country during the coronavirus disease (COVID-19) pandemic, noting that Indigenous Peoples were overrepresented among the homeless population across Canada. In Toronto, representatives of civil society working with people living in encampments explained that many of them were Indigenous persons, survivors of the residential schools system, who had physical and mental health challenges. Serious deficiencies in drinking water and sanitation services were also reported.

50. The Special Rapporteur reminds all orders of government that encampment residents are rights holders and should have access to water, sanitation and health support.

51. Furthermore, after visiting Nunavut and Nunatsiavut in 2022, the Federal Housing Advocate identified overcrowding as a key housing problem that led to unsafe living conditions and serious consequences on health, such as the spread of tuberculosis.<sup>26</sup>

52. Similar concerns have been raised in Métis communities, which have some of the lowest housing outcomes among Canadians. The descendants of the Métis people who were

<sup>23</sup> The First Nations Drinking Water Settlement website is available at <https://firstnationsdrinkingwater.ca/index.php/about-us/>.

<sup>24</sup> See <https://www.parl.ca/legisinfo/en/bill/44-1/c-61>.

<sup>25</sup> See <https://laws-lois.justice.gc.ca/eng/acts/n-11.2/FullText.html>.

<sup>26</sup> See Office of the Federal Housing Advocate, *Federal Housing Advocate’s Observational Report: Inuit Housing* (Ottawa, Canadian Human Rights Commission, 2023).



forcibly displaced from their lands in 1927 are still living on road allowances are precariously housed and are provided with minimal infrastructure, without water and sanitation.<sup>27</sup>

53. The Special Rapporteur emphasizes the recommendations made in 2009 by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, that specific funding should be directed to groups vulnerable to discrimination, and that a coordinated national strategy for reducing homelessness should be adopted that links short-term measures with longer-term measures.<sup>28</sup>

## VI. Impact of extractive and other industries on water sources

### A. Toxic discharges by mining and other industries

54. Mining is a water-intensive industry that can significantly affect aquatic ecosystems and water availability for communities. It also generates toxic pollutants and waste that can harm water quality. Instances in Canada include the release of heavy metal-laden sludge into rivers and the deliberate dumping of metals.

55. An example of risks that became a reality happened in 2014 in British Columbia, when the tailings dam at Mount Polley mine, owned by Imperial Metals, collapsed.<sup>29</sup> The release of 25 million cubic metres of tailings effluent contaminated Polley and Quesnel Lakes with harmful substances, severely affecting access for First Nations communities to sacred lands, water and fishing.<sup>30</sup> Despite a federal investigation under way, Imperial Metals has faced no legal repercussions to date. In 2022, the same company was granted an interim permit, until June 2025, to discharge effluent directly into Quesnel Lake. The permit is currently being amended.

56. The testimonies of Grassy Narrows First Nation in Ontario were particularly harrowing. The 1,600 people in this community in northern Ontario, who depended on the river for their traditional way of life and sustenance, were victims of a massive discharge of mercury that still affects them today. In the 1960s, a pulp and paper mill discharged some 20,000 pounds of mercury into the river over a period of eight years. By the 1970s, the fish in the river were so contaminated that the provincial government banned their commercialization.

57. The consequences of the water contamination on the physical and mental health of the people of Grassy Narrows First Nation are well documented. One comprehensive study found 37 specific health symptoms associated with mercury poisoning. Rates of depression and mental health concerns are high: 27.4 per cent of adolescents have attempted suicide, or 41.2 per cent of girls and 10.7 per cent of boys. A recent community health assessment found that 33 per cent of mothers in the community had reported losing a close friend or family member to suicide.<sup>31</sup>

58. In 2017, the Province of Ontario enacted the English and Wabigoon Rivers Remediation Funding Act, and established a trust of \$85 million to fund the assessment and

<sup>27</sup> Displaced Métis who resorted to developing communities on unused portions of land along the sides of roads became known as “road allowance people”. These communities were not connected to services or infrastructure, such as running water and electricity.

<sup>28</sup> A/HRC/10/7/Add.3, paras. 99 and 101.

<sup>29</sup> See <https://imperialmetals.com/our-operations/mount-polley-mine/breach-overview>.

<sup>30</sup> See Steven H. Emerman, *Bridging the Gap: Towards Best International Standards on Mine Waste Safety in British Columbia* (Vancouver, BC Mining Law Reform; Ottawa, Mining Watch Canada, 2022).

<sup>31</sup> Mergler and others, “The contribution across three generations of mercury exposure to attempted suicide among children and youth in Grassy Narrows First Nation, Canada”.

remediation of contaminants.<sup>32</sup> However, no river system remediation has yet occurred, according to the information received.

59. In 2018, the Grassy Narrows First Nation Land Declaration was issued, in which Grassy Narrows First Nation declared a large portion of their territory an Indigenous Sovereignty and Protected Area.<sup>33</sup> They denounced industrial activities worsening mercury contamination and environmental degradation and sought broad changes in land-use direction over those lands under provincial legislation. However, since then, the government of Ontario has granted approximately 4,000 mining claims within the lands of Grassy Narrows First Nation.<sup>34</sup> There are also proposals to store highly radioactive waste in the headwaters of the Wabigoon River.<sup>35</sup>

60. In 2021, Grassy Narrows First Nation sued the provincial government for granting nine exploration permits to three companies without their free, prior and informed consent.<sup>36</sup>

61. Concerns have been raised regarding the increasing use by the mining industry and Government of the global transition to renewable energy to justify advancing mining in sensitive ecosystems. For example, a proposed regional hub for lithium extraction in Québec could affect eskers, a geologically crucial feature for important drinking water sources. Additionally, there are plans to expand mining into the world's second-largest peatland complex, in an area known as the Ring of Fire in Ontario. These ecosystems are essential for the recharge cycle and provide water to areas far beyond the immediate project site.

