

Submission on the combined eighth and ninth periodic reports of Canada to the United Nations Committee on the Elimination of Discrimination against Women

January 20, 2016

This memorandum is submitted to the United Nations Committee on the Elimination of Discrimination against Women in its pre-sessional working group discussing the list of issues for the October review of Canada. It highlights two areas of concern for the committee's consideration of the Canadian government's compliance with the Convention on the Elimination of All Forms of Discrimination against Women. First, it contains information on police abuses and failures to investigate violence perpetrated against indigenous women in British Columbia. Second, it addresses poor access to water and sanitation in First Nations communities in Ontario. These relate to CEDAW articles 2, 11, 12, 13, and 14.

Police abuses and failures to investigate violence perpetrated against indigenous women (Articles 2 and 12)

Human Rights Watch greatly appreciates the committee's long-standing attention to the levels of violence experienced by indigenous women and girls in Canada, and recognition of its disproportionate nature. The committee's inquiry concerning the murders and disappearances of indigenous women and girls in Canada under article 8 of the Optional Protocol played a critical role in raising public awareness of the severity of the problem and bringing about the government's current preparations for a national public inquiry into the violence. With the committee's review of Canada in October coming toward the beginning of the national public inquiry process, it will present an important opportunity to engage with the government on the scope and design of the inquiry. In this respect, we would recommend that the committee continue to raise the issue of police accountability, in order to ensure that the national public inquiry addresses the abuses perpetrated by police against indigenous women, as well as police failures to investigate violence perpetrated by others.

In particular, we would recommend that the committee continue to highlight the fear of retaliation that indigenous women and girls experience in the absence of effective police accountability mechanisms. In the report on its inquiry, the committee described "a continuing distrust of the police on the part of Aboriginal women and their families and a real sense of profound fear of

police retaliation if they complain or make reports of violence.”¹ The committee also wrote, “The prevailing distrust among aboriginal women is compounded by reports that the oversight bodies that investigate and punish police misconduct, abuse of authority and any other act contrary to police ethics are not sufficiently independent and effective.”²

As we have previously shared with the committee, Human Rights Watch encountered alarming levels of fear of retaliation by police among interviewees during the research for our 2013 report on police treatment of indigenous women and girls in northern British Columbia.³ Unfortunately, the same fear of retaliation may inhibit indigenous women and girls, especially those who have had previous negative experiences with police, from participating fully in Canada’s national public inquiry.

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

The average Canadian has easy access to sufficient and affordable clean water and adequate sanitation.⁴ The quality of water is strictly governed for most Canadians by provincial legislation and regulations. In stark contrast, indigenous people living in Canada’s First Nations communities experience a much different reality.⁵ According to a 2005 federal auditor general report, “[w]hen it comes to the safety of drinking water, First Nations communities do not benefit from a level of protection comparable with that of people living off reserves.”⁶ We believe this disparity has a direct impact on the human rights to water and sanitation and related rights for indigenous people living on reserves. This impact is felt distinctly by First Nations women, as traditional keepers of water and caregivers at home.

¹ United Nations Committee on the Elimination of Discrimination against Women, “Report of the inquiry concerning Canada of the Committee on 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,” March 30, 2015, CEDAW/C/OP.8/CAN/1, para. 142.

² Ibid, para. 157.

³ 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, <https://www.hrw.org/report/2013/02/13/those-who-take-us-away/abusive-policing-and-failures-protection-indigenous-women>.

⁴ Canada’s water quality is among the highest in the world, ranking 4 out of 17 peer OECD countries. The Conference Board of Canada, Water Quality Index, undated, <http://www.conferenceboard.ca/hcp/details/environment/water-quality-index.aspx> (accessed January 7, 2016). The average daily residential water use was 251 liters per person in 2011. Environment and Climate Change Canada, Residential Water Use in Canada, undated, <http://www.ec.gc.ca/indicateurs-indicators/default.asp?lang=en&n=7E808512-1> (accessed January 7, 2016). While cost of water varies greatly by province, the average monthly flat rates for water and sewer services in 2009 were \$36.13. Environment and Climate Change Canada, 2011 Municipal Water Pricing Report: Municipal Water Pricing 2009 Statistics, 2012, <http://www.ec.gc.ca/Publications/992156D4-2599-4026-9B4C-47855D26CCB8/2011MunicipalWaterPricingReport2009Statistics.pdf> (accessed January 7, 2016).

