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PROGRAM

Submission on the combined eighth and ninth periodic reviews of Canada to the United Nations Committee on the Elimination of Discrimination against Women (“the Committee”)

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Human Rights Watch and the International Human Rights Program at the University of Toronto’s Faculty of Law submit this memorandum to the Committee on the occasion of its consideration of Canada’s compliance with the *Convention on the Elimination of All Forms of Discrimination against Women* (“the Convention”). This submission is based on Human Rights Watch research and highlights two issue areas of concern: policing failures and abuses that contribute to Indigenous women’s and girls’ vulnerability to violence and access to safe water and sanitation on First Nation reserve communities in Ontario. It responds to paragraphs 16 and 17 of the Committee’s list of issues in relation to Articles 2, 12, 13(c), 14(1), 14(2)(h), and 15(1) of the Convention. It also identifies questions and includes proposed recommendations to the Government of Canada.

Police Abuses and Failures to Investigate Violence Perpetrated against Indigenous Women (Articles 2, 14(1), 15(1))

In March 2015, the Committee released a report under Article 8 of the Optional Protocol.¹ It found that Canada was committing “grave violations” of its international human rights commitments.² The Committee concluded that Canada’s failure to act diligently to respond to the violence perpetrated against Indigenous women and girls, including police failures to investigate, violated the rights of Indigenous women victims of violence under articles 1, 2(c) (d) (e) and (f), 3, 5(a), 14(1), and 15(1) of the Convention.³ The CEDAW inquiry report and its 38 recommendations to Canada further support and affirm the findings and recommendations of the Inter-American Commission on Human Rights in its January 2015 report on missing and murdered Indigenous women and girls in British Columbia.⁴ They also echo many of Human Rights Watch’s findings and recommendations in its 2013 report,

¹ Committee on the Elimination of Discrimination Against Women, *Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women*, March 2015, CEDAW/C/OP.8/CAN/1[CEDAW inquiry report].

² *Ibid.* at para 214.

³ *Ibid.* at para 211.

⁴ *Missing and Murdered Indigenous Women in British Columbia, Canada*, Inter-Am Ct HR OEA/Ser.L/V/II. Doc. 30/14 (21 December 2014).

“Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia.”⁵

We note that at Canada’s last review before the Committee in 2008, the Committee urged Canada to examine and respond to State failures to investigate cases of missing and murdered Indigenous women.⁶ Since the CEDAW inquiry report was released, both the Human Rights Committee as a matter of priority and the Committee on Economic, Social, and Cultural Rights have made recommendations to Canada on the issue.⁷ We urge the Committee to critically examine the status of Canada’s implementation of the Committee’s inquiry report recommendations and make a priority recommendation to Canada on the subject.⁸

Since 2012, Human Rights Watch has investigated, reported on, and stayed engaged in domestic advocacy related to State failures to diligently respond to cases of missing and murdered Indigenous women and girls. Human Rights Watch’s 2013 report was based on 87 interviews with Indigenous women and girls and other stakeholders. It documented the failures of the Royal Canadian Mounted Police (RCMP) in British Columbia to protect Indigenous women and girls from violence, including abusive policing practices, such as excessive use of force and physical and sexual assault. The report also documented the inadequate police complaints and oversight mechanisms in Canada that do not fully protect against police immunity.

In 2016, Human Rights Watch investigated a range of policing-related abuses and failures to respond to violence against Indigenous women and girls in the province of Saskatchewan. Human Rights Watch plans to release the full findings and recommendations of the Saskatchewan investigation by the end of this year. Initial findings from this research,

⁵ Human Rights Watch, *Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada*, February 2013, online: HRW <<https://www.hrw.org/report/2013/02/13/those-who-take-us-away/abusive-policing-and-failures-protection-indigenous-women>>.

⁶ Committee on the Elimination of Discrimination against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women*, 7 November 2008, UN Doc. CEDAW/C/CAN/CO/7 at para 32 [2008 CEDAW Concluding observations].

