**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:

* 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.

First Nations across Canada are negatively and disproportionately affected by water pollution, water scarcity and flooding. As a result, the human right of First Nations’ citizens to safe, clean water is denied, as are First Nations’ inherent and Treaty rights, as affirmed in the United Nations Declaration on the Rights of Indigenous Peoples and Canada’s Constitution Act, 1982.

Increased water pollution:

* Cumulative downstream impacts resulting from hydro electric dams and extractive industry projects have reduced water flows and led to consequent reductions in fish stocks, resulting in a lack of potable water and food insecurity. Pollution from mining, oil and gas, pulp and paper, and various other industrial activities have released vast amounts of toxic effluent, killing fish, and leading to unsafe drinking water. First Nations in the Peace Athabasca Delta of Alberta and along the Mackenzie River in Northwest Territories continue to challenge development based on these kinds of impacts. Some specific examples include:
  + Grassy Narrows First Nation, where First Nations have ingested water poisoned with mercury for more than 50 years. <https://pulitzercenter.org/reporting/my-ears-keep-ringing-all-time-mercury-poisoning-among-grassy-narrows-first-nation>
  + Boat Harbour by Pictou Landing First Nation, in New Brunswick, Canada, is affected by effluent from a mill, as chronicled in the following link: <https://www.thechronicleherald.ca/news/provincial/timeline-a-post-colonial-history-of-boat-harbour-387575/>

Water Scarcity:

* Many First Nations are facing daily challenges to access clean drinking water. The Canadian government has violated its international human rights obligations toward First Nations by failing to remedy the water crisis. Currently, more than 100 First Nations are without clean drinking water. Many have faced these conditions for years and even decades. The federal government has committed to ending all long-term drinking water advisories by 2021 but is not on track to fulfil its commitment.
* Emergency events affecting water supply are more devastating in First Nations than in municipalities of similar size and circumstance and are more often than not attributable to the delay in accessing equipment and repairs for their water treatment plants. The lack of access to adequate amounts of clean water has forced affected First Nations band councils to purchase water supplies that must be flown in or trucked in. In remote communities, these costs rise exponentially due to the method and distance of transportation.

Increased flooding:

* In 2011, Manitoba used the Portage Diversion to divert water from the Assiniboine River northward into Lake Manitoba to protect the City of Winnipeg from flooding. This displaced over 5000 people from four communities downstream. The Interlake Reserves Tribal Council (IRTC) reported that the flooding has affected the ways members use the lands. For example, certain lands no longer support hunting, trapping or gathering of medicinal plants and berries. Fisher River Cree Nation reported that their fishers experienced three or more years of hardship when the emergency outlet channel was initially constructed as nets clogged with debris, silt and mud, there were changes in the fish spawning patterns and currents, and related effects.
* Adverse impact due to flooding from high water levels in the Great Lakes have affected the water treatment plant at the Zhiibaahaasing First Nation. Two years in a row the water of the lake rose to flood the water treatment plant, and in the second year, the plant was damaged beyond repair. The First Nation has had to use bottled water until temporary means of water distribution were implemented. A prefabricated water plant was used while a new water treatment plant and distribution system is being designed and constructed.
* How has climate change exacerbated water-related problems?

Standard thresholds for response and equipment have now been surpassed due to climate change. This in turn causes breakdowns in the supply chain and access to clean water by First Nations and Indigenous Services Canada (ISC) is called upon for assistance to resolve the problem. This process can last years as is seen in the continuing high number of drinking water advisories issued by ISC, which can lead to escalating emergency events due to a lack of potable water.

Examples include:

* In Northern Canada, some fly-in communities cannot access water treatment supplies during seasons when deliveries are not feasible. Climate change has exacerbated the problem by limiting access to these communities even further when ice roads fail to form.
* Increased flooding in First Nations in Atlantic Canada and increased episodes of drought.
* Loss of land (sea-level rise and flooding result in loss of traditional territory and land used for housing, hunting, and other activities).
* Loss of resources due to both flooding and drought (vegetation, fauna) posing a risk to health.
* Loss of traditional foods, leading to food insecurity.
* Further contamination of drinking water (sanitation issues);
* Melting ice caps creating changes in seasonal flows to rivers and lakes which result in a change in nutrient flow, water quality, and fish populations. This can also pose a threat to human safety.
* Decreases in snow and ice thickness have resulted in unsafe hunting conditions, food insecurity (changes in fauna migratory patterns), a poorer local economy, and the loss of social and cultural identity.
* Melting of permafrost, especially in northern locations inhabited by First Nations, leading to the loss of housing and greater food insecurity.
* 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.

The Federal Government has a fiduciary responsibility to First Nations as a result of its assertion of jurisdiction but is failing in the exercise of this responsibility. Currently, First Nations Drinking Water is not regulated. The *Safe Drinking Water for First Nations Act* allows for enforceable regulations, however, such regulations have not been created. First Nations have challenged this legislation and work on the regulatory framework has stopped while First Nations seek repeal and replacement of the Act.

