

**Universal Periodic Review  
Canada**

**The United Nations Human Rights Council**

**Water in Canada: An Inalienable Right**

**JOINT SUBMISSION**

**Presented by**

*Service intercommunautaire d'animation franciscaine*

*Franciscans International* (NGO with a general consultative status at the ECOSOC)



**30th session of the Working Group on the Universal Periodic Review  
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1. As part of Canada's review, during the 30th session of the Working Group on the Universal Periodic Review (UPR), the organizations described below present this joint submission about the human right to water and sanitation in Canada, and the measures taken by the Canadian Government to implement it.
2. The Service intercommunautaire d'animation franciscaine (SIAF)<sup>1</sup>, founded in 2000, brings together different religious and secular communities and fraternities in Quebec, that draw their inspiration from Francis and Clare of Assisi. Their spirituality calls us to become the guardians of Creation.
3. Franciscans International (FI) is an international human rights non-governmental organization, founded in 1989. It has a general consultative status at the United Nations Economic and Social Council since 1995. FI supports Franciscans and their partners working at the local and national levels. FI contributes to bringing their partner's concerns and expertise to the UN in order to address the structural causes of human rights violations.
4. Water is a prerequisite to every life and, as such, the recognition of the human right to water and sanitation is a "prerequisite for the realization of other human rights."<sup>2</sup> Through this document, we wish to insist on the urgency for the Canadian State to take concrete actions in order to respect, protect and implement that human right.
5. This document contains four parts. The first part deals with the problem of water in Canada. The second part describes the recognition of the human right to water and sanitation, and the recognition of the human right to a healthy environment, as well as Canada's recommendations and answers formulated during the second UPR of Canada, on April 26, 2013. The third part exposes the violations of that right as well as the threats that the human right to water will face in the country in the coming years. The last and fourth part contains the recommendations that we formulate as part of the UPR.

### **Part 1: The Problem of Water in Canada**

6. Canada's population represents only 0.5% of the world's population, but its territory houses about 7% of renewable freshwater resources on earth<sup>3</sup>. Less than 2% of earth's water supply consists of drinking fresh water. Therefore, Canada is one of the countries that possess the largest amount of fresh water in the world<sup>4</sup>. The Great Lakes

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<sup>1</sup> Service intercommunautaire d'animation franciscaine, online: <<https://www.cheminsfranciscains.ca/le-siaf>>.

<sup>2</sup> Committee on Economic, Social and Cultural Rights, *General Comment n ° 15, The right to water (arts. 11 and 12) of the International Covenant on Economic, Social and Cultural Rights*, 2002, E/C.12/2002/11, par. 1.

<sup>3</sup> Environment and Climate Change Canada, *Water quantity*, online: <<https://www.ec.gc.ca/eau-water/default.asp?lang=En&n=2DE7B40F-1>>.

<sup>4</sup> Barlow, M., Clarke, T., *Blue Gold: The Fight to Stop the Corporate Theft of the World's Water*, New York: The New Press, 2002.

and the Saint Lawrence River provide drinking water to more than 40 million people and house more than 3500 animal and plant species, threatened today by pollution, global warming and the intensive exploitation of natural resources.<sup>5</sup> Most Canadians live in the southern part of the country, while for the most part, water runs in the northern part. This distribution of watersheds results in that the territories that house the more fresh water are those who are the less populated. Furthermore, the concentration of people in the southern part of the country has major consequences on the hydrological systems of that region.<sup>6</sup>

7. The destruction of natural environments and their pollution has direct consequences on the ecosystems and on the populations whose way of life depends on them. The International Indian Treaty Council illustrates how the ecosystem's destruction leads to negative consequences. River water, polluted by chemical toxins, causes sudden deaths, chronic illnesses, as well as cancers.<sup>7</sup> In many places, pollution threatens groundwater too. One of the reasons the quality of Canadian waters is constantly deteriorating is because the federal government authorized mining companies to discharge their toxic waste in some lakes, which exposes those lakes' flora and fauna to a lethal contamination.<sup>8</sup> Furthermore, as discussed below, legislative changes to the *Navigable Waters Protection Act*, the *Fisheries Act* and the *Canadian Environmental Assessment Act*, weaken the federal protection of stretches of water everywhere in the country. Finally, in the Indian reserves, the First Nation's access to drinking water and sanitation is not effectively guaranteed by the federal authorities, which endangers the health of the people that live in that area.

## **Part 2: The Human Right to Safe Drinking Water and Sanitation and the Human Right to a Healthy Environment in Canada**

8. In Canada, the federal, the provincial and the municipal administrations as well as the First Nations' governments, have an agreement of self-governance to share water management.<sup>9</sup>
9. Although the *Canadian Charter of Rights and Freedoms* does not guarantee the human right to water and sanitation *explicitly*, and the Supreme Court of Canada has not recognized this right, it is possible to consider its implicit guarantee by the following articles: 7 (guarantees the right to life, liberty and security); 15 (guarantees

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<sup>5</sup>Barlow, M., *Our great Lakes commons: a people's plan to protect the great lakes forever*, The Council of Canadians, 2011, p. 9, online:

<<https://canadians.org/sites/default/files/publications/GreatLakes%20Commons%20report%20-%20final-Mar2011.pdf>>.

<sup>6</sup>Environment and Climate Change Canada, *Water quantity*, see *supra* note 4.

<sup>7</sup> International Indian Treaty Council, *Joint submission to the United Nations Human Rights Council in regard to the Universal Periodic Review concerning Canada*, September 8<sup>th</sup> 2008, par. 9.

<sup>8</sup> See *infra* par. 32.

<sup>9</sup> Environment and Climate Change Canada, *Water—How we manage it*, online:

<<https://www.ec.gc.ca/eau-water/default.asp?lang=Fr&n=3DC41CC0-1#a7>>.

equality rights) and 36 (1) (c) (concerning equalization and providing essential public services of reasonable quality to all Canadians).<sup>10</sup>

10. At the international level, one of the first enunciations implying a connection between water resources and human dignity, as well as quality of life, happened in 1977, during the United Nations Conference on Water, in Mar del Plata, Argentina. The recognition of the right to water as a human right, happened much later, first in an implicit manner. In 2002, the Committee on Economic, Social and Cultural Rights, recognizes in its General Comment n° 15, that the right to water is implicitly included in articles 11 (the right of everyone to an adequate standard of living) and 12 (the right of everyone to the enjoyment of the highest attainable standard of physical and mental health) of the *International Covenant on Economic, Social and Cultural Rights*, a covenant to which Canada is a party.<sup>11</sup> The right to water is defined as “sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.”<sup>12</sup> Thus, the three fundamental factors of the right to water are: availability, quality and accessibility (physical accessibility, economic accessibility, non-discrimination in water access and information accessibility). In 2008, the mandate of Special Rapporteur on the human rights to safe drinking water and sanitation was established.<sup>13</sup>
11. On July 28, 2010, through the resolution 64/292, the General Assembly of the United Nations recognized the fundamental right to water and sanitation “as a human right that is essential for the full enjoyment of life and all human rights.”<sup>14</sup> Canada abstained from voting on that historical resolution by saying that “since there was no consensus on the matter it was premature to declare such a right in the absence of clear international agreement.”<sup>15</sup>
12. On September 30, 2010, during its 15th session, the Human Rights Council adopted by consensus a resolution that “affirms that the human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity.”<sup>16</sup>

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<sup>10</sup> Boyd, David R., “No Taps, No Toilets: First Nations and the Constitutional Right to Water in Canada,” *McGill Law Journal* 57:1, September 2011, p. 81.

<sup>11</sup> *International Covenant on Economic, Social and Cultural Rights*, New York, December 16, 1966, Treaty series of Canada 1976/46, accession on May 19, 1976.

<sup>12</sup> Committee on Economic, Social and Cultural Rights, *General Comment n° 15*, see *supra* note 3, par. 2.

<sup>13</sup> Resolution 7/22 adopted by the Human Rights Council, *Human rights and access to safe drinking water and sanitation*, A/HRC/RES/7/22, par. 2.

<sup>14</sup> Resolution 64/292 adopted by the General Assembly, *The human right to water and sanitation*, July 28, 2010, A/RES/64/292, par.1.

<sup>15</sup> *General Assembly Adopts Resolution Recognizing Access to Clean Water, Sanitation as Human Right and appoints Carman Lapointe-Young of Canada as Under-Secretary General for Internal Oversight Services*, July 28, 2010, online: <<https://www.un.org/press/en/2010/ga10967.doc.htm>>.

