

Enhancing the Rights-Based Framework for Canada's National Housing Strategy

An ideas paper

Bruce Porter

Executive Director

Social Rights Advocacy Centre



April 26, 2018

Bruce Porter is the Executive Director of the Social Rights Advocacy Centre, which spearheads collaborative initiatives in research, public education and legal advocacy for social rights in Canada and around the world. He has written extensively on social rights and on the right to housing and recently co-edited the book *Social Rights in Canada*. Bruce is a Commissioner of the Ontario Human Rights Commission and is acting as the senior advisor to the UN Special Rapporteur on Adequate Housing. The ideas presented here for discussion are those of the author only.

Enhancing the Rights-Based Framework for Canada's National Housing Strategy is an ideas paper to simulate discussion for the National Consultation on a Human Rights-Based Approach to Housing. Feedback and suggestions sent to bporter@socialrights.ca would be welcome. After receiving some feedback and engaging in discussion, a subsequent paper will develop these ideas into a submission for the consultation.

The author is grateful to Maytree for supporting this research.

Contents

- A. Summary 1

- B. Assessing the rights-based framework for Canada’s National Housing Strategy 4
 - 1. Introduction: Creating a human rights space for governance and accountability in housing..... 4
 - 2. Building the National Housing Strategy around international human rights obligations and the 2030 Agenda 5
 - 3. A rights-based strategy means recognizing the right to adequate housing 7
 - 4. The necessity for hearings and remedies for systemic violations ... 8
 - 5. Ensuring access to alternative adjudication and remedies that are complementary to protections under the Charter and other laws.. 9
 - 6. Ensuring that remedial recommendations are not ignored. 12

- C. Clarifying the architecture of the National Housing Strategy to ensure rights-based accountability, including access to hearings and effective remedies 13
 - 1. Based on the right to housing under international human rights law and commensurate obligations 13
 - 2. The role of the Housing Advocate 14
 - 3. The role of the Housing Council 14
 - 4. The role of community-based initiatives and the public engagement 16

- D. Conclusion 16

A. Summary

This paper provides a commentary on the rights-based framework announced in Canada's National Housing Strategy: A Place to Call Home, on November 22, 2017 [NHS]. It also proposes ways in which the architecture of the NHS can be clarified in its implementing legislation so as to ensure compliance with the basic requirements of an effective rights-based strategy. In particular, the paper proposes that the legislation needs to ensure access to adjudication and effective remedies for systemic violations of the right to adequate housing by way of hearings before an adjudicative panel and remedial recommendations to the appropriate minister(s).

The key features of the proposed legislation are described at the end of the paper. In summary, they consist of the following:

- a. A clear affirmation of the right to housing and a commitment to its progressive realization, based on the normative framework of international human rights law and consistent with Canada's commitments under the 2030 Agenda for Sustainable Development;
- b. A commitment to promote interpretations and applications of other laws and policies consistent with the right to adequate housing, recognition of the right to housing in the FPT Housing Framework Agreement and all bilateral agreements and that all branches, departments and levels of government have shared obligations to progressively realize the right to housing as guaranteed under international human rights law;
- c. Enhanced independence of the Housing Council, so that it can act as an effective monitoring body for the implementation of the Strategy and ensure compliance with human rights-based goals and timelines;
- d. An enhanced role for the Office of the Housing Advocate, to receive information regarding systemic issues, send "communications" to relevant ministers to which they are required to respond; and take selective issues to hearings before an adjudicative panel, in collaboration with rights-claiming communities;
- e. An adjudicative panel appointed by the Housing Council to hear and make recommendations on selective systemic cases;
- f. Procedures to ensure that remedial recommendations receive full consideration by requiring the relevant minister, cabinet or a parliamentary committee to consider any remedial recommendations from the adjudicative panel and agree to either accept or reject these, with reasons;

- g. An enhanced role for community-based initiatives, through which to ensure local rights-based advocacy and engagement in the housing strategy and the promotion of the right to housing.



The National Housing Strategy will create...





B. Assessing the rights-based framework for Canada's National Housing Strategy

1. Introduction: Creating a human rights space for governance and accountability in housing

The government's commitment to a national housing strategy challenges us to develop, through a participatory approach, solutions to one of the most serious systemic human rights violations in Canada. The commitment to a rights-based approach also challenges us to consider how it is that homelessness and precarious housing became so widespread, without prompting a response commensurate with so serious a violation of fundamental human rights to dignity, security and life itself. It requires us to consider a human rights failure in Canada and how to address it. This is not only Canada's first National Housing Strategy, but the first piece of legislation to govern the progressive realization of a social right to which Canada is committed under international human rights law. It is a historic opportunity, and it is important that we get it right.

