

CANADA'S VIOLATIONS OF THE HUMAN RIGHT TO WATER

**Submitted to the Special Rapporteur on the human
right to safe drinking water and sanitation
by the Blue Planet Project**



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In July of 2010, when the United Nations General Assembly passed the historic resolution 64/292 officially recognizing water and sanitation as human rights, Canada was among a minority of countries that abstained from the vote.¹

In June 2012 at Rio+20 negotiations, the Canadian government publicly stated that it would recognize the human right to water.² However, the actions of the government demonstrate the failure to respect, protect and fulfill the human right to water in four key areas highlighted in this report:

1. Violation of right to water of indigenous communities
2. Violations of the mining industry in Canada
3. Violations of Canadian mining corporations abroad
4. Privatization of water and sanitation services

A version of this report was submitted to the Human Rights Council during Canada's Universal Periodic Review in April 2014.

It must be noted that the items presented in this report do not constitute an exhaustive list of Canada's violations of the human right to water. This report simply presents key areas that are central to the Blue Planet Project's work on the human right to water.

About the Blue Planet Project:

The Blue Planet Project is a global initiative of the Council of Canadians working with partners around the world to achieve water justice by promoting water as a human right and a commons. The Council of Canadians is Canada's largest social justice advocacy organization with members and chapters across the country.

¹ <http://www.un.org/News/Press/docs/2010/ga10967.doc.htm>

² <http://www.world-psi.org/en/canada-ready-recognize-water-human-right>

1. WATER FOR FIRST NATIONS

The right to water and sanitation has long been denied to an alarmingly high number of First Nations communities in Canada.

According to Health Canada, as of January 31 2014, there were 88 First Nations communities across Canada are under drinking water advisories.³

Some of these advisories have been in place for over a decade⁴. Incidence of waterborne diseases in First Nations communities is 26 times higher than in the general Canadian population, in part due to faulty or nonexistent water treatment systems in these communities.⁹ First Nations communities in some areas are required to drink and cook with bottled water⁵

Between 2009 and 2011, the federal government conducted an assessment of the water and wastewater systems across Canada that serve First Nations communities.¹¹ 571 First Nations communities participated, representing 97% of First Nations communities in the country.⁶

The report found:

- Over a third of the systems for these communities were determined to be high risk, meaning that water quality was already poor enough to be detrimental to health and safety, or water systems were deficient enough to likely lead to harm to health for members of the communities.
- 25% of the First Nations population across Canada were found to be living in communities served by high risk water systems.
- A total of 312 systems did not meet Canadian health standards for drinking water.

Among the many underserved First Nations communities, the Council of Canadians has been in communication with the Attawapiskat First Nation, the Pikangikum First Nation of Northern Ontario and Northern Manitoba First Nations represented by the Manitoba Keewatinowi Okimakanak (MKO).

³ <http://www.hc-sc.gc.ca/fniah-spnia/promotion/public-publique/water-eau-eng.php#s2d>

⁴ <http://www.globalnews.ca/health/interactive+map/6442563948/story.html>

⁵ <http://www.globalnews.ca/health/dont+drink/6442564604/story.html>

⁶ <http://www.aadnc-aandc.gc.ca/eng/1313762701121/1313762778061>

Attawapiskat

In 2011, much media attention was given to Attawapiskat, where living conditions⁷ have degraded so significantly that the Red Cross intervened to supply humanitarian aid to the community. In 2009, a massive sewage flood dumped waste into the homes of 90 community members, leading to an evacuation order by Attawapiskat officials.⁸ Neither the Provincial nor the federal government considered this an emergency, and did not come to the community's aid. Rather the community relied on trailers donated by a mine that is housed on traditional Attawapiskat territory, and these temporary residences are still used to house people in the community. The water in the community is not considered safe to drink,⁹ and many do not have running water at all.¹⁰ However, as Shawn Atleo, National Chief of the Assembly of First Nations has stated "these conditions are right across the country. We have many Attawapiskats."¹¹

