**Call for Inputs**

**Too Dirty, Too Little, Too Much: The Global Water Crisis and Human Rights**

“There is simply no way to overstate the water crisis of the planet today.”

Maude Barlow, former senior advisor on water to the President of the   
United Nations General Assembly

A global agreement now exists that human rights norms apply to a broad spectrum of environmental issues, including water and sanitation.

The Special Rapporteur on human rights and the environment, Dr. David Boyd, is working to provide additional clarity regarding the substantive rights and obligations that are essential to the enjoyment of a safe, clean, healthy and sustainable environment.

He has submitted reports on clean air, a safe climate, a healthy biosphere, and good practices on the promotion and implementation of the right to a safe, clean, healthy and sustainable environment. He is now preparing a thematic report focusing on human rights and associated obligations related to water pollution, water scarcity and floods. For that purpose, he is seeking inputs on the topic from States and stakeholders through responses to the brief questionnaire below.

Your replies will inform the Special Rapporteur’s analysis and contribute to his report, which will be presented to the Human Rights Council in March 2021.

**Questionnaire**

The Special Rapporteur invites and welcomes your answers to the following questions:

1. Please provide examples of ways in which water pollution, water scarcity and floods are having adverse impacts on human rights. Adversely affected rights could include, among others, the rights to life, health, water and sanitation, food, culture, livelihoods, non-discrimination, a safe, clean, healthy and sustainable environment, and indigenous peoples’ rights.
2. How has climate change exacerbated water-related problems?
   1. As Jim Bruce (CDN Co-Chair of 1st IPCC) said, if climate change is a shark then water is its teeth. Indigenous communities with low resilience have less capacity to sustain themselves in the face of weather impacts (basic heating and cooling requirements), food scarcity due to changing habitats that impact species they rely upon for subsistence or moderate livelihood incomes, habitation insecurity due to flooding and drought, human health impacts from new diseases such as COVID-19. (For example, COVID-19 has resulted in the suspension of water quality monitoring at the federal and many provincial level sharing the pandemic.) Given that First Nation safe drinking water is already inconsistently supplied in Canada, any of the above impacts access further reduce access to fundamentals of life.
3. To protect a wide range of human rights, what are the specific obligations of States and responsibilities of businesses in terms of addressing water pollution, water scarcity and floods? Please provide specific examples of constitutional provisions, legislation, institutions, regulations, standards, policies and programmes that apply a rights-based approach to preventing, reducing, or eliminating water pollution, water scarcity and floods. Please include, inter alia, any instruments that refer directly to the right to a healthy environment and/or the rights to clean water and adequate sanitation.
   1. *There may be others but the one I am most familiar with is (and is currently undergoing an amendment process to strengthen it):* 
      1. *NWT Environmental Rights Act*
         1. *6. (1) Every person resident in the Territories has protect the right to protect the environment and the public trust from the release of contaminants by commencing an action in the Supreme Court against any person releasing any contaminant into the environment.*
         2. *(2) No person is prohibited from commencing an action under subsection (1) by reason only that he or she is unable to show (a) any greater or different right, harm or interest than any other person; or (b) any pecuniary or proprietary right or interest in the subject matter of the proceeding.*
4. If your State is one of the 156 UN Member States that recognizes the right to a safe, clean, healthy and sustainable environment, has this right contributed to preventing, reducing, or eliminating water pollution, water scarcity and floods? If so, how? If not, why not?
   1. *Canada is not one of the 156*
5. Please provide specific examples of good practices in preventing, reducing, or eliminating water pollution, water scarcity and floods. These examples may occur at the international, national, sub-national, or local level. Examples may involve water quality and quantity monitoring; guaranteeing procedural rights (e.g. public access to water quality information, public participation in decision-making about proposed uses of water, access to remedies); water use and water quality legislation, regulations, standards, and policies; and initiatives to reduce water consumption and/or water pollution from specific sectors (e.g. agriculture, electricity generation, industry, transportation, domestic use). Where possible, please provide evidence related to the implementation, enforcement, and effectiveness of the good practices.
   1. *Our experience is that rights-based approaches are important and ultimately necessary, but they do not in and of themselves guarantee action. Indigenous rights are a perfect example… Even with the recognition of rights indigenous nations fight, often on successfully, to ensure implementation of their rights, and in particular their sit at tables of decision making.*
   2. *Our approach is to “just do it”. Our view is that if you can get people into the same room to talk about the art of the possible, and you can negotiate an acceptable outcome, you can sidestep the rights conversation for the time being [which can often result in a deadlock]. Therefore, we focus on creating reconciliation-based, transformation oriented processes aimed at creating new collaborative governance tables. Sometimes these are issues specific, sometimes they are more general. We have one right now focussed on trying to save Lake Winnipeg. It involves municipal mayors and first nation chiefs and they “bring their jurisdictions to the table” to try to make progress because they all have agreed that they have one view in common: the status quo is not good enough. They have chosen not to debate who has the right to do some thing, but to agree that they need each other in order to create change. Once that agreement is reached, they just then have to figure out who else do they need in order to make progress.*