<sup>16</sup> Human Rights Council, Resolution 15/9, *Human rights and access to safe drinking water and sanitation*, 15th session, September 30, 2010, A/65/53/Add.1, par.3.

13. The Human Rights Council, as well as different treaty bodies, have also recognized the linkage between a healthy environment and several human rights acknowledged at the universal level, such as the right to adequate food, the right to adequate housing and the right to the highest attainable standard of health.<sup>17</sup> In its General Comment n° 14, on the right to the highest attainable standard of health, the Committee on Economic, Social and Cultural Rights notes that:

“The right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.”<sup>18</sup>

14. The Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment defined in his first report two human rights categories related to the environment. In the first category, there are rights “whose enjoyment is particularly vulnerable to environmental degradation,”<sup>19</sup> such as rights to life, health, food, water, housing, and self-determination.<sup>20</sup> The second category contains rights “whose exercise supports better environmental policymaking,”<sup>21</sup> such as rights to freedom of expression and association, to information, to participation in decision-making and to effective remedies.

15. It is important to note that until today, a majority of constitutions recognize the right to a healthy environment, which “reflects growing awareness of the importance of environmental values and greater acceptance of a right to a healthy environment.”<sup>22</sup>

16. During the United Nations Conference on Sustainable Development, in June 2012, the Canadian government recognized the existence of the human right to water and sanitation.<sup>23</sup> From then on, as maintained by the non-governmental organization Council of Canadians, it is important that the actions of the Canadian government to respect, protect and fulfill the human right to water, be deployed in four areas: the rights for indigenous communities; the analysis of the mining policy in Canada; the

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<sup>17</sup>*Analytical study on the relationship between human rights and the environment*, Report of the United Nations High Commissioner for Human Rights, A/HRC/19/34, 2011.

<sup>18</sup>Committee on Economic, Social and Cultural Rights, *General Comment n° 14, The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/2000/4, August 11, 2000, par.4.

<sup>19</sup>*Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, John H. Knox, December 24, 2012, A/HRC/22/43, par. 17.

<sup>20</sup>*Ibid.*, par. 19.

<sup>21</sup>*Ibid.*, par. 17.

<sup>22</sup>*Analytical study on the relationship between human rights and the environment*, see *supra* note 18, Par.31.

<sup>23</sup> *Letter dated 22 June 2012 from the Permanent Representative of Canada to the United Nations addressed to the Secretary General of the United Nations Conference on Sustainable Development*, A/CONF.216/12, July 17, 2012.

analysis of the Canadian mining policy in the world; privatization of water and sanitation services.<sup>24</sup>

17. During its second evaluation, as part of the Universal Periodic Review (April 26, 2013),<sup>25</sup> Norway, Spain, Germany and Ecuador formulated some recommendations to the Canadian government about the human right to water and sanitation. They recommended particularly to recognize this right in a national legislation<sup>26</sup>; to reduce the inequalities in the access to water faced by indigenous communities<sup>27</sup>; to develop a national plan to guarantee it, in consultation with indigenous peoples<sup>28</sup>; and to allocate sufficient funding to ensure the implementation of that right<sup>29</sup>. Canada accepted those recommendations.<sup>30</sup>
18. Finally, the *United Nations Declaration on the Rights of Indigenous Peoples*<sup>31</sup>, adopted by the United Nations General Assembly in 2007 and officially endorsed by Canada in November 2010<sup>32</sup>, also recognizes the First Nation's rights related to drinking water and sanitation. In particular, article 18, the right to participate in decision-making in matters which would affect their rights; article 21, the right to the improvement of their economic and social conditions; and article 26, the right to the lands, territories and resources, which they have traditionally owned, are particularly important on this matter. Furthermore, some recommendations formulated by the Truth and Reconciliation Commission of Canada in their final report issued in 2015<sup>33</sup> specifically aim at improving the First Nation's health conditions.<sup>34</sup>

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<sup>24</sup> Karunanathan, M., and Willows, J., *Canada's Violations of the Human Right to Water*, Council of Canadians' Blue Planet Project, October 2012, p. 2.

<sup>25</sup> Report of the Working Group on the Universal Periodic Review, Canada, June 28, 2013, A/HRC/24/11, § 128,123, § 128,130, § 128,131, § 128,132, § 128,133.

<sup>26</sup> *Ibid.*, §128.123.

<sup>27</sup> *Ibid.*, §128.123, §128.132, §128.133.