Those of us who have participated in reviews of Canada before UN human rights bodies have talked to each other about being taken by surprise by feelings of shame and personal responsibility for Canada's human rights failings, particularly in relation to housing and homelessness. It is not that we were unaware of any of the issues being presented, but rather, it is the effect of hearing the testimony of organizations working on the ground and those with lived experiences in a space in which human rights are considered to be of paramount importance, in which Canada's commitment to the right to housing is assumed to mean something. The shock expressed by international observers about homelessness in Canada makes us aware that something is missing at home. In that human rights space, experiences are heard not simply as evidence of policy failures but as deeper failures to accord equal dignity and rights to particular groups. Systemic violations of rights that have become accepted or deemed too complex to solve are seen as unacceptable and eminently solvable, requiring only a commitment to fundamental human rights values.

These experiences have impressed upon many of us the need for human rights spaces at home, similarly defined by Canada's commitment to the right to housing under international human rights law, but closer to where people live, providing ongoing accountability to human rights commitments, and generating more effective responses to remedial recommendations than has usually been the case with recommendations from UN human rights bodies. We view the drafting of the housing strategy legislation as an opportunity to

do just that – to create a human rights space in which to render homelessness and inadequate housing in so affluent a country as Canada both unacceptable and solvable.

2. Building the National Housing Strategy around international human rights obligations and the 2030 Agenda

The National Housing Strategy is founded on a commitment “to progressively implement the right of every Canadian to access adequate housing.” The Strategy “will contribute to United Nations Sustainable Development Goals [the 2030 Agenda] and affirm the International Covenant on Economic, Social and Cultural Rights.” These are the commitments that will frame the legislation implementing the rights-based housing strategy, and around which a rights-based approach must be constructed.

The international human rights obligations affirmed in the Strategy provide a rigorous normative framework for assessing obligations under a national housing strategy. Article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) commits a state to take steps “to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”¹ The UN Committee on Economic, Social and Cultural Rights has described the standard to be applied to the progressive realization of housing as requiring the state “to demonstrate that, in aggregate, the measures being taken are sufficient to realize the right for every individual in the shortest possible time in accordance with the maximum of available resources.”² With the adoption of the Optional Protocol to the ICESCR, the standard applied to assess progressive realization has been articulated as a standard of “reasonableness,” not dissimilar to the standard applied in Canada for the accommodation of disabilities or to limitations to charter rights.³

The obligations under the ICESCR apply to all levels of government in Canada, within their respective jurisdictions. Article 28 of the ICESCR affirms that “the provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.”⁴

1 International Covenant on Economic, Social and Cultural Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976, in accordance with article 27, [ICESCR] Article 2(21).

2 UN Committee on Economic and Social Rights (CESCR), *General Comment No.4: The Right to Adequate Housing (Art. 11(1) of the Covenant)*, E/1992/23 at para 14.

3 R. Brown, M. Langford, B. Porter and J. Rossi (eds) *The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: A Commentary* (Capetown: Pretoria University Law Press, 2016); Bruce Porter, [Rethinking Progressive Realization: How Should it be Implemented in Canada?](#) Background Paper for a Presentation to the Continuing Committee

4 ICESCR, supra note 1, Article 28.

Goal 11 of the 2030 Agenda for Sustainable Development, to “make cities and human settlements inclusive, safe, resilient and sustainable” relies on target 11.1., committing states to “by 2030, ensure access for all to adequate, safe and affordable housing and basic services....”⁵ The realization of the right to housing thus constitutes both a human rights obligation that is binding under international law on all levels of government, but also a critical commitment that Canada has made to the global community to ensure access to housing for all by 2030.

It is proposed that the legislation implementing the housing strategy explicitly reference these existing international norms and commitments to define the obligations of governments. There are a number of advantages to relying on the right to housing under international human rights law rather than defining it within the legislation for the purposes of the housing strategy.

