




HUMAN  
RIGHTS  
WATCH

## MAKE IT SAFE

Canada's Obligation to End the First Nations Water Crisis

## **SUMMARY AND RECOMMENDATIONS**





Canada, one of the wealthiest countries in the world, is also one of the most water-rich. The province of Ontario shares the Great Lakes—which contain 18 percent of the world’s fresh surface water—with the United States. Access to sufficient, affordable, and safe drinking water and adequate sanitation is easy for most Canadians. But this is not true for many First Nations indigenous persons. In stark contrast, the water supplied to many First Nations communities on lands known as reserves is contaminated, hard to access, or at risk due to faulty treatment systems. The government regulates water quality for off-reserve communities, but has no binding regulations for water on First Nations reserves.

Youths walk along the road in Neskantaga First Nation, a remote community in Northern Ontario which has been on a boil water advisory since 1995. © 2015 Samer Muscati/Human Rights Watch



Drinking water advisories alert communities when their water is not safe to drink. In Canada, these advisories are highly concentrated in First Nations communities. They exist for 134 water systems—90 of them in Ontario Province—in 85 First Nations reserves across Canada, as of January 2016. Many of these drinking water advisories for reserves persist for years, sometimes for decades. They are indicative of the broader systemic crisis that leaves many First Nations persons facing daily challenges just to access safe water for drinking and hygiene—a fundamental human right easily enjoyed by most Canadians.

On March 22, 2016, auspiciously World Water Day, new Prime Minister Justin Trudeau announced his government’s budget, with significant funds to address failing infrastructure in First Nations communities. With nearly CAD\$4.6 billion to be invested in infrastructure in indigenous communities over the next five years, including for water and wastewater systems, this is a promising announcement.

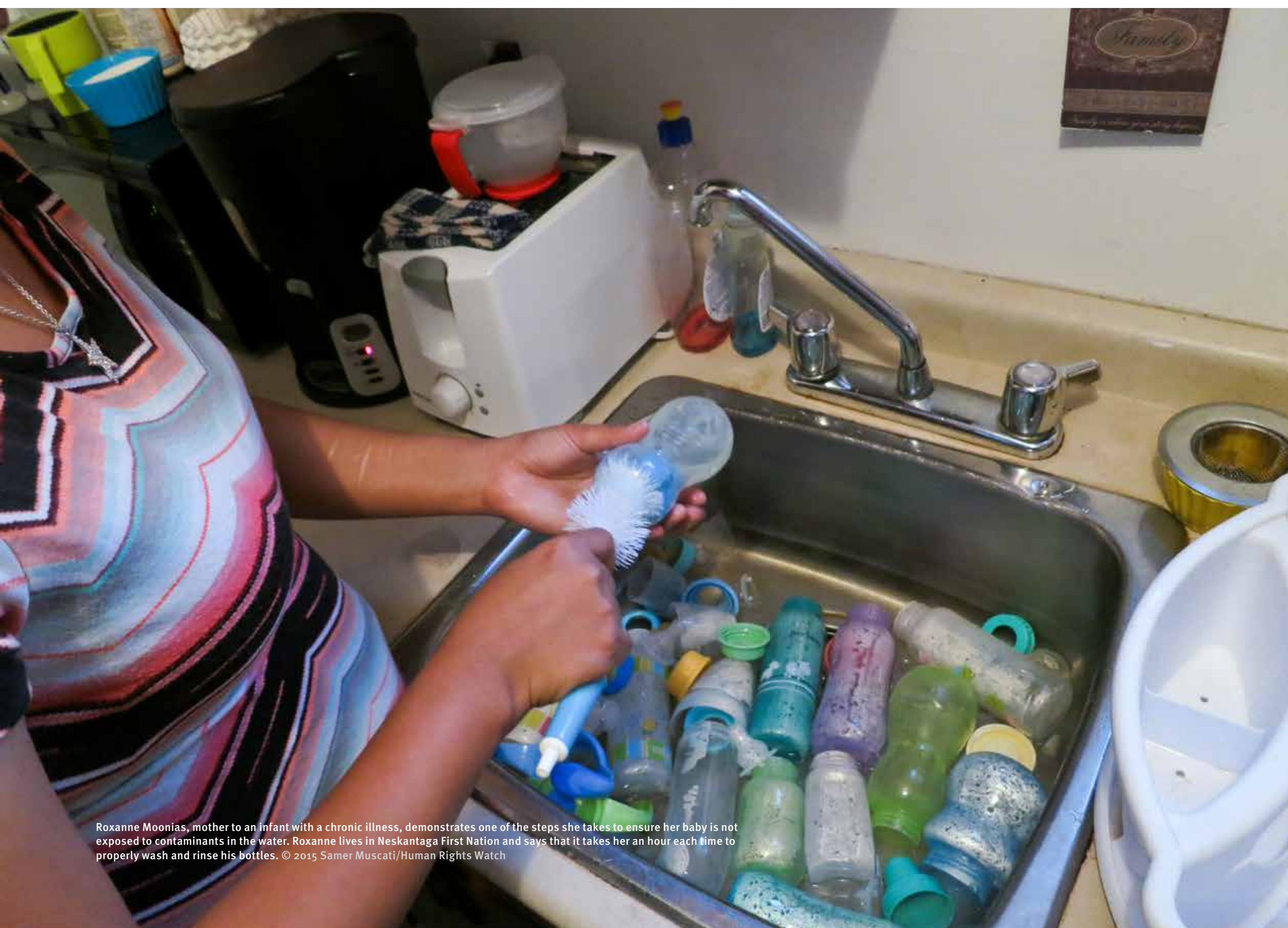
Financial commitment alone, however, will not solve the water and wastewater crisis on First Nations reserves. Along with infrastructure investments, the government should remedy a range of problems that contribute to the water crisis. These include: the lack of binding regulations on water quality on First Nations reserves; persistent under-funding and arbitrary budgeting for water system costs, including capital, operation, and maintenance costs; lack of support for household water and wastewater systems; worsening conditions of source water; and lack of capacity and support for water operators.

Human Rights Watch conducted research in First Nations communities in the province of Ontario between July 2015 and April 2016 to understand the human impacts of this crisis, and to understand why the problem persists. We conducted a water and sanitation survey with 99 households, home to 352 people, in Batchewana, Grassy Narrows, Shoal Lake 40, Neskantaga, and Six Nations of the Grand River First Nations. Human Rights Watch conducted an additional 111 qualitative interviews with chiefs and council members in these and other First Nations communities, residents, water operators, educators, environment and health experts, academics, and staff of



Walter Sakanee, an elder living in Neskantaga First Nation, has had difficulty fighting infections in his legs. He relies on his family members to collect safe drinking water for him in blue plastic jugs from a reverse osmosis machine located at the community’s water treatment plant. He is not able to access the plant on his own due to his physical disability. © 2015 Samer Muscati/Human Rights Watch





Roxanne Moonias, mother to an infant with a chronic illness, demonstrates one of the steps she takes to ensure her baby is not exposed to contaminants in the water. Roxanne lives in Neskantaga First Nation and says that it takes her an hour each time to properly wash and rinse his bottles. © 2015 Samer Muscati/Human Rights Watch



Installed in 2009, a reverse osmosis machine is the only source of clean drinking water in Neskantaga First Nation. According to government reports, the machine breaks down at least a few times a year and bottled water must be flown in for about CAD\$15,000 a month.



Beverages for sale in Neskantaga First Nation. Safe drinking water in the community's only store is more expensive than sugary drinks. © 2015 Samer Muscati/Human Rights Watch





Josephine Mandamin, from the Wikwemikong Unceded Indian Reserve and known as the Water Walker, pictured after a water ceremony and elder circle in Whitefish River First Nation. © 2015 Samer Muscati/Human Rights Watch

aboriginal representative organizations. Human Rights Watch also attended an elder circle celebrating water and its cultural significance. We found that the Canadian government has violated a range of international human rights obligations toward First Nations persons and communities by failing to remedy the severe water crisis.

## IMPACT OF THE WATER CRISIS

Contaminants in drinking water on First Nations reserves visited by Human Rights Watch included coliform, *Escherichia coli* (*E. coli*), cancer-causing Trihalomethanes, and uranium. Some of these are naturally occurring, some likely result from poor wastewater management on and off reserves, and others result from organic material in dirty source water reacting with chemicals meant to disinfect it. Exposure to these types of contaminants can have health impacts that range from serious gastrointestinal disorders to increased risk of cancer.

Our research found that while the most severe public health concerns—water-borne illnesses and related deaths—have mostly been avoided through water advisories, the social costs and human rights impact of the crisis are considerable. In communities like Neskantaga and Shoal Lake 40 First Nations, where advisories have existed for approximately 20 years each, a whole generation of children grew up unable to drink the water from the taps. Individuals from this generation are starting to have their own children, and to despair.

The daily hardship of living under a water advisory for years means that some people become frustrated and drink it without boiling or otherwise treating it—risking exposure to contaminants. Others use tainted water for bathing or for household tasks, such as washing dishes or clothes. Some avoid the water at all costs, but do not have sufficient safe water to meet their daily needs. Many households surveyed by Human Rights Watch reported problems related to skin infections, eczema, psoriasis, or other skin problems, which they believed were associated with water conditions in their homes. Whether or not a direct causation between exposure to the water provided to their households and these conditions can be established, the water crisis does decrease





Pipe in Shoal Lake 40 First Nation which has been under a boil water advisory since 1997. The pipe delivers raw lake water to a pump house for disinfection, before it is pumped out to households for domestic use. © 2015 Amanda Klasing/Human Rights Watch

the quality and quantity of water available for hygiene. Some reported that their doctors told them there was a direct correlation. Many people also reported changing hygiene habits, including limiting baths or showers for children, based on concerns about water quality.

Debora C., a woman in Grassy Narrows First Nation, explained how difficult it was to manage her 9-year-old son's recurrent rash: "I kept taking him to the clinic and they kept saying it was eczema. His belly and buttocks got really red, oozy and it spread. The ointment [they gave me] didn't work. I took him again." Finally, her son

was diagnosed with a skin disease that resists most antibiotics. She cannot bathe him in the tap water in her home, and uses bottled water in large jugs:

I sponge him with bottled water from the jugs, clean him that way.... My son has scarring now from where the rash broke out. [It's] not inflamed now... But he will have an inflammation once in a while, it won't go away [totally] because of the water, but now we know how to control [the infection].



Pump house in Shoal Lake 40 First Nation where raw lake water is mixed with chlorine disinfectant before being pumped out to households. © 2015 Amanda Klasing/Human Rights Watch

Caregivers, often women like Debora, shoulder a greater burden of care, work, and worry to ensure that at-risk individuals—children, elders, and people with disabilities or serious illnesses—avoid exposure to unsafe water. Roxanne M., a young mother in Neskantaga First Nation, described to Human Rights Watch the hour-long process she underwent daily to wash bottles for her 4-month-old infant with a rare heart condition. "It was a concern about how to bathe my son and how I was going to wash his bottles," she said. The process to secure safe water for her baby's bath took about two hours every other day. Washing her baby's bottles to avoid contamination

also took an hour—every day. "It makes me feel tired, exhausted. It's stressful," she said.

Lower-income or financially struggling families on First Nations reserves feel the water crisis intensely, and struggle with the cost of coping. This is particularly true for households not serviced by community systems. One in five First Nations household in Ontario relies on a private well for drinking water, and 57 percent of households rely on a household septic system. The cost to monitor quality and maintain the safety of these systems





A contractor works to connect a household to a neighbor's well in Batchewana First Nation. The household had been without water for over a year after its second well had run dry. © 2015 Amanda Klasing/Human Rights Watch

can be difficult to afford—and, the capital costs needed to rehabilitate failed systems are often prohibitively high.

