

**Submission to the 30th Session of the Universal Periodic Review
on Economic, Social and Cultural Rights in Canada**

September 2017

Dr. Christina Szurlej, Director
Atlantic Human Rights Centre
St. Thomas University
Fredericton, NB, E3B 5G3, Canada
ahrc@stu.ca ~ +1(506)452-0451 ~ <http://wp.stu.ca/ahrc/>



About the Atlantic Human Rights Centre

Established in 1989, the Atlantic Human Rights Research Centre (AHRC) is based at St. Thomas University in Fredericton, New Brunswick. The Centre promotes and develops multidisciplinary teaching and research in the area of human rights at the regional, national, and international levels. The AHRC stimulates informed thinking about human rights and their implication for law and society through excellence in analysis and research.

Our mission is to:

- i) Undertake, encourage and facilitate research in the field of human rights;
- ii) Coordinate and develop undergraduate courses in the field of human rights;
- iii) Conduct specialized human rights courses of a continuing education nature for various professional groups;
- iv) Promote and stimulate informed thinking about human rights by organizing conferences and workshops and by disseminating information about human rights; and
- v) Collaborate and cooperate with other organizations, groups and individuals working in the field of human rights at the national, regional and international levels.

Producing this report in cooperation with senior students as an in class assignment in the Capstone Seminar in Human Rights, offered at St. Thomas University's Human Rights Department, is a reflection of the AHRC's mission of advancing high quality teaching and research. The Capstone Seminar is thematic; as this year's theme addresses the relationship between the environment and human rights, our report focuses on rights impacted by environmental degradation. Students' individual contributions are recognized in endnotes to this report.

Additional information about the work of the Atlantic Human Rights Centre is available here: <http://wp.stu.ca/ahrc/>

Information about the Human Rights Department, also based at St. Thomas University, is available here: http://w3.stu.ca/stu/academics/departments/human_rights/

Submission to the 30th Session of the Universal Periodic Review on Economic, Social and Cultural Rights in Canada

September 2017

Introduction

1. The Government of Canada places greater emphasis on promoting and protecting civil and political rights than economic, social and cultural rights, as exemplified by the Constitutional protection of the former and absence of the latter in the *Canadian Charter of Rights and Freedoms* (hereinafter *The Charter*). Such prioritization overlooks the reality that certain economic and social rights must be satisfied in order to enjoy civil and political rights. To address the lack of attention and protection accorded to the rights most essential for human survival, this submission to the Universal Periodic Review focuses on gaps concerning the rights to clean air, water, and adequate food.¹

Right to Clean Air²

Background

2. According to the World Health Organization, 11.6% of all global deaths (approximately 6.5 million) were linked to air pollution in 2012.³ Fifty percent of Canadians are exposed to harmful levels of pollution and “more than 20,000 premature deaths annually are attributable to air pollution.”⁴ Air pollution poses an egregious threat to the right to health, a clean environment, security of the person, and an adequate standard of living. Despite the prevalence and gravity of this threat, the Canadian government has failed to enact legislation protecting the right to clean air.

3. Sarnia, Ontario provides us with a microcosm of the threat facing Canadians today. Referred to as “Chemical Valley,” Sarnia has the worst air quality in the country and its conditions severely threaten the lives of its inhabitants. Twenty-six percent of inhabitants suffer from high blood pressure, 39% of women in the immediate area have experienced a miscarriage or still birth, and 40% of individuals surveyed required the assistance of an inhaler to simply breathe properly.⁵

Legal Source of Obligations

4. Though there is no overt legal human right to clean air or a healthy environment in Canada, breathing air free of toxic pollutants is the most fundamental human activity for survival. *The Charter* provides a constitutionally protected right to “life, liberty, and security of the person,”⁶ as mirrored under Article 6(1) of the *International Covenant on Civil and Political*

Rights (ICCPR).⁷ Canada infringes this constitutionally and internationally protected right by failing to adequately protect its populace from harmful pollutants resulting in death. The right to health as found under article 12 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) is similarly threatened.⁸ Finally, as a State Party to the *Convention on Long-range Transboundary Air Pollution*, Canada has a legal obligation to limit air pollution.⁹