⁷ Human Rights Committee, *Concluding observations on the sixth periodic report of Canada*, 13 August 2015, UN Doc. CCPR/C/CAN/CO/6 at para 9: The State party should, as a matter of priority, (a) address the issue of murdered and missing indigenous women and girls by conducting a national inquiry, as called for by the Committee on the Elimination of Discrimination Against Women, in consultation with indigenous women’s organizations and families of the victims; (b) review its legislation at the federal, provincial and territorial levels, and coordinate police responses across the country, with a view to preventing the occurrence of such murders and disappearances; (c) investigate, prosecute and punish the perpetrators and provide reparation to victims; and (d) address the root causes of violence against indigenous women and girls); and Committee on Economic, Social, and Cultural Rights, *Concluding observations on the sixth periodic report of Canada*, 23 March 2016, UN Doc. E/C.12/CAN/CO/6 at para 34 [2016 CESCR Concluding observations].

⁸ Committee on the Elimination of Discrimination against Women, *List of issues in relation to the combined eighth and ninth periodic reports of Canada*, 10 March 2016, UN Doc. CEDAW/C/CAN/Q/8-9 at para 17 [CEDAW List of Issues].

however, provide further evidence of a deeply fractured relationship between law enforcement and Indigenous communities encompassing both municipal police services and the RCMP. At this point in the investigation, a similar pattern of allegations of mistreatment and abuse against Indigenous women found in the 2013 report is emerging, along with serious concerns as to whether the police are diligently protecting women and girls from violence. Human Rights Watch will provide the Committee with the full findings, once published.

There has been limited progress made in Canada to ensure that police are accountable for their policing failures affecting Indigenous women and girls. Despite law and police reform, it is still the case that in some jurisdictions allegations of serious police misconduct may result in police investigating police. Given the central role that policing failures and police accountability mechanisms play in the State's overall failure to protect Indigenous women and girls, we recommend that the issues of police accountability and fear of police retaliation be raised in dialogue with the Canadian State authorities. Please find below information on the status of the implementation of three CEDAW inquiry report recommendations and suggested questions and recommendations for the Government of Canada.

(1) Measures to establish a national public inquiry into cases of missing and murdered Indigenous women and girls that must be fully independent from the political process and transparent⁹

The National Inquiry into Missing and Murdered Indigenous Women and Girls formally commenced its work on September 1, 2016.¹⁰ The terms of reference are publicly available and five commissioners have been appointed.¹¹

While the Government of Canada is to be commended for establishing a national public inquiry, the vague terms of reference create uncertainty regarding the full scope of the inquiry.¹² The government has reassured civil society that the police abuses and policing failures will be investigated,¹³ but the terms of reference do not expressly require the Commissioners to inquire into the role of police.

⁹ Ibid.

¹⁰ Kerry Benjoe, "Day 1 of the National Inquiry on Missing and Murdered Indigenous Women and Girls has arrived" (1 September 2016), online: <<http://leaderpost.com/news/local-news/day-1-of-the-national-inquiry-on-missing-and-murdered-indigenous-women-and-girls-has-arrived>>.

¹¹ Government of Canada, "National Inquiry into Missing and Murdered Indigenous Women and Girls" (2016), online: AANDC <<https://www.aadnc-aandc.gc.ca/eng/1448633299414/1448633350146>>.

¹² Indigenous and Northern Affairs Canada, "Terms of Reference" (2016), online: <<https://www.aadnc-aandc.gc.ca/eng/1470422455025/1470422554686>> [Terms of Reference].

¹³ Joanna Smith, "Policing under scrutiny at inquiry over missing, murdered indigenous women", *National Observer* (2 August 2016), online: <<http://www.nationalobserver.com/2016/08/02/news/policing-under-scrutiny-inquiry-over-missing-murdered-indigenous-women>>.

How can the Government of Canada guarantee that the terms of reference require the Commissioners to inquire into and report on the role of police in the crisis of violence?