The poor water and sanitation situation in First Nations contributes to the severe housing shortage on reserves. There are long waiting lists for housing, and overcrowding is common. Yet communities cannot increase their housing without upgrades to water and wastewater infrastructure.

Finally, the crisis impacts the cultural rights of First Nations persons. According to custom and tradition among many communities, women are the keepers and protectors of waters. Many First Nations persons see water as living, and as a form of medicine. Not being able to drink the water from their own community is distressing to some. Ceremonies, customary fishing and hunting practices, and ways of teaching children and sharing traditional knowledge are impacted when water is contaminated.

## WHY THE PROBLEM PERSISTS

The drinking water crisis on reserves can be resolved, and yet it has persisted for decades. Canada has frequently acknowledged its many challenges in addressing the problem. Since 1977, the federal government has investigated, made recommendations, and committed



Filters provided by Batchewana First Nation to a household with poor quality well water. Without the filters the water is unusable even for bathing or cleaning; and households must always use bottled water for drinking.  
© 2015 Samer Muscati/Human Rights Watch



funds to remediate the water and wastewater situation on the reserves. Yet the problem remains acute. The government's own audits show a pattern of overpromising and underperforming, without sufficient monitoring of whether money that is invested results in positive outcomes. Simply put, investments of billions of dollars over decades have not translated into safe drinking water for thousands of First Nations persons living on reserves.

### *Absence of Regulations*

A primary contributor to this inertia is the legal discrimination that exists related to the regulation and protection of drinking water for First Nations reserves. Provincial and territorial regulations governing safe drinking water and sanitation, which operate to protect the health of most Canadian residents, do not extend to First Nations reserves.

For decades, the federal government did not take appropriate action to ensure residents on First Nations reserves benefited from equal protection before the law—to this day there are no drinking water regulations on reserve. It is unsurprising, then, that this disparate system of regulations has led to disparate outcomes in access to safe drinking water and sanitation. Systems have been designed, constructed, and operated on reserves without the kind of legal standards and protections that the government has adopted for all other Canadians. Since 2006, the federal government has used contract law to govern safe drinking water on reserve. But even with contractual clauses in funding agreements between the federal government and First Nations, members of First Nations communities live without comparable protections and access to safe drinking water and sanitation as Canadians living off reserves.

The impact of this can be observed in the duration of water advisories on reserves, even for relatively new water systems. Of the dozens of drinking water advisories in effect on systems in Ontario First Nations, at least 57 of them are for systems less than 25 years old and 12 are for systems less than 15 years old. In at least two cases, the advisory was put in place within a few years of construction. At least one government contractor raised concerns in the mid-1990s that the government was funding systems on First Nations reserves in Ontario that would not be accept-

able off reserve. Yet the practice continued, and to date, many reserve systems fall below provincial standards.