As a common standard, First Nations work to the levels of the Canadian Drinking Water Guidelines. A link to those guidelines can be found here: <https://www.canada.ca/en/health-canada/services/environmental-workplace-health/water-quality/drinking-water/canadian-drinking-water-guidelines.html>

Other instruments which guide the work in water and environment include:

* + United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP);
  + Convention on Biological Diversity (CBD);
  + United Nations Sustainable Development Goals (SDGs);
  + United Nations Framework Convention on Climate Change (UNFCCC);
  + International Covenant on Economic, Social and Cultural Rights (ICESCR);
  + Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
  + Convention on the Rights of the Child (CRC);
  + Convention on the Rights of Persons with Disabilities (CRPD);
  + International Convenant on Civil and Political Rights (ICCPR);
  + Sections 7, 15, 25, and 35 of Canada’s *Constitution Act 1982*;
  + Treaties and other constructive arrangements between First Nations and the Crown;
  + Canadian Environmental Protection Act (CEPA);
  + Impact Assesment Act (IAA);
  + Fisheries Act (FA);
  + Species at Risk Act (SARA);
  + Migratory Birds Convention Act (MBCA).

Specifically, with emergency preparedness and response, which has implications on water access and security, the department of Indigenous Services Canada (ISC) is responsible for the health, safety, and security of First Nations and, as of April 1, 2014, ISC assumed responsibility for costs for on-reserve emergencies. This single window provides First Nations, provinces and territories with improved access to emergency funding when needed.[[1]](#footnote-1) Under ISC’s Emergency Management Assistance Program, First Nations governments are responsible for creating and implementing emergency management plans to prepare communities to cope with an emergency.[[2]](#footnote-2) ISC’s National Emergency Management Plan states that the Department accepts responsibility for providing emergency management support to First Nations communities.”[[3]](#footnote-3)

* 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?

Canada does not explicitly recognize the right to a safe, clean, healthy, and sustainable environment in constitutional instruments. However, the Province of Quebec and Province of Ontario have recognised the right to a healthy environment through the Charter of Human Rights and Freedoms and Environmental Bill of Rights, respectively. The Yukon and Northwest Territories each have similar legislation. A constitutional challenge is currently underway to determine if Section 7 of the Canadian Charter of Rights and Freedoms extends “life, liberty, and security of the person” to include a safe environment.

As ISC has accepted the responsibility for on-reserve emergency management, First Nations have the expectation that the federal government of Canada will exercise its responsibility for the provision of emergency services comparable to non-Indigenous municipalities. One of the mechanisms to achieve this responsibility is through the 2007 *Emergency Management Act*[[4]](#footnote-4) which states that “each federal minister is responsible for the identification of risks that are within, or related to their area of responsibility, including those related to critical infrastructure, such as food supply, electricity grids, transportation, communications and public safety systems”[[5]](#footnote-5), and through section 91(24) of the Constitution Act[[6]](#footnote-6) which prescribes the legislative authority of the Government of Canada for ‟Indians, and Lands reserved for the Indiansˮ to the Minister of ISC through the Indian Act[[7]](#footnote-7) and the Department of Indian Affairs and Northern Development Act (R.S.C. 1985 c. I-6, sec. 4)[[8]](#footnote-8).

* 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

Some examples include:

* + In May 2000, in the town of Walkerton, Ontario, the drinking water supply became contaminated with E. coli:232, people became ill and some died. Ontario responded by establishing an operational service agency to ensure clean and safe drinking water for the entire province, excluding Indian Reserves, which fall under federal jurisdiction. The Walkerton Clean Water Centre (WCWC) coordinates and provides education, training, and information to drinking water system owners, operators and operating authorities and the public in order to safeguard Ontario’s drinking water. No such similar federal agency exists for First Nations in Canada.
  + There have been many First Nations projects funded under ISC’s Emergency Management Assistance Program (EMAP) to mitigate against flooding and other disasters, and as noted on the ISC website “In partnership with First Nations communities, provincial and territorial governments and non-government organizations, Indigenous Services Canada's Emergency Management Assistance Program (EMAP) helps communities on-reserve access emergency assistance services. EMAP provides funding to First Nations communities so they can build resiliency, prepare for natural hazards and respond to them using the 4 pillars of emergency management.”[[9]](#footnote-9)
    1. Kashechewan Far Field Study – The Far Field Flood Study examines flood mitigation options on the Albany River in order to find the best way to deal with ice-jam flooding during the spring thaw.[[10]](#footnote-10)
    2. James Bay Emergency Management Coordinator – The Mushkegowuk Council have a dedicated coordinator working directly with the James Bay Coast First Nations of Kashechewan, Moose Cree, Attawapiskat and Albany to ensure the communities are safe and well-prepared in case of spring flooding.[[11]](#footnote-11)
    3. Manitoba Flood Preparedness Forum – Organized by the Assembly of Manitoba Chiefs, this forum from February 28 to March 1, 2018 brought together all First Nations in Manitoba routinely affected by flooding.[[12]](#footnote-12)
    4. Acadia First Nation, Nova Scotia developed an emergency management program that provides their five reserve communities with emergency management services in mitigation, preparedness, response and recovery. A flood mapping study was also started in fiscal year 2018 to 2019.[[13]](#footnote-13)
* 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.