<sup>28</sup> *Ibid.*, §128.123.

<sup>29</sup> Report of the Working Group on the Universal Periodic Review, see *supra* note 26, § 128,133.

<sup>30</sup> Report of the Working Group on the Universal Periodic Review, Canada, Addendum, *Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, September 17, 2013, A/HRC/24/11/Add.1, par.32.

<sup>31</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, Resolution 61/295 of the General Assembly, September 13, 2007.

<sup>32</sup> *Canada's Statement of Support on the United Nations Declaration on the Rights of Indigenous Peoples*, November 12, 2010, online: <<https://www.aadnc-aandc.gc.ca/eng/1309374239861/1309374546142>>.

<sup>33</sup> Consult the final report of the Truth and Reconciliation Commission of Canada, online: <<http://www.trc.ca/websites/trcinstitution/index.php?p=890>>.

<sup>34</sup> Truth and Reconciliation Commission of Canada, *Calls to Action*, 2012, recommendations 18 to 24, online: <[http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls\\_to\\_Action\\_English2.pdf](http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf)>.

### Part 3: Violations of the Rights to Safe Drinking Water, Sanitation and a Healthy Environment

#### a) Right to Safe Drinking Water and Sanitation on Indian Reserves

19. Canada's regulatory framework related to drinking water and sanitation on the Indian reserves is deficient.<sup>35</sup> In that respect, it is important to note that since the Indian reserves are under federal jurisdiction,<sup>36</sup> the provincial standards, when it comes to drinking water and sanitation, do not apply to them. Furthermore, according to the *Indian Act*, the First Nations do not have the authorization to regulate those questions by themselves.<sup>37</sup> Thus, the Federal government's omission to adopt appropriate standards and policies is even more serious. This legal gap creates many problems, particularly by allowing that systems of treatment and filtration of water in the reserves do not respect the standards applicable off reserves, and, consequently, they do not guarantee water of sufficient quality.<sup>38</sup> Thus, it is possible to affirm that the First Nations are the first ones affected by the water crisis in Canada.<sup>39</sup>

20. The *Safe Drinking Water for First Nations Act*, a legal text whose objective is to allow the adoption of rules for ensuring safe access to drinking water and sanitation services, as well as to protect drinking water sources in First Nations' territories, is adopted in 2013. Nevertheless, this action received a lot of criticism, particularly because of the insufficient consultations of the First Nations<sup>40</sup> and the funding provided to them, which was deemed insufficient to implement the requirements of the act.<sup>41</sup> The Council of Canadians considers that the lack of funding commitment by the government creates a substantial risk that the communities might be obliged to privatize their water treatment systems.<sup>42</sup> Thus, this act represents a first step forward (by allowing to adopt, eventually, rules on that matter), but remains deficient,

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<sup>35</sup> Human Rights Watch, *Make it Safe: Canada's Obligation to End the First Nations Water Crisis* (HRW, *Make it Safe*), June 2016, pp. 56–65.

<sup>36</sup> The Constitution Act of 1867 (The British North American Act of 1867), Art. 91 (24), online: <<http://laws-lois.justice.gc.ca/eng/Const/page-4.html>>.

<sup>37</sup> HRW, *Make it Safe*, see *supra* note 36, p. 56.

<sup>38</sup> *Ibid.*, pp. 57-62.

<sup>39</sup> Consult: McGregor, D., "Traditional Knowledge: Considerations for Protecting Water in Ontario," *The International Indigenous Policy Journal*, 3 (3), September 2012, online: <<http://ir.lib.uwo.ca/cgi/viewcontent.cgi?article=1080&context=iipj>>.

<sup>40</sup> Franciscans International, Joint submission on Canada, *Alternative report on Canada's compliance with the International Covenant on Civil and Political Rights*, 114<sup>th</sup> Session of the UN Human Rights Committee, Geneva, June 29-July 24, 2015; HRW, *Make it Safe*, see *supra* note 36, pp. 63–64; Union of B.C. Indian Chiefs, *Submission to the Standing Senate Committee on Aboriginal Peoples, Bill S-11 An Act respecting the safety of Drinking Water on First Nation lands (Safe Drinking Water for First Nations Act)*, February 9, 2011, online: <<https://sencanada.ca/en/Content/Sen/committee/403/abor/17evc-e>>; Assembly of First Nations, *Safe Drinking Water for First Nations*, Resolution no. 76/2015, December 10, 2015, par. B, online: <<http://www.afn.ca/uploads/files/resolutions/res-sca-2015.pdf>>.