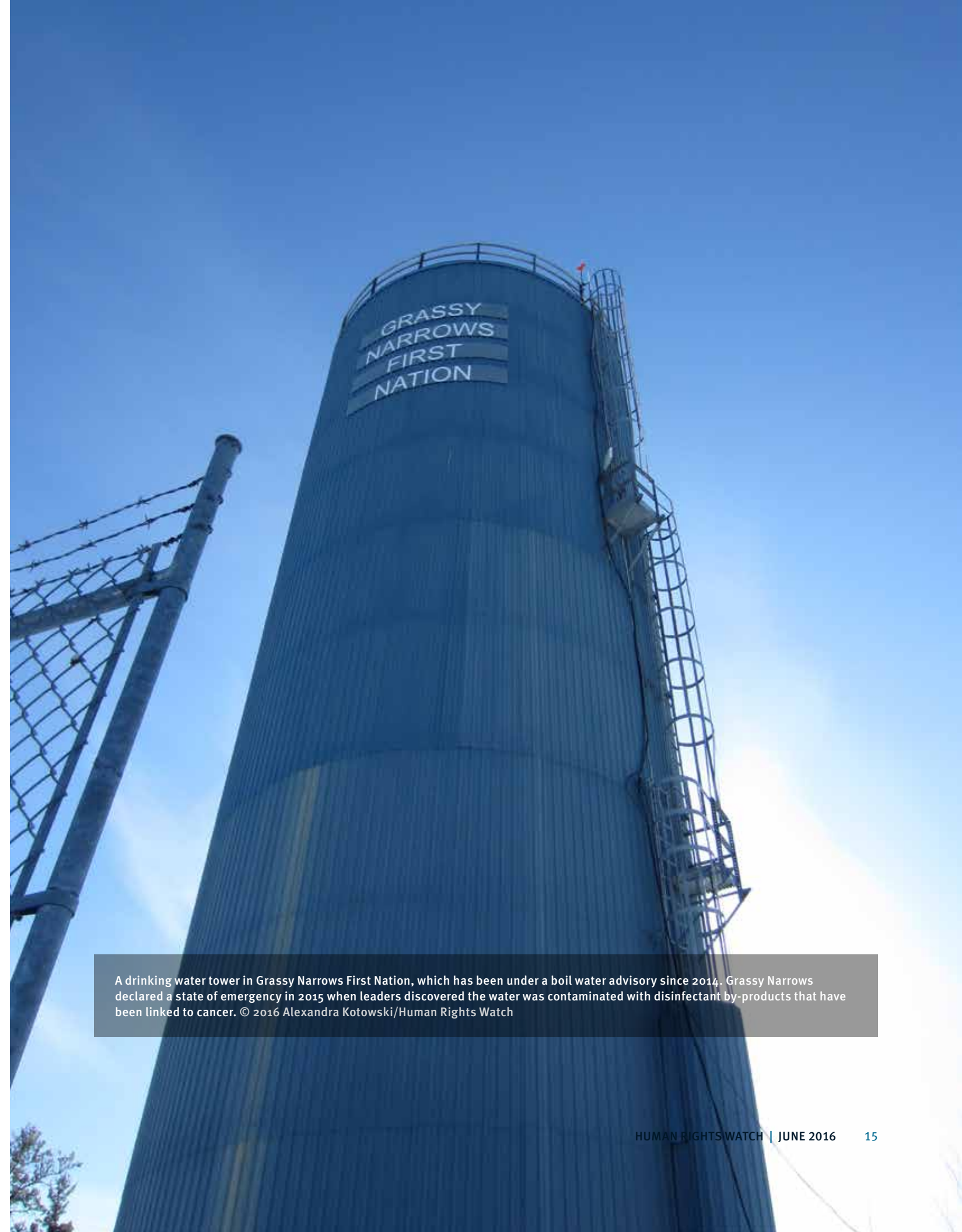
### *The Federal Government's Role*

The Constitution Act, 1867, grants the federal government jurisdiction over "Indians and lands reserved for the Indians"—in effect governing most aspects of life on reserve, including governance of First Nations. Under this provision, the Canadian Parliament first passed the Indian Act in 1876, which has been amended many times since but remains in force today. While the federal government has devolved many social services to First Nations to administer on reserve, it remains the primary source of revenue for communities. First Nations chiefs and councils are accountable to members on reserve for providing services, including owning and operating water and wastewater systems on reserve. Their power to govern, however, is significantly limited by the far-reaching role of the federal government instituted by the antiquated and discriminatory Indian Act.

Except in rare cases, all capital costs and a portion of operation and maintenance costs for systems come from the federal government. In practice, Indigenous and Northern Affairs Canada (INAC)—the federal department with jurisdiction over reserves—has considerable authority over water and wastewater on reserve. The buck literally stops with INAC, and yet, 36 percent of the drinking water advisories in place in 2015 on water systems in Ontario First Nations had been in place for over 10 years.