- By referencing the commitment to the right to adequate housing under international human rights law, the legislation can rely on norms and standards that have been elaborated to define the content of the right to adequate housing and the commensurate obligations of government. It does not have to “reinvent the wheel.”
- Provinces, territories and municipal governments are already obliged to comply with the right to housing under international human rights law. Agreeing to participate in the National Housing Strategy can be articulated as a recognition of existing shared obligations. Quebec, in particular, made a unique commitment to ensure the right to adequate housing and other economic, social and cultural rights when it “ratified” the ICESCR in 1976, and it has actively participated in reviews before UN treaty monitoring bodies.⁶ Participation in the National Housing Strategy may be more acceptable to Quebec when it is framed around its existing obligations under international human rights.
- Commitments to implement the right to housing under international human rights law are distinct from obligations linked to statutory rights, and the right to adequate housing under international human rights law is not directly enforceable by courts. This allows the legislation to rely on alternative accountability mechanisms outside of the court system.

5 A/RES/70/1 - Transforming our world: the 2030 Agenda for Sustainable Development

6 Bill C-400: An Act to ensure secure, adequate, accessible and affordable housing for Canadians First Session, Forty-first Parliament s. 4. “Quebec may, having ratified the International Covenant on Economic, Social and Cultural Rights, use the benefits of this Act with respect to its own choices, its own programs and its own approach related to housing on its territory.”

- Where possible, courts are required to interpret and apply laws, including the Charter and human rights legislation, consistently with international human rights law and administrative decision-makers are required to ensure that their decisions are consistent with the values of international human rights and the Charter. Based on this principle, governments and advocates can promote administrative and judicial decisions in a wide range of areas of law and policy that will be in line with the right to adequate housing as implemented in the National Housing Strategy.

3. A rights-based strategy means recognizing the right to adequate housing

The Discussion Paper and public statements by government seem to have suggested a distinction between a “rights-based” housing strategy and a housing strategy based on the right to housing. At times it has seemed that a “rights-based housing strategy” might be reduced to a strategy which complies with existing legal obligations under the Canadian Charter of Rights and Freedoms and human rights legislation with respect to non-discrimination, affirming values of inclusion, participation and accountability but without entrenching a commitment to the progressive realization of the right to adequate housing as promised in the National Housing Strategy, to which governments can be held accountable.

The right to adequate housing is not, of course, the only right that must be protected in a rights-based housing strategy. It must address systemic patterns of discrimination on the grounds of race, gender, disability, LGBTQ2S status, the effects of colonization and other grounds. The right to housing must always be understood through an equality lens and is interdependent with many other fundamental human rights. Principle 2 of the Special Rapporteur’s report on rights-based housing strategies makes it clear that substantive equality and priority accorded to marginalized and disadvantaged groups, and those most in need, must infuse all aspects of housing strategies.⁷ Similarly, the right to housing should be included in other strategies addressing poverty, disability, systemic racism, and gender.

The Special Rapporteur’s report also makes it clear, however, that a rights-based housing strategy must be grounded in a recognition of the right to adequate housing as it is understood and elaborated under international human rights law.⁸ If legislation implementing a rights-based strategy does not place the

⁷ United Nations Human Rights Council, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in this Context, Leilani Farha*. Rights-Based Housing Strategies, [A/HRC/37/53](#) [Special Rapporteur, Rights Based Housing Strategies, [A/HRC/37/53](#)]

⁸ *Ibid*, at para 16.

right to adequate housing at its centre, then it is not a rights-based housing strategy. It will not comply with Canada's international obligations; it will not meet the commitment made in the National Housing Strategy to "progressively implement the right of every Canadian to access adequate housing;" it will not be acceptable to civil society; and it will not be effective.

4. The necessity for hearings and remedies for systemic violations

A dominant concern among civil society, also expressed by the UN Special Rapporteur on the Right to Adequate Housing, is that the architecture outlined in the National Housing Strategy and described in the Discussion Paper does not appear to provide for processes through which systemic rights claims may be heard or adjudicated. The role of the Housing Advocate is described as identifying solutions to systemic barriers but it is not clear whether those who are affected by the systemic barriers and best able to identify them would have access to hearings in which to speak in their own voice, as rights-holders.