<sup>41</sup> HRW, *Make it Safe*, see *supra* note 36, p. 64.

<sup>42</sup> The Council of Canadians, *Submission on Bill S-11 to the Standing Senate Committee on Aboriginal Peoples*, February 18, 2011, p. 3.

particularly because it does not anticipate a concrete implementation plan.<sup>43</sup> Furthermore, without sufficient funding, that act will become a strain above all, upon the First Nations, who will not have any support to reach all the objectives provided in the act.<sup>44</sup>

21. In spite of the recommendations formulated on that matter during the last UPR of Canada<sup>45</sup>, the inequality in accessing safe drinking water between the indigenous and non-indigenous communities persists. Since 2006, the Committee on Economic, Social and Cultural Rights noted the existing gap between indigenous and non-indigenous people, particularly when it comes to water access.<sup>46</sup> For example, while Winnipeg residents enjoy access to drinking water, this is not the case for the First Nation community of Band 40, on the Shore of Shoal Lake, near Winnipeg.<sup>47</sup> A woman, member of that community, testified with strong feelings of inequality and discrimination and said that she should not have to take her children to Winnipeg so that they can bathe with clean water.<sup>48</sup> This example of discrimination for the First Nations' access to drinking, clean and safe water shows a generalized problem in Canada.

22. In 2016, a Human Rights Watch report describes the water crisis among the First Nations, and explains it by the lack of regulatory framework for the accessibility and cleanliness of water, by the underfunding and arbitrary allocation of the budget for the water treatment system and by the poor quality of water sources, particularly surface water. The report brings to light the different negative impacts of that crisis upon the life and rights of communities living in the reserves, particularly in the field of hygiene, health, housing and cultural life. At-risk populations (children, sick people, pregnant women, elderly people and people with disabilities) suffer the most from the lack of water or its poor quality.<sup>49</sup> The consequences of this crisis mainly fall upon caregivers (for the most part women) who find themselves in a situation where they do not possess the means to care for their loved ones decently, and where the exercise of their rights is affected as well.<sup>50</sup>

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<sup>43</sup> Bowden, M.A., *A Brief Analysis of Bill S-11: Safe Drinking Water for First Nations Act*, National Environment, Energy and Resource Law Summit, Banff, 2011, pp. 25–26.

<sup>44</sup> *Ibid.*, p.25.

<sup>45</sup> Report of the Working Group on the Universal Periodic Review, Canada, A/HRC/24/11, June 28, 2013, § 128,123, § 128,132, § 128,133.

<sup>46</sup> Consideration of reports submitted by state parties under articles 16 and 17 of the covenant, Concluding observations of the Committee on Economic, Social and Cultural Rights, Canada, E/C.12/CAN/CO/4—E/C.12/CAN/CO/5, 2006, pp. 3–4.

<sup>47</sup> Suzuki, David, *Clean drinking water should be a human right in Canada*, November 27, 2014, online: <<http://davidsuzuki.org/blogs/science-matters/2014/11/clean-drinking-water-should-be-a-human-right-in-canada/>>.

<sup>48</sup> HRW, *Make it Safe*, see *supra* note 36, p. 18.

<sup>49</sup> *Ibid.*, p.45.

<sup>50</sup> *Ibid.*, p.47.