Pikangikum First Nation

In Pikangikum, an Ontarian First Nations community of 2,300 people, 80-95% of the homes lack running water and indoor plumbing, yet the federal government did not list this community as a high priority in their water assessment.¹² Some members of the community access their drinking water in buckets from a nearby lake. In the summer, the overburdened septic systems can flow into this water source, severely contaminating it. When Ontario's Northwestern Health Unit sent a team to investigate the water system in Pikangikum in 2006, one investigator stated that "[w]e were startled, upset. It was awful. This was a level of neglect that almost appeared purposeful." In April of 2011, a state of emergency was declared in the community, as no supply of potable water was available whatsoever.¹³

⁷ <http://www.cbc.ca/news/canada/story/2011/12/01/attawapiskat-thursday.html>

⁸ <http://www.globaltvedmonton.com/timeline/6442531868/story.html>

⁹ <http://www.globaltvedmonton.com/timeline/6442531868/story.html>

¹⁰ <http://www.thestar.com/news/canada/article/1094631--for-attawapiskat-residents-life-is-a-constant-struggle>

¹¹ <http://www.theglobeandmail.com/news/politics/first-nations-lament-living-conditions-in-many-attawapiskats/article2268756/>

<http://www.ecojustice.ca/files/first-nations-right-to-water>

¹³ <http://netnewsledger.com/2011/04/15/state-of-emergency-declared-pikangikum-first-nation/>

“We have made formal requests for support to upgrade our water and sanitation systems to the six Ministers of the Department of Indian and Northern Affairs since 1999 to the present, October 7, 2011,” Pikangikum band member Gordon Peters wrote in a letter to the Council of Canadians. “These Ministers of the Crown have failed to take leadership to begin immediate and concrete action required to avoid the health hazards to the Peoples of the Pikangikum First Nation.

The letter, enclosed in the appendix of this submission, further describes conditions in which over 400 homes have no running water or sanitation forcing community members to walk to the water treatment plant to fill water buckets for drinking, travel a 140 km round trip to Red Lake in order to wash clothes and dig their own outhouses.

The 2006 study by the North Western Health Unit concluded “the lack of safe potable water and accompanying lack of water distribution infrastructure has contributed to the burden of illness for the Pikangikum residents.”¹⁴

Northern Manitoba

In March 2011, Northern Manitoba chiefs ran a public education campaign through postcards featuring the black and white image of a young man with a rash on his face and a caption that read “Do you have running water? I don’t... And I live in Canada.”

A series of high profile media stories have depicted the deplorable conditions in Manitoba’s four Island Lake First Nations -- St. Theresa Point, Wasagamack, Red Sucker Lake and Garden Hill -- located about 500 kilometres northeast of Winnipeg. According to a 2011 CBC report only half the homes in the Lake Island region of Northern Manitoba received running water to their homes¹⁵. A second category had water delivered to their homes every week or two, often running out in between deliveries, while a third category were left to their own devices and had to fetch their own water in pails.

A 2010 series by the Winnipeg Free Press depicts the humiliating plight of thousands of people living on First Nations reserves in Northern Manitoba having to defecate outdoors in -28 degree weather.¹⁶

Chiefs in the region have also sounded the alarm on the propensity of First Nations homes to be hardest hit by epidemic outbreaks as a result of poor access to water

¹⁴ <http://www.turtleisland.org/healing/pikangikum06a.pdf>

¹⁵ <http://www.cbc.ca/news/canada/manitoba/story/2011/03/20/man-f-water-human-rights.html>

¹⁶ <http://www.winnipegfreepress.com/no-running-water/>

and sanitation. In 2009, the Canadian Medical Association reported that “whereas Aboriginal Canadians make up 3.4% of the population (with 1.14 million people), they accounted for 16% of admissions to hospital during the first wave of the pandemic, and 43% of Aboriginal patients had underlying medical conditions.”¹⁷

Bill S-8

The government’s purported attempts to remedy the situation through legislation have been highly contested by First Nations advocates.