62. Lastly, the Special Rapporteur wishes to stress that mining sites and wastes frequently require long-term monitoring and water treatment, for decades or even perpetually. Canada has 10,000 orphaned or abandoned mines that could threaten groundwater and surface water. According to information received, despite efforts for more than 20 years, the country lacks a complete inventory of these mines.<sup>37</sup>

## B. Oil and gas

63. The Special Rapporteur was troubled by testimonies from First Nations about oil pollution in the Alberta oil sands, home to 23,000 Indigenous persons.

64. At 170 billion barrels, the Alberta oil sands are the world's third-largest proven oil reserve. There are approximately 120 active projects, owned by major oil companies and producing 2.6 million barrels daily.<sup>38</sup>

65. The projects include the extraction of bitumen and heavy oil, sometimes through mining or intensive drilling technologies, including fracking. In 2019, mining consumed almost 58 billion gallons of water.<sup>39</sup>

66. These activities have an impact on the Athabasca and Peace Rivers and Cold Lake. However, the impact extends beyond the borders of the oil sands. The Athabasca River flows into Lake Athabasca at the Peace-Athabasca Delta, which appears in the Ramsar List of Wetlands of International Importance and is located in Wood Buffalo National Park, a United Nations Educational, Scientific and Cultural Organization (UNESCO) world heritage

<sup>32</sup> Ontario provincial government, "Mercury contamination in the English and Wabigoon Rivers near Grassy Narrows and Wabaseemoong Independent Nations", 6 December 2023.

<sup>33</sup> Available at <https://freegrassy.net/grassy-narrows-land-declaration-bans-all-industrial-logging/>.

<sup>34</sup> See Maan Alhmidi, "'We were poisoned once before': Ontario First Nations voice concern over mining claims", *Toronto Star*, 19 July 2023.

<sup>35</sup> See Brett Forester, "First Nations leaders continue to oppose Ontario nuclear waste burial projects", *CBC News*, 1 March 2024.

<sup>36</sup> See Michelle Karlenzig, "Grassy Narrows suing Ontario for handing out 'exploratory permits' on treaty territory", *APTN News*, 17 November 2021.

<sup>37</sup> See MiningWatch Canada, "Finally! New national inventory for orphaned and abandoned mine sites", 10 May 2017.

<sup>38</sup> See Stephen Leahy, "This is the world's most destructive oil operation – and it's growing", *National Geographic*, 11 April 2019.

<sup>39</sup> See Nicholas Kusnetz, "Canada's tar sands: destruction so vast and deep it challenges the existence of land and people", *Inside Climate News*, 21 November 2021.

site. In 2023, given the risks from petroleum activities, UNESCO recommended that Canada update its action plan for the world heritage site.<sup>40</sup>

67. Extracting bitumen through open-pit mining produces large amounts of waste collected in ponds. Along the banks of the Athabasca River is one of the world's largest collections of tailings waste ponds, large lakes containing hydrocarbons, naphthenic acids and heavy metals.<sup>41</sup> As of 2018, the tailings ponds had a volume of 1.3 trillion litres – enough waste to fill more than 500,000 Olympic swimming pools – which was expected to increase by 300 billion litres over the following two decades.<sup>42</sup> Although the release of this water is prohibited, heavy metals can seep into groundwater. A 2020 report found multiple cases of seepage from oil sands tailings ponds into groundwater, expected to contaminate surface waters.<sup>43</sup>

68. The Special Rapporteur is deeply concerned by information indicating that the federal Government is considering developing regulations to release treated tailings water into adjacent waters.<sup>44</sup> Such action would be of major concern for downstream communities already affected by spills, such as the Athabasca Chipewyan First Nation and Mikisew Cree First Nations. Unnoticed for nine months, the unreported toxic seepage from the tailings pond at Kearl, owned by Imperial Oil, shows the risks faced by the communities and explains a lack of trust in the authorities and the system in place.<sup>45</sup> The Special Rapporteur reiterates the recommendation of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes that the Government consider potential environmental and health risks in developing regulatory criteria for the treatment and discharge of process-affected water.<sup>46</sup>

69. The Alberta oil sands operations are significantly affecting the health and well-being of local communities, with reports of rising carcinogens in sediments and waterways emanating from tar sands mining activity in what researchers have called slow industrial genocide.<sup>47</sup> Acid emissions have led to precipitation containing high levels of nitric and sulfuric acid, which affects lakes, streams and wetlands by making the waters more acidic. The results is more aluminium absorption from the soil, which is carried into lakes and streams, making waters toxic to crayfish, clams, fish and other aquatic animals.<sup>48</sup> Elevated levels of toxic pollutants, including arsenic, mercury and polycyclic aromatic hydrocarbons, have been found in the flesh of moose, ducks and muskrats in the region.<sup>49</sup> In 2010, elevated levels of mercury, lead, nickel and other heavy metals were found in the river downstream of oil sands development and in snow samples from Lake Athabasca, with water pollution levels higher than normal downstream of oil sands mining.<sup>50</sup>

70. The Special Rapporteur met Indigenous Peoples and civil society based near the oil sands, including five First Nations chiefs, Indigenous women and elders. The women and the elders tearfully explained how they had observed changes in river water quality, meat quality, the availability of wild fish and the deaths of animals over the previous decades. They shared

<sup>40</sup> UNESCO, World Heritage Centre, “Wood Buffalo National Park”, State of Conservation Information System. Available at <https://whc.unesco.org/en/soc/4339>.

<sup>41</sup> Leahy, “This is the world’s most destructive oil operation”. See also <https://spaceref.com/science-and-exploration/athabasca-oil-sands-as-seen-from-space/>.

