

Mandates of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the rights of indigenous peoples; and the Special Rapporteur on the human rights to safe drinking water and sanitation

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on the rights of indigenous peoples; and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 31/9, 33/12 and 33/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **adverse and discriminatory conditions of access to safe drinking water and adequate housing for First Nations aboriginal communities across Canada**. Reports suggest that the disproportionately greater frequency and length of drinking water advisories in First Nations communities, as opposed to the general population, reflect the unequal efforts of public authorities to ensure that those aboriginal peoples have access to safe drinking water and sanitation services.

According to the information received:

The First Nations people, a group of numerous aboriginal populations representing approximately 4 percent of the Canadian population, suffer from disproportionate levels of poverty, inadequate access to water and sanitation services, and attendant impacts on health. The incidence of waterborne infections in First Nations communities has reportedly been estimated at 26 times greater than the national average. Approximately 30 percent of community water systems are classified as high risk, indicating that many of these systems do not ensure access to water with adequate quality. Moreover, aboriginal homes are 90 times more likely to be without piped water than all other homes in Canada.

Governance framework for water provision produces discriminatory outcomes

Many First Nations people live on land denominated reserves, which fall within the jurisdiction and responsibility of the federal government. The federal government's performance in water and sanitation services on reserves is allegedly poor. It is attributable to various factors including: ineffective monitoring, a lack of skilled operation, a less robust governance structure for water and sanitation in First Nations reserves than in other Canadian jurisdictions, and the poor mobilization of resources allocated to essential infrastructure in First

Nations reserves. Notably, over the preceding five years, Indigenous Northern Affairs Canada (INAC), the federal department with jurisdiction over reserves, reportedly devolved more than 1 billion CAD to the Treasury Board as “surplus”. These devolutions are allegedly due *inter alia* to inefficient processes in procurement and construction, and have outwardly prevented necessary improvements to many reserves’ water and sanitation services.

Drinking water advisories – precautionary safety notices from public authorities reporting on potentially compromised water quality – have, on numerous occasions, demonstrated the disproportionately poorer conditions of First Nations peoples’ access to adequate water services. A 2015 investigation revealed that among 1,838 total active drinking water advisories in Canada, as of January 2015, First Nations communities, which represent merely 4 per cent of the total population, were affected by 169 (or 9 per cent) of that total. As of July 2016, 158 drinking water advisories are in effect in 114 First Nations reserves across Canada. Many advisories have been in place for several years and in dozens of cases they span more than a decade.

Since 2004, the number of active advisories per year in Ontario – the province in which drinking water advisories most affect First Nations communities – has increased, with statistically significant peaks in 2011 and 2013. The study, which analyzed 402 drinking water advisories occurring between 2003 and 2014 in First Nations communities in Ontario, furthermore demonstrated that more than half (233) of these advisories were due to equipment malfunction. According to the study, almost half of the drinking water advisories (47%) occurred in drinking water systems where the primary operator did not have adequate training for the treatment system. In this connection, data from 2010 indicates that only 37% of operators in First Nations communities were certified, despite the fact that the Department of Indian Affairs and Northern Development’s 2006 *Protocol for Safe Drinking Water for First Nations Communities* requires that every First Nations community have a certified water systems operator.

Impacts on the rights to water and sanitation and potential risks to the right to health

Potentially, the health and wellbeing of the affected First Nations people are seriously affected by living for extended periods of time with unsafe water:

- In some cases, the existence of a drinking water advisory causes users to limit their contact with piped water. For instance, users restrict their practices related to personal hygiene in hopes that these measures will protect them against other harmful outcomes. Attendant health concerns include problems related to skin infections, eczema, psoriasis and other skin-related issues. These have been reported by First Nations residents who associate them to the water conditions in their homes. Medical

doctors treating these residents have apparently validated concerns that these problems may be related to their water conditions.

- Having to boil water can make for lengthy processes that translate into significant time losses for residents—especially women. Mothers and caregivers, for instance, reportedly spend several hours to safely bathe their children and wash essential childcare materials, such as baby bottles.
- Physically transporting bottled water (either in small bottles or larger jugs) to the household reportedly causes significant problems particularly for First Nations people with disabilities, the elderly, children and pregnant women.
- Where community water points for treated water are established as a solution, some users face difficulty in retrieving water and transporting it to their home, especially during the winter time. In such cases, residents have had to rely on others for help in fetching water or have reportedly resorted to alternative water sources, such as nearby bodies of water, whose water quality may be unsafe.
- The provision of unsafe drinking water can also cause water services to become less affordable for users who opt or have no other choice but to purchase bottled water. Boiling water can also entail additional costs of electricity or other fuel. This is particularly relevant given the greatly disadvantaged socioeconomic conditions experienced by many First Nations households in comparison to other Canadian households. Bottled water is sometimes bought at exorbitant prices. For instance, the price for 1.5L of bottled water in some affected areas has been observed at CAD 4.59, an entirely unsustainable price for many individuals and families.

In addition, the higher prevalence of individually managed water and sanitation solutions in First Nations communities, as opposed to the general population, indicates further potentially disproportionate health and socioeconomic impacts; 13% of First Nations households rely on private wells and 1.5% officially receives no water service. For wastewater services, 36% reportedly rely on household septic systems and other individual solutions and 2% of homes officially receive no service. Potential risks arising from the use of these services are exacerbated by the lack of dedicated government funding to upgrade, operate, maintain, or monitor individual systems such as wells, septic tanks and other individual solutions on reserves. Risks to health from poor water quality are particularly concerning relevant as many First Nations people receive little or no assistance to maintain systems safety and ensure the acceptable quality of their water. While some cases of assistance from public authorities have been reported, such as providing filters to users with poor quality well water, they appear in some cases

to only partially respond to users' water-related needs, since filtered water may still be unsafe to drink.

