



Government of Canada
Permanent Mission of Canada
to the United Nations and the
Conference on Disarmament

Gouvernement du Canada
Mission permanente du Canada
auprès des Nations Unies et de
la Conférence du désarmement

Note No.: GENEV-3286

Reference: Canada's response to AL CAN 2/2016

The Permanent Mission of Canada to the Office of the United Nations at Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to refer to AL CAN 2/2016 from the Special Rapporteur on adequate housing, the Special Rapporteur on the rights of indigenous peoples, and the Special Rapporteur on the human rights to safe drinking water and sanitation, dated 4 November 2016

The Permanent Mission of further has the honour to submit Canada's response. The submission consists of one document.

The Permanent Mission of Canada to the Office of the United Nations at Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 1 February 2017.



Canada's Response to the Joint Communications from Special Procedures

(i.e., response to questionnaire submitted to Canada by three Special Rapporteurs on behalf of the Office of the United Nations High Commissioner for Human Rights)

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations (please see the full text of the letter to assist INAC response).

The Government of Canada recognizes that more must be done to support First Nations communities in addressing water and wastewater infrastructure challenges. The Government also recognizes that access to safe and affordable housing is essential to developing healthier, more sustainable Indigenous communities, and improving their social well-being. As such, the Government of Canada is engaging in a renewed, respectful, and inclusive nation-to-nation process and is committed to working in collaboration with First Nations and stakeholders to improve essential physical infrastructure, including water, wastewater and housing.

Budget 2016 was an important first step in reversing the chronic underfunding of infrastructure in First Nation communities. The Government of Canada committed investments of approximately \$4 billion in Budget 2016, through Indigenous and Northern Affairs Canada (INAC), for on-reserve infrastructure.

Water and wastewater

Between 2008-2009 and 2014-2015, the federal government has invested approximately \$331 million annually to support First Nation communities in managing their water and wastewater infrastructure. In Budget 2016, the Government of Canada provided targeted investments of \$1.8 billion over five years, beginning in 2016-2017. Over five years, this is an annual average of \$360 million committed for water and wastewater services on-reserve. When combined with annual departmental reference levels of \$203 million, the combined annual average is \$563 million. Budget 2016 proposes to address health and safety needs, capacity and training, ensure proper facility operation and maintenance, and end long-term drinking water advisories on reserves within five years.

To help improve the monitoring and testing of on-reserve community drinking water, Budget 2016 includes, for Health Canada, an investment of \$141.7 million over five years, starting in 2016-17. This funding will complement the significant investments that the Government is making in water and wastewater infrastructure on-reserve through the green infrastructure initiative. This investment will also help monitor progress on efforts to end drinking water advisories on-reserve.

This long-term approach will support First Nations in the operation and maintenance of existing facilities; as well as construction of new facilities, while building community capacity to ensure that standards for water and wastewater infrastructure in First Nations communities are comparable to other communities within Canada.

Housing

Budget 2016 provided \$416.6 million over two years to INAC to address urgent housing conditions on-reserve. An additional \$137.7 million over two years was provided to Canada Mortgage and Housing Corporation (CMHC), most of which to support the renovation and retrofit of existing housing on reserve.

While Budget 2016 housing investments will have a positive, short-term stimulus effect, INAC recognizes that there is a need to continue the momentum with longer-term investments delivered through a broader strategy that recognizes adequate housing as the foundation for improving overall well-being for Indigenous peoples.

The primary role of INAC with respect to housing on-reserve is to fund First Nation governments for the delivery of programs and services. The Department provides an annual contribution to First Nations for housing, which may be used at their discretion to meet a range of housing needs. All decisions regarding housing, including the selection of designs and the procurement of construction materials, are made by communities. The Department does not engage in the procurement of products or services on the behalf of bands and does not review or endorse companies, products, systems, or services.