23. The negative impacts of the water crisis on health are numerous and serious. Lack of water and its poor quality cause or contribute to the propagation or the aggravation of different illnesses, including skin infections, impetigo, eczema, hair loss, whooping cough, diarrheal diseases, influenza, pneumonia, as well as MRSA infections (Methicillin-resistant *Staphylococcus Aureus*)<sup>51</sup>. Furthermore, the water crisis impacts mental health and there is a high rate of suicide, drug addiction and psychological distress in the communities that do not have access to drinking water.<sup>52</sup> Generally, the lack of water and its poor quality prevent the adequate care to people suffering from chronic diseases or people recovering from surgery.<sup>53</sup>
24. As of July 31, 2017, 102 long-term drinking water advisories and 48 short-term advisories in 101 First Nations communities south of the 60<sup>th</sup> parallel, excluding British Columbia, were issued.<sup>54</sup> This happens when water quality tests determine that water is potentially unsafe or confirmed to be unsafe<sup>55</sup> and they can recommend: 1) boiling water; 2) not consuming water; or 3) not using water.<sup>56</sup> The Chief and Councils in the First Nations communities or the provincial, territorial or municipal governments in off-reserve communities issue these advisories.<sup>57</sup> Water contamination, caused among other things by uranium and E.coli, results in negative consequences on the First Nations communities' rights and those of their members, particularly on the right to health and the rights to ancestral traditions.
25. As the NGO Council of Canadians has mentioned, this situation reflects the urgency to develop a national water policy to ensure clean and safe water for everyone now, and for generations to come.<sup>58</sup> In particular, it is necessary to ensure better water treatment infrastructure,<sup>59</sup> especially on Indian reserves. It is also necessary that the adoption of policies and standards that affect the First Nations' rights comply with their free, prior and informed consent<sup>60</sup>, and that any transfer of responsibility, when it comes to drinking water and sanitation, is supported by the necessary funds.

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<sup>51</sup> Boyd, see *supra* note 11, p. 105; HRW, *Make it Safe*, see *supra* note 36, p. 40.

<sup>52</sup> Boyd, see *supra* note 11, p. 105 and p. 116.

<sup>53</sup> HRW, *Make it Safe*, see *supra* note 36, pp. 45–46.

<sup>54</sup> *Questions and Answers: Drinking Water and Wastewater in First Nations communities south of 60 °*, Government of Canada, online: <<https://www.canada.ca/en/health-canada/services/first-nations-inuit-health/health-promotion/environmental-public-health/drinking-water-wastewater-first-nations-inuit-health-canada.html>>.

<sup>55</sup> *Drinking water advisories: First Nations south of 60*, Government of Canada, online: <<https://www.canada.ca/en/health-canada/topics/health-environment/water-quality-health/drinking-water/advisories-first-nations-south-60.html>>.

<sup>56</sup> *Idem*.

<sup>57</sup> *Idem*.

<sup>58</sup> Lui, Emma, *On notice for a drinking water crisis in Canada*, The Council of Canadians, March 2015, online: <[https://canadians.org/sites/default/files/publications/report-drinking-water-0315\\_0.pdf](https://canadians.org/sites/default/files/publications/report-drinking-water-0315_0.pdf)>.

<sup>59</sup> Franciscans International, Joint submission on Canada, *Alternative report on Canada's compliance with the International Covenant on Civil and Political Rights*, 114<sup>th</sup> Session of the UN Human Rights Committee, Geneva, June 29-July 24, 2015.

<sup>60</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, Resolution 61/295 of the General Assembly, September 13, 2007, art.19.

b) Impact of the Water Protection Legislative Framework's Dismantling and Mining Activities on the Right to a Healthy Environment

26. At the present time, a specific national policy for water protection in Canada does not exist. Despite the fact that the government has adopted an Oceans Protection Plan in 2016<sup>61</sup>, recent legislative modifications to the federal laws have greatly weakened water protection in Canada. In particular, modifications to the *Fisheries Act*, the *Navigable Waters Protection Act*, and the *Canadian Environmental Assessment Act* made by omnibus bill C-38 and bill C-45, represent a step back when it comes to the protection of water resources in Canada.

27. Henceforth, the *Navigable Waters Protection Plan* now protects only 97 lakes and 62 rivers (as well as oceans)<sup>62</sup> on the millions that were previously protected. In fact, while the previous version of the act protected all navigable waters in the country, the new act applies only to the stretches of water specifically identified in the schedule.<sup>63</sup> Therefore, that act does not protect 99% of water stretches. Thus, it is now possible, in virtue of the *Navigable Waters Protection Plan*, to do work on the lake and rivers not included in the schedule, without the Federal Minister of Transport's authorization. This legislative modification results in weakening the protection granted to the stretches of water in Canada.

28. Regarding the *Fisheries Act*, the modifications provided by bill C-38 ensure that from November 25, 2013, only the fish useful for fishing (commercial, traditional or recreational) are protected.<sup>64</sup> Furthermore, the act only protects the fish against "serious harm" that they might endure.<sup>65</sup> Moreover, considering that the previous version of the act extended the protection of this one to the "fish habitat,"<sup>66</sup> and not only to the fish as such, it is possible to consider that the modification of the act represents a step back when it comes to the protection of the environment.