5. The right to clean air has been tangentially recognized by the Supreme Court of Canada (SCC). In *Ontario v. Canadian Pacific* [1995], the SCC endorsed a passage from the Law Reform Commission acknowledging environmental pollution as a threat to the fundamental value of a right to a safe environment.¹⁰ The Court further validated a report of the World Commission on Environment and Development recognizing that “all human beings have the fundamental right to an environment adequate for their health and well-being.”¹¹

6. It is recommended Canada:

- i) Enact legislation securing legal protection of the right to clean air by:
 - a) setting caps on greenhouse gases and air pollutants and establishing energy efficiency standards;
 - b) regulating motor vehicles for fuel efficiency; and
 - c) requiring mandatory labelling of consumer products responsible for indoor air pollution.
- ii) Establish a mandatory and routine monitoring mechanism for air pollutants in order to understand the impact of air pollution on all segments of the Canadian population.

Right to Clean Water¹²

Background

7. Canada is home to 18% of the world’s fresh drinking water,¹³ however as of July 2017, 150 First Nations communities in Canada did not have access to water safe for consumption.¹⁴ In 102 communities, the Drinking Water Advisory (DWA) has been in place for over a year.¹⁵ DWA’s have three categories:

- i) Boil Water Order, requiring water to be boiled for safe consumption;
- ii) Do Not Consume Order, wherein water may not be used for cooking, brushing teeth, or drinking, but can be used for showering; and
- iii) Do Not Use Order, prohibiting all use of water.¹⁶

8. Advisories have been issued due to water contaminants, such as E. coli and coliform (forms of harmful bacteria), uranium and trihalomethanes, which are present due to poor wastewater management;¹⁷ other water supplies have been contaminated by chemical spills or lack of infrastructure.¹⁸ The cause of a DWA is different in every community, but a lack of infrastructure funding, maintenance, and unclear government jurisdiction over water management remain consistent.¹⁹

9. In a speech made to the 72nd General Assembly, Canada acknowledged, *inter alia*, its failure to provide a remedy for unclean water and sanitation.²⁰ Despite public acknowledgement, the government has approved and endorsed projects placing existing water sources at risk of contamination in order to advance economic development. For instance, the Government of Canada approved the Kinder Morgan Trans Mountain oil pipelines in 2016,²¹ threatening the water supply of the Coldwater Indian Band, the Tsleil-Waututh and Squamish Nation.²²

10. Another example of the federal government's inaction is its refusal to adequately address mercury poisoning on the Grassy Narrows Reserve. An overflow at the Dryden Mill owned by Domtar (now called Reed Paper) in the 1970's caused mercury to spill into the water supply,²³ but recent reports show evidence of continual leakage of mercury into the Wabigoon River.²⁴ Residents of Grassy Narrows are suffering migraines, tremors, and difficulty balancing, symptoms proven to result from mercury poisoning.²⁵

11. Passed in 2013, the *Safe Drinking Water for First Nations Act* declared "the government of Canada is committed to improving the health and safety of residents of First Nation lands." However, the government has not yet taken meaningful action to improve infrastructure to end long-term Boil Water Orders.²⁶ Following years of low-cost contractors who provide short term solutions at the expense of long term improvements,²⁷ the 2016 Federal Budget contained a five-year plan to invest \$1.8 billion to improve water and wastewater infrastructure on reserves.²⁸ Over a year later, evidence on lowering the number of DWAs is negligible. Humanitarian organizations have also questioned the approach taken by the Canadian government, as it lacks adequate consultation with each indigenous community.²⁹

Legal Source of Obligations

12. In 2002, the Committee on Economic, Social and Cultural Rights acknowledged "the human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights."³⁰ In 2010, the Human Rights Council recognized access to safe drinking water and sanitation as a human right.³¹ In explaining its rationale, the Council argued the right to water is a corollary of the right to an adequate standard of living, including the right to health, as protected under the ICESCR.³² Prior to this recognition by the Council, Canada had an obligation under the *Convention on the Rights of the Child* (CRC) to provide

“...adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution”³³ Another obligation is found in the *Convention on the Elimination of All Forms of Discrimination Against Women*, protecting the right of women “...to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.”³⁴