INAC is working in collaboration with CMHC on a National Housing Strategy and in the process has engaged (consulted) with key Indigenous partners including National Indigenous Organizations and Indigenous Peoples on-reserve, in remote, urban and northern communities. Through these engagements, INAC and CMHC heard that there is an urgent need for: stable and predictable funding; distinct housing strategies that address the unique needs and challenges of First Nations, Métis and Inuit; capacity development; and, support for the development of Indigenous-led institutions as well as innovative approaches that could include new financing models. That being said, INAC will continue to work with CMHC on addressing the housing needs and meeting the aspirational goals of Indigenous peoples.

2. Please provide information on the measures being taken to provide access to safe, affordable and accessible water and adequate housing for First Nations peoples, notably those living in communities whose water systems are subject to systematic drinking water advisories.

As highlighted above, the Government of Canada is increasing investments and support to First Nations for water and wastewater infrastructure. The Government of Canada agrees that all Canadians should have access to safe, clean, reliable drinking water. That is why we have committed to ending long-term drinking water advisories on reserves within five years, starting in 2016–17. To help achieve this goal, projects and initiatives are being prioritized with a focus on eliminating all of the long-term drinking water advisories affecting systems financially supported by the Government of Canada. Regional officials are working directly with affected communities and other relevant stakeholders to address site-specific issues. A task force of water experts comprising First Nation leaders, water experts from the Department of Indigenous and Northern Affairs Canada, First Nation technical organizations, provinces and

the private sector is being established in the three regions requiring the most support: Ontario, Saskatchewan, and British Columbia. In addition to these efforts, plans specific to each long-term drinking water advisory affecting INAC-funded systems have been developed to ensure that solutions are implemented.

Health Canada works directly with First Nations to assist communities in monitoring drinking water quality, which includes providing advice and guidance about drinking water safety and wastewater disposal, and reviewing infrastructure project proposals from a public health perspective. When a potential concern about the drinking water quality is identified, departmental officials immediately communicate the appropriate recommendations to the Chief and Band Council of the First Nation community for action, which can include issuing a drinking water advisory (DWA). It is the responsibility of the Chief and Council, or their delegates, to issue or rescind a DWA and take necessary actions. Health Canada also assists First Nations communities in their efforts around the safe disposal of on-site domestic sewage and, if there is a risk to public health, inspects wastewater facilities to provide advice on how to reduce this risk.

Through joint efforts with these communities, progress is being made. All First Nations communities now have access to trained personnel to sample and test drinking water quality at the tap, and it is being monitored more regularly. As a result of enhanced capacity and increased monitoring frequency, First Nations' and Health Canada's ability to detect potential problems sooner has improved. Overall, perceptions of First Nations residents around the safety of their water supply have also improved.

Since the commitment to end long-term drinking water advisories was made in Budget 2016, fourteen long-term drinking water advisories on reserve have been removed.

As mentioned above, the Government of Canada recognizes that access to safe and affordable housing is essential to developing healthier, more sustainable Indigenous communities, and improving their social well-being.

As a first step to tackle this pressing issue, Budget 2016 announced \$416.6 million in funding over two years to address immediate housing needs on reserve. This investment focuses on communities with the highest needs and vulnerable population. It also supports initiatives that help communities strengthen their capacity to oversee and manage their on-reserve housing portfolio and develop innovative approaches that are beneficial to the entire community.

3. Please provide information on the measures being taken to improve the water and sanitation systems of First Nations communities to an equal standard as those found throughout Canada, and how these measures have been linked to measures to address the need for adequate housing, in particular for the approximately 30 percent of First Nations community water systems assessed by relevant authorities as presenting high risk.

As previously outlined, the Government of Canada's new long-term approach to water and wastewater infrastructure on reserve will support First Nations in the operation and maintenance of existing facilities, as well as construction of new facilities, while building community capacity to ensure that standards for water and wastewater infrastructure in First Nations communities are comparable to other communities within Canada.

Indigenous and Northern Affairs Canada (INAC) supports First Nation communities to have a base of water and wastewater facilities that meet established standards by tracking the ongoing condition of facilities through inspections. The Department monitors the lifecycle of water and wastewater infrastructure and related assets. The protection of infrastructure and related assets through adequate operations and maintenance is integral to mitigating health and safety concerns and ensuring that existing and new water and wastewater infrastructure and related assets reach their full life cycle. INAC supports First Nation communities to have a base of water and wastewater facilities that meet established standards by tracking the ongoing condition of facilities through inspections that are carried out at least once every three years with the Asset Condition Reporting System. Through the Asset Condition Reporting System inspections, a list of deficiencies is developed and provided to the First Nations and INAC.

