



First Nations Water Rights:
Drinking Water Advisories as a Violation of
Children's Rights



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**Submission by Save the Children Canada to the Committee on the Rights of the Child's
review of Canada's periodic report for the 87th pre-sessional.
March 2020**

We write in advance of the 87th pre-session of the Committee on the Rights of the Child relating to Canada's compliance with the Convention on the Rights of the Child. This submission focuses on the water crisis in First Nation communities.

Note on Methodology: Much of the research for this report comes from the 2015 Child Rights Situational Analysis (CRSA), conducted for Save the Children Canada by Joan Riggs and her team at Catalyst Research. The CRSA is a document that guides our work in all areas of program, policy and community development in partnership with Indigenous communities and relevant stakeholders.

Note on Cluster of Rights: Disability, basic health and welfare (arts. 6, 18, para. 3, 23, 24, 26, 27, paras. 1–3, and 33). Specifically, **article 24 Health & Health Services: The percentage of households without access to hygienic sanitation facilities, and access to safe drinking water.**

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Submission by Save the Children Canada

Introduction

Save the Children is a child rights organization that fights for the rights of every last child, in Canada and across the globe. The risks of climate change are immense for children: Indigenous people around the world face disproportionate effects of the climate crisisⁱ. Similarly, in Canada, it is clear that Indigenous peoples are too often burdened with the consequences of environmental damageⁱⁱ. Young people are identifying environmental issues across the country as being of the utmost importance to their well-being, including and especially Indigenous youth.

The water crisis that many First Nations face is wide-reaching, and the causes complex. Water sources may be contaminated, such as in Asubpeeschoseewagong First Nation (Grassy Narrows) where a chemical spill in the 1970s led to “do not consume” advisories that still hold today. In other areas, access is difficult - in Garden Hill First Nation, Manitoba, 180 homes lack running water and indoor plumbing. Elsewhere water sources are at risk due to faulty infrastructure, such as in Shoal Lake 40 First Nation or the Six Nations of Grand River, Ontario.

The Canadian Constitution states that the federal government are the duty bearers in ensuring First Nations children have access to clean drinking water as they have the exclusive authority to legislate on matters pertaining to “Indians, and Lands reserved for Indians.”

Save the Children Canada is committed to ensuring children realize the rights to which they are entitled under the UN Convention on the Rights of the Child, and the United Nations Declaration on the Rights of Indigenous Peoples. At Save the Children Canada, we are part of a network of 30 member organizations working in 120 countries towards a world in which every last child attains the right to survival, protection, development, and participation. In Canada, we interpret and translate this vision into our Reconciliation Program, which strives for a reconciled Canada – in doing so, we recognize that First Nations, Inuit and Metis children are least likely to have their rights upheld.

Working in partnership with First Nations, we promote and listen to children's voices on climate change and environmental issues. In Garden Hill, Grassy Narrows, Shoal Lake 40 First Nation and elsewhere, we are working to prioritize child and youth perspectives and voices on climate change and water. Realizing the right to participate in decision-making is crucial in all areas of young peoples' lives, and the environment is no different

Clean water as a children's rights issue

The causes of the water crises are complex and varied. First Nations' water is often contaminated, hard to access, or at risk due to faulty treatment systems. With the roots of the challenge embedded in the colonial process and subsequent discrimination and inequality. Increasingly, we're finding that climate change is compounding the difficulties many First Nations face in accessing clean water. A changing climate is bringing more frequent droughts in summer months, as water tables lower, water contains a higher concentration of nitrates, sediment and other pollutants, further taxing strained or faulty treatment systems.ⁱⁱⁱ

The right to clean water is critical to the health and well-being of children. Article 24 of the Convention on the Rights of the Child says, "States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. (They) shall strive to ensure that no child is deprived of his or her right of access to such health care services. This involves... the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution." Canada ratified the CRC in 1991, and yet, almost 30 years later, we still see this threat facing far too many young people in our country.

Access to water is also present in the United Nations Declaration on the Rights of Indigenous People, both explicitly and implicitly in reference to land and self-determination.

- Articles 10 and 19 refer to the rights of Indigenous peoples to not be removed from their lands, and to be consulted in all decisions affecting them.
- Article 21 states: "1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security."
- Article 25 notes that "Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owners or otherwise occupied and used lands, territories, waters and coastal seas and other resources to uphold their responsibilities to future generations in this regard."
- Article 32 relates to the rights of Indigenous peoples to determine what they want to see done with their own lands and communities.