There is no clear indication that the Commissioners will interpret the terms of reference to include an examination of the role of police services, including allegations of police abuse and mistreatment and policing failures, in connection to the systemic issue of missing and murdered Indigenous women and girls. It is crucial that the police—including all police forces in Canada across federal, provincial, municipal, and First Nations jurisdictions—be examined in this inquiry and that this examination include investigating allegations that police failed to adequately respond to incidents of violence, as well as allegations that police personnel were themselves perpetrators of, or otherwise complicit in, incidents of violence.¹⁴

How can the Government of Canada guarantee that the provinces and provincial and municipal police forces will cooperate with the Commissioners so that the Commissioners will be able to inquire into and report on underlying causes of violence, including police mandates and practices across federal, provincial, and municipal jurisdictions?

In addition to limitations in the terms of reference, the Commission may face jurisdictional challenges if they do investigate the role of policing. The provinces are under no legal obligation to provide any data or information about their police mandates, practices, and public police complaints mechanisms to the Commissioners. Provincial and municipal police forces and provincial independent investigations offices derive their authority from provincial legislation.¹⁵ As such, the provinces can inquire into their police forces, whereas a federal entity, such as a public inquiry, does not have the express legal authority to do so.¹⁶ For the Commissioners to be able to inquire into and report on the role of police and police complaints commissions (also called independent investigation offices) across Canadian jurisdictions, the provinces need to cooperate with the Commissioners and require provincial and municipal police forces to similarly cooperate and disclose information to the Commissioners.

To date, only Ontario has an Order-in-Council that obliges Ontario to participate in the inquiry.¹⁷

In light of limitations in both the terms of reference and jurisdictional reach of the Commission, there is a risk that it will be unable to provide comprehensive, cross-

¹⁴ Human Rights Watch, Meghan Rhoad, “Dispatches: Abuse of Canada’s Indigenous Women Should Be Properly Investigated” (22 July 2016), online: <<https://www.hrw.org/news/2016/07/22/dispatches-abuse-canadas-indigenous-women-should-be-properly-investigated>>.

¹⁵ See e.g. Ontario’s *Police Services Act*, RSO 1990, c P.15 at Part I, Municipalities.

¹⁶ Empowered under the federal *Inquiries Act*, RSC 1985, c I-11.

¹⁷ Ontario, “Order in Council”, 6 September 2016, online: <<https://news.ontario.ca/mag/en/2016/09/order-in-council-3.html>>.

jurisdictional recommendations on improving police response to the violence and independent police complaints mechanisms.

(2) Cases of missing and murdered women are duly investigated and prosecuted¹⁸

Canada reports that the RCMP has already updated its reporting policies to improve data collection, but does not provide an update on police forces in provincial jurisdictions; can Canada confirm that the RCMP, as well as provincial and municipal police forces, are mandated to collect ethnicity data?

In 2014 and 2015, the RCMP released national operational overview documents that contain the most current government data on missing and murdered Indigenous women and girls, including data on investigations.¹⁹ While this is the most comprehensive data the State has ever released on the issue, there are methodological constraints that limit its utility. The inconsistent data collection mandates (some police forces do not collect ethnicity data) suggests that the RCMP data is not fully representative of all the cases of missing and murdered Indigenous women and girls in Canada.²⁰ Canada noted to the Committee that Statistics Canada is working with the RCMP to improve its data collection and that the RCMP “has already” updated its reporting policies to improve data collection;²¹ Canada did not expressly state that police forces are now required to collect ethnicity-disaggregated data²²—which UN treaty bodies, including the Committee in its inquiry report, have recommended to Canada.²³

Without accessible, ethnicity-disaggregated data on cases of missing and murdered Indigenous women and girls, it is difficult to assess if such cases are duly investigated and

¹⁸ CEDAW List of Issues, *supra* note 8 at para 17.