Annual Performance Inspections of on-reserve water and wastewater infrastructure are also done to ensure that: the treatment process performs to design standards; operator level of certification meets the complexity level of the treatment plant; performance of the treatment process is acceptable; and the potential for contamination is identified and the necessary improvements are made to mitigate this potential. The annual inspections include site visits conducted by a qualified person (licensed consulting engineer, licensed Tribal Council engineer, provincial water system inspector or a water system operator) who must be certified to a level equivalent to the level of the system being inspected and who cannot be a member of the band involved. An evaluation of the management risk levels associated with each system is performed as part of the process. The annual inspection reports are discussed with and submitted to the band council and to the INAC regional office. Further to those inspections, INAC Regional Offices work with First Nations through the annual First Nations Infrastructure Investment Plan process to address any identified repairs and maintenance work needed to preserve water and wastewater facilities.

Results from the 2015-16 Annual Performance Inspections showed that 17% of water systems and 2.7% of wastewater systems had a high risk rating; while, 28% of water systems and 52% of wastewater systems had a medium risk rating. A system is deemed "high risk" when there are major deficiencies identified with the majority of the components. Medium risk systems

have deficiencies that, individually or combined, pose a medium risk to the quality of water and human health. Progress can be monitored based on the increase of low risk rankings within water and wastewater systems. The percentage of water systems that have low risk ratings increased from 27% to 56% between 2011 and 2015-16. The percentage of wastewater systems that have low risk ratings increased from 35% to 45% between 2011 and 2015-16. These percentages are a good indication of how investments have had a positive impact on the quality of water and wastewater in First Nations communities. Future investments will lead to further increases in the amount of systems deemed low risk.

The percentage of First Nations' water systems that met the Guidelines for Canadian Drinking Water Quality increased from 46% in 2011 to 92% in 2015-2016. The percentage of First Nations' wastewater systems producing treated water that met effluent quality regulations and guidelines progressed from 68% in 2012 (the year new standards were introduced) to 80% in 2015–2016, partially due to investments that support communities in complying with Environment Canada's Wastewater Systems Effluent Regulations.

As the owners and operators of infrastructure on-reserve, First Nation communities are responsible for the planning, design, procurement, construction, and operation and maintenance of on-reserve infrastructure. As a standard practice, INAC provides funding and advice for infrastructure on reserve, but it does not engage in the procurement of products or services on the behalf of First Nation communities. In support of on-reserve infrastructure, INAC requires the application of the Protocol for INAC-Funded Infrastructure to all First Nation owned and/or operated infrastructure and housing. The Protocol for INAC-funded Infrastructure provides an up to date listing of applicable statutes and regulations that must be complied with, as well as a listing of additional policies, codes, directives, standards, protocols, specifications, guidelines, and procedures to which a Council of a First Nation is required, by INAC, to adhere to as a condition of funding. The Protocol serves as a reference for qualified and experienced third parties who are engaged by First Nations to provide planning, design, construction, operation and maintenance services, or goods or other services on First Nation land.

4. Please provide information on the measures being taken to impart adequate training to water and sanitation systems operators in First Nations reserves, as well as to households with individual systems, particularly ensuring that training will be acceptable from the particular socio-cultural standpoints of each community.

INAC supports First Nations in their efforts to operate and maintain their water and wastewater infrastructure through the Circuit Rider Training Program. The Circuit Rider Training Program provides First Nations operators with hands-on, on-site training and mentoring on how to operate their drinking water and wastewater systems. The Circuit Rider Training Program is offered through a variety of partners and service providers including private companies, tribal councils and First Nation technical organizations.

The Circuit Rider Training Program rotates qualified experts, known as Circuit Rider Trainers (CRTs), through a circuit of First Nation communities, who provide hands-on training to operators on their own water and wastewater systems.