The United Nations names safe water and access to proper sanitization a "basic human right." Canada's Constitution obligates providing essential public services of "reasonable quality" to all Canadians. As such, the provision of clean drinking water is a responsibility of the federal government under the Charter of Rights and Freedom.

Furthermore, the failure to provide drinking water violates the treaties signed by many First Nations. The Constitution, through the Indian Act, grants the federal government jurisdiction over most aspects of life on reserves, including governance of First Nations resources. This prevents First Nations from taking control of their own water governance, contradicting article 26 of UNDRIP that states that Indigenous peoples have the right to 'own, use, develop and control' their

lands and resources, such as water. It also violates Article 25, which recognizes Indigenous peoples' right to maintain and strengthen their spiritual relationship with traditionally owned or occupied lands, territories and waters. Traditional practices cannot take place with contaminated, dangerous waters.

Situational Analysis

In 2020, we are two years into the United Nations Water Action Decade (2018-2028), which is an effort to draw attention to the violations of the right to water, and to attempt to transform how we manage water for everyone. There are four important principles to the right to water: water must be available, accessible, be of good quality, and it must be stable & reliable. For First Nations children in the communities experiencing drinking water advisories (DWAs), we know that this is not the case. Water is not of good quality, it is not always available, and the source itself is not reliable. At times, the federal government has ended an advisory for a few weeks, only to start it up again.

Currently, there are 56 long-term 'Drinking Water Advisories' (DWAs) in First Nations communities, 43 of these are boil-water advisories, and 13 are do-not-consume advisories; this affects well over 2,182 First Nations households.^{iv} Drinking Water advisories are issued to warn people not to drink water that, based on water quality testing, may be unsafe or is known not to be safe. There are three types of advisories – boil water, do not consume and do not use.

Boil water advisories (BWAs) are a preventive measure put into place when the water in a community's water system is known or suspected to have disease-causing bacteria, viruses or parasites that can cause waterborne illness, or when water quality is questionable, and contaminant will be removed from water if it is boiled.^v The reasons for BWAs are varied: 4% of boil water advisories were due to the detection of *Escherichia coli* (E. coli), 13% were due to other microbiological water quality parameters, and the remaining 83% were due to equipment and process-related problems.^{vi} BWAs are the most common kind of Drinking Water Advisory found in Canada, and these can be either short or long-term. While the Government of Canada has promised^{vii} to eliminate all long-term drinking water advisories by March 2021, it is clear that the lack of clean water is a reality for far too many First Nations children. Furthermore, questions remain about whether the government is on track to fulfill its promise to eliminate these advisories in the next 18 months.^{viii}

There is growing concern about the implications of resource extraction and industry on water quality. With Indigenous communities disproportionately affected by chemical and oil spills. In Grassy Narrows First Nation in Ontario, for example, a chemical plant dumped 9,000 kilograms of mercury into its watershed, contaminating fisheries. The rest of the community's water sources are currently under "do not consume" orders, with wells testing positive for high uranium content, and the community water system has tested positive for a cancer-causing chemical that is a by-product of disinfection.

Similarly, in 2017 roughly 250,000 litres of crude oil and other toxins were spilled into the North Saskatchewan River, and 5,000 litres of crude oil spilled into Red Deer River in Alberta, leading water advisories in a number of First Nations.

Communities across the country can and do experience unsafe drinking water, however, in the case of First Nations communities, not only are DWAs more prevalent than in non-First Nations communities, the federal government is responsible for ending them.^{ix} DWAs are found in all 10 provinces and 2 of the 3 territories, with the highest numbers found in B.C., Saskatchewan, Ontario and Newfoundland.^x The reasons for the high number of long-term advisories on First Nations reserves are rooted in Canada’s colonial history: during the 19th & 20th century, provincial & national governments forced First Nations people onto reserves, which were often in places where economic development and resource extraction was going to happen. Too often economic development led to environmental damage, which in turn isolated. The location of reserves has meant that many communities are vulnerable to flooding and forest fires, and other changes in the global climate. Together with a focus on resource extraction, such as mining, forestry management and nuclear waste management, these and other factors have combined to have a devastating impact on the environment and human health, including drinking water.^{xi}

Comments on the State report

We want to draw attention to the ways that the government of Canada references access to clean drinking water in their report. We appreciate that Canada acknowledges and regrets the high numbers of Indigenous children that lack access to sustainably safe drinking water. They say that they are dealing with this by adopting “a strategy that aims to eliminate all long-term drinking water advisories affecting public water systems in First Nations communities financially supported by the Government of Canada by March 2021. The Government of Canada provides support to First Nations communities in establishing drinking water quality monitoring services, and guidance and recommendations related to water safety.” (Recommendation 141: Access to Clean Drinking Water)

It is promising to see that the government is committed to ending Drinking Water Advisories, and we do see progress being made. At the same time, we note that there is still much work to be done both in ending Drinking Water Advisories on reserves, and on climate change mitigation and adaptation more generally.