Impacts on the right to housing

Considerable demand exists for adequate housing with safely managed drinking water and sanitation services on First Nations reserves, with national estimates ranging from a need for 35,000 to 85,000 new units. The Senate Standing Committee on Aboriginal Peoples reported last year on its investigation of on-reserve housing and infrastructure that existing stock of housing in many communities is in deplorable condition and that, in many First Nation communities, the housing situation is in a state of crisis. A range of issues, including the previously stated INAC budget limitations and inefficiencies in disbursing allocated funds for essential services, have led reserves to delay building houses until they would include adequate collective water supply and sanitation services. Overcrowding has been reported in various communities as a result of the housing shortage, which can constitute greater health risks given the previously cited conditions concerning access to water.

Frequent and extended boil water advisories also have effects on the right to adequate housing. Electricity costs associated with boiling water may be significant and unaffordable for many households. The Standing Senate Committee on Aboriginal Peoples also noted in its 2015 interim report on housing that there may be a link between mould growth in homes, a significant problem in First Nations housing, and long-term boil water advisories. The report allegedly points to one community as an example, saying, "boiling water for so many people contributes to moisture in the home and eventual mold growth." Unsafe water has forced First Nations people to leave their homes and communities. In remote communities, the lack of on-reserve housing with adequate infrastructure is frequently the reason that people leave their communities and migrate to urban centres.

We wish to express our concern regarding the continuation of discriminatory outcomes affecting the access of First Nations aboriginal groups to safe drinking water and sanitation services and adequate housing. We are concerned that the current framework used to ensure the operation, maintenance, monitoring, and regulation of First Nations communities' water and sanitation systems – based on divided oversight from INAC and other government agencies including Health Canada and Environment and Climate Change Canada – is inefficient and poorly tailored to account for their particular social, economic and technical realities. We express concern regarding the regularly occurring water advisories that are disproportionately higher in First Nations communities as opposed to the general population, indicating the likely violation of the affected individuals' human rights related to safe, affordable, and accessible water services, to adequate housing, and to the highest attainable standard of physical and mental health. Moreover, we express concern that within the First Nations communities, which are disproportionately disadvantaged nationwide in general, low-income households and users depending on individual water and sanitation solutions particularly

results in unsafe and unaffordable access to water, leading to further negative impacts on their human rights to water and to the highest attainable standard of physical and mental health.

We are aware that the current federal budget has increased allocations to nearly CAD 4.6 billion for investment in infrastructure in indigenous communities over the next five years, including for water and wastewater systems. However, we express concern that financial commitments alone will not be the sole measure required to bring the water and sanitation services up to acceptable standards in First Nations reserves.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
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.
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.
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.
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 circumstances may justify the devolution of these funds.

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 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."

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Victoria Lucia Tauli-Corpuz

Special Rapporteur on the rights of indigenous peoples

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Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to remind your Excellency's Government of its obligations under various international human rights instruments, in particular the International Covenant on Economic, Social and Cultural Rights to which Canada is a party since 19 May 1976, and more specifically article 11.1 recognizing the right of everyone to an adequate standard of living for himself and his family, including food and housing, and to the continuous improvement of living conditions. This article must be read in conjunction with article 2.2 of the Covenant which provides for the exercise of any right under the Covenant without discrimination of any kind.

Furthermore, we recall the recognition of the human right to safe drinking water and sanitation by the UN General Assembly (resolution 64/292) and the Human Rights Council (resolution 15/9), which derives from the right to an adequate standard of living, protected under, inter alia, article 25 of the Universal Declaration of Human Rights, and article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). In its General Comment No. 15, the Committee on Economic, Social and Cultural Rights clarified that the human right to water means that everyone is entitled to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses, which includes sanitation. The human right to sanitation means that everyone, without discrimination, has physical and affordable access to sanitation, in all spheres of life, which is safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures dignity.

We would also like to draw the attention of your Excellency's Government to the principles of equality and non-discrimination, which are core elements of the international human rights normative framework and enshrined, inter alia, in article 2 of the Universal Declaration of Human Rights, article 2 of the ICESCR and International Covenant on Civil and Political Rights, and notably article 2 of the Declaration of the Rights of Indigenous Peoples and other human rights conventions.

Moreover, we would like to remind your Excellency's Government of its obligations under the Declaration of the Rights of Indigenous Peoples, notably article 7.1 which guarantees indigenous peoples' rights to life, physical and mental integrity, liberty and security of person. In addition, article 21 of that Declaration guarantees indigenous peoples' right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of housing, sanitation, health and social security, and determines that States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions.

The right to adequate housing is also a central component of the right to an adequate standard of living and is protected in article 11.1 of ICESCR. Furthermore, according to the CESCR's General Comment No. 4 established that the right to housing

should not be interpreted in a narrow or restrictive sense such as merely having a roof over one's head; rather, it should be seen as the right to live somewhere in security, peace and dignity. In this sense, the right to housing includes guaranteeing (a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure; such as safe drinking water (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy.