



## **End of Mission Statement by the Special Rapporteur on the human rights to safe drinking water and sanitation, Mr Pedro Arrojo-Agudo at the conclusion of the country visit to Canada**

Ottawa, 19 April 2024

As the United Nations Special Rapporteur on the human rights to safe drinking water and sanitation, I address you today at the conclusion of my visit to Canada, which I undertook from 8 to 19 April 2024 at the government's invitation. I am deeply grateful to the Government of Canada for the invitation and collaboration in organizing the visit and for the respectful dialogue we had, which I hope will continue in the future.

I am deeply grateful to the Indigenous Peoples representatives, civil society organizations, and academics for generously sharing their thoughts, experiences, and information on the struggles, challenges, and opportunities regarding the fulfilment of the human right to safe drinking water and sanitation in Canada. I wish to extend a special thanks to the First Nations and Inuit elders and women I had the privilege of meeting, who shared their invaluable knowledge and experience with me. Your insights have reinforced my belief that Indigenous Peoples should be at the heart of safe drinking water and sanitation policies and programmes in Canada on the basis of the sustainable management of aquatic ecosystems and that an intercultural dialogue on conditions of equality is crucial to bridge the unacceptable gap affecting Indigenous Peoples' human right to safe drinking water and sanitation in the country.

Before delving into the details, I would like to clarify the purpose of this statement. It serves to present my preliminary findings and recommendations, which are based on the information gathered prior to and during the visit. I must emphasize that this is not the final report. The final and more comprehensive report will be presented to the United Nations Human Rights Council at its 57th session in September 2024.

### **Introduction**

I have completed two eventful weeks during which I had the privilege of meeting with authorities, Indigenous Peoples, civil society, and academics in Ottawa, Iqaluit, Toronto, Fort McMurray, Vancouver, and Smithers.

I received compelling testimonies about the harsh living conditions on-reserve where Indigenous Peoples have historically been forced to live and where, in many cases, not even their human right to drinking water is guaranteed.

In addition, climate change is an unparalleled challenge, and we are just beginning to witness its effects.

## **The institutional framework**

Canada is a federation in which the responsibility for managing aquatic ecosystems, drinking water, and sanitation services mainly lies with the provincial and territorial governments. The federal government is responsible for implementing legislation regarding navigation and fishhabitat , agreements with the United States in transboundary basins, and supporting the provision of water and sanitation services on-reserve, which are under federal jurisdiction.

Despite some good examples on transboundary cooperation this distribution of powers could make it difficult to develop ecosystem approaches in the management of transboundary basins and aquifers (shared by provinces and territories) that are necessary to face the growing risks derived from climate change, through adequate planning and management of these basins.

It is noteworthy that First Nations Reserves only represent small portions of their traditional territories, meaning that the sources they depend on are often outside of reserves. Therefore, although the federal government funds on-reserve drinking water programs, their water sources are often impacted by productive activities and discharges that are under the control of the provincial authorities. This jeopardizes the enjoyment of First Nations' safe drinking water and sanitation rights as the implementation of these rights falls through the cracks of the institutional system.

Likewise, this division of powers cannot blur the federal government's ultimate obligation to guarantee human rights to drinking water and sanitation throughout the country. In this vein, it would be essential that Canada recognizes the human rights to safe drinking water and sanitation at the federal level

## **Non-compliance with the human rights to water and sanitation**

One of the expressions of the injustices and human rights violations that the Indigenous Peoples of Canada have historically suffered is the constraint of First Nations in Reserves. This constraint has resulted in harsh living conditions that have generated and continue to generate the tragedy of suicide among children and young people.

The development of certain extractive activities, mainly mining and hydrocarbons, has caused risks and impacts of toxic contamination of the water sources that supply the First Nations communities. Particularly harrowing were the testimonies collected from Grassy Narrows First Nation in Ontario, victims of a massive mercury spill that still affects the fisheries on which they feed, while mining licenses continue to be approved in their territories without their consent. In addition, the testimonies of the First Nations affected by oil pollution from the exploitation of hydrocarbons in the Alberta tar sands were also disheartening.

It is puzzling that in cases like the Mount Polley spill, where the company responsible is easily identified, the principle of holding those who cause damage or pollution of the water sources accountable and requiring them to restore the damage and compensate the people affected is not being applied effectively.

I met First Nations Chiefs, Indigenous women's organizations, and water defenders who are opposing large hydrocarbon transportation infrastructures in their territories. These infrastructures, such as the Coastal Gaslink Pipeline or the Trans Mountain Pipeline System, have been directly affecting and will affect the water sources of Wet'suwet'en and Secwepemc Peoples in their unceded territories. The Tiny House Warriors movement and other similar groups have voiced their opposition to these infrastructures in defence of rivers, such as the *Webzin Kwah*, that, without a doubt, must be protected as unique natural heritage sites.

In these cases, Indigenous Peoples' rights to peaceful protest and freedom of expression have been breached through criminalization, repression, and persecution, undermining the trust and credibility on the reconciliation commitment. In this regard, I support and reiterate the recommendations previously made by the Special Rapporteur on the rights of Indigenous Peoples in his report (A/HRC/54/31/Add.2) and the Committee on the Elimination of Racial Discrimination (CERD/C/CAN/CO/21-23) urging Canada to halt the criminalisation of Indigenous human rights defenders defending their lands and resources from extractive industries and business actors.

It is important to pay special attention to the obligation established by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), domesticated in Canada by the current UNDRIP Act. This obligation requires that the principle of free prior and informed consent is applied respecting the dynamics of consultation and consent established by the Indigenous Peoples themselves. Unfortunately, I have observed unjustifiable practices, such as transferring the responsibility of conducting consultations in the environmental impact assessment process to the companies concerned, which goes against the aforementioned obligation.

### **Drinking water advisories in First Nations**

The use of the term "drinking water advisories" to refer to the non-availability of drinking water is concerning, especially when it comes to long-term drinking water advisories. These advisories suggest that there is a structural failure in providing access to drinking water. According to information received, such advisories affect most of Indigenous Peoples reserves. Meanwhile, most of non-Indigenous populations, mainly in urban areas, only experience occasional advisories due to accidents or breakdowns that are quickly remedied, as expected in a rich country like Canada.

It's worth noting that regardless of whether there are drinking water advisories in place, I received testimonies indicating that numerous houses on-reserve do not have access to tap water, which is a breach of the fundamental right to clean drinking water.

The different types of water advisories warn against different types of uses of water. At Federal level the first categorization of these advisories, correspond to boil water advisory, which is meant to combat biological contamination due to a lack of sanitation and/or adequate treatment. This type of advisory can be resolved by using accessible and inexpensive means of disinfection. Other type of categories such as do not consume advisories, and the do not use advisores indicate serious problems of toxic contamination, such as heavy metals.

I would like to emphasize that the systematic or frequent non-availability of drinking water for any of the abovementioned reasons breaches the human right to drinking water. In these cases, public information on the non-availability of drinking water is necessary. Still, it does not in any way guarantee the human right to drinking water of those concerned.

Ultimately, I would like to underline that the concern for water potability problems obscures the necessary attention to sanitation services, particularly on-reserve. Nevertheless, during the visit, I learnt about First Nations communities where the maintenance costs of septic tanks are difficult to cover.

### **Encouraging progress and pending challenges**

Undoubtedly, the work of the Truth and Reconciliation Commission and the recognition by the Canadian Parliament of the genocide committed against Indigenous Peoples will go down in history and constitute a worldwide reference on the necessary recognition of similar crimes in so many colonization processes. The commitment to reconciliation that arose from this

parliamentary decision opens a hopeful path that must be pursued as a priority for the country over and above ideologies and partisan options.

With the enactment of the UNDRIP Act, the Canadian government rectified the error of voting against it when the United Nations approved it. Nonetheless, the road ahead requires profound changes, particularly regarding the provision of infrastructure in the First Nations Reserves and Inuit communities with the corresponding provision of funds to manage the water and sanitation services under the Canadian standards-to cover the historical gap of marginalization imposed over centuries on First Nations. In the same vein, the development of this new Act should positively complement the Crown Treaties with the First Nations, promoting the effective control of these peoples over the waters of their territories, as established in the UNDRIP.

Recently, a class action filed by Neskantaga First Nation, Curve Lake First Nation, and Tataskweyak Cree Nation, due to long-term water advisories led in December 2021 to a positive reaction from the government agreeing on an 8-billion-dollar settlement which establishes concrete measures to solve and compensate eligible First Nations and their members affected by long-term drinking water advisories. These measures should logically be extended to all First Nations suffering from similar problems.

Despite the original deadline of 2021 to end all long-term drinking water advisories, the federal government has failed to meet this goal, extending the deadline to 2026. In fact, even the Neskantaga First Nation, being direct beneficiaries of the class action settlement, continues to be under a water advisory after 29 years.

In addition, as a result of the class action settlement, the government has undertaken a process to address the chronic issue of drinking water in First Nations: Bill C61, which aims to improve water and sanitation in First Nations lands. Regarding this bill, during my visit, several representatives from First Nations expressed reasonable concerns that deserve to be considered, such as the lack of clear recognition of First Nations' rights and jurisdiction over their lands and water sources as required by UNDRIP and the need to include a binding requirement to guarantee the minimum national standards on drinking water and sanitation.

The new Canada Water Agency must address the Federal Government's obligation to ensure the human right to drinking water and sanitation in First Nations Reserves and Inuit communities and transfer capacities, competencies, and means to the Indigenous Peoples' authorities on water and sanitation services.

Due to the current distribution of competencies regarding water and sanitation, which are handled by the provinces and territories (excluding reserves), the Canada Water Agency can only foster cooperation. However, in my view, it should also possess supervisory powers that would enable it to guarantee the human rights to water and sanitation to everyone at the federal level.

Likewise, deeper reforms are needed to review the unjust constraint of First Nations in reserves. These reforms would allow for effective control of the waters and aquatic ecosystems in the historical territories.