<sup>42</sup> Jodi McNeill, “Oilsands tailing ponds are a nasty challenge that can’t be ignored”, *Calgary Herald*, 30 April 2018.

<sup>43</sup> See Commission for Environmental Cooperation, *Alberta Tailings Ponds II: Factual Record regarding Submission SEM-17-001* (Montreal, 2020).

<sup>44</sup> See Environment and Climate Change Canada, “Oil sands mining effluent”, 15 September 2023.

<sup>45</sup> See Alienor Rougeot, “From toxic leak to cover-up: unravelling the Imperial Oil scandal in Alberta’s oil sands”, Environmental Defence, 27 November 2023.

<sup>46</sup> [A/HRC/45/12/Add.1](#), para. 111 (i).

<sup>47</sup> Jennifer Huseman and Damien Short, “‘A slow industrial genocide’: tar sands and the Indigenous Peoples of northern Alberta”, *International Journal of Human Rights*, vol. 16, No. 1 (January 2012).

<sup>48</sup> Christina Nunez, “Acid rain, explained”, *National Geographic*, 28 February 2019.

<sup>49</sup> Kusnetz, “Canada’s tar sands”.

<sup>50</sup> Erin N. Kelly and others, “Oil sands development contributes elements toxic at low concentrations to the Athabasca River and its tributaries”, *Proceedings of the National Academy of Sciences of the United States of America*, vol. 107, No. 37 (14 September 2010).

how their sacred rivers had undergone irreversible changes and how the animals had been contaminated, had died or had disappeared.

71. First Nations explained that Fort Chipewyan – a community located on the western shore of Lake Athabasca, downstream of the oil sands – had high rates of all types of cancers. A report by the Alberta Cancer Board in 2009 concluded that the number of cancer cases observed in Fort Chipewyan in the period 1995–2006 was higher than expected for all cancers and recommended an investigation into the possible exposure of the population to potentially carcinogenic agents that could be removed.<sup>51</sup> According to the information received, an independent investigation has not yet been undertaken by Canada or Alberta. The doctor who raised concerns about the rising number of cases was dismissed in 2015.<sup>52</sup>

72. The Special Rapporteur has noted that First Nations and civil society have understandably grown tired and sceptical of the authorities after years of meetings and consultations that have not resulted in any changes. Instead, industries continue to operate under the same rules and have even expanded their operations.

73. According to representatives of First Nations, once a project is approved, monitoring focuses solely on the environment, not human health.

74. Furthermore, First Nations have informed the Special Rapporteur that owing to a lack of trust in the water quality, people are resorting to drinking expensive bottled water, which indicates a failure to comply with the human right to water because the criterion of acceptability is not fulfilled.

75. The Special Rapporteur met with representatives of companies operating in the oil sands, who explained the process of conducting environmental impact assessments before the approval of a new project. He is concerned about the lack of strategic environmental assessments in areas with exponentially increasing productive development, mostly related to extractive industries posing high levels of risk, especially with many new ventures planned. The absence of strategic evaluation hinders the identification of the combined impact of the various activities, which is essential for assessing the true impact of the industries.

76. Likewise, it is worrisome that it is the companies themselves that conduct environmental impact studies. The companies argue that they have the best technical knowledge of their projects. This undermines the responsibilities and obligations of the federal Government and the provincial government towards the people whose lives depend on the affected water sources. Furthermore, the companies have been given the responsibility of engaging in consultations with First Nations, creating a clear power imbalance with the communities, who see their claims and knowledge marginalized despite being the most knowledgeable about the impact that they experience.<sup>53</sup>

77. Given the lack of information and distrust of public institutions and private companies, First Nations have organized a water-monitoring programme. The Special Rapporteur highlights the work done in the Athabasca River basin, entailing observation by different generations over time, and considers that it should be part of an overall assessment of the changes that the watershed has undergone since the area's industrialization.<sup>54</sup>

<sup>51</sup> See Yiqun Chen, *Cancer Incidence in Fort Chipewyan, Alberta: 1995–2006* (Edmonton, Alberta Cancer Board, 2009).

<sup>52</sup> See National Post, “Doctor who raised alarm about cancer rates in Fort Chipewyan let go by health board in surprise dismissal”, 12 May 2015; and Jamie Malbeuf, “Doctor who raised concerns about cancer rates downstream from oilsands wins whistleblower award”, CBC News, 10 March 2021.

<sup>53</sup> See Janelle Marie Baker and Clinton N. Westman, “Extracting knowledge: social science, environmental impact assessment, and Indigenous consultation in the oil sands of Alberta, Canada”, *Extractive Industries and Society*, vol. 5, No. 1 (January 2018).

<sup>54</sup> See Keepers of the Water, “Proud hosts of this Indigenous-led water quality monitoring program!”, 15 December 2022.

## C. Dams

78. The Special Rapporteur received information about the Site C dam project in British Columbia, which has significant implications for local and Indigenous communities in British Columbia and Alberta.

79. The dam will flood 83 kilometres of the Peace River and its tributaries, submerging Indigenous burial grounds, traditional hunting and fishing areas, and habitats for over a hundred species, some of which are at risk of extinction.

80. The Government remarks that reports commissioned by experts assure the dam is safe. However, the testimonies received show that people feel insecure, pointing to geotechnical challenges, such as slope instability on the river's banks, which poses serious risks for downstream communities and worsens water problems for Indigenous communities.