⁵ We have chosen to use “indigenous” because it is the terminology used by the United Nations and applicable human rights standards. We recognize, however, that other terms, such as “First Nations” and “Aboriginal” are commonly used in Ontario and Canada.

⁶ 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, <http://www.oag-bvg.gc.ca/internet/docs/c20050905ce.pdf>, p. 26 (accessed January 7, 2016).

The government of Canada has long been aware of the dire water and sanitation situation facing First Nations communities. Between the government’s own assessments and surveys, inquiries by expert commissions, and independent audits, there is ample evidence that First Nations communities on reserves—including in Ontario—have dramatically worse water and sanitation conditions than Canadians living off reserves. These assessments, spanning more than 20 years, include the following:

- **A 1995 survey of drinking water and wastewater treatment systems by Indigenous and Northern Affairs Canada (INAC, formerly called “Indian Affairs and Northern Development”) and Health Canada.** This survey found that about 25 percent of water-treatment systems and community sewage-treatment facilities in First Nations communities “posed significant health and safety risks” and required upgrading.⁷
- **A 1996 report by the Royal Commission on Aboriginal Peoples (RCAP).** The commission recommended that the “government of Canada provide additional resources for construction, upgrading and operation of water and sewage systems to ensure that adequate facilities and operating systems are in place in all First Nations communities within five years.”⁸ This spurred a national action plan, under which the government committed to improving infrastructure and allocating additional resources for First Nations’ water and sewage needs.⁹
- **A 2002 inquiry following the Walkerton water contamination disaster.** In 2000, drinking water in Walkerton (a non-Aboriginal community in Ontario) was contaminated with *e.coli*, resulting in seven deaths and hundreds of illnesses.¹⁰ A subsequent inquiry looked broadly at drinking water in Ontario, including in Aboriginal communities. It found that reserves had severe problems with infrastructure; training and certification of operators; testing and inspection; microbial contamination; and distribution systems.¹¹ It criticized the lack of legally enforceable standards for drinking water on First Nations reserves.

⁷ Report of the Commissioner of the Environment and Sustainable Development to the House of Commons, Office of the Auditor General 2005, Chapter 5, <http://www.oag-bvg.gc.ca/internet/docs/c20050905ce.pdf>, (accessed January 19, 2016) p. 1 citing to the 1995 report.

⁸ Canada, Royal Commission on Aboriginal Peoples, Report of the Royal Commission on Aboriginal Peoples, Volume 3: Gathering Strength: Community Services: A Health Hazard, 1996

http://www.collectionscanada.gc.ca/webarchives/20071211053819/http://www.ainc-inac.gc.ca/ch/rcap/sg/si37_e.html#3 (accessed January 19, 2016). See also, Canada, Royal Commission on Aboriginal Peoples, Report of the Royal Commission on Aboriginal Peoples, Volume 5: Renewal: A Twenty-Year Commitment, 1996,

http://www.collectionscanada.gc.ca/webarchives/20071211053728/http://www.ainc-inac.gc.ca/ch/rcap/sg/sk6_e.html (accessed January 19, 2016).

⁹ Minister of Indian Affairs and Northern Development Ottawa, Gathering Strength-Canada's Aboriginal Action Plan, 1997, <http://www.ahf.ca/downloads/gathering-strength.pdf> (accessed January 7, 2016). This was the government’s response to the 4,000 page report of the Royal Commission on Aboriginal Peoples.

¹⁰ The Honourable Dennis R. O’Connor, Part One: A Summary Report of the Walkerton Inquiry: The Events of May 2000 and Related Issues, 2002, http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/walkerton/part1/WI_Summary.pdf (accessed January 7, 2016).

¹¹ Ibid.