¹⁹ Royal Canadian Mounted Police, “Missing and Murdered Aboriginal Women: A National Operational Overview” (May 2014), online: <<http://www.rcmp-grc.gc.ca/en/missing-and-murdered-aboriginal-women-national-operational-overview>> [2014 RCMP Operational Overview]; Royal Canadian Mounted Police, “Missing and Murdered Aboriginal Women: 2015 Update to the National Operational Overview” (June 2015), online: <<http://www.rcmp-grc.gc.ca/en/missing-and-murdered-aboriginal-women-2015-update-national-operational-overview>> (see also: Statistics Canada, “Criminal victimization in Canada, 2014” by Samuel Perreault, in Catalogue No 85-002-X (Ottawa: Statistics Canada, 2015) at 17).

²⁰ 2014 RCMP Operational Overview, *ibid.* at 3-4, 21; Human Rights Watch, Letter to the Human Rights Committee (1 July 2015).

²¹ Committee on the Elimination of All Forms of Discrimination, *Consideration of reports submitted by States parties under article 18 of the Convention*, 13 April 2015, UN Doc. CEDAW/C/CAN/8-9 at para 132 [2015 Canada report]; Committee on the Elimination of Discrimination against Women, *Information received from the Government of Canada on the measures taken in response to the inquiry concerning Canada of the Committee of the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, 19 May 2016, UN Doc. CEDAW/C/op.8/CAN/3 at para 17 [2016 Canada report].

²² *Ibid.*

²³ See especially CEDAW inquiry report, *supra* note 1 at para 216, Data Collection (i).

prosecuted. In Human Rights Watch’s research, family members consistently expressed dissatisfaction at the police response to cases and described their difficulty in accessing a remedy for what many considered to be police neglect. Human Rights Watch believes that ethnicity-disaggregated data collection should be done by police forces across Canada for victims of crime, as well as for complainants of police misconduct with their voluntary participation in order to identify potential bias in policing.

(3) Measures to break the circle of distrust between the authorities and Indigenous communities, improve avenues of communication, and engage in a meaningful dialogue with representatives of the Indigenous community²⁴

How are the inquiry consultations going to foster trusted channels of communication and ensure that Indigenous women and girls and family members of the missing and murdered who come forward to share their stories will be protected from police retaliation?

The terms of reference authorize the Commissioners to refer information regarding police misconduct back to “the appropriate authorities”.²⁵ It is unclear what “appropriate authorities” means in the case of an allegation of police misconduct. If it means the existing police complaint mechanism at the national and provincial levels, this frequently ends up with police investigating other police. This type of police feedback loop may exacerbate the distrust and fear of retaliation, and dissuade Indigenous women and girls to come forward and share their experiences of police abuse and misconduct.

Human Rights Watch has documented high levels of distrust between Indigenous women and girls and police forces, as well as alarming levels of fear of retaliation. These may be inhibiting factors to Indigenous women’s and girls’ full participation in the inquiry and deprive the inquiry of critical information. In order to rebuild trust and mitigate this fear, the Commissioners must protect participants from retaliation, including retaliation by police, and have a procedure to respond if retaliation is reported to the Commissioners.²⁶

Right to Water and Sanitation on First Nation Reserves in Ontario (Articles 2, 12, 13(c), and 14(2)(h))

Most Canadians have easy access to sufficient, affordable water and adequate sanitation. They benefit from Canada’s superior water quality that is ranked among the highest in the

²⁴ CEDAW List of Issues, supra note 8 at para 17.

²⁵ Terms of Reference, supra note 13.

²⁶ Human Rights Watch, “Letter from Human Rights Watch to the Government of Canada on National Inquiry into the Murders and Disappearances of Indigenous Women and Girls” (26 February 2016), online: <<https://www.hrw.org/news/2016/02/26/letter-human-rights-watch-government-canada-national-inquiry-murders-and>>.

world.²⁷ This is not the case for Indigenous people who reside on First Nation²⁸ reserve lands in Ontario.²⁹ We believe that this differential access to safe water and adequate sanitation contravenes Indigenous peoples' rights to water and adequate sanitation and impacts Indigenous women's cultural practices, as they are widely understood within their communities to be the keepers of water.