13. During previous reviews, Canada accepted recommendations on realizing the right to water, but implementation is outstanding. For instance, during the second cycle, Ecuador called for Canada to adopt legislation recognizing “access to water and sanitation as a human right, and develop a national plan to guarantee it...to reduce the gap in access to this right between indigenous peoples and the rest of society.”³⁵

14. It is recommended Canada:
- i) Halve the number of long term water advisories by 2020 through:
 - a) supporting and facilitating the creation of a community-specific approach to water and sanitation infrastructure;
 - b) increasing the number of employees at Indigenous and Northern Affairs Canada to 5,000;
 - c) clarifying which level of government is responsible for repairs and maintenance to avoid undue delays in lifting drinking water advisories.
 - ii) Develop and implement a five year plan to fully eliminate long-term drinking water advisories.

Right to Adequate Food³⁶

Background

15. Food security means circumstances in which all people, at all times, have physical and economic access to sufficient, safe, and nutritious food to meet dietary needs for an active, healthy life.³⁷ In Canada, food security is monitored and measured based on a household’s access to adequate food.³⁸ Adequate food should be available in sufficient quantity, safe for human consumption, free of adverse substances, and culturally acceptable;³⁹ this fundamental right should be met without discrimination based on group membership.⁴⁰

16. According to Statistics Canada, nearly 1.1 million households (8.3%) experienced food insecurity in 2011-2012; of those, “5.8% was reported as moderate and 2.5% was severe.”⁴¹ Households most vulnerable to food insecurity are those with children under eighteen (10.2%), lone-parent families (22.6%), and those dependent on government services as a primary source

of income (21.4%).⁴² Inuit (27%), First Nations (22%), and Métis (15%) are more likely to experience household food insecurity as compared to 7% of non-Aboriginal people.⁴³

17. While all regions of Canada are affected, territories reported higher levels of food insecurity than provinces, illustrated by disparity between the highest provincial percentages in Nova Scotia (11.9%) and the highest territorial results in Nunavut (36.7%).⁴⁴ The territories food insecurity prevalence has only worsened since, with rates of 46.8% in 2014.⁴⁵ Difficulty in accessing remote locations causes disproportionately high cost discrepancies in food prices between the provinces and territories. For instance, on average, 4.54 kg of potatoes costs \$3.34 in Ottawa, whereas that figure nearly quadruples in Nunavut at \$12.85.⁴⁶ Lack of access to affordable, nutritional food is a trend seen across northern and remote communities.⁴⁷

18. It is important to note available data on the realization of the right to food in Canada is incomplete. Statistics Canada does not extend their food security survey to all regions, some of which fall within aforementioned vulnerable categories. As such, it is possible that lack of access to adequate food is worse, particularly in the Canadian territories, than is publicly known.

Legal Source of Obligations

19. Having ratified the ICESCR, Canada has an obligation to “recognize the right of everyone to an adequate standard of living...including adequate food...and to the continuous improvement of living conditions.”⁴⁸ Under the CRC, Canada must likewise ensure an adequate standard of living good enough to meet the physical and mental needs of children. Canada has a duty to “help families and guardians who cannot afford to provide this, particularly with regard to food...”⁴⁹ Meeting the right to adequate food necessitates “physical and economic access” for all.⁵⁰ Additionally, Canada has a duty to provide adequate food without discrimination as to “race, colour, sex, language, religion, political or other opinion, national or social origin, property or other status.”⁵¹

20. Canada is also expected to fulfil commitments made during previous cycles. During its second UPR, Canada agreed to “reinforce policies and programmes developed to address poverty, homelessness, [and] food insecurity... with special focus on the most disadvantaged groups, such as Aboriginal peoples.”⁵² Canada likewise committed to address “deep and severe food insecurity faced by Aboriginal peoples across Canada living both on and off reserves, in remote and urban areas, especially for children.”⁵³

21. It is recommended Canada:

- i.) Establish a mandatory, routine, inclusive monitoring and measurement mechanism for food security in order to produce reliable and complete national data.
- ii.) Subsidize the cost of safe, nutritious foods for those at greatest risk of experiencing food insecurity to ensure physical and economic access to adequate food for all, irrespective of geographic location, socioeconomic status, or group membership.