The importance of a claiming mechanism through which effective remedies can be identified and ensured has always been front and centre in recommendations from UN human rights bodies to Canada. In its repeated and urgent calls for a national housing strategy based on the right to housing, the Committee on Economic, Social and Cultural Rights identified the key components that must be included in the strategy: "measurable goals and timetables, consultation and collaboration with affected communities, complaints procedures, and transparent accountability mechanisms, in keeping with Covenant standards."⁹ The previous UN Special Rapporteur on the Right to Adequate Housing, Miloon Kothari, reiterated this key recommendation in his report to the UN Human Rights Council on his mission to Canada in 2008, noting again the need for complaints procedures in a national housing strategy.¹⁰

The current Special Rapporteur, Leilani Farha, in her recent thematic report on rights-based housing strategies, identifies as the first key principle that: "The right to housing should be recognized within housing strategies as a legal right, subject to effective remedies." Principle 8, on access to justice, elaborates states' obligations in this respect.

Rights-based strategies must include effective claiming mechanisms that guarantee access to remedies where a violation is found. Such mechanisms

⁹ *Committee on Economic, Social and Cultural Rights: Canada*, E/C.12/1/Add.31, (1998) at para 62.

¹⁰ United Nations Human Rights Council, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in this Context, Miloon Kothari - Addendum - Mission to Canada (9 to 22 October 2007)*, UN Human Rights Council OR, 10th Sess, UN Doc A/HRC/10/7/Add.3, (2009) at para 90

can play a vital role in ensuring that housing systems operate inclusively and effectively. They allow marginalized groups to identify unmet housing needs, draw attention to circumstances that have been neglected or ignored and identify laws, policies or programmes that deny access to adequate housing. They provide rights holders with the opportunity to identify appropriate remedies or solutions to their housing problems.

While ultimate recourse to courts is important, other more accessible claiming mechanisms should also be included in housing strategies. Ombudsman offices, housing commissioners, human rights institutions, community housing councils or housing advocates may be given authority to consider complaints and to require responses by governments and other relevant actors.

It is particularly important that claiming mechanisms be able to hear systemic claims and hold all relevant actors accountable. They should be given broad jurisdiction to hear from civil society, engage multiple levels of government and to hold private actors accountable.¹¹

The Discussion Paper makes no reference to this central obligation to ensure access to adjudication and effective remedies. It proposes instead to structure a rights-based approach around four of six core principles identified in the 2003 “Common Understanding” of a rights-based approach to development adopted by UN development agencies: Accountability, Participation, Non-discrimination and Inclusion.¹² Conspicuously ignored is the fact that according to the Common Understanding, accountability means that states “have to comply with the legal norms and standards enshrined in human rights instruments. Where they fail to do so, aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law.”¹³

5. Ensuring access to alternative adjudication and remedies that are complementary to protections under the Charter and other laws

The first question asked about a housing strategy recognizing a right to housing has been whether individuals will be able to claim a right to housing in court and whether the government intends to amend the Canadian Charter of Rights and Freedoms to include the right to housing. Canadians are used to thinking of rights claims as individual claims before courts, so these questions

11 Special Rapporteur, Rights Based Housing Strategies, [A/HRC/37/53](#) at paras 111-113.

12 The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies available online at: <http://hrbportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies>;

13 Ibid.

are to be expected. It is important to be clear about the relationship between the right to housing in the housing strategy, which may rely on adjudicative and remedial mechanisms outside of the court system, and a constitutional or statutory guarantee that gives rise to claims before courts or tribunals.

The proposals advanced in this paper, that access to adjudication and remedies for systemic claims be provided in the housing strategy legislation, relying on the Housing Advocate, the Housing Council, and an adjudicative panel, rather than on courts, should not be mistaken for a suggestion that courts are not competent to adjudicate claims related to the right to housing or that they ought not, in other contexts, to adjudicate such claims. On the contrary, the commitment to the right to housing in the housing strategy should recognize the important role to be played by courts in protecting the right to housing in many other contexts, including under the Charter.

Canada is a “dualist” country, which means that international human rights are not directly enforceable by domestic courts unless they have been incorporated into domestic law. However, Canada is still required under international human rights law to ensure access to effective remedies for all human rights, including the right to housing.¹⁴ Remedies need not always rely on courts, but “whenever a Covenant right cannot be made fully effective without some role for the judiciary, judicial remedies are necessary.”¹⁵

There is a myriad of ways that courts in Canada are already involved in adjudicating claims related to the right to housing – including non-discrimination, security of tenure, zoning and planning. In adjudicating these issues, courts should consider Canada’s obligations under international human rights law and interpret domestic law consistently. Human rights commissions and tribunals can also play an important role in promoting access to justice for the right to housing.¹⁶ The housing strategy should commit governments to promoting interpretations of human rights legislation and other laws and policies that advance the right to housing. Governments can play an important role in promoting interpretations and applications of these laws that are consistent with the right to housing and thus with the rights-based housing strategy. Consideration should be given in the future to expanding the mandates of the Canadian Human Rights Commission and Tribunal to include the right to housing and other social rights. The provision of alternative forms of adjudication and remedy within the housing strategy does not preclude these kinds of developments and should in fact encourage them.