- **A 2001 INAC assessment.** INAC conducted another assessment in 2001, and found that nearly three-fourths of the systems on reserves posed “potential” health and safety risks to people who use them.¹²
- **A 2005 Auditor General report on drinking water in First Nations communities.** The Auditor General of Canada audited drinking water in First Nations communities, issuing a report in 2005.¹³ It concluded that “[w]hen it comes to the safety of drinking water, residents of First Nations communities do not benefit from a level of protection comparable to that of people who live off reserves.”¹⁴ It attributed this partly to the lack of laws and regulations governing drinking water in First Nations communities.¹⁵ It also found that the design, construction, operation, and maintenance of many water systems in First Nations communities were deficient, and the federal departments involved suffered management weaknesses.¹⁶
- **A 2006 report of the Expert Panel on Safe Drinking Water for First Nations.** The Minister of Indian Affairs and Northern Development and the National Chief of the Assembly of First Nations announced a “Plan of Action for Drinking Water in First Nations Communities” in 2006,¹⁷ which led to the Expert Panel on Safe Drinking Water for First Nations.¹⁸ The panel issued a report in November 2006, which found problems with capacity of water facilities and operators, and insufficient financial resources.¹⁹
- **A 2011 independent audit of water and wastewater systems on reserves.** An independent assessment of water and wastewater systems on First Nations reserves was conducted in 2009, assessing 807 water systems serving 560 First Nations reserves. The report, issued in 2011, found that 39 percent of these reserve systems were at high risk, 34 percent at medium risk, and 27 at low risk.²⁰ The percentage of at-risk systems was higher in Ontario, with 45.5 percent at high risk, 38 percent at medium risk, and 16 percent at low risk.²¹

¹² Indian and Northern Affairs Canada, National Assessment of Water and Wastewater Systems in First Nations Communities: Summary Report, May 2003, http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/watw_1100100016374_eng.pdf, p. i (accessed January 19, 2016).

¹³ 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, <http://www.oag-bvg.gc.ca/internet/docs/c20050905ce.pdf> (accessed January 7, 2016).

¹⁴ *Ibid.*, p. 1.

¹⁵ *Ibid.*, p. 2. Provinces have legislation and regulation for drinking water – the INAC and Health Canada state that provincial jurisdiction over drinking water does not extend to reserves. All employers subject to Canada Labour Code, including federal government, must provide their employees with safe drinking water—applies only to employees. However, First Nations communities do not benefit from the regulatory protections for drinking water available in provinces or to federal employees.

¹⁶ *Ibid.*

¹⁷ Parliamentary Information and Research Service, Safe Drinking Water in First Nations Communities, Publication No. 08-43-E, May 28, 2010, p. 3.

¹⁸ *Ibid.*

¹⁹ Report of the Expert Panel on Safe Drinking Water for First Nations, November 2006, p. 60.

²⁰ Department of Indian Affairs and Northern Development, National Assessment of First Nations Water and Wastewater Systems, January 2011, <https://www.aadnc-aandc.gc.ca/eng/1313426883501/1313426958782> (accessed January 7, 2016).

²¹ Department of Indian Affairs and Northern Development, National Assessment of First Nations Water and Wastewater Systems, Ontario Regional Roll-Up Report: Final, January 2011, https://www.aadnc-aandc.gc.ca/eng/1314634863253/1314634934122#chp2_1, p. 11 (accessed January 7, 2016).

- As of October 31, 2015 there were 139 drinking water advisories in effect in 94 First Nations communities across Canada, excluding British Columbia.²²

Finally responding to this slew of evidence, in May 2010, the federal government took an important step toward regulating drinking water and wastewater standards on reserves by introducing a bill on these issues.²³ Parliament passed the First Nations Safe Drinking Water Act, which entered into force in November 2013, but regulations need to be developed to fully implement the law.²⁴ More than two years after the passage of the law, regulations have not been promulgated.

Human Rights Watch investigated the impacts of poor water and sanitation conditions in First Nations communities in Ontario in 2015. The full findings of this research will be published in a report later this year and shared with the Committee at that time. However, our initial findings suggest that the diverse challenges related to water and sanitation faced by First Nations communities, including lack of regulation and poor quality drinking water and sanitation, impact the health, general living conditions, and the exercise of cultural rights of people living on reserves.