81. The dam's construction has raised concerns among civil society, Indigenous Peoples and experts. For instance, in 2016, more than 250 university professors across Canada, including legal scholars and water and environmental scientists, issued a statement expressing concerns.<sup>55</sup>

## D. Pipelines

### 1. Line 5 pipeline to the Great Lakes

82. The Special Rapporteur received concerning information about the risks posed by the Line 5 pipeline to the Great Lakes, which are home to 20 per cent of the world's surface fresh water and provide drinking water to more than 40 million people. The Line 5 pipeline transports up to 22.7 million gallons of crude oil and natural gas liquids daily from Canada, through the United States of America, to Ontario, crossing straits and traversing Indigenous territories. Risks of catastrophic oil spills due to the aged infrastructure and the strong currents in the straits are well documented.<sup>56</sup>

83. However, the company plans to re-route the existing pipeline in Wisconsin and build a tunnel under the Straits of Mackinac in Michigan, which has raised opposition from civil society, academia, businesses, local government and Indigenous Peoples, among others.<sup>57</sup>

84. The Special Rapporteur reiterates the recommendation made by the Special Rapporteur on the rights of Indigenous Peoples that Canada cease construction or operation of pipelines until the free, prior and informed consent of the Indigenous Peoples affected was secured.<sup>58</sup>

### 2. Coastal GasLink pipeline project in Wet'suwet'en territory

85. The Special Rapporteur visited Wet'suwet'en territory, which is affected by the Coastal GasLink pipeline project. The 670-kilometre route of the pipeline passes through the territories of more than 30 Indigenous communities, including 190 kilometres through Wet'suwet'en territory, dividing it into two. It is one of the largest private sector projects in Canadian history, and is expected to be in operation for more than 30 years.<sup>59</sup> The \$14.5 billion pipeline is designed to carry natural gas obtained in British Columbia to a terminal on the province's north coast for export.

86. The pipeline affects more than 600 streams, creeks, rivers and lakes, relevant for the Wet'suwet'en water consumption and use. It also seriously affects their traditional practices

<sup>55</sup> See <https://sitecstatement.wordpress.com/home-2/>.

<sup>56</sup> Michigan Department of Environment, Great Lakes, and Energy, "Michigan State of the Great Lakes: 2020 report" (2021), p. 23; and United States District Court for the Western District of Wisconsin, *Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation v. Enbridge Energy Company*, Case No. 19-cv-602-wmc, Opinion and Order, 16 June 2023.

<sup>57</sup> See <https://www.oilandwaterdontmix.org/>.

<sup>58</sup> A/HRC/54/31/Add.2, para. 96 (a).

<sup>59</sup> Amnesty International, *'Removed from Our Land for Defending It': Criminalization, Intimidation and Harassment of Wet'suwet'en Land Defenders* (London, 2023).

and livelihoods, such as fishing, hunting and gathering. During his visit, the Special Rapporteur observed how the First Nation draws water from the Wedzin Kwa (Morice) River, which they consider sacred and their kin.

87. The Special Rapporteur met with the Wet'suwet'en people, who reject the pipeline project. They explained that the consultation process failed to follow the United Nations Declaration on the Rights of Indigenous Peoples and human rights standards, as their institutions and traditions were not considered.

88. During construction, the pipeline project has incurred accumulated fines of more than \$800,000, primarily from the British Columbia Environmental Assessment Office for environmental violations. In 2020, Office inspectors found that Coastal GasLink had failed to properly survey 68 wetlands before starting construction.<sup>60</sup>

89. The criminalization of those who opposed the pipeline is of major concern. In 2019, the Supreme Court of British Columbia granted the company an interlocutory injunction preventing rights holders from attempting non-violently to stop the pipeline construction in their territory. Operating under the injunction, the Critical Response Unit of the Royal Canadian Mounted Police and the company's private security officers intimidated and harassed rights holders.<sup>61</sup> According to information received, as of August 2024, eight Wet'suwet'en and other Indigenous land defenders had proceedings ongoing against them, and one further had been sentenced.<sup>62</sup>

90. There is a concern that recent bills introduced to protect against "critical infrastructure sabotage" may suppress the growing movement against fossil fuels, in which Indigenous Peoples play a central role, by silencing dissent against planned or existing projects.<sup>63</sup> The Special Rapporteur heard concerns from civil society about the potential for such action to become the new normal when opposing large-scale projects.

91. Throughout his visit, the Special Rapporteur found that the rights of Indigenous Peoples to peaceful protest and freedom of expression had been breached through criminalization, repression and persecution, which undermined the trust and credibility of the reconciliation process. He reiterates the recommendation by the Special Rapporteur on the rights of Indigenous Peoples that Canada halt the criminalization of Indigenous human rights defenders.<sup>64</sup>

### 3. Trans Mountain pipeline in Secwepemc territory

92. The Trans Mountain pipeline expansion involved building a new pipeline from the Alberta oil sands to British Columbia, increasing its capacity from 300,000 to 890,000 barrels per day.<sup>65</sup> The pipeline expansion affects, among others, Secwepemc territory and waters. Despite opposition from the Secwepemc assembly and a lack of consent from 14 of the 17 bands in the territory, the project has continued.

93. The Tiny House Warriors Movement was formed by First Nations to protect the territory from the pipeline.<sup>66</sup> They built tiny houses along the pipeline construction route. In a meeting with the Special Rapporteur, they explained that no treaties had ever been signed between Canada and the Secwepemc, meaning that their territory was unceded. They stressed that they had never been consulted and they had never granted their consent, in accordance

<sup>60</sup> Betsy Trumpener, "A pipeline runs through it: Coastal GasLink is crossing hundreds of waterways in northern B.C.", CBC News, 20 February 2021.

<sup>61</sup> See communication CAN 2/2022, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27260>.

<sup>62</sup> Amnesty International, "Canada: Wet'suwet'en Chief Dsta'hyl declared first Amnesty International prisoner of conscience held in Canada", 31 July 2024.