Human Rights Watch investigated the impacts of poor water and sanitation conditions in First Nations reserve communities in Ontario between July 2015 and April 2016. Its June 2016 report, "Make It Safe: Canada's Obligation to End the First Nations Water Crisis" documents the lack of access to safe water and adequate sanitation on reserve communities in Ontario and the particular impact this has on First Nations women.³⁰ In addition to 111 qualitative interviews with community stakeholders, Human Rights Watch conducted a water and sanitation survey with 99 households, home to 352 people in Batchewana, Grassy Narrows, Neskantaga, Shoal Lake 40, and Six Nations of the Grand River First Nations. Our findings indicate that while the water crisis on reserve can be resolved and the Government of Canada is aware of the extent of the problem (having already invested billions of dollars over decades),³¹ the extent of the existing barriers to safe water access indicate that this is a systemic issue. Barriers include the absence of binding water regulations on First Nations reserves, lack of infrastructure investments, persistent underfunding and arbitrary budgeting for water and wastewater systems, and the lack of capacity and support for water operators on First Nation reserves.

In its 2008 Concluding observations, the Committee acknowledged with regret that Indigenous women continue to live in impoverished conditions, which include a lack of access to clean water.³² At the time the Committee recalled its previous 2003 recommendations and called on Canada to eliminate discrimination against Indigenous women and girls and allow for the equal enjoyment of their human rights to physical and psychological well-being.³³ In February 2016, the Committee on Economic, Social, and Cultural rights noted its concern about First Nation peoples' restricted access to safe

²⁷ The Conference Board of Canada, "Water Quality Index", online: <<http://www.conferenceboard.ca/hcp/details/environment/water-quality-index.aspx>>.

²⁸ This report will use the term Indigenous and First Nations interchangeably; please note that they have distinct meanings in Canadian law. A First Nations person is an Indigenous person, who is subject to federal law that provides for First Nations reserve communities and governance structures on reserve. Métis and Inuit peoples are other groups of formally recognized Indigenous peoples under Canadian law.

²⁹ Office of the Auditor General of Canada, Report of the Commissioner of the Environment and Sustainable Development to the House of Commons, Chapter 5: Drinking Water in First Nations Communities, 2005 at 26, online: <<http://www.oag-bvg.gc.ca/internet/docs/c20050905ce.pdf>>.

³⁰ Human Rights Watch, *Make It Safe Canada's Obligation to End the First Nations Water Crisis*, June 2016, online: <<https://www.hrw.org/report/2016/06/07/make-it-safe/canadas-obligation-end-first-nations-water-crisis>>.

³¹ INAC, "2014-2015 Financial Overview" (July 2014), online: <http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ-AI/STAGING/texte-text/fin_overview_2014_1406217230189_eng.pdf>; INAC, "2014-2015 Report on Plans and Priorities, First Nations Water and Wastewater Action Plan" (2015), online: <<https://www.aadnc-aandc.gc.ca/eng/1420658157414/1420658186376>>.

³² 2008 CEDAW Concluding observations, *supra* note 6 at para 43.

³³ *Ibid.* at para 44.

drinking water and sanitation, as well as the lack of water regulations applicable to First Nation reserve lands.³⁴ The Committee urged Canada to ensure access to safe drinking water and sanitation for First Nations through a process that involves their active participation in water planning and management and considers their economic and cultural rights to water.³⁵

Notably, Canada's eighth and ninth periodic reports to the Committee did not raise the issues of Indigenous women's lack of access to safe water and adequate sanitation.³⁶ While the Committee raised them in its list of issues, requesting information about the challenges that Indigenous women and girls face, including safe drinking water and sanitation,³⁷ Canada has not subsequently provided any information on these issues. We urge the Committee to raise the issue of First Nation women's access to safe drinking water and adequate sanitation with government authorities in consideration of First Nation women's rights to water, health, adequate living conditions, and sanitation, as well as their right to participate in all aspects of their cultural life, including their traditional practice as keepers of the water. We have included below questions and proposed recommendations to Canada for your consideration.

(1) Lack of regulations on First Nation reserve lands

Will the Government of Canada make a verbal commitment to act immediately to fill the discriminatory regulatory gap on accessible, safe water on reserves and involve First Nations women, as customary keepers of the water, in the process?