The Committee, in preparation for its review of Canada in October, should consider the impact of poor quality water and sanitation on women, who are often caregivers. Our initial findings suggest that poor water conditions, particularly for communities under a drinking water advisory, can make caregiving activities especially burdensome and can add hours to simple tasks. Women explained to Human Rights Watch the extra hours they had to spend mitigating the risks of poor drinking water in their households. Simple tasks, such as washing baby bottles, can take hours of time between collecting water from safe water points, to boiling water, to triple washing bottles.

The Committee should also consider addressing how the water and sanitation conditions affect First Nation women's ability to exercise their cultural rights. Many First Nations women experience

²² There are three levels of water advisories: boil water advisory/order is used "to advise the public that they should bring their tap water to a rolling boil for at least one minute before drinking and using for other purposes, such as brushing teeth. This is usually recommended when disease-causing bacteria, viruses or parasites are found in the drinking water system"; do not consume advisory/order (alternatively called "do not drink advisory/order") is used "to inform the public that they should not consume their tap water for drinking; brushing their teeth; cooking; washing fruits and vegetables; making infant formula or other drinks, soups or ice cubes; for bathing infants and toddlers or feeding pets...These advisories are issued when the water system contains a contaminant that cannot be removed from the water by boiling;" and, do not use advisory/order is used "to advise the public that they should not use their tap water for any reason. These advisories are issued when the water system contains contamination that cannot be removed from the water by boiling, consumption of the water poses a health risk, and exposure to the water when bathing could cause skin, eye or nose irritation." Health Canada, Drinking water and wastewater, <http://www.hc-sc.gc.ca/fniah-spnia/promotion/public-publique/water-eau-eng.php> (accessed January 19, 2016).

²³ Parliamentary Information and Research Service, Safe Drinking Water in First Nations Communities, Publication No. 08-43-E, May 28, 2010, p. 11.

²⁴ Safe Drinking Water for First Nations Act (S.C. 2013, c. 21), November 1, 2013, <http://laws-lois.justice.gc.ca/PDF/S-1.04.pdf> (accessed January 7, 2016).

water and sanitation problems through a cultural lens which recognizes water as a living and spiritual entity, and considerations of the impact of poor water and sanitation should take that into account. For example, First Nations people in Ontario consider water to be sacred and acknowledge a special cultural relationship with it. In this relationship, water has the responsibility to purify, cleanse, and give life to the environment and all living things.²⁵ According to custom and tradition, women are the keepers and spiritual protectors of the waters, and their teachings guide First Nations peoples on how to care for the waters.²⁶ First Nations communities have ceremonies related to the care of water and have knowledge, customary laws, and ways of teaching their children about their special relationship with water.²⁷

Recommendations

In its upcoming pre-session discussion for Canada's upcoming review, Human Rights Watch encourages the committee to include the following issues in its list of issues and questions the State should respond to in writing:

- Emphasize to the government that the inquiry on missing and murdered indigenous women should facilitate the participation of the most marginalized indigenous women and girls, including by providing protection for those may fear police retaliation.
- Ask the government to address police accountability, including by ensuring that all serious police misconduct allegations are subject to independent civilian investigation.
- Request the government to detail:
 - How it plans to engage First Nations women in resolving the long-standing regulatory gap regarding safe drinking water and sanitation on reserves in Ontario.
 - Measures it has considered to ensure that First Nations caregivers, often women, have necessary information and assistance to care for family members at particular risk from poor water and sanitation conditions.
 - Steps to ensure that First Nations women, who are traditionally considered the keepers of the water, can participate in all aspects of cultural life related to water, recognizing its spiritual significance.

We hope you find these comments helpful, and would welcome an opportunity to discuss these issues with you.

²⁵ See, for example, AORMC Water Working Group, Anishinabek Traditional Knowledge & Water Policy Report, 2009, <http://www.anishinabek.ca/download/Water%20Report.pdf>, p. 5 (accessed January 19, 2016).

²⁶ *Ibid.*

²⁷ Chiefs of Ontario, Water Declaration of the Anishnaabek, Mushkewoguk and Onkewhonwe in Ontario, October 2008, <http://static1.squarespace.com/static/54ade7ebe4b07588aa079c94/t/54ea50c2e4b0feaa4772eaaf/1424642242464/COO-water-declaration-revised-march-2010.pdf> (accessed January 19, 2016).