<sup>63</sup> A/HRC/54/31/Add.2, para. 66.

<sup>64</sup> *Ibid.*, para. 96 (k). See also CERD/C/CAN/CO/21-23, paras. 19 and 20.

<sup>65</sup> For information on the Trans Mountain Expansion Project, see Trans Mountain, "Past project: TMEP".

<sup>66</sup> See Nic Sanford Belgard, "Tiny House Warriors for the homelands", Indigenous Peoples Power Project, 13 November 2021.

with the United Nations Declaration on the Rights of Indigenous Peoples, for the pipeline to pass through their territory.

94. In April 2022, the Committee on the Elimination of Racial Discrimination sent a letter to Canada under its early warning and urgent action procedure, seeking information on the Government's support for the pipeline, which the Committee explained could breach the obligations of Canada under the International Convention on the Elimination of All Forms of Racial Discrimination.<sup>67</sup>

## VII. Access to and acceptability of water in Inuit communities

95. Inuit residents make up approximately 85 per cent of the population of Nunavut Territory.<sup>68</sup> The Inuit have rights guaranteed protected by the Nunavut Land Claims Agreement.<sup>69</sup> The territorial government represents the interests of both Inuit and non-Inuit residents. Inuit organizations, which have responsibilities under the constitutionally protected Agreement, represent the Inuit as an Indigenous People and are directly involved in planning and developing public policy. The transfer of power from Canada to Nunavut is a significant achievement and represents a new era for Nunavut that could grant more autonomy to the Inuit.<sup>70</sup>

96. The Special Rapporteur visited Iqaluit and, given the vast extent of Nunavut and its 25 communities, held an online meeting with all municipalities, at which water issues related to the communities in the territory were discussed. He observed that providing safe and clean drinking water in Nunavut was a serious challenge for geographic, climatic and economic reasons that resulted in an infrastructure gap, and he witnessed how well organized the communities were and how Inuit traditional knowledge persisted despite the legacy of colonization.

97. Residential water use in Nunavut is the lowest per capita in Canada, at 153 litres per capita per day, compared to an average of 220 litres per capita nationwide.<sup>71</sup> The drinking water systems for all 25 communities in Nunavut include a treatment plant and delivery trucks. Given that only 14 per cent of residents have water piped to their homes, most people rely on water transported by trucks for access to water.<sup>72</sup>

98. Additionally, 85 per cent of the water treatment infrastructure in Nunavut is in a poor condition. While 92 per cent of the population receive drinking water from treatment plants, the capacity of facilities is lower than elsewhere in Canada, with treatment facilities relying more on chlorine, given the difficulties in maintaining and repairing infrastructure. Some 40 per cent of wastewater pipes are in a poor or very poor condition, compared to 10 per cent nationwide.<sup>73</sup>

99. During meetings, public officers and water technicians explained that the poor condition of the pipelines was currently a problem, making plant maintenance very expensive. They observed that a renewable energy plan would be crucial for the operation of the plants, noting that all other provinces and territories in Canada had such a plan.

100. Regarding wastewater, 22 communities in Nunavut have trucked wastewater systems.<sup>74</sup>

101. During a meeting with the Nunavut Water Board, representatives highlighted the importance of a water management strategy for Nunavut. Nunavut Territory is the only

<sup>67</sup> See [https://fafia-afai.org/wp-content/uploads/2022/05/INT\\_CERD\\_ALE\\_CAN\\_9554\\_E.pdf](https://fafia-afai.org/wp-content/uploads/2022/05/INT_CERD_ALE_CAN_9554_E.pdf).

<sup>68</sup> Statistics Canada, "Inuit: fact sheet for Nunavut", 29 March 2016.

<sup>69</sup> See <https://nlca.tunngavik.com/>.

<sup>70</sup> See Crown-Indigenous Relations and Northern Affairs Canada, "Nunavut devolution", 5 March 2024. Available at <https://www.rcaanc-cirnac.gc.ca/eng/1352471770723/1537900871295>.

<sup>71</sup> Nunavut Tunngavik Incorporated, "Nunavut's infrastructure gap: executive summary", September 2020.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

Canadian jurisdiction without a comprehensive water management strategy. The government of Nunavut is prioritizing the development of a water management strategy and a subsequent action plan to improve water management in the territory.

102. It is crucial to support the Nunavut government and Inuit organizations in building policy and capacity to face the challenges that already exist, as well as the unprecedented challenges of climate change and associated allocation of budget. The thawing of permafrost and rising sea levels are salinizing traditional water sources close to the sea. Moreover, Inuit knowledge, values and practices need to be integrated into the governance approach to be developed in the Nunavut water strategy, with the effective participation of Inuit communities.

103. The Special Rapporteur received testimonies from rights holders and government officials who explained that water was still collected directly from rivers, lakes and ice in many small communities. During a meeting with Inuit elders, the Special Rapporteur learned about the traditional water systems used in the past and how some were still used in the communities.

104. The Special Rapporteur emphasizes that while infrastructure is important, Inuit traditional knowledge and the ways of transmitting this knowledge, particularly intergenerational knowledge, must be considered in developing public water-related policies. In this regard, women, elders and youth should have guaranteed access to decision-making. The role of women is crucial, as demonstrated during the water crisis in Iqaluit in the winter of 2021, when, as confirmed by testimonies received, women provided early warnings about the change in water quality before anyone else had noticed the problem.