Impact of lack of access to clean water

Unsafe drinking water affects the ability of children to assert their right to relationships with the land and water, and affects their own physical, mental and spiritual wellbeing. Children have the right to clean water and sanitation; this access to clean drinking water is essential in allowing children to lead healthy lives. Water also shapes access to other rights, such as the right to an education, which includes ceremony, teachings, and knowledge found in relationships.^{xii} It is crucial to note that it is not just physical health, but a broader understanding of well-being that includes spiritual, physical, mental, and emotional impacts. As the Treaty 3 Nibi Declaration (2019) notes, water “nourishes us, spiritually, physically, mentally and emotionally and provides cleansing and healing. Clean nibi for drinking is important to our health. We must respect our sacred relationship with nibi and all beings in creation to help protect nibi for our children and

future generations.” Water is, therefore, about dignity: a lack of water is a sign that duty-bearers are not upholding their duties to children.

The inability to realize the right to water has implications for other rights, such as the right to nutrition, the right to an education, the right to mental health, rights to relationships with land and waters, and the right to traditional cultural practices. Failure to uphold the rights of children means that the sacred relationship that women have with water is not transmitted to children and future generations of children. It has implications for the present and the future, and is an issue of much more than physical health alone.^{xiii} DWAs have long-term effects on the health and ways of living on indigenous people. Furthermore, these effects go beyond the water and water systems themselves. These include (but are not limited to): the contamination of animals traditionally hunted for food, diseases that have resulted from DWAs, the increase in obesity & diabetes due to the need to rely on non-traditional foods, and finally, a lack of support and services to treat all of the above concerns.

Health Canada works with provincial and territorial governments to set out guidelines on drinking water. These guidelines recognize that we must have good water to protect the “health of the most vulnerable members of society, such as children and the elderly”.^{xiv} First Nations communities do not have comparable legally enforceable protections. However, there is a [Protocol for Safe Drinking Water for First Nations Communities](#) that sets out clear standards for the design, operation and maintenance of drinking water systems to support First Nations in providing community water and wastewater services comparable to the levels of service that would generally be available in off-reserve communities of similar size and circumstances.^{xv} This guidance states that it is also intended for use by Indian & Northern Affairs Canada staff, Public World and Government Services Canada, and everyone else that is involved with providing advice and assistance to First Nations in the design, construction, operation, maintenance and monitoring of drinking water systems.

Canada has acknowledged the problematic nature of water advisories in Canada. In the government of Canada’s submission to the Committee on the UNCRC in its review last year, it states that it: “regrets the high numbers of Indigenous children that lack access to sustainably safe drinking water... The Government of Canada provides support to First Nations communities in establishing drinking water quality monitoring services, and guidance and recommendations related to water safety.” There is inadequate funding for water treatment plans, and a lack of sustainability in terms of the plans in place to manage new water treatment plants including infrastructure, operations, maintenance and training. There are also many other ways that Indigenous peoples rights are violated that affect safe access to water.

The issues that are emerging in First Nations Communities under DWAs are multifaceted, and affect many aspects of community members’ lives. From mercury poisoning, to blood noses, to food-borne illnesses, there are multiple problems caused by DWA. In some cases, the water is so contaminated that there is not even a BWA but just a blanket recommendation not to drink the water.^{xvi} These ‘do not use’ water advisories occur when using the water poses a health risk; when the water system has pollutants that cannot be removed through boiling; and when being exposed to the water through bathing could, perhaps due to a chemical spill, irritate the skin, eyes, and nose.^{xvii} We know that Indigenous children face infectious diseases in greater numbers than non-Indigenous children, and that many of these diseases are due, directly and indirectly, to water

contamination. For instance, in 2011, the incidence of active TB disease reported for the Aboriginal population was 34 times higher than for the Canadian-born non-Aboriginal population.^{xviii} Save the Children is proud to work with Cat Lake First Nation, ON, who recently declared a state of emergency over its housing crisis, which led to multiple deaths from respiratory illness. As the UN Special Rapporteur on Housing has noted, First Nations communities in Canada face chronic, discriminatory underfunding when it comes to housing^{xix}.