6. Please identify specific challenges that your government, business, or organization has faced in attempting to employ a rights-based approach to address water pollution, water scarcity and floods and the impacts of these problems on human rights.
   1. *Given that there is an approach in this country that says that rights exist without having to be proven, but to be truly implemented they need to be negotiated, the barriers to a race-based approach to addressing almost any issue is almost insurmountable. Entire careers can be used just trying to negotiate one agreement on governance that can be used to address environmental issues. Therefore, we have adopted the approach outlined a #f5 above as an alternative approach.*
   2. *Another example of how these alternative approaches can accomplish the same goal is the Thaidene Nene conservation area in NWT. This conservation area, which is indigenous lead and has resulted in the creation of federal and territorial parks in partnership with Lutsel Ke First Nation, was approached by the first nation as an alternative to land claims negotiations. They realize that if they could negotiate an acceptable conservation area, they could protect that area, and create a plan for a sustainable use, without having to negotiate a land claim first. Given that the territory is now set aside as a conservation area in partnership with the first nation, they never need to negotiate a land claim and they have achieved their protection and sustainable use goals.*
   3. *These are the broad kinds of governance arrangements that require creative thinking in order to sidestep an extremely intractable rights based processes, at least as regards indigenous governance rights that can be used to address water pollution, etc.*
7. Please specify ways in which additional protection is provided (or should be provided) for populations who may be particularly vulnerable to water pollution, water scarcity and floods (e.g. women, children, persons living in poverty, members of Indigenous peoples and traditional communities, older persons, persons with disabilities, ethnic, racial or other minorities and displaced persons). How can these populations be empowered to protect and improve water quality and availability?
   1. *Water is not priced appropriately, if it was the income could be redistributed to ensure that those living in remote or poor locations could have access to safe drinking water.*
   2. *The current First Nation Safe Drinking Water Act in Canada could be revised to be a rights-based approach that affirms indigenous rights to safe drinking water for example.*
   3. *Enforcement of the Fisheries Act would make a big difference for those urban or less rural indigenous nations that live near sources of water pollution [such as near Sarnia Ontario].*
   4. *If businesses were required to pay some form of taxation or fee for the use of water in first nation traditional territories, this fear could be directed to indigenous governments to address the shortfall and funding that they receive for the operations and maintenance of water treatment facilities. Alternatively, these kinds of fees could be put into a provincial fund that is used or shared across indigenous governments to achieve that same goal.*
8. How do you ensure that the rights of environmentalists working on water issues (environmental human rights defenders) are protected? What efforts has your Government or business made to create a safe and enabling environment for them to freely exercise their rights without fear of violence, intimidation, or reprisal?
9. There is substantial evidence that the actions of high-income States (from high levels of material consumption to high levels of greenhouse gas emissions) are linked to adverse effects on water availability and water quality in low and middle-income States. What are ways in which high-income States should assist low-income States in responding to and preventing water pollution, water scarcity and floods?
10. For businesses, what policies or practices are in place to ensure that activities, products, and services across the entire supply chain (extraction/sourcing, manufacturing, distribution, sale, and end-of life management) minimize water use and water pollution and meet human rights standards, especially those articulated in the Guiding Principles on Business and Human Rights?
    1. *While there is no veto for indigenous rights-holders in Canada, businesses could choose to act as if there was, and could recognize that without social license in indigenous territories they should not be conducting their business. This seems unrealistic, but we are at the stage where unrealistic things have to become a realistic if we are going to address some of the very serious challenges we have. It’s only unrealistic if you assume a “business as usual” approach that only involves tinkering at the edges of change.*

**Submission of responses**

Please send your responses to the questionnaire **in Word format** by email to [srenvironment@ohchr.org](mailto:srenvironment@ohchr.org). Submissions will also be accepted via regular mail at the following address:

Special Rapporteur on human rights and the environment

Special Procedures Office of the United Nations High Commissioner for Human Rights (OHCHR)

Palais des Nations

CH-1211 Geneva 10, Switzerland

**We kindly request that your submission be concise and limited to a maximum of   
5 pages (or 2,000 words), not including appendices or attachments.**

Due to a limited capacity for translation, we also request that your inputs be submitted in English, French, or Spanish.

To avoid unnecessary duplication: if you have recently replied to other questionnaires from UN human rights mechanisms (or other international bodies) with information that would be relevant to this request as well, we welcome your directing us to those replies.

**The deadline for submission is 10 November 2020.**

Unless otherwise requested, all submissions will be made publicly available and posted on the Special Rapporteur’s homepage at the OHCHR website.

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