Part of this can be attributed to unpredictable and often insufficient funding from the federal government to build, operate, maintain, and monitor water and wastewater systems. The federal government funds a portion of operations and maintenance costs for First Nations' public water and wastewater systems on reserves, leaving a standard 20 percent deficit for the First Nations to cover. The federal government does not evaluate the ability of First Nations to make up the difference, despite limited community resources.

INAC faces a number of funding constraints, including a 20-year-old arbitrary cap on base funding growth. Between 1996 and 2015, INAC's base budget was limited



A drinking water tower in Grassy Narrows First Nation, which has been under a boil water advisory since 2014. Grassy Narrows declared a state of emergency in 2015 when leaders discovered the water was contaminated with disinfectant by-products that have been linked to cancer. © 2016 Alexandra Kotowski/Human Rights Watch





Six Nations of the Grand River (SNGR) is the largest First Nation community in Ontario, with nearly 12,000 residents on the reserve. SNGR's new state of the art water treatment facility, built in 2013, services less than half of the households, while the majority of SNGR residents still get their water from private wells or cisterns. © 2016 Rod Whitlow

to an annual 2 percent increase—regardless of population growth, inflation, or need. The United Nations special rapporteur on the rights to water and sanitation has warned that imposing this type of cap can slow down the progressive realization of human rights, or worse, lead to retrogression. While the budget under Prime Minister Trudeau lifts the cap, its legacy is enduring, with new investments needed to make up ground lost under the arbitrary scheme.

Remarkably, despite the strain of this funding cap, INAC has also failed to spend substantial funds over five recent fiscal years, and sent more than \$1 billion in funds back to the Treasury Board as “surplus.” INAC has consistently struggled to spend budgeted funds, meaning that in many years, tens of millions of promised dollars for First Nations have gone unspent. Some lapsed funding is expected, but INAC’s lapses were significant and not publicly explained.

#### Other Challenges

In addition to regulatory and funding problems, lack of source water protections and government support for private water and wastewater systems contributes to the crisis on reserves.

The quality of source water has a direct impact on drinking water. While water treatment is designed to make source water safe to drink, heavily contaminated source water can make water treatment more difficult and expensive. Ontario has more First Nations water systems that rely on surface water and “groundwater under the direct influence of surface water” (GUDI) than any other province—meaning water quality is directly related to watershed and source water conditions.

For the most part, source water protection falls under provincial law in Canada, because the watershed extends outside the reserve. This makes it legally and logistically difficult for First Nations to engage on the issue. In practice, First Nations cannot effectively carry out their culturally-understood obligation to protect water—either on or off reserve. First Nations leaders raised consistent concerns with Human Rights Watch about the lack of consultation regarding commercial activities that

impact their traditional territories and the waters within it. In many cases, the lakes, rivers, and streams that contribute to the source water for these communities have deteriorated because of pollutants from industries, and growing municipalities.

Households dependent on private wells or wastewater systems on reserves are in an even more precarious situation than those served by public water systems. There is no dedicated government funding to upgrade, operate, maintain, or monitor these systems. Nearly one in five households on reserves in Ontario use these private wells. Households on well systems in Human Rights Watch’s survey reported contamination ranging from coliform and *E. coli* to uranium. For the most part, First Nations and these individual households are left to fend for themselves.

## CANADA’S LEGAL OBLIGATIONS

The right to water entitles everyone, without discrimination, “to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use.” Likewise, the right to sanitation entitles everyone, without discrimination, to “have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, and socially and culturally acceptable and that provides privacy and ensures dignity.” The Canadian government’s failings with respect to water and sanitation constitute a violation of these rights for many First Nations persons living on reserves in Ontario.

Canada has an obligation to act to eliminate discrimination in law and fact, and ensure adequate safe drinking water and sanitation on reserves. While there is no dispute that the government has invested money to address this issue, the fact remains that a significant number of First Nations persons in Ontario cannot drink the water in their homes. The federal government has failed to address factors that contribute to this crisis. International human rights bodies and experts have raised concerns about Canada’s failure to do so.