## VIII. Water advisories

105. The Special Rapporteur noticed that public officials, Indigenous Peoples and activists commonly used the term “water advisory”. In Canada, drinking water advisories are issued to warn people not to drink water that may be unsafe. Advisories are issued by First Nations in their communities and by provincial, territorial or local governments off-reserve. Short-term water advisories typically last less than a year, while long-term advisories are in place for more than a year.<sup>75</sup>

106. Water advisories are issued to warn against various types of water use, and are categorized into different types.<sup>76</sup> The first type is the “boil water” advisory, issued to combat biological contamination from inadequate sanitation and treatment. This advisory type can be resolved using readily available and affordable disinfection methods. The other categories are “do not consume” and “do not use” advisories, which indicate more severe toxic contamination, such as from heavy metals.

107. The Special Rapporteur emphasizes that the systematic or frequent non-availability of drinking water for any of the above-mentioned reasons breaches the human right to drinking water. In these cases, public information on the non-potability of water is issued, but it is not sufficient to meet the obligation to ensure safe drinking water for all.

108. The Special Rapporteur believes that long-term water advisories indicate a systemic failure to provide access to drinking water. The information received shows that these advisories mainly affect Indigenous Peoples and non-Indigenous rural, isolated populations in remote areas. On the other hand, the data indicates that people living in urban areas face only occasional advisories as accidents or breakdowns are quickly resolved.

109. It is important to highlight that despite the presence of water advisories, the Special Rapporteur has received testimonies indicating that many homes in First Nations communities are not connected to water supply networks and, therefore, do not have access to tap water.

<sup>75</sup> Indigenous Services Canada, “About drinking water advisories”, 19 February 2021. Available at <https://www.sac-isc.gc.ca/eng/1538160229321/1538160276874>.

<sup>76</sup> Ibid.



110. In Ontario, the Special Rapporteur met with a representative of the Attawapiskat First Nation, which has struggled with access to clean water for more than 20 years. The community relies on reverse osmosis systems for its drinking water. Still, in 2019, harmful levels of trihalomethanes and haloacetic acids were found in the tap water owing to the interaction of chlorine with high levels of organic materials.<sup>77</sup> Local authorities declared an emergency and advised against using hot water because of the risks of skin infections. Even though there is no water advisory in place, the community's human right to water is still not being fulfilled.

111. Another example is the Six Nations of the Grand River Reserve in Ontario, which lacks guaranteed access to safe drinking water. As a result of the lack of infrastructure, only 10 per cent of the population have access to potable water. According to information received, the community depends on an aquifer from which companies extract 3.6 million litres of water daily without the consent of the Indigenous Peoples. Residents must collect water from a public stand for cleaning and hygiene and buy bottled water, often from the same companies that extract their water. Some draw water from wells and pay to clean the systems owing to a lack of sanitation.

112. The Special Rapporteur emphasizes that while there is a significant concern with regard to issues of water access and quality, there is also a lack of attention to sanitation services, particularly in reserves. The Special Rapporteur received testimonies about First Nations communities where the maintenance costs of septic tanks are difficult to cover.

113. Comparing the data on water advisories over the past few years, the Special Rapporteur has learned that the number of long-term water advisories has decreased significantly because of the government efforts. However, the federal Government has failed to meet the original commitment to end all long-term drinking water advisories by 2021, and has extended that deadline to 2026.

114. In this regard, the case of the Neskantaga First Nation, which has been under a long-term water advisory for 29 years, is paradigmatic.

115. The Neskantaga First Nation is an Anishinaabe community located in northern Ontario. During a meeting with the Special Rapporteur, representatives from this First Nation described how the Government relocated the community in the late 1980s, with the federal Government promising to build drinking water infrastructure. However, the promise was never fulfilled, and the community has been subject to a water advisory since 1995. In 2013, the chief declared a state of emergency owing to a mental health crisis that involved 7 suicides, including 2 children, and 27 attempted suicides. In 2019 and 2020, the community had to be evacuated to the city owing to problems with the water system.

116. Following the class action lawsuit filed by Neskantaga in 2019, the Government agreed in 2021 to an \$8-billion settlement, including measures to address and compensate for the lack of safe drinking water on many First Nations reserves.<sup>78</sup> However, the long-term water advisory in the Neskantaga First Nation community continues and will turn 30 years old in February 2025 if the situation remains unchanged.

117. During meetings, British Columbia authorities acknowledged that water advisories in the province were partly a result of the growing challenges posed by the impact of climate change and the limited capacities of small local operators. Common reasons for issuing the advisories were microbiological exceedances, source contamination and lack of maintenance.

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<sup>77</sup> See Jorge Barrera, "Wishing for a summer with clean water in Attawapiskat", CBC News, 25 July 2019.

<sup>78</sup> See <https://firstnationsdrinkingwater.ca/>.

## **IX. Free, prior and informed consent of Indigenous Peoples: a gap in legislation that jeopardizes the human rights of Indigenous Peoples to water and sanitation**

118. The Special Rapporteur welcomes the endorsement by Canada of the United Nations Declaration on the Rights of Indigenous Peoples and its commitment to the implementation thereof. However, the Special Rapporteur considers this step forward in protecting Indigenous rights to be insufficient, because it has not resulted in concrete legal policies that implement the right of Indigenous Peoples to respect for the principle of free, prior and informed consent.

119. In 2021, Canada passed the United Nations Declaration on the Rights of Indigenous Peoples Act, a national law intended to advance the implementation of the United Nations Declaration on the Rights of Indigenous Peoples at the federal level. However, this law does not fully reflect the Declaration, as the principle of free, prior and informed consent has not been fully implemented. Consultation with Indigenous Peoples continues to be based on a procedural obligation of the Crown to do so under the Constitution, which does not give Indigenous Peoples the power to reject actions.

120. The gap between the promises under the Act and the Constitution leaves Indigenous Peoples without full legal protection, forcing them into costly litigation or potential criminalization. As a result, resource-extraction and other land-based projects are able to proceed without the consent of the Indigenous Peoples concerned, negatively affecting their water and livelihoods.