¹ The Atlantic Human Rights Centre extends its thanks to Rachel Slipp for editing the stakeholder report and providing valuable commentary. Rachel is in her fourth year of study to earn an honours in human rights and a major in political science at St. Thomas University (STU). All subsequent students who are acknowledged for their input are likewise currently enrolled in academic programs at STU.

² The section on the right to clean air is prepared with assistance from Catherine Lansley, who is in the final year of a double major in human rights and communications and public policy, and Jarrod Ryan who is in his third year of a major in political science and human rights. Thanks are also owed to Noah Turner for contributing case-specific information on Sarnia, Ontario; he is in the third year of earning an honours in criminology and a major in human rights.

³ World Health Organization, "WHO releases country estimates on air pollution exposure and health impact," 26 September 2016, <http://www.who.int/mediacentre/news/releases/2016/air-pollution-estimates/en/>

⁴ David. R. Boyd, *The Right to a Healthy Environment: Revitalizing Canada's Constitution*, Vancouver: UBC Press, 2012, p. 153.

⁵ Ecojustice, "Exposing Canada's Chemical Valley: An Investigation of Cumulative Air Pollution Emissions in the Sarnia, Ontario Area," p. 9.

⁶ *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c. 11.

⁷ UN General Assembly, *International Covenant on Civil and Political Rights (ICCPR)*, 16 December 1966, Article 6 (1).

⁸ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, 16 December 1966, Article 11(1).

⁹ International Energy Agency, "Energy and Air Pollution," *World Energy Outlook Special Report*, 2016, <http://www.iea.org/publications/freepublications/publication/WorldEnergyOutlookSpecialReport2016EnergyandAirPollution.pdf>

¹⁰ *Ontario v. Canadian Pacific* [1995] 2 S.C.R. 1031, para. 55.

¹¹ World Commission on Environment and Development (Brundtland Commission), *Our Common Future*, 1987, p. 348.

¹² The section on the right to clean water is prepared by Brianna Matchett who is in the final year of earning an honours in human rights.

¹³ The Council of Canadians Acting for Social Justice, "Glass Half Empty," February 2017, David Suzuki Foundation, <https://www.amnesty.ca/sites/amnesty/files/DWA%20report%20-%20Feb%2009.pdf>

¹⁴ Health Canada, "Drinking water advisories: First Nations south of 60," *Canada.ca*, 31 August 2017, <https://www.canada.ca/en/health-canada/topics/health-environment/water-quality-health/drinking-water/advisories-first-nations-south-60.html>

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ The Council of Canadians, "Glass Half Empty," p. 33

¹⁸ David R. Boyd, "No Taps, No Toilets: First Nations and the Constitutional Right to Water in Canada," *McGill Law Journal* 57, no. 1 (2011): 81-134.

¹⁹ CBC News, "Tainted water 'jeopardizing health' of First Nations children, families rights group says," *CBC News*, 11 June 2016, <http://www.cbc.ca/news/canada/thunder-bay/human-rights-water-first-nations-1.3619218>

²⁰ Justin Trudeau, Speech during 72nd Session of the United Nations General Assembly, United Nations, New York, 22 September 2017.

²¹ John Paul Tasker, "Trudeau cabinet approves Trans Mountain, Line 3 pipelines, rejects Northern Gateway," *CBC News*, 29 November 2016, <http://www.cbc.ca/news/politics/federal-cabinet-trudeau-pipeline-decisions-1.3872828>

²² *Ibid.*

²³ *Weyerhaeuser Company Limited v Canada*, 2017 ONCA, para. 2. The AHRC thanks Chloé Saunier and Rachel Patrick for producing research on this case. Chloé is in her third year of earning a Bachelor of Arts Degree with a major in human rights. Rachel is in her third year of a major in human rights and criminology, along with a minor in political science.

²⁴ Paola Loriggio, "Study claims mercury still leaking from mill near Grassy Narrows: chief," *The Globe and Mail*, 10 April 2017, <https://beta.theglobeandmail.com/news/national/study-claims-mercury-still-leaking-from-mill-near-grassy-narrows-chief/article34160163/?ref=http%3A%2F%2Fwww.theglobeandmail.com&>

²⁵ Richard Pearshouse, "Canada has a toxic mercury blind spot," *The Globe and Mail*, 25 September 2017, <https://beta.theglobeandmail.com/opinion/canada-has-a-toxic-mercury-blind-spot/article36384328/?ref=http%3A%2F%2Fwww.theglobeandmail.com&>

²⁶ Tonina Simeone and Shauna Troniak, "Bill S-8 the Safe Drinking Water for First Nations Act," Ottawa: Library of Parliament, 2012.