As a result of the climate crisis globally, the vulnerability of First Nations communities to water advisories has increased in recent years in Canada. Many of the water advisories are in northern Ontario, which is a region that has seen significant warming in recent years.^{xx} Recent academic analysis from three climate stations in Northern Ontario illustrate an increase in annual maximum 5-day cumulative rainfall over the last 30 years, which in turn leads to higher risks of waterborne disease outbreaks.^{xxi} This phenomenon is not limited to Northern Ontario alone: researchers are finding similar results in other parts of the country as well.^{xxii}

Recommendations

Being committed to children's rights and the environment must include efforts to improve access to clean water. We see government action on this front as crucial in enacting change, both in terms of clean drinking water, as well as in broader conversations about climate change and environmental sustainability. One of the core principals of human rights principles is that governments have a responsibility to progressive realization of rights. This means that as the main duty-bearer, they must commit to appropriate measures in light of resources available.

Duty bearers have a responsibility to ensure children's voices are heard when it comes to human rights. Child and youth participation is crucial in getting a better understanding of how young people see climate change, and what they think the solutions are. Though our various climate change programs in the Island Lake region (Manitoba) and Kenora region (Ontario), we see the importance of resilience in the face of climate change and environmental degradation. These projects put First Nations community and child perspectives, values, and sociocultural context at the heart of climate change vulnerability assessments and adaptation planning. Prioritising youth and child voices, we're able to collect a variety of perspectives on resilience as it relates to water, climate and reconciliation.

As an ally, we stand with Indigenous water advocates, and learn from their leadership on this issue, and on environmental issues generally. The government must work towards recognizing, protecting and upholding First Nations, Metis and Indigenous peoples' water rights^{xxiii}. This means ensuring that children's access to the right to water is realized, and that young people's voices are given spaces to be heard. It also means honouring treaties and respecting Indigenous title to land and water, while correcting historic root causes of the water crisis.

As such, we ask that the Committee asks Canada to consider and implement the following recommendations. The appropriate cluster of rights is: Disability, basic health and welfare (arts. 6, 18, para. 3, 23, 24, 26, 27, paras. 1–3, and 33). Specifically, article 24 Health & Health Services: The percentage of households without access to hygienic sanitation facilities, and access to safe drinking water.

- Include young Indigenous people in any and all meaningful consultations on water rights. The consent of young Indigenous people is central in ensuring the legitimacy and sustainability of the solutions and actions that the government commits to, in partnership with First Nations, Metis & Inuit. Canada must listen to Indigenous communities, and especially Indigenous youth, as they speak up about water. As 14 year-old [Autumn Peltier](#), the Chief Water Commissioner for the Anishinabek nation, has said, there should be a call to action globally to protect water resources for the next generation.
- Eliminate all long-term water advisories so that every child in Canada can fulfill their right to clean drinking water. The federal government projects it is on track to eliminate long-term water advisories by March 2021, however, 56 remain (as of August 2019). These long-term advisories should end – and crucially, no new ones should be added – as planned, where possible accelerating action.
- Consider enacting new legislation to better protecting water rights for First Nations, and enshrine Free, Prior & Informed Consent as necessary at all times. As the [AFN notes](#), meaningful engagement^{xxiv} with Indigenous peoples was missing in 2013 with the First Nations Safe Drinking Water Act. The Act, as it reads now, could be interpreted as imposing liability on First Nations, while diminishing liability of government. New laws should not undermine First Nations rights, nor make First Nations liable for federal infrastructure which is mismanaged.^{xxv}
- During times of drinking water advisories, continue to ensure access to affordable drinking water when other publicly sourced options are not available or safe to drink. In this regard, policy coherence is critical to ensure the connection between water rights and the right to food security, particularly when looking at the high cost of importing food and clean drinking water into northern communities. As a recent University of Toronto study^{xxvi} finds, food insecurity in Nunavut has gotten worse, despite the introduction of the Nutrition North program in 2011.^{xxvii}
- Commit to meaningful measures that ensure access to clean water before, during and after climate-induced disasters in First Nations communities. As noted above, the climate crisis has a direct link to long term water advisories. Climate change affects First Nations communities in a host of other ways. As the Special Rapporteur on Indigenous People’s notes in his 2014 paper from his visit to Canada, “While Indigenous peoples potentially have much to gain from resource development within their territories, they also face the highest risks to their health, economy and cultural identity from any associated environmental degradation.”
- Recognize Indigenous communities as [observers, stewards, and interpreters of ecosystems](#). Look to Indigenous leadership, including youth leaders, to propose solutions that will enable children to realize their right to water. Find ways to increase capacities of communities to treat all the effects that not having water has had on Indigenous communities. This includes ensuring other rights, such as the right to health and right to education, are within reach.
- Hold corporations that are active in First Nations to account through legislation to prevent water contamination. This will also work towards mitigating the risk of economic activity to water systems, and adapting to the increasing effects of climate change.