121. The consequences are alarming, as the Special Rapporteur observed. An example is when the Wet'suwet'en hereditary chiefs of British Columbia were consulted for two years regarding the Coastal GasLink pipeline. They decided not to give consent, owing to the environmental risk. However, the company signed agreements with five band councils, State-created entities under the Indian Act.<sup>79</sup>

122. During meetings with British Columbia authorities, the Special Rapporteur learned about developments in the province, including the incorporation of the United Nations Declaration on the Rights of Indigenous Peoples into provincial law, the United Nations Declaration on the Rights of Indigenous Peoples Act and efforts to align existing provincial legislation with the Declaration, and funding for the participation of Indigenous Peoples in decision-making. However, recent events in Wet'suwet'en territory highlight the need for clear laws and policies on obtaining free, prior and informed consent.

123. In meetings with industry representatives, the Special Rapporteur confirmed that the Government has delegated to companies the responsibility of consulting affected communities, which is alarming, as it leaves rights holders in such a sensitive issue in the hands of corporations.

124. The Special Rapporteur observes that receiving contracts or funds from the companies involved does not imply consent per se. This underscores the unequal power relationship and the need for effective legislation to ensure the right of Indigenous Peoples to respect for the principle of free, prior and informed consent.

## **X. Climate change**

125. Looking ahead, Canada must pay attention to the foreseeable impact of climate change on water resources. The annual average temperature in the country has increased at twice the global average rate.<sup>80</sup> In this regard, the Special Rapporteur collected data during his visit that can be summarized as follows.

126. Many Canadian cities rely on water from the Rocky Mountains. Climate change-induced phenomena such as melting glaciers, droughts, high temperatures and

<sup>79</sup> Amnesty International, *'Removed from Our Land for Defending It'*, p. 29.

<sup>80</sup> See Environment and Climate Change Canada, "Temperature change in Canada", 25 July 2024.

wildfires increase the vulnerability of water supplies. Indigenous Peoples in the region expressed concern, given that their territories were located along the Rocky Mountains. Calgary, the largest city in Alberta, imposed “Stage 1” outdoor water restrictions on 15 August 2023, owing to worsened drought conditions.

127. According to information, climate emergencies in Alberta and drought had a devastating impact on the water of residents, including Indigenous Peoples, leading to water shortages and displacement to southern cities. The Little Red River Cree Nation, whose homes burned in wildfires in May 2023, still live in hotels, potentially making them the first persons in Canada who have been internally displaced owing to climate change.

128. In Nunavut, even communities far in the northern Arctic raised concerns about the salinization of their water sources and the early loss of permafrost affecting the water cycle and the quality of the drinking water. Notably, the Canadian Arctic faces a disproportionately high risk, given that the average temperature in northern Canada has increased at approximately three times the global average warming rate.<sup>81</sup>

129. Despite the commitment of Canada to international agreements such as the Paris Agreement, there is growing consensus that its insufficient efforts to meet emissions targets could have catastrophic effects on human rights, especially regarding access to water for vulnerable groups.<sup>82</sup>

130. The Special Rapporteur praises the fact that Indigenous Peoples have been included in climate change decision-making under the Climate Preparedness and Adaptation Strategy of British Columbia, and expects it to be actionable.

## XI. Canadian companies operating overseas

131. Many Canadian companies operate globally, including mining companies operating in 98 countries. Some 60 per cent of the world’s mining companies are based in Canada, with a significant impact on the human rights to water and sanitation.

132. The Special Rapporteur commends Canada for the creation of the Canadian Ombudsperson for Responsible Enterprise. However, to enhance its effectiveness, the Ombudsperson should be given the powers to compel the companies that it investigates to submit documents and give testimony; to implement a Canadian regulation for corporate responsibility abroad; and to reinforce protection mechanisms.

133. Similarly, mandatory legislation is necessary in Canada on human rights and environmental due diligence, following the Guiding Principles on Business and Human Rights and the Maastricht Principles on the Human Rights of Future Generations. Such legislation should apply to all human rights and require companies to prevent human rights violations by undertaking due diligence measures and supporting access to remedies in Canadian courts.

## XII. Conclusions and recommendations

### A. Conclusions

**134. The Special Rapporteur acknowledges the political organization of Canada and the efforts made to ensure the human rights to safe drinking water and sanitation. However, the lack of efficient and coordinated efforts among jurisdictions is detrimental to the enjoyment of these rights. Furthermore, the lack of justiciability of these rights leaves right holders unable to seek redress they are threatened or violated.**

<sup>81</sup> See *ibid.*, and Crown-Indigenous Relations and Northern Affairs Canada, “Arctic and Northern Policy Framework”, 22 September 2022.

<sup>82</sup> See Christopher Campbell-Durufflé, “The Canadian Net-Zero Emissions Accountability Act: a tepid response to the Paris Agreement”, *UBC Law Review*, vol. 56, No. 2 (November 2023).

135. The State party retains the obligation to comply with international human rights and should ensure that regional and local authorities monitor and implement human rights without discrimination. As consistently emphasized by treaty bodies in their general comments and in their review of Canada, delegation of the responsibility for implementing human rights to regional or local authorities does not absolve the Government of its responsibility.

136. The Special Rapporteur believes there is an urgent need for an ecosystem approach to water planning and management at the basin level for sustainable water management, particularly to prevent the increasing risks of floods and droughts due to climate change, which will require the participation of government entities at all levels.

137. Although legislative advances have been made, significant barriers exist to realizing the human rights of Indigenous Peoples to water and sanitation. The lack of clear regulations on free, prior and informed consent hinders progress and puts Indigenous Peoples at risk.