In February 2016, nine First Nations women from communities across Ontario traveled to Geneva to tell the United Nations Committee on Economic, Social and Cultural





Pictograph of Mishibijiw on the shores of Lake Superior. Mishibijiw is an Ojibwe water spirit and this site is considered sacred to Batchewana First Nation. © 2015 Samer Muscati/Human Rights Watch

A drawing by the grandson of Chief Dean Sayers, Batchewana First Nation, highlighting the importance of Mishibijiw. © 2015 Samer Muscati/Human Rights Watch

Rights (CESCR) that filthy water is making their families sick and undermining their spiritual relationship with water. Linda Redsky of Shoal Lake 40 First Nation told the Committee, “The problem is inequality and institutionalized discrimination that ensures that settler communities get essential services while Indigenous communities do not.... My boy, Adam, has eczema. His and my grandsons’ entire lives have been lived under a boil water order. I should not have to take them to Winnipeg so that they can have a clean bath.”

With the Trudeau government’s budget announcement and stated commitment to bring the water and wastewater systems in First Nations communities up to the standard of comparable communities off reserves within five years, there is hope that this problem will be resolved. But past failures should not be repeated. New investments in water and wastewater infrastructure on First Nations reserves should be accompanied by enforceable regulations, sufficient funds for capital, operation, and maintenance costs for community and household systems, and mechanisms to track progress. Canada should establish an independent First Nations water commis-

sion with authority to monitor and evaluate water policy and outcomes that affect First Nations.

Decades of failure to fulfill the rights to water and sanitation have caused lasting damage to First Nations communities. It is time for Canada to make it safe.



# RECOMMENDATIONS

## TO THE GOVERNMENT OF CANADA

- In collaboration with First Nations, develop a plan for addressing water and sanitation conditions on reserves that allows for long-term and sustainable solutions beyond the current five-year budget. The plan should have:
  - » Quantifiable targets;
  - » Sufficient and consistent budget allocations;
  - » A fixed timeframe for initial implementation;
  - » Commitments for ongoing operation and maintenance support;
  - » A time-bound commitment to end long-term drinking water advisories and reduce risk level of high-risk water and wastewater assets on reserves; and
  - » Specific recommendations, funding, and measures related to private or household-level water and wastewater systems.
- Direct Indigenous and Northern Affairs Canada (INAC) to prioritize capital allocations for First Nations communities under long-term drinking water advisories.
- Establish an independent First Nations water commission to monitor and evaluate government performance related to water and wastewater on First Nations, including specifically the outcomes related to government water and wastewater funding commitments. In its work, the commission should take into account indigenous customs, laws, and practices.
- Work closely with First Nations to promulgate enforceable drinking water and sanitation regulations:
  - » In a manner consistent with communities' rights under Canadian law and international law;
  - » With sufficient funding and technical support for First Nations to meet these standards; and
  - » Under an appropriate timeline for full enforcement that permits First Nations to bring all systems up to the safety standards established by the regulations.
- Engage First Nations on the cultural aspects of water in order to identify culturally acceptable, sustainable water policy and practical solutions on reserves.
- Set up an inter-ministerial or cabinet-level working group concerning First Nations water and wastewater systems to ensure collaboration and information sharing among departments, and to regularly report to the First Nations water commission.
- Identify lessons learned from past funding commitments for First Nations water and wastewater systems, and prevent replication of past failures.

## TO THE PARLIAMENT OF CANADA

- Reform or repeal problematic portions of the Safe Drinking Water For First Nations Act, including provisions that could render First Nations financially liable for past federal government failures, and ensure that all legislative measures taken to address the water crisis are supported with the necessary resources and funding to secure effective implementation.
- Adhere to international legal standards related to indigenous peoples in current and future legislation addressing First Nations. Respect the rights set out in the United Nations Declaration on the Rights of Indigenous Peoples in laws related to water resources.