Canada does not have a uniform national standard for drinking water. Water and wastewater systems are regulated under provincial or territorial law.³⁸ For First Nation reserves under federal jurisdiction, these provincial laws do not apply and are non-enforceable on reserve lands.³⁹ This results in unequal government protection of water quality and access, which is a direct form of discrimination against First Nations peoples living on reserves.

While the Government of Canada took an initial step to regulate drinking water and wastewaters standards on First Nation reserves by passing the *First Nations Safe Drinking Water Act* in 2013, the federal government has not yet adopted regulations to implement the law—perpetuating a regulatory gap.⁴⁰ At present, key Indigenous stakeholders, including

³⁴ 2016 CESCR Concluding observations, *supra* note 7 at para 43.

³⁵ *Ibid.* at para 44.

³⁶ 2015 Canada report and 2016 Canada report, *supra* note 21.

³⁷ CEDAW List of Issues, *supra* note 8 at para 16.

³⁸ See David R. Boyd, *No Taps, No Toilet: First Nations and the Constitutional Right to Water in Canada*, 57:1 McGill LJ (2011) at 96-100.

³⁹ See *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5 at s 91(24).

⁴⁰ *Safe Drinking Water for First Nations Act* (SC 2013, c 21), November 1, 2013, online: <<http://laws-lois.justice.gc.ca/PDF/S-1.04.pdf>>; INAC, Water and Wastewater Infrastructure Investment Report: April 2012-

the Assembly of First Nations, are calling for the repeal of the law and the passage of a new law in consultation with First Nations. This government's efforts should be consistent with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and supported by funding to First Nations to maintain and operate safe water and wastewater systems.⁴¹

The regulatory gap has had tangible effects that contribute to the water and sanitation crisis on reserves. While the federal government has funded the building and operation of water and wastewater systems on reserve lands, consultants engaged to build systems and system operators on reserve lands are not legally obliged to comply with safety regulations, exposing communities and households to what has been deemed by Health Canada to be "potentially high risk situations."⁴²

There is a need to close the regulatory gap. The failure to do so is a form of discrimination with First Nations people on reserve living without comparable protections and access to safe drinking water and sanitation as Canadians living off reserve.

(2) Poor quality drinking water and problems with sanitation

How will Canada engage caregivers, who are principally First Nations women, on improving access to safe water on reserves?

Poor drinking water quality is a major concern that jeopardizes the health, standard of living, and sanitation of people living on First Nation reserves. As of July 2016, there were 132 drinking water advisories in effect in 92 First Nations communities across Canada, excluding British Columbia.⁴³ Water advisories indicate that the water is unfit to consume, or has to be boiled.⁴⁴ Human Rights Watch's June 2016 research looked specifically at Ontario's water advisories. Of the 90 drinking water advisories in place in 2015 in Ontario

March 2013, online: <<https://www.aadnc-aandc.gc.ca/eng/1100100035002/1100100035004>>; note also that while there is a lack of binding, enforceable regulations, there are non-binding protocols on the design, construction, operation, maintenance and monitoring of drinking waters systems on First Nation reserves (INAC, "Protocols for Decentralised Water and Wastewater Systems in First Nations Communities" (2010), <https://www.aadnc-aandc.gc.ca/eng/1100100034991/1100100034996#chp1_2>; INAC, "Protocol for Centralised Drinking Water Systems in First Nations Communities" (2010), online: <<https://www.aadnc-aandc.gc.ca/eng/1100100034998/1100100035000>>; INAC, "Protocol for Centralised Wastewater Systems in First Nations Communities" (2010), online: <<https://www.aadnc-aandc.gc.ca/eng/1100100035002/1100100035004>>.

⁴¹ Assembly of First Nations, Safe Drinking Water for First Nations, Resolution no. 76/2015, December 10, 2015; see e.g. discussions among First Nations technical operators and leaders, Chiefs of Ontario First Nations Working Group on Water Meeting, March 23, 2016, notes on file with Human Rights Watch.