The Circuit Rider Trainers also support on-reserve operators to coordinate their certification training. They may also provide advice to Chiefs and Councils on the responsibilities with respect to management, operation and maintenance of their water and wastewater systems. Currently, approximately 70 Circuit Rider trainers support First Nation operators.

The program is offered to all First Nation communities across Canada and is intended for water and wastewater treatment plant operators who are currently employed by a First Nation community and are operating the First Nation's community water and/or wastewater treatment system(s). INAC provides financial support for the training and certification of operators. First Nation Chiefs and Band Councils are responsible for ensuring that the operators are adequately certified.

The Circuit Rider Training Program aims to:

- support on-reserve water and wastewater system operators in developing and maintaining the capacity to manage their systems well;
- improve the maintenance, management and effectiveness of on-reserve drinking water and wastewater systems;
- reduce the number and duration of drinking water advisories (DWAs); and,
- help First Nations communities to exploit the full service life of their water and wastewater infrastructure.

The Department assisted in the establishment of the Circuit Rider Trainers Professional Association in March 2009. This Association meets annually and, throughout the year, maintains the network of Circuit Rider Trainers to share best practices, training materials and provide mutual support.

The Department will continue to partner with First Nations to improve and innovate based on best practices. INAC provides financial support to assist First Nations in providing community

water and wastewater services comparable to the levels of service that would generally be available in non-native communities of similar size and circumstances. By policy, privately-owned homes are not eligible for funding support for on-site water and wastewater systems.

Health Canada has also implemented a National Wastewater Program and developed several water-related guidance documents and public awareness materials for use in First Nations communities. This approach to water in First Nations includes:

- Procedures for Addressing Drinking Water Advisories in First Nations Communities South of 60°.
- Implementation of a National Framework for the Review of Water and Wastewater Infrastructure Project Proposals in First Nations Communities that better incorporates Health Canada's integrated review process.
- Guidelines for drinking water cisterns and trucked water delivery in First Nations communities.
- Toolkit for Individual Wells for First Nations.

5. Please provide information on the mechanisms in place to facilitate the timely and efficient disbursement of funds destined to maintain and/or improve water and sanitation systems and housing for First Nations communities, notably clarifying what systems may justify the devolution of these funds.

To facilitate the timely and efficient disbursement of funding for water and sanitation systems, Indigenous and Northern Affairs Canada (INAC) has developed a First Nations Infrastructure Investment Plan process. First Nations Infrastructure Investment Plans are developed annually by First Nations in partnership with INAC, to strategically plan investments, in the short and medium term, while supporting a base of infrastructure that protects health and safety and enables engagement in the economy. This capital planning process aims to improve resource management, increase accountability and ensure efficient and effective planning for infrastructure investments over five years.

INAC selects water and wastewater infrastructure projects for funding through a review of projects on the community First Nations Infrastructure Investment Plans and proposals submitted by eligible recipients. INAC also utilizes the National Priority Ranking Framework and Priority Ranking Framework for Water and Wastewater Projects to help decision makers direct funding towards priority projects in a fair and consistent manner.

These tools rank infrastructure projects with a commitment to the following priorities: protecting and maintaining the life cycle of existing assets, with an emphasis on health and safety; mitigating health and safety risks through existing and new assets; addressing the backlog regarding water and sewage systems under capital and facilities maintenance activities; and, investing in other priorities, including investments in sustainable communities.

The Department applies formula-based funding for the operation and maintenance of existing assets. Operation and maintenance funding supports operation costs such as the purchase of chemicals to treat water and wastewater, operational supplies, salaries and training and other personnel costs. Funding for maintenance is provided to ensure that systems continue to run safely and in optimal condition throughout their lifespan. Operation and maintenance funding amounts vary based on the number of systems being funded and on the type and size of the systems. Remoteness is considered as it affects costs related to availability and transportation of goods.