Endnotes

- ⁱ https://www.un.org/en/events/indigenousday/pdf/Backgrounder_ClimateChange_FINAL.pdf
- ⁱⁱ <https://ehp.niehs.nih.gov/doi/pdf/10.1289/ehp.8433>
- ⁱⁱⁱ https://www.afn.ca/uploads/files/env/08-03-27_climate_change_and_water_research_paper_final.pdf
- ^{iv} The Government of Canada projects that 2,182 homes will be impacted by long-term boil water advisories by the time the number of advisories decreases to 38. The number of homes currently impacted by the 56 advisories in place, is not provided but is expected to be significantly higher.
- ^v First Nations Health Authority, Drinking Water Advisories. <https://www.fnha.ca/what-we-do/environmental-health/drinking-water-advisories>
- ^{vi} Government of Canada Drinking Water Advisories: <https://www.canada.ca/en/environment-climate-change/services/environmental-indicators/drinking-water-advisories.html>
- ^{vii} When Prime Minister Justin Trudeau assumed office in 2015, he promised to end all long-term boil water advisories by March 2121.
- ^{viii} Since making the promise in 2015, the federal government has eliminated 87 BWAs, but 56 remain.
- ^{ix} The government of Canada is responsible for First Nations BWAs through the Ministry of Indigenous Services.
- ^x Watertoday.ca
- ^{xi} Child Rights Situational Analysis of Indigenous Peoples in Canada, Save the Children Canada, pg 20. 2015.
- ^{xii} Humanium: <https://www.humanium.org/en/water/>
- ^{xiii} Treaty 3 Nibi Declaration: <http://gct3.ca/events/treaty-3-nibi-declaration-national-forum/>
- ^{xiv} <https://www.canada.ca/en/health-canada/services/environmental-workplace-health/water-quality/drinking-water/canadian-drinking-water-guidelines.html>
- ^{xv} Safe Drinking Water for First Nations Act: <https://www.aadnc-aandc.gc.ca/eng/1330528512623/1330528554327>
- ^{xvi} <https://www.sac-isc.gc.ca/eng/1538160229321/1538160276874>
- ^{xvii} Ibid
- ^{xviii} Save the Children Canada, Child Rights Situation Analysis. Pg. 33.
- ^{xix} UN Special Rapporteur, Leilani Farha (July 2019): Adequate housing as a component of the right to an adequate standard of living, and the right to non-discrimination in this context: <https://www.undocs.org/A/74/183>
- ^{xx} Wang et al (2018). Increased Risks of Waterborne Disease Outbreaks in Northern Ontario due to Climate Change. *Journal of Water Management Modelling*. Retrieved from: <https://www.chijournal.org/C436>
- ^{xxi} Ibid
- ^{xxii} Experimental Lakes Area
- ^{xxiii} Assembly of First Nations: <https://www.afn.ca/wp-content/uploads/2018/08/18-07-09-Housing-Sector-Technical-Update-re-Water-July-2018-V4.pdf>
- ^{xxv} UN Special Rapporteur, James Anaya: <http://unsr.jamesanaya.org/docs/countries/2014-report-canada-a-hrc-27-52-add-2-en.pdf>
- ^{xxvi} Galloway, T. (2016). Canada's northern food subsidy Nutrition North Canada: a comprehensive program evaluation. *International Journal of Circumpolar Health*: 76 (1). Retrieved from: <https://www.tandfonline.com/doi/full/10.1080/22423982.2017.1279451>
- ^{xxvii} CBC Marketplace: <https://www.cbc.ca/news/canada/north/food-insecurity-nunavut-nutrition-north-1.5140132>