⁴² See letter dated November 1996, on file with Human Rights Watch.

⁴³ Health Canada, "Drinking Water Advisories in First Nations communities" (2016), online: <<http://www.hc-sc.gc.ca/fniah-spnia/promotion/public-publique/water-dwa-eau-aeep-eng.php>>.

⁴⁴ Health Canada, "Drinking water and wastewater" (2016), online: <<http://www.hc-sc.gc.ca/fniah-spnia/promotion/public-publique/water-eau-eng.php#type2>>.

First Nations communities, 55 (68 percent) had been in place since 2010 or earlier, and 29 (36 percent) over 10 years.

Water advisories indicate potential water contaminants that may or may not be removed from the water by boiling – such as coliform, *Cryptosporidium*, *E.coli*, cancer-causing Trihalomethanes, uranium, and high sulfur content. These contaminants have also been reported in households serviced by private household wells, or those that rely on trucked water or rain water to fill cisterns. Such contaminants can have serious health impacts, from rampant skin infections and serious gastrointestinal disorders, to increased risk of cancer. The water advisories are instated to protect against the health risk. However, Human Rights Watch found that First Nations people who have been under water advisories for decades sometimes choose to consume the water when completing tasks such as brushing teeth because of the impediments to accessing safe water—such as the distance to safe water access points and the time to boil water.

Human Rights Watch found that poor water conditions, particularly for communities under a water advisory, are an additional burden upon everyday caregiving activities. This can make a simple task into an hours-long undertaking with significant impacts on health and hygiene. The impact of poor water is particularly felt by caregivers, who are principally women, and low-income families, which are often headed by single-mothers. First Nations women explained to Human Rights Watch how tasks, such as washing baby bottles or bathing children, can take hours due to time spent collecting water from safe access points and then boiling and transferring the water. Additionally, women reported the strained balance between caregiving and formal employment, such as the stress of having to routinely miss work to take care of sick children and go to doctor appointments.

Many of the households surveyed by Human Rights Watch reported problems related to skin infections, eczema, psoriasis, or other skin problems that they thought either were related to or exacerbated by the water conditions in their home. They also reported changing hygiene habits because of this by limiting baths or showers. This response has a direct impact on hygiene and therefore health.⁴⁵

Human Rights Watch also found that many homes had at least one individual with a special need for higher quality water –the elderly, infants, pregnant women, and people with disabilities and chronic illnesses. The lack of access to safe water and sanitation has a disproportionately negative impact on these people, including those recovering from surgeries or other health conditions.

⁴⁵ Muileboom, J. et al, “Community-associated methicillin-resistant *Staphylococcus aureus* in northwest Ontario: A five-year report of incidence and antibiotic resistance”, *Can J Infect Dis Med Microbiol*, v 24(2), 2013, online: <<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3720013/#b15-jidmm24e042>>.

(3) Impact on First Nations peoples' spiritual life and the exercise of cultural rights

How does Canada plan to incorporate First Nations customary knowledge and practices related to water as it responds to the regulatory gap and engage First Nations women in particular in this process?

The Committee should be mindful of how water and sanitation conditions directly affect First Nation women's ability to exercise their cultural rights. Many First Nations women experience and understand water through a cultural framework where water is a living and spiritual entity. Many first Nations people in Ontario consider water to be sacred and speak of water in terms of a spiritual and cultural relationship. In this relationship, water purifies, cleanses, and gives life to the environment and all living things.⁴⁶ By custom in many First Nations communities, women are the keepers and spiritual protectors of the water—they are the water carriers and life givers who speak for the water.⁴⁷ Their teachings guide First Nations peoples on how to care for their waters and inform water ceremonies, customary laws, and ways of teaching First Nations children about their communities' special relationship with water.⁴⁸

The impact of poor water and sanitation can impede First Nation's women capacity to fully participate in their cultural life as keepers of the water, including the use of water for health, sanitation, and ceremonial purposes. It is important to also consider First Nations peoples' cultural and spiritual relationship with water when considering the impact of poor quality and access to water on reserves and how best to implement a governmental response to the problem. The Economic, Social and Cultural Rights Committee has maintained that the right to water entitles people to water that is culturally acceptable, which for Indigenous peoples, as provided for in the UNDRIP, includes the ability to maintain and strengthen a spiritual relationship with water.⁴⁹