March of 2012 at the Assembly of First Nations Water Conference, AFN National Chief Atleo quoted Treaty 7 Grand Chief Charles Weaselhead on the flaws with bill S-8, namely the lack of resources allocated to the communities: “Regulations without capacity and financial resources to support them will only set up First Nations to fail. We must address the capacity gap as well as the regulatory gap. The Safe Drinking Water for First Nations Act alone cannot and will not ensure the safety of First Nations drinking water.”¹⁸

First Nations group further decried provisions within the bill that would allow regulations to override treaty rights.¹⁹ The bill allows for regulations to override Aboriginal rights to the extent necessary to ensure the safety of drinking water on First Nation lands.

Legislation demanding that First Nations communities potentially exchange their treaty rights for a regulatory water scheme does not support the human right to water. The fundamental human right to water cannot be conditional upon giving up other rights. To retain legislative protection of this right from a population unless they sacrifice another right is extortion. As stated in the Office of the UN High Commissioner for Human Rights factsheet, the First Nations drinking water crisis in Canada is shameful. In an affluent country where most have access to drinking water, the exclusion of First Nations communities such as those of Pikangikum and Attawapiskat and Northern Manitoba from access to safe water is deplorable.

MINING AND LAKE DUMPING IN CANADA

A number of recent studies have shown that Canada is not sheltered from the impacts of the global water crisis. According to Dr. David Schindler claims of

¹⁷ <http://www.cmaj.ca/content/183/13/E1033.full>

¹⁸ <http://www.afn.ca/index.php/en/news-media/latest-news/national-chief-atleo-opening-remarks-afn-water-rights-conference>

¹⁹ <http://www.parl.gc.ca/HousePublications/Publication.aspx?Docid=5684992&file=4>, section 3

Canada's abundant water supplies have been deceptive and failed to tell an accurate story about water stress and shortages, particularly in Canada's Prairie Provinces.²⁰ As such, it is vital that the right to water and sanitation be linked to environmental safeguards that ensure source water protection and the preservation of water supplies for future generations.

Canada's gutting of environmental regulation, through the omnibus budget implementation bill C- 38 in the name of economic growth, was met with outrage within the scientific and environmental community. The potentially dangerous far-reaching implications of this bill on water resources have been well argued by a number of environmental organizations including West Coast Environmental Law, Mining Watch Canada and Ecojustice.

Not coincidentally the same 425-page bill calls for a \$500 billion in investments in the extractive sector over the next decade – a scenario which would not be possible without the dismantling of environmental safeguards.

In the meantime, Canada's current practices with regards to the mining and extractive industries already severely threaten increasingly scarce water resources. A growing number of communities are arguing that a failure to regulate the extractive industry is threatening their water supply constituting a violation of their human right to water. Clean up costs of mining waste are astronomical, and cannot be reasonably incurred by future generations who will need to clean bodies of water that have been turned into dumpsites.²¹

Lake dumpings have a profound impact on freshwater ecosystems in Canada. The Ekati Diamond Mine, operated by BHP Billiton Canada Inc in the Northwest Territories, reported that 26 tonnes of ammonia, 3,802 kg of arsenic, 1,384 tonnes of chlorine, 2,736 tonnes of phosphorous, and 33,314 kg of lead were released into the surrounding environment in 2010, amongst numerous other chemicals disposed of on-site.²² The company dumps into Long Lake, which has led to contaminated groundwater. In 2008, a spill from the mine leaked processed kimberlite tailings over approximately 37,000 square meters of land near the mine. Fay Lake was contaminated by the 4.5 million liters of waste that rushed towards it, leading to concerns about the fish that inhabit the lake.

²⁰ <http://www.gordonfn.org/resfiles/Schindler.pdf>

²¹ "Troubled Waters", <http://www.miningwatch.ca/news/troubled-waters-how-mine-waste-dumping-poisoning-our-oceans-rivers-and-lakes>

²²

http://www.ec.gc.ca/pdb/websol/querysite/facility_substance_summary_e.cfm?opt_npri_id=0000005236&opt_report_year=2010#note1

Mallard Lake in Saskatchewan was a gold mine tailings compound from 1973-1997.⁴⁵ To offset the severe negative effects on the fish population, the fish were moved to nearby Yew Lake. However, the fish were able to make their way back to Mallard Lake, when a water control structure at Mallard Lake's outlet was removed.²³ The pike in Yew Lake have an average of 8 times the normal level of mercury in their flesh.⁴⁸ Yet, Mallard Lake was proposed again as a dumping lake in 2011.²⁴

Unfortunately, rather than regulate lake dumping, Canada has recently legalized it by adding a loophole to the Federal Fisheries Act.