Specific to this discussion, the following key points are noted:

* + One of the key issues for First Nations is the inconsistent and insufficient funding provided by the federal governement. First Nations are unable to plan long-term because it is impossible to predict what level of funding will be allocated annually.
  + To date, federal, provincial, and territorial governments have failed to accept the implications of First Nations’ rights and act in accordance with them.
* 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?

First Nations need access to additional human and financial resources. Funding needs to be sufficient, predictable and sustained, so that capacity can be built and maintained in First Nations. For example, there are many highly trained water operators in First Nations communities, but they are often underpaid or recruited out of the communities by organizations that can pay a market wage.

Some First Nations have water systems that draw water from organically rich water sources. Their water systems have been designed to disinfect with chlorine and now their drinking water has high levels of disinfection by-products. The water sources and/or disinfection methods must be repaired to eliminate the contamination of the drinking water.

It is the intent and current practice of First Nations to ensure they are included in all decisions affecting their rights and that their free, prior, informed consent must be recognized and affirmed before any decision affecting the development of any policies, procedures, or programmes that affects their rights, lives and livelihoods in any way, shape or form is made.

* 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?

The Assembly of First Nations advocates with the appropriate levels of government in Canada to ensure the protection of the rights to assembly and expression, as well as other legal rights. However, those governments do not consistently respect those rights. For example, concerns about fracking were raised by Elsipotog First Nation, where the Royal Canadian Mounted Police (RCMP) forcibly removed protesters from the site. As a second among many examples, the confrontation between proponents and protesters over the Trans Mountain pipeline expansion in British Columbia met with similar response from the RCMP.

* 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?

While the interests of low-income States require attention, the interests of First Nations within Canada must also be met. Any international assistance cannot stand in the way of addressing domestic issues.

* 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?

Not applicable.

**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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1. [Indigenous and Northern Affairs Canada National On-reserve Emergency Management Plan](https://www.sac-isc.gc.ca/eng/1324572607784/1535123607689" \l "chp9) [↑](#footnote-ref-1)
2. [Library of Parliament Research Papers - Emergency Management on First Nations Reserves Background Paper](https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/201558E#a9) [↑](#footnote-ref-2)
3. [2013 Fall Report of the Auditor General of Canada](https://www.oag-bvg.gc.ca/internet/English/parl_oag_201311_06_e_38800.html#hd5c) [↑](#footnote-ref-3)
4. [Emergency Management Act 2007](https://laws-lois.justice.gc.ca/eng/acts/e-4.56/) [↑](#footnote-ref-4)
5. [Indigenous and Northern Affairs Canada National On-reserve Emergency Management Plan](https://www.sac-isc.gc.ca/eng/1324572607784/1535123607689#chp9) [↑](#footnote-ref-5)
6. [Constitution Act 1867](https://laws-lois.justice.gc.ca/eng/const/) [↑](#footnote-ref-6)
7. [Indian Act (R.S.S., 1985, c. I-5)](https://laws-lois.justice.gc.ca/eng/acts/i-5/section-4-20141216.html#wb-cont) [↑](#footnote-ref-7)
8. [Department of Indian Affairs and Northern Development Act [Repealed, 2019, c. 29, s. 382]](https://laws-lois.justice.gc.ca/eng/acts/i-6/) [↑](#footnote-ref-8)
9. [Emergency Management Assistance Program](https://www.sac-isc.gc.ca/eng/1534954090122/1535120506707) [↑](#footnote-ref-9)
10. [Emergency Management Assistance Program: Funded projects 2015-2016](https://www.sac-isc.gc.ca/eng/1457986011414/1535120834280) [↑](#footnote-ref-10)
11. [Emergency Management Assistance Program: Funded projects 2016-2017](https://www.sac-isc.gc.ca/eng/1488801706500/1535120713767) [↑](#footnote-ref-11)
12. [Emergency Management Assistance Program: Funded projects 2017-2018](https://www.sac-isc.gc.ca/eng/1525696570726/1535121057697) [↑](#footnote-ref-12)
13. [Emergency Management Assistance Program: Funded projects 2018 to 2019](https://www.sac-isc.gc.ca/eng/1557227920685/1557227945452) [↑](#footnote-ref-13)