²⁷ Justin Ling, "Indigenous Water Crisis: Total Disaster," *Vice News Canada*, 7 September 2017, <https://news.vice.com/story/inside-ottawas-failure-to-fix-the-first-nations-drinking-water-crisis>

²⁸ Bill C-15: An Act to Implement Certain Provisions of the Budget Tabled in Parliament, 22 March 2016 and Other Measures, Chapter 3.

²⁹ Amnesty International Canada, "Thirsting for Fairness and Equality," 13 February 2017. <https://www.amnesty.ca/blog/thirsting-fairness-and-equality> p. 16.

³⁰ UN Committee on Economic, Social and Cultural Rights (CESCR), "General Comment No. 15: The Right to Water," 20 January 2003, E/C.12/2002/11.

³¹ UN Human Rights Council, "The Human Right to Safe Drinking Water and Sanitation," 8 April 2011, A/HRC/RES/16/2.

³² ICESCR, Article 11(1) and Article 12(2).

³³ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, Article 24(3).

³⁴ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, Article 14 (2).

³⁵ UN Human Rights Council, "Report of the Working Group on the Universal Periodic Review: Canada," 28 June 2013, para 128.123 (Ecuador). See also para. 128.130 (Germany); para. 128.131 (Spain); para. 128.132 (Spain); and para. 128.133 (Norway).

³⁶ The section on adequate food is prepared with the assistance of Camille Xavier who is in her third year of earning an honours in human rights, with a minor in French .

³⁷ Food and Agricultural Organization of the United Nations, "Defining Food Security," *Trade Reforms and Food Security: Conceptualizing the Linkages*, Rome, 2013.

-
- ³⁸ Valerie Tarasuk, Andy Mitchell and Naomi Dachner, *Household Food Insecurity in Canada*, 2014. Toronto: Proof Food Insecurity Policy Research, 2016, p. 6, <http://proof.utoronto.ca/wp-content/uploads/2016/04/Household-Food-Insecurity-in-Canada-2014.pdf>
- ³⁹ Committee on Economic, Social and Cultural Rights (CESCR), “General Comment No. 12,” E/C.12/1999/5, 12 May 1999, paras. 7-13.
- ⁴⁰ ICESCR, Article 2(2).
- ⁴¹ Statistics Canada, “Household Food Insecurity, 2011-2012,” November 2015, <http://www.statcan.gc.ca/pub/82-625-x/2013001/article/11889-eng.htm>
- ⁴² Statistics Canada, “Study: Food Insecurity in Canada, 2007 to 2012,” 25 March 2015, <http://www.statcan.gc.ca/daily-quotidien/150325/dq150325a-eng.htm>
- ⁴³ Statistics Canada, “Health at a Glance,” <http://www.statcan.gc.ca/pub/82-624-x/2013001/article/11763-eng.htm>
- ⁴⁴ *Ibid.*
- ⁴⁵ Valerie Tarasuk et al, *Household Food Insecurity in Canada*, p. 2.
- ⁴⁶ Statistics Canada, “2017 Nunavut Food Price Survey – Comparison of Nunavut & Canada CPI Food Price Basket Items,” 2017, <http://www.stats.gov.nu.ca/Publications/Historical/Prices/2017%20Nunavut%20Food%20Price%20Survey,%20Comparison%20of%20Nunavut%20&%20Canada%20CPI%20Food%20Price%20Basket%20Items.xlsx>
- ⁴⁷ *Ibid.*
- ⁴⁸ ICESCR, Article 11(1).
- ⁴⁹ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, Article 27.
- ⁵⁰ CESCR, General Comment No. 12, para. 6.
- ⁵¹ ICESCR, Article 2(2).
- ⁵² Human Rights Council, “Report of the Working Group on Universal Periodic Review: Canada,” A/HRC/24/11, 28 June 2013, para. 128.127 (Slovakia).
- ⁵³ *Ibid.*, para. 128.77 (Namibia).