The Fisheries Act was first implemented in 1868.⁵⁰ The Federal Department of Fisheries and Oceans was given the power to administer and enforce the Act in 1978, so as to protect the fisheries industry and the environment, and to "prevent pollution of Canadian fishery waters".²⁵

In 2002, the Federal government amended the Fisheries Act regulations (namely the Metal Mining Effluent Regulations) to include Schedule II, a list of freshwater lakes that metal mining companies that would be reclassified as tailing impoundment areas to which protections of the Fisheries Act would no longer apply. Once added to Schedule II, these tailings impounded areas could legally be used for dumping metal mine waste.

Since then, Canada has further undermined the fisheries act eliminating provisions ensuring fish habitat protection and the protection of non-commercial species on land and in water. This includes the protection of aquatic species in waters that are not frequented by humans.²⁶

CANADIAN MINING ABROAD

According to University of Ottawa Law Professor Lynda Collins, under international law, Canada is obliged not to interfere with the rights of other states' citizens.²⁷ This means that Canada is obliged not to be complicit in violations of human rights by Canadian companies overseas, nor to interfere with other government's regulation of water. Where a "threshold of gravity" is met in terms of the rights violations by a

²³ <http://www.gazette.gc.ca/rp-pr/p1/2011/2011-02-19/html/reg2-eng.html>

²⁴ <http://www.ceaa.gc.ca/050/documents/41460/41460E.pdf> page 20

²⁵ <http://www.dfo-mpo.gc.ca/habitat/role/141/reports-rapports/2001-2002/ec/page01-eng.asp>

²⁶ <http://thetyee.ca/Blogs/TheHook/2013/10/31/Fisheries-Act-Gutting/>

²⁷ Environmental Rights on the Wrong Side of History: Problematizing Canada's Position on the Human Right to Water, Lynda Collins, page 11, at <http://onlinelibrary.wiley.com/doi/10.1111/j.1467-9388.2010.00691.x/abstract>

Canadian company overseas, it can be argued that Canada is under an obligation to investigate, regulate and try that company before our courts.²⁸ In short, numerous international law customs require that states not sit idly by while companies owned by their citizens violate the human rights of others.

Canadian mining activities in other countries severely impact the human right to water for citizens in those regions. Canadian companies account for nearly 75% of the international mining industry. In 2010, the Canadian mining industry made approximately 187 billion dollars.²⁹ 58 billion resulted from mining activities in Canada, which accounts for only 31% of Canada's mining assets. Over 1000 Canadian mining companies own assets abroad.³⁰

Problems arise in attempting to bring forward legal challenges on behalf of affected communities, as Canadian courts tend to avoid adopting jurisdiction to hear lawsuits. Courts are limited in their exercise of jurisdiction where the Canadian government refuses to regulate an industry.

The Canadian mining industry is notorious for its human rights violations abroad. By extension, the Canadian government is violating the human right to water by denying regulation of Canadian mining companies abroad, and subsequently denying recourse for foreign citizens who are negatively affected by these mines. Goldcorp's Marlin mine in Guatemala and Pacific Rim in El Salvador are but two examples of struggles against Canadian mining abroad.