## TO INDIGENOUS AND NORTHERN AFFAIRS CANADA (INAC)

- Identify water and wastewater systems funded by INAC that fall below the standards in the *Guidelines for Canadian Drinking Water Quality* and fix these systems immediately.
- Establish a fair, transparent process for determining financial support for water and wastewater systems on reserves, including a formula for calculating capital, operation, and maintenance funding levels. Ensure that funding levels take into consideration the population, resources, remoteness, health and safety concerns, and water and wastewater assets.
- Assess water and wastewater assets annually, and ensure funding commitments keep pace with investment needs.
- Help First Nations develop accessible and easy to understand communications about risks to water and wastewater systems in their communities.
- Establish clear and transparent internal oversight of funding for water and wastewater systems under the new budget.
- Work closely with First Nations technical and community experts and ensure that new system designs allow for population growth, account for sustainable life-cycle costs, and are adaptable to decreased source water quality over time.
- Draw on technical water and wastewater expertise from other federal departments, and from provincial, territorial, or municipal governments.
- Work with water operators on reserves to understand their training needs and address the need for coordination that allows for lone operators to take time off.



## TO HEALTH CANADA

- Support research to monitor skin or other hygiene-related health concerns associated with poor drinking water quality or drinking water advisories on reserves.
- Ensure water operators on reserves have regular and consistent access to water quality testing supplies.
- Provide greater support for the monitoring of private household drinking water systems, including wells.

## TO TRIBAL COUNCILS

- Encourage water system knowledge-sharing among First Nations supported by the councils, including about design options and training.
- Help similar communities share experiences in water and wastewater systems on reserves, and encourage shared innovation and similar design so that operators can work across neighboring systems, and spare parts are interoperable, when emergencies arise.

## TO THE GOVERNMENT OF ONTARIO

- Work with federal departments and First Nations to support source water protection planning for waters affecting First Nations reserves, treaty lands, and traditional territories. For plans that have already been approved by Ontario without adequate First Nations collaboration, support remediation co-management plans to ensure First Nations can actively participate in the protection of their source waters off reserve.
- Engage First Nations communities in meaningful consultation, consistent with international standards, for all activities affecting treaty lands and traditional territories, and the water therein.
- Develop robust and formal inter-governmental mechanisms with federal departments and First Nations for sharing expertise and traditional knowledge specific to water as it pertains to source protection, water and wastewater infrastructure, treatment, and monitoring.
- Expand and enhance provision of in-kind technical/engineering expertise and capital funding that support safe drinking water on reserves.



# MAKE IT SAFE

## Canada's Obligation to End the First Nations Water Crisis

Canada is one of the most water-rich countries in the world, yet many indigenous (First Nations) people face daily challenges just to access safe water for drinking and hygiene—a fundamental human right easily enjoyed by most other Canadians. Drinking water advisories exist for 134 water systems—90 of them in Ontario— in 85 First Nations reserves across Canada, alerting communities that their water is not safe to drink.

*Make It Safe: Canada's Obligation to End the First Nations Water Crisis* finds that the water crisis on First Nations reserves has persisted for decades due to the lack of regulations governing water quality for reserves, insufficient and arbitrary funding, tainted source water, and lack of capacity and support for water system operators. As a result, water on many reserves is not safe. Contaminants include coliform, *Escherichia coli* (*E. coli*), cancer-causing Trihalomethanes, and uranium.

Health impacts of exposure to such contaminants can range from serious gastrointestinal disorders to increased risk of cancer. The water crisis also decreases the quality and quantity of water available for drinking and hygiene. Caregivers shoulder extra burdens to ensure that children, elders, and others avoid exposure to unsafe water. The crisis also impacts the cultural rights of First Nations persons.

New investments in water and wastewater infrastructure on First Nations reserves announced by Prime Minister Justin Trudeau should be accompanied by enforceable regulations, sufficient and rational funding, and oversight. Canada should establish an independent First Nations water commission to monitor and evaluate water policy, funding, and outcomes.



*View of Lake Huron from the shore of Kettle and Stony Point First Nation, located in Southern Ontario.*

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