- 6. Please provide information on how the right to water is protected in Canadian law and explain, in particular, the position Canada takes in its litigation regarding the scope of fiduciary duties of the federal government with respect to ensuring access to safe drinking water and sanitation; the application of the right to life and security of the person under sections 7 and the right to equality and non-discrimination under section 15 of the Canadian Charter of Rights and Freedoms; and the commitment under section 36(1)(c) of the Constitution of Canada to “providing essential public services of reasonable quality to all Canadians.”**

Canada recognizes the human rights of everyone to safe drinking water and basic sanitation as essential to the right to an adequate standard of living, and therefore, implicit under Article 11 of the *International Covenant on Economic, Social and Cultural Rights*.

Canada interprets the rights to safe drinking water and basic sanitation as the right to a sufficient quantity and safe quality of reasonably affordable and accessible water for personal and domestic uses (i.e. for drinking, cooking and for personal and household hygiene), and the right to basic sanitation that is safe and hygienic. Water and sanitation services should be physically and economically accessible on an equal and non-discriminatory basis.

Canada attaches great importance to these rights and takes very seriously its obligation to take appropriate steps, to the maximum of its available resources, towards its progressive realization by all appropriate means.

Canada is a federation. The responsibility for water management is shared by the federal, provincial, and municipal governments, and in some instances, by the territories and by Aboriginal¹ governments under self-government agreements. This shared responsibility gives rise to close cooperation and collaboration among all levels of government and Aboriginal peoples.

¹ In late 2015, the Government of Canada began using, in public communications, the term “Indigenous” instead of “Aboriginal” to officially describe the Indigenous populations in Canada (i.e., First Nations, Inuit and Métis). However, in legal contexts, Canada must continue to use the various terms that are included in federal and provincial laws. For example, section 35 of Canada’s *Constitution Act, 1982* recognizes and affirms “the existing aboriginal and treaty rights of the aboriginal peoples of Canada”. That provision contains a specific definition for this term. Therefore, this report will generally use the term “Indigenous”; but will use the term “Aboriginal” when referring to constitutionally protected rights.

Provinces and territories are responsible for the day-to-day management and regulation of drinking water supplies within their jurisdiction. Most of these governments delegate certain authorities to municipalities, especially the drinking water treatment and distribution and wastewater treatment operations of urban areas. They may also delegate some water resource management functions to local authorities that may be responsible for a particular area or river basin. Most major uses of water in Canada are permitted or licensed under provincial water management authorities.

The federal government has certain specific responsibilities relating to water, such as fisheries and navigation, as well as exercising certain overall responsibilities for managing water within its jurisdiction, which includes federal lands (e.g., National Parks), federal facilities (e.g., office buildings, labs, penitentiaries, military bases), First Nation reserves, as well as two of Canada's three territories (Nunavut and Northwest Territories). Shared federal-provincial responsibilities include agriculture and health. Responsibility for providing water and wastewater services to First Nations is shared among band councils, Indigenous and Northern Affairs Canada, Health Canada and Environment Canada.

Canada progressively realizes the rights to safe drinking water and basic sanitation domestically through a combination of federal, provincial, territorial and municipal legislation, by-laws, regulations, codes, in addition to administrative, policy, programming and financial measures. These measures address the availability, quality and accessibility of water in Canada, including in respect of water quality and safety, its supply and sanitation, and the quantity and affordability of water.

For example, the [Guidelines for Canadian Drinking Water Quality](#) set the basis for establishing drinking water quality requirements to provide the cleanest, safest and most reliable drinking water possible in all jurisdictions in Canada.

The [Canada Water Act](#) calls for joint consultation between the federal and provincial governments in matters relating to water resources. Joint projects involve the regulation, apportionment, monitoring or survey of water resources, and the pre-planning, planning or implementation of sustainable water resource programs.

The Province of Quebec's [Act to affirm the collective nature of water resources and provide for increased water resource protection](#) guarantees every person's right to have access to safe drinking water, under the conditions and within the limits defined by the Act. The Act also confirms the legal status of water as a collective resource and defines the common rights and responsibilities concerning its use and conservation.

The Province of Manitoba's *Drinking Water Safety Act* addresses drinking water quality standards, assessment of water system infrastructure and water supply sources, and requirements for operating licenses for water systems.