The government's relationship with First Nations peoples is often mired by a lack of cultural awareness. This is true in the context of the water crisis, where Elders believe that their cultural knowledge about water is not considered in decision-making by the community, or

⁴⁶ See e.g. AORMC Water Working Group, *Anishinabek Traditional Knowledge & Water Policy Report* (2009), online: <<http://www.onwa.ca/upload/documents/water-report.pdf>>.

⁴⁷ Ibid; Josephine Mandamin, Water Grandmother, Mnidoo Minising Elders Council Gathering. Whitefish River First Nation, September 15, 2015.

⁴⁸ Chiefs of Ontario, Water Declaration of the Anishnaabek, Mushkewoguk and Onkewhonwe in Ontario, October 2008, online: <<http://static1.squarespace.com/static/54ade7e4b07588aa079c94/t/54ea50c2e4b0feaa4772eaaf/1424642242464/COO-water-declaration-revised-march-2010.pdf>>.

⁴⁹ See UN Committee on Economic, Social and Cultural Rights, *General Comment No. 15 The Right to Water*, UN Doc. E/C12/2002/11, adopted January 20, 2003, para 12(c)(i); *United Nations Declaration on the Rights of Indigenous Peoples*, adopted September 13, 2007, GA Res. 61/295, UN Doc. A/61/L.67 and Add.1 (2007) at paras 25, 32.

other public and private stakeholders, such as government and industry stakeholders.⁵⁰ Source water protection, furthermore, generally falls under provincial law. The lack of a formal, consistent pathway for First Nations peoples to engage with the provinces or third party industry stakeholders on source water protections makes it extremely difficult in practical terms for First Nations people to effectively carry out their culturally understood obligation to protect the water.

Violations of the Convention:

Canada is not meeting its obligations under the Convention. The Committee concluded in its inquiry report that Canada is contravening the rights of Indigenous women and girl victims of violence to non-discrimination (art. 2), non-discrimination in rural areas (art. 14(1)), and equality under the law (art. 3). Human Rights Watch considers Canada to have not yet taken sufficient action to meet its obligations to Indigenous women and girl victims of violence under the Convention. Additionally, Canada is struggling to meet its obligations under the Convention to First Nations women living on reserve without access to safe water and sanitation with respect to their rights to non-discrimination (art. 2), to health (art. 12), and to enjoy adequate living conditions in relation to sanitation and water supply (art. 14(2)(h)). The lack of safe water and sanitation is also linked to Indigenous women's ability to participate in cultural life (art. 13(c)). Canada should do more to the maximum of its available resources to progressively realize the elimination of all forms of discrimination with respect to these rights.

Recommendations

- 1) The Commissioners of the National Inquiry into Missing and Murdered Indigenous Women should ensure that the role of police and independent civilian complaints commissions across federal, provincial, and municipal jurisdictions are inquired into and reported on as part of the inquiry;
- 2) Inquiry Commissioners should facilitate the participation of the most marginalized Indigenous women and girls, including by establishing a procedure to respond to reported police retaliation;
- 3) Canada should actively engage First Nations women in water systems management and regulation that resolves the regulatory gap, provides resources to assist caregivers' who tend to vulnerable populations at risk from poor water and sanitation conditions, and ensures access to safe water and sanitation for all persons on reserve lands; and
- 4) Canada should ensure that First Nations women can fully participate in all aspects of their cultural and spiritual life related to water and contribute to culturally acceptable, sustainable water policy and practices on reserves.

⁵⁰ Chiefs of Ontario, *Aboriginal Traditional Knowledge & Source Water Protection: First Nations' Views on Taking Care of Water*, March 2006 at 22, 24; Anishnabek, *Anishnabek Great Lakes Round Table Gathering Final Report*, March 24-25, 2015 at 17.