29. Since June 29, 2012, the new *Canadian Environmental Assessment Act* provides for the obligation to conduct environmental assessments only for projects designated through an act, a regulation or a ruling from the Minister of the Environment<sup>67</sup>,

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<sup>61</sup>*The Prime Minister of Canada announces the National Ocean's Protection Plan*, November 7, 2016, online: <<http://pm.gc.ca/eng/news/2016/11/07/prime-minister-canada-announces-national-oceans-protection-plan>>.

<sup>62</sup>*Navigation Protection Act, Schedule "Navigable Waters,"* current to August 27, 2017, online: <<http://laws-lois.justice.gc.ca/eng/acts/N-22/page-8.html>>.

<sup>63</sup>*Navigation Protection Act*, L.R.C. (1985), ch. N-22, current to August 27, 2017, Art. 3, online: <<http://laws-lois.justice.gc.ca/eng/acts/N-22/page-1.html>>.

<sup>64</sup>*Fisheries Act*, L.R.C. (1985), ch. F-14, current to August 27, 2017, art.35 (1), online: <<http://laws-lois.justice.gc.ca/eng/acts/F-14/page-4.html>>.

<sup>65</sup>*Idem.*

<sup>66</sup>*Fisheries Act* before the amendment, art. 35 (1), online: <<http://laws-lois.justice.gc.ca/eng/acts/F-14/section-35-20120629.html>>.

<sup>67</sup>*Canadian Environmental Assessment Act*, 2012, L.C. 2012, ch. 19, art. 52, art. 2, 13, 14, 84 (a), online: <<http://laws-lois.justice.gc.ca/fra/lois/C-15.21/page-3.html#docCont>>.

thereby reducing the number of projects submitted to an environmental assessment in virtue of the previous *Canadian Environmental Assessment Act* from 1992.<sup>68</sup> Moreover, the report established in 2014 by the Commissioner of the Environment and Sustainable Development highlights that “the rationale to identify projects for environmental assessment is unclear.”<sup>69</sup> Furthermore, the Commissioner mentioned that “[...] taking into consideration the potential for significant adverse environmental effects [...] we found that in some cases, there was insufficient documentation to demonstrate how the factors were validated and weighed in the analysis, and how input from stakeholders and Aboriginal groups was used to inform the recommendations.”<sup>70</sup> Moreover, the new Act reduces the possibility of the public’s participation by restraining the definition of “interested party” to the people directly affected by the project or having, in the eyes of the authorities, relevant information or expertise.<sup>71</sup> The Commissioner of the Environment also concluded that some practices related to the participation of the public and the First Nations presented gaps, particularly in terms of the short timeframes allowed and the funding programs that do not cover all participants’ costs.<sup>72</sup>

30. Furthermore, it is important to note that these bills were modified without consulting the First Nations people beforehand, even if most changes concerned them.<sup>73</sup>
31. Although lakes and rivers remain protected through different applicable provincial standards<sup>74</sup>, the legislative changes made to these federal laws cause a harmful impact upon water protection in Canada through the abolition of national mechanisms contributing to the protection of that resource. The analysis of the situation describes well the urgency to make water a priority in the Canadian politics, in order to protect it through a modified national politics to guarantee clean, drinking and renewable water for all citizens and future generations.

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<sup>68</sup> *Canadian Environmental Assessment Act*, abrogated, L.C. 1992, ch. 37, online: <<http://laws.justice.gc.ca/eng/acts/c-15.2/20100712/P1TT3xt3.html>>.

<sup>69</sup> *Report of the Commissioner of the Environment and Sustainable Development, Chapter 4: Implementation of the Canadian Environmental Assessment Act, (2012)*, Fall 2014, par.4.21, online: <[http://www.oag-bvg.gc.ca/internet/English/parl\\_cesd\\_201410\\_04\\_e\\_39851.html](http://www.oag-bvg.gc.ca/internet/English/parl_cesd_201410_04_e_39851.html)>.

<sup>70</sup> *Ibid.*, par.4.22.

<sup>71</sup> *Canadian Environmental Assessment Act, 2012*, see *supra* note 68, art 2 (2).