The transfer of powers from the Federal Government to Nunavut is a significant achievement. In this context, during my visit to Iqaluit, I had the opportunity to hear from government and Inuit representatives about the need to increase federal funds to provide and maintain water services with adequate infrastructure in Nunavut's harsh climatic conditions under the impacts of climate change. The melting thawing of permafrost and the rise of sea levels generates, among other risks and impacts, the salinization of certain water sources. It is crucial to support the Nunavut government and Inuit organizations in building capacity to face the unprecedented challenges

posed by climate change. Moreover, the Inuit knowledge, values and practices need to be integrated into the governance approach to be developed in the Nunavut Water Strategy, as well as the effective participation of Inuit communities.

It is necessary to implement political and institutional reforms to develop an ecosystem approach based on human rights in transboundary basins that encompass several provinces and territories. It is important to have a comprehensive approach to managing the risks associated with climate change. This should include watershed planning and adequate adaptation plans for droughts and floods. At the basin level, an ecosystem approach should be adopted to identify and assess the synergistic impacts of new extractive projects in basins already overburdened by multiple activities. Strategic Environmental Assessments should be made mandatory to achieve this goal. Furthermore, this approach must be based on human rights, guaranteeing the effective participation of the population of each basin and, in particular, the equitable participation of Indigenous Peoples in the management and planning of basins that overflow their territories.

Many Canadian companies operate globally, including Canadian mining companies which are present in 98 countries. The impact, risks, and conflicts generated by their extractive activities have a significant impact on human rights in these countries and on Canada's reputation. In this context, I would like to highlight the work of the Canadian Ombudsperson for Responsible Enterprise. Although it lacks enforcement powers, it can bring problems to light, suggest alternatives, and offer mediation options. However, the effectiveness of this institution could be strengthened by implementing a Canadian regulation for corporate responsibility abroad and reinforcing whistleblower protection.

### **Preliminary recommendations**

- I recommend recognising the human rights to safe drinking water and sanitation in the federal legal framework.
- I recommend that the Federal Government implements the UNDRIP Act as the main tool to realise the commitment to reconciliation as a national priority:
  - Guaranteeing the effective application of the principle of free prior and informed consent, with full respect to the traditional governance and participation avenues of Indigenous Peoples;
  - Promoting legal reforms to recognize First Nations' jurisdiction over water sources, aquatic ecosystems and lands beyond their reserves, on which they rely.
  - Establishing binding legal requirements to guarantee the minimum national standards on drinking water and sanitation in First Nations reserves and Inuit communities;
  - Transferring the competencies on drinking water and sanitation services in reserves to the Indigenous authorities, ensuring the investments and funds for managing these services under Canadian standards.
- I recommend that the Federal Government ensure specific investments, funds and human resources in Nunavut are adapted to the climatic condition and the specific impacts of climate change and that the Nunavut Government ensure effective participation of Inuit communities, integrating their knowledge and practices in the governance of water and sanitation.
- I recommend promoting federal legal reforms to promote a human rights-based ecosystem approach to planning and managing transboundary watersheds, with the effective participation of the watershed population, particularly equal participation of Indigenous Peoples.

## **Information about the visit**

During the visit, I met with representatives from: The federal government -- including Parliamentary Secretary to the Prime Minister and Special Advisor for Water, and government officials from Indigenous Services Canada; Environment and Climate Change Canada (including the following branches Canada Water Agency, Science and Technology Branch, Climate Change Branch and Environmental Protection Branch); Department of Justice; Health Canada; Natural Resources Canada; Agriculture and Agri-Food Canada; Infrastructure Canada; Crown-Indigenous Relations and Northern Affairs Canada, and Fisheries and Oceans Canada. Nunavut: Nunavut Association of Municipalities; Government of Nunavut: Community and territorial services; Department of Health; Department of Environment; Climate Change Secretariat; Nunavut Water Board; Mayor of Iqaluit; Water Technicians from Iqaluit. Alberta Environment and Protected Areas and Alberta Energy Regulator; British Columbia: Ministry of Water, Land and Resource Stewardship (Stewardship Operations -Strategic Land Use, North Area-; Regional Operations Administrator; Water, Fisheries and Coast Division; Water Resources Stewardship); Ministry of Indigenous Relations and Reconciliation (Senior Resource Coordination Officer -North Regional Negotiations Team-; Northern Health Authority (North West, Environmental Health; Northern Health Indigenous Health Advisor; Community Health Services Manager for Smithers); Ministry of Health (Health Protection; Indigenous Health; Drinking Water); Office of the Provincial Health Office; Ministry of Attorney General; Office of the Canadian Ombudsperson for Responsible Enterprise (CORE).

I also met and interacted with dozens of Indigenous Peoples in all the provinces and cities I visited, as well as with representatives from civil society organizations and academia.

In addition, I met with representatives from the oil, and mining industries.

I want to reiterate that this Statement includes my preliminary thoughts and ideas. A report containing a large analysis will be presented to the Human Rights Council's 57th session in September 2024.

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