## **B. Recommendations**

138. The Special Rapporteur recommends that Canada:

(a) Publicly recognize the human rights of all to safe drinking water and sanitation, without any type of discrimination;

(b) Enact federal, provincial and territorial legislation recognizing the human rights to safe drinking water and sanitation and ensuring their effective implementation;

(c) Ensure that the financial means necessary to guarantee the human rights to safe drinking water and sanitation are in place when water and sanitation responsibilities are transferred to municipal or Indigenous authorities in reserves;

(d) Develop and implement a coordinated national action plan on water and sanitation on the basis of human rights obligations, specifically focusing on Indigenous Peoples and impoverished and marginalized groups, and including issues such as climate change and water-source conservation and protection;

(e) Enact a federal law to provide the Canada Water Agency with the powers and competencies to lead nationally in monitoring the fulfilment of the human rights to safe drinking water and sanitation, including a strong complaints mechanism that is accessible to all rights holders nationwide without discrimination;

(f) Promote institutions at the basin level to develop sustainable management and appropriate climate change adaptation strategies in transboundary basins shared between several provinces or territories;

(g) Enact a federal law and implement policies that effectively guarantee the right of Indigenous Peoples to respect for the principle of free, prior and informed consent, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples, with full respect for their traditional governance and avenues of participation, also in accordance with the Declaration;

(h) Enact legal reforms to recognize the jurisdiction of First Nations over the water sources and aquatic ecosystems on which they depend, in order to guarantee their effective participation in decision-making in matters relating to their water sources, in accordance with articles 18, 19, 25 and 26 of the United Nations Declaration on the Rights of Indigenous Peoples;

(i) Establish binding legal requirements to guarantee that the minimum national standards on drinking water and sanitation are applied in First Nations reserves and Inuit and Métis communities;

- (j) **Transfer the competencies with regard to water and sanitation services on reserves to the Indigenous authorities, ensuring the investment and funds necessary for managing these services under Canadian regulatory standards;**
- (k) **Reform mining laws to create territories incompatible with mining, on the basis of Indigenous and community land-use priorities;**
- (l) **Establish a mechanism for federal, provincial and territorial governments to address jurisdictional overlap and to intervene in cases of pollution or potential pollution of water sources of First Nations off-reserve;**
- (m) **Promote policy and institutional reforms to establish a human rights-based approach to ecosystem development in basins that cross multiple provinces and territories in order to ensure the well-being and sustainability of aquatic and related ecosystems and to create adaptation strategies at the basin level to mitigate the effects of droughts and floods caused by climate change;**
- (n) **Reinforce legal and regulatory measures at the provincial level to ensure that water-quality monitoring mechanisms include wells in rural areas and off-reserve water sources of First Nations reserves;**
- (o) **Hold accountable without delay the companies responsible in cases of toxic contamination, such as in the cases of the collapse of the tailings dam at Mount Polley mine and the discharge of mercury affecting Grassy Narrows First Nation; restore ecosystems, with effective measures to secure water quality and end food insecurity resulting from the contamination of fishery wildlife and food changes; provide those affected with adequate monitoring, medical care and compensation; and, in the case of Grassy Narrows First Nation, ensure that promises to create a mercury care home and treatment centre and to comprehensively reform the Mercury Disability Board are not delayed;**
- (p) **Ensure investments, funds and human resources in Arctic regions adapted to climatic conditions and the specific impact of climate change, with the Nunavut government ensuring the effective participation of the Inuit and integrating their knowledge into the governance of water and sanitation;**
- (q) **Suspend large-scale mining and oil and gas pipeline projects, such as mining in the Ring of Fire and the Coastal GasLink, Trans Mountain and Line 5 pipelines, until the necessary processes of assessing the impact of long-term risks to human rights, the environment and biodiversity, and guaranteeing the right of the Indigenous Peoples concerned to respect for the principle of free, prior and informed consent, have been completed;**
- (r) **In the case of projects already under way that have caused and are causing a serious impact on health, as denounced by the affected peoples, such as in the Alberta oil sands exploitations, revoke any licence for new projects or for the release of treated tailings water, and develop independent studies on public health, with the participation of those affected, to provide remedy and rehabilitation;**
- (s) **Approve due diligence legislation for Canadian companies operating abroad, including a due diligence obligation with regard to all human rights and support and protection for whistle-blowers, workers, human rights defenders, community representatives and all rights holders to guarantee their security and access to remedy in Canadian courts;**
- (t) **Strengthen the mandate of the Canadian Ombudsperson for Responsible Enterprise by increasing its independence and providing it with the investigatory powers necessary to compel companies to submit documents and give testimony;**
- (u) **Ensure that Indigenous women have equal representation and consultation status in all decision-making processes, bearing in mind their traditional role as water caretakers;**
- (v) **Stop processes and strategies of harassment, intimidation, illegal surveillance and criminalization of land and water defenders – such as those under way**

**in the territories of Wet'suwet'en – and drop the criminal charges against them, and implement the recommendations of the Special Rapporteur on the rights of Indigenous Peoples, since maintaining this type of strategy contradicts the national commitment to reconciliation.**

**139. In areas with existing extractive or industrial operations that pose significant environmental and social risks, the Special Rapporteurs recommends that the Government:**

**(a) Ensure that a strategic environmental assessment is conducted before new mining or industrial concessions are granted, in order to identify and evaluate synergies and the combined impact of such activities at the basin level;**

**(b) Assess beforehand and monitor the risks and impact on public health and the social impact, using a human rights-based approach;**

**(c) Ensure the participation of the local population, including Indigenous Peoples, by respecting their governance mechanisms and their right to respect for the principle of free, prior and informed consent.**

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