In the Northwest Territories (NWT), the "[NWT Water Stewardship Strategy: A Plan for Action 2016-2020](#)" aims to ensure that waters which flow into, within or through the Northwest Territories are substantially unaltered in quality, quantity and rates of flow; that residents have

access to safe, clean and plentiful drinking water at all times; that residents can rely on their water to sustain their communities and economies; and, that residents are involved in and knowledgeable about water stewardship. The “NWT Water Stewardship Strategy...” builds upon the implementation of the previous “[Northern Voices, Northern Waters: NWT Water Stewardship Strategy 2010-2015](#)”.

In addition, the equality rights protections under section 15 of the *Canadian Charter of Rights and Freedoms* (*Charter*) and federal, provincial, territorial human rights legislation are an important part of the domestic framework that ensures equality of access to safe drinking water and sanitation in Canada.

In recognizing the existence of the rights to safe drinking water and basic sanitation, and ensuring their equal enjoyment by all Canadians, access to safe drinking water, the effective treatment of wastewater and the protection of sources of drinking water on First Nation lands is a priority for the Government of Canada. It is Canada’s view that First Nations should expect, as do all Canadians, access to safe, clean and reliable drinking water.

In this regard, the federal government adopted the [Safe Drinking Water for First Nations Act](#), which came into force on November 1, 2013. The Act enables the federal government to work with First Nations, their technical experts, and other stakeholders to develop enforceable federal regulations that will help to ensure access to safe, clean, and reliable drinking water, the effective treatment of wastewater, and the protection of sources of drinking water on First Nation lands. Specifically, the Act gives the Governor in Council the authority to enact regulations which may vary from province to province and which can replicate a particular provincial regulatory regime to the extent necessary, while including any adaptations that may be necessary to accommodate the application of the content of the provincial regime to reserve lands.

The Government of Canada’s current plan is for regulations that will be developed concurrently on a region-by-region basis; however, at this time, no regulations have been made under the Act nor have any draft regulations been published for public comment.

Indigenous Affairs and Northern Development Canada (INAC) has established water and wastewater protocols to help ensure that residents on First Nation lands enjoy standards of health and safety comparable to other Canadians. Standards are necessary to maintain water quality and to protect the substantial investments in First Nation water and wastewater systems.

Canada has committed an historic investment of \$1.8 billion over five years, beginning this fiscal year, to accomplish the goal of on reserve water and wastewater infrastructure to address health and safety needs, ensure proper facility operation and maintenance, and end long-term drinking water advisories on reserve. In addition, the government of Canada has committed another \$141 million dollars over five years to improve water monitoring and testing and to help measure progress made. This investment more than doubles the targeted funding per year provided under the First Nations Water and Wastewater Action Plan and directly responds to the needs identified in the National Assessment of First Nations Water and

Wastewater Systems. Canada is partnering with First Nations communities on new approaches to ensure future projects are completed on time and on-reserve water and wastewater systems are safe and better meet the needs of the community and at the same time increases their capacity to manage their own systems while using the most up-to-date remote monitoring systems where appropriate (also see the response to Question #1).

In relation to whether Canada has a fiduciary duty with respect to ensuring access to safe drinking water and sanitation, Canadian law recognizes that there is a fiduciary relationship between the Crown and Indigenous peoples, however, to this day Canadian law has not recognized any specific fiduciary duty in the context of water on reserves or on lands held by Indigenous peoples.

Question #6 in the Special Procedures' questionnaire references the right to life and security of the person under section 7 and the right to equality and non-discrimination under section 15 of the *Charter*, which forms a part of Canada's Constitution. These rights are guaranteed subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. All legislation and government action must comply with and are subject to scrutiny under these constitutional guarantees. The courts are empowered to strike down laws that are found to be inconsistent with them, and to provide other appropriate and effective remedies where breaches of these rights are found.

Canada is not aware of any cases launched under the *Charter* wherein domestic courts have addressed these guarantees in the context of a right to water.

Question #6 also references section 36 of the *Constitution Act*, 1982, which is found under Part III entitled Equalization and Regional Disparities. Section 36 entrenches the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services.

Canada is not aware of any challenge from a private citizen or group alleging a government violation of section 36 in the context of a right to water.