14 CESCR, General Comment 9, E/C.12/1998/24.

15 Ibid at para 9.

16 See, for example, Ontario Human Rights Commission, Policy on human rights and rental housing, Approved July 21, 2009; See Martha Jackman and Bruce Porter, “Social and Economic Rights,” in P. Oliver, P. Macklem and N. Des Rosiers, *The Oxford Handbook of the Canadian Constitution* (New York, Oxford University Press, 2017) at pp 843-866.

The right to housing should also be protected constitutionally in Canada, through consistent interpretations of rights in the Charter, in particular rights to life, liberty and security of the person in section 7 and the right to equality in section 15.¹⁷ The Supreme Court of Canada has stated that the Charter should be assumed to provide protection of international human rights ratified by Canada and that whenever possible, courts should adopt interpretations of charter rights that are consistent with Canada's international obligations.¹⁸ The Court has left open the question of whether the right to security of the person should be interpreted to include protection of the right to housing and other economic and social rights.¹⁹

Courts in other jurisdictions as well as the UN Human Rights Committee have recognized that access to housing is necessary to protect the right to life.²⁰ At its most recent review of Canada, the CESCR urged the federal government to engage civil society and organizations of Indigenous peoples to revise its approach to litigation "with a view to broadening the interpretation of the Canadian Charter of Rights and Freedoms, notably sections 7, 12 and 15, to include economic, social and cultural rights, and thus ensure the justiciability of Covenant rights." It is hoped that this recommendation will be incorporated into the mandate of the Minister of Justice, as described in the Prime Minister's Mandate Letter, to review litigation strategy to ensure consistency "with our commitments, the Charter or our values."²¹ The National Housing Strategy should include commitments to promote access to effective remedies under the Charter as well.

Rights-based accountability mechanisms within the housing strategy that do not rely on courts should thus be considered and advanced as complementary to and supportive of other avenues for access to justice for the right to housing. The housing strategy legislation provides an opportunity to affirm the importance of access to adjudication and effective remedies, and to develop procedures that are better contoured to the implementation of obligations under international human rights law to progressively implement

17 See Martha Jackman and Bruce Porter, "Social and Economic Rights," in P. Oliver, P. Macklem and N. Des Rosiers, *The Oxford Handbook of the Canadian Constitution* (New York, Oxford University Press, 2017) at pp 843-866.

18 *R. v. Hape*, [2007] 2 S.C.R. 292, 2007 SCC 26

19 *Irwin Toy v Quebec (AG)*, [1989] 1 SCR 927 at 1003-4; See Martha Jackman and Bruce Porter "[Strategies to Address Homelessness and Poverty in Canada: The Charter Framework](#)", in Martha Jackman & Bruce Porter (eds), *Advancing Social Rights in Canada* (Toronto: Irwin Law, 2014)

20 See, for example, *Shantistar Builders v Narayan Khimalal Totame* (1990) 1 SCC 520, para 9; *Chameli Singh v State of UP* (1996) 2 SCC 549. United Nations Human Rights Council, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in this Context, The right to life and the right to housing A/71/310* online at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/71/310; UN Human Rights Committee, *Concluding Observations, Canada CCPR/C/79/Add.105*.

21 Minister of Justice and Attorney General of Canada Mandate Letter (November 12, 2015).

the right to housing, without in any way suggesting that courts don't also have a critical role to play.

The Special Rapporteur's report makes it clear that rights-based participation and accountability cannot be reduced to consultation with "stakeholders" or participation in advisory bodies. Those who are affected by homelessness and inadequate housing must be empowered to participate as rights-holders to claim their rights. That is the process through which housing becomes understood as a human right – tied to dignity, security, to what it means to be human – and through which policy and programmatic responses can be ensured to be both responsive to lived experience, and consistent with human rights norms.