<sup>72</sup> *Report of the Commissioner of the Environment and Sustainable Development, Chapter 4: Implementation of the Canadian Environmental Assessment Act, (2012)*, see *supra* note 70, par.4.33, 4.50-4.53

<sup>73</sup> *Projet de loi C-45 : des groupes manitobains dénoncent le manque de consultation, Radio Canada, December 10, 2012*, online: <<http://ici.radio-canada.ca/nouvelle/591396/manifs-c-45-loi-omnibus>>; Buzzetti, Hélène, *Offensives autochtones, Le devoir*, January 9, 2013, online: <<http://www.ledevoir.com/politique/canada/367938/offensives-autochtones>>; *Assemblée des Premières Nations, Loi fédérale omnibus : Projet de loi C-38 : Loi sur l’emploi, la croissance et la prospérité durable et Projet de loi C-45 : Loi de 2012 sur l’emploi et la croissance, december 2012*, online: <[http://www.afn.ca/uploads/files/12-12-18\\_omnibus\\_summary\\_next\\_steps\\_ff.pdf](http://www.afn.ca/uploads/files/12-12-18_omnibus_summary_next_steps_ff.pdf)>.

<sup>74</sup> Environment and Climate Change Canada, *Water Governance & Legislation—Provincial / Territorial*, <<https://www.ec.gc.ca/eau-water/default.asp?lang=En&n=24C5BD18-1>>.

32. Moreover, the consequences of mining activities on water quality and access in Canada are numerous. Pollution of large territories, construction of dams, devastation of water resources, flooding of arable lands, obstruction to fishing and agriculture, environmental disasters and the lack of rehabilitation of contaminated lands result in the perturbation of ecosystems and economic and social activities, and threaten health and public security. Furthermore, the extractive industry often benefits from access to water resources at little or no cost.<sup>75</sup> Moreover, budget cuts, lack of transparency and the recent environmental deregulation limit the government's capacity to fulfill its regulating role.
33. In conclusion, the harmful effects caused by the legalization of disposing mine waste on Canadian lakes and ecosystems, have been highlighted.<sup>76</sup> At the present time, the *Metal Mining Effluent Regulations* contains a list of 27 water stretches (lakes, ponds and streams) in which the companies are allowed to dump their mine wastes.<sup>77</sup> These wastes are one of the reasons why the quality of the Canadian water available is constantly deteriorating.

#### **Part 4. Recommendations**

34. The Service intercommunautaire d'animation franciscaine and Franciscans International recommend that Canada:
- Elaborates and implements, in collaboration with the provinces, a national policy for all Canadians, that fulfills Canada's international obligations in virtue of the right to water and sanitation;
  - Guarantees, in collaboration with the provinces, the provision of drinking water to all citizens, including the First Nations, among others, by funding programs that promote the conservation, the preservation and the restoration of freshwater sources and other water sources;
  - Adopts and promotes, in collaboration with the provinces, strategies of citizen participation, regarding the human right to water, that are inclusive, non-discriminatory and egalitarian;
  - Re-establishes national environmental mechanisms of protection and regulation, that affects all the Canadian ponds and stretches of water;
  - Regulates the activities of the extractive industries and implements effectively these regulations;
  - Elaborates, applies and enforces coherent environmental standards in the sanitary, agricultural, fishery and industrial fields;

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<sup>75</sup>Windfield, Mark, et al., "Looking Beneath the Surface, An Assessment of the Value of Public Support for the Metal Mining in Canada," Pembina Institute, Mining Watch, October 2002, p. 19, online: <[https://miningwatch.ca/sites/default/files/belowthesurface-eng\\_0.pdf](https://miningwatch.ca/sites/default/files/belowthesurface-eng_0.pdf)>.

<sup>76</sup>Karunanathan, M., and Willows, see *supra* note 24.

<sup>77</sup> *Metal Mining Effluent Regulations*, SOR/2002-222, Schedule 2, current to August 27, 2017, online: <<http://laws-lois.justice.gc.ca/fra/reglements/DORS-2002-222/>>.

- Involves, consults and works together with the First Nations on the environmental issues that concern them, and guarantees the implementation of the chosen solutions;
- Guarantees, in collaboration with the provinces, that water is and remains a public and free good, belonging to all citizens and implement the means to protect its free provision;
- Establishes and adopts legislation at the federal and provincial levels in order to guarantee to all Canadians full access to clean water and sanitation services; and that these laws guarantee a sustainable management of water resources, in accordance with the Canadian government's commitment to fulfill the objectives of sustainable development.