Goldcorp in Guatemala

In San Marco, Guatemala, the Marlin gold mine is operated by Canadian owned company Goldcorp. A study in 2006 demonstrated that the nearby Tzálá river was contaminated.³¹

Individuals living near the mine have been shown to have higher levels of metals in their systems, including arsenic,³² and very high levels of arsenic have been found in

²⁸ <http://journals1.scholarsportal.info.proxy.bib.uottawa.ca/tmp/9644927642895212085.pdf>, Responsibility Beyond Borders: State Responsibility for Extraterritorial Violations by Corporations of International Human Rights Law, by Robert McCorquodale and Penelope Simons

²⁹ <http://www.nrcan.gc.ca/minerals-metals/publications-reports/4425>

³⁰ <http://www.nrcan.gc.ca/minerals-metals/publications-reports/4425>

³¹ http://ciel.org/Law_Communities/Guatemala/Cordaid%20Guatemala%20brochure%20UK-DEF.pdf

³² https://s3.amazonaws.com/PHR_Reports/guatemala-toxic-metals.pdf page 15

the groundwater near the mine.³³ One report stated that “due to the detection of elevated arsenic concentrations in the drinking water, we cannot rule out the possibility that mining related activities are directly or indirectly involved in the health effects observed [in local inhabitants].”³⁴ In May of 2010, the Inter- American Commission on Human Rights (IACHR) called on the Guatemalan government to order that activity at the mine cease, due to environmental and human rights concerns.⁶⁵ The mine, however, continued to operate.⁶⁶ This precautionary measure requested by the IACHR has now been modified, as per a request by the Guatemalan government, however the recommendations made by the IACHR to address the concerns surrounding water, among other issues, have not been met.

Pacific Rim and El Salvador

In 2004, El Salvador refused to issue a mining permit to Canadian company Pacific Rim to mine for gold in Cabanas.³⁵ The public had voiced concerns about the environmental impact on the water supplies for the country. Pacific Rim proceeded to launch a legal challenge against the country, arguing that international trade agreements between El Salvador and the US should apply, and that Pacific Rim was entitled to damages from El Salvador for blocking economic efforts.³⁶ In June of 2012, the mining company cleared their first hurdle. An international tribunal – the International Centre for Settlement of Investment Disputes – determined that the case should proceed against El Salvador. However, they found that the case would not proceed under trade legislation, but rather under El Salvador’s own legislation requiring compensation for expropriation. As stated by a representative of the Center for International Environmental Law (CIEL), “Pac Rim is trying to dictate El Salvador’s environment and social policy”.³⁷

Pacific Rim has now been bought over by Australian-Canadian company Oceana Gold, which has taken over the legal challenge.

³³ <http://catapa.be/files/marlin.pdf>

³⁴ <http://catapa.be/files/marlin.pdf>

³⁵

http://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=showDoc&docId=DC2551_En&caseId=C661, para 8. <http://www.oxfamamerica.org/press/pressreleases/world-bank-allows-mining-company-lawsuit-against-el-salvador-to-move-forward>

³⁶ Pac Rim Cayman LLC v. Republic of El Salvador (ICSID Case No. ARB/09/12), http://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=showDoc&docId=DC2551_En&caseId=C661

³⁷ http://ciel.org/HR_Envir/PAC_RIM_4Mar11.html

Canada's CSR sham

In 2009 Canadian Prime Minister Stephen Harper established a Federal corporate social responsibility watchdog agency to resolve disputes arising in Canadian mining companies abroad.³⁸

The Office of the Extractive Sector Corporate Social Responsibility Counsellor opened in 2010. The agency was implemented to consider complaints related to the practices of Canadian mining companies overseas, including any negative human rights and environmental impacts on local communities where the mines are located.

However, Canadian companies are only encouraged to adopt voluntary environmental standards by the agency, without any mandatory compliance. Furthermore, complaints cannot be assessed unless the company agrees to participate. The agency has no real power to keep Canadian companies from violating other state citizens' human right to water.

A survey of approximately a third of internationally-operating Canadian mining companies demonstrated that these companies self-report a very low adherence to voluntary guidelines for social responsibility. One Canadian company president went so far as to state that "[Corporate Social Responsibility] is an airy-fairy concept that is meaningless in our business."³⁹ Only 5% of the survey respondents stated that they adhere to one of the many independently developed voluntary corporate social responsibility standards that have been developed for the extractive industry.⁴⁰ With such self-reported results, it is immensely flawed to state that voluntary standards are a legitimate method of regulating Canadian mining companies abroad.

³⁸ http://www.international.gc.ca/csr_counsellor-conseiller_rse/About_us-A_propos_du_bureau.aspx?view=d

³⁹ "Corporate Social Responsibility & the Canadian International Extractive Sector: A Survey", report by the Canadian Center for the Study of Resource Conflict, at http://www.resourceconflict.org/ccsrc_report_0906.pdf, page 22

⁴⁰ "Corporate Social Responsibility & the Canadian International Extractive Sector: A Survey", report by the Canadian Center for the Study of Resource Conflict, at http://www.resourceconflict.org/ccsrc_report_0906.pdf, page 30

On October 18, 2013 the CSR Counsellor quietly resigned from her post without ever having mediated any of the 6 cases brought before her during her mandate.⁴¹ As noted by Mining Watch Canada, her departure has highlighted the severe shortcomings of Canada's CSR strategy.

PRIVATIZATION

Privatization of water has led to violations of the human right to water around the world that have been well documented by our allies in the Global North and South. It has been shown that privatization leads to higher costs for citizens to access clean, safe water, leaving those without money unable to afford this basic human right. In Canada, the vast majority of water and sanitation services are publicly owned and operated, but the failure to adequately fund these services and impose funding conditions forcing cash-strapped municipalities to consider private sector involvement have threatened the ability of communities to keep their water and sanitation services public.

Rate hikes

The Council of Canadians and the Canadian Union of Public Employees have brought attention to the fact that the privatization of water in Moncton increased the cost of water significantly.⁴² In one year, rates increased by 75%, and recent rates for water use are significantly higher than the Canadian average. While proponents of privatization in Moncton have argued that quality of services has improved, no analysis has been done on the impacts of these rates hikes on lower income households in the community.

With a median income in 2005 that was slightly over \$25,000 for persons 15 years of age or over, the Council of Canadians strongly fears that rate hikes in Moncton have very likely placed a strain on lower income households having to choose between water and other basic needs.

A December 2011 Times and Transcript news article noted the frequency of late payments on water bills in Moncton. According to a city spokesperson, \$2.6 million was owed by residential water users.

Lack of transparency and public participation

⁴¹ <http://www.miningwatch.ca/blog/federal-csr-counsellor-has-left-building-can-we-now-have-effective-ombudsman-mechanism-extracti>

⁴² <http://rabble.ca/blogs/bloggers/making-waves/2012/02/lessons-moncton%E2%80%99s-water-privatization- experience>

In Winnipeg, community members have decried the lack of transparency and public debate over the decision to enter into an agreement with French multinational water corporation Veolia for the city's waste water treatment plant. A 2010 Probe Research poll revealed that 61 percent of Winnipeggers opposed the sewage contract that was hatched in secret by city officials and the corporation.⁴³

CONCLUSION

While Canada finally claims to recognize water and sanitation as a human right, it has a long way to go towards its implementation. Canada is yet to put forth a plan or dedicate funding towards the realization of this vital human right. Meanwhile it continues to fall shamefully short of its obligations towards Indigenous communities, it has severely weakened environmental legislation threatening source water supplies throughout the country, it continues to promote an extractive industry responsible for grave human rights and environmental violations and it is undermining the ability of communities to maintain public water and sanitation services.

The Council of Canadians urges the United Nations to demand that Canada put in place a national action plan for the realization of the Human Right to Water and Sanitation in consultation with the public and Indigenous communities which includes:

- Adequate funding for public infrastructure in First Nations communities and recognition of the right of First Nations to build and operate their own water and sanitation services;
- The elimination of funding conditions for municipalities seeking federal funding for water and sanitation infrastructure that would force them to explore private sector options and the creation of a national public water infrastructure fund that would address the more than \$30 billion infrastructure deficit in water and sanitation services;
- The recognition of water and sanitation as a human right in domestic law providing recourse for communities in Canada whose rights are violated
- Recourse for communities impacted by Canadian human rights violations abroad, notably those of Canadian mining corporations.

⁴³ <http://cupe.ca/water/winnipeg-residents-reject-secret-sewage>