6. Ensuring that remedial recommendations are not ignored

A widely acknowledged problem in the area of social rights accountability is that governments often choose to simply ignore remedial orders, even when they emanate from courts. For many years, important recommendations with respect to the right to adequate housing have been made by UN treaty monitoring bodies and they have simply been ignored. Experiences in other countries suggest that even when courts are involved in ordering systemic remedies, governments have frequently failed to respond appropriately.²²

As it is described currently, the rights-based framework would rely on "recommendations" of the Housing Advocate to CMHC and the responsible minister. It is not made clear what kind of status these recommendations would have. A rights-based approach requires that recommended remedies be accorded a different status than policy recommendations which governments receive on an ongoing basis. It is important that the housing strategy legislation ensure that when the adjudicative panel or the Housing Advocate makes recommendations for remedies to human rights violations, these are not simply treated as policy recommendations that can be ignored.

This paper suggests an approach adopted from the procedure at the UN Human Rights Council under the Universal Periodic Review. In that procedure, states receive recommendations from other states and they must formally decide and report to the Human Rights Council whether each recommendation is accepted or rejected. A similar procedure was proposed in an Alternative Social Charter during the constitutional negotiations leading to the Charlottetown accord.²³ Under that procedure, remedial recommendations by a social rights tribunal would not take effect "until the House of Commons

²² M. Langford, C. Rodriguez and J. Rossi (eds.), *Making it Stick: Compliance with Social Rights Judgments in Comparative Perspective*, (Pretoria University Law Press, Capetown, 2014.)

²³ See Alternative Social Charter, (1992) online at <http://socialrightscura.ca/documents/archive/Alternative%20Social%20Charter.htm>

or the relevant legislature has sat for at least five weeks, during which time the decision may be overridden by a simple majority vote of that legislature or Parliament.”

The point of these kinds of procedures is to ensure that remedial recommendations are not simply ignored. It is hoped that governments that are committed to the realization of the right to housing under the Strategy would be reluctant to refuse to implement a remedy that is required for compliance.

C. Clarifying the architecture of the National Housing Strategy to ensure rights-based accountability, including access to hearings and effective remedies

The National Housing Strategy released on November 22, 2017 sketches in a preliminary fashion an institutional framework through which a rights-based approach is to be implemented. The following proposals suggest clarifications and enhancements to that architecture that should be included in the legislation in order to address the concerns described above. These do not, however, fundamentally alter the nature of the commitments made or the institutional structure described. The most significant enhancement is to ensure that the legislation facilitates hearings and adjudication of systemic claims as part of the commitment to rights-based accountability.

1. Based on the right to housing under international human rights law and commensurate obligations

As explained above, the legislation needs to be clear that it recognizes the right to adequate housing as it is guaranteed under international human rights law and the obligation of governments to progressively realize that right. The Strategy should affirm that under both International and domestic law, courts and administrative decision-makers must ensure that their decisions and interpretations of laws are consistent with international human rights law, and that the obligation to progressively realize the right to housing is shared by all levels and branches of government, and all departments. In other words, the Strategy should articulate the role of the federal government in ensuring that the whole of government in Canada complies with the right to housing - not simply one department within the federal government.

2. The role of the Housing Advocate

If the rights-based framework is to be effective, the Housing Advocate needs to be properly resourced, staffed and mandated to conduct investigations into systemic issues and potential non-compliance and issue remedial recommendations. In selective cases, the Housing Advocate should be mandated to work with affected groups to bring critical systemic issues to hearings before an adjudicative panel.

The Housing Advocate's role in issuing remedial recommendations could be modelled on the "communications" procedure available to Special Rapporteurs and Independent Experts appointed by the UN Human Rights Council.²⁴ The Housing Advocate could be mandated to submit what could be called "communications," "appeals" or "allegation letters" to responsible ministers within the federal government, provinces and territories, or municipalities, outlining information received or the results of investigations and explaining how these may substantiate a finding of non-compliance with the right to adequate housing. Similar procedures could be put in place for communications to private actors. The responsible minister or level of government should be required to respond within a specified period of time, either by providing a necessary explanation or undertaking to take remedial action. There should also be provisions for "urgent appeals" where prompt response is required. Reports of all communications and responses could be provided to the Housing Council and on an annual basis to parliament. The Housing Advocate should also be mandated to support affected communities to take selective systemic issues, deemed to be particular importance, to hearings before an adjudicative panel. The panel should have the mandate to consider allegations of non-compliance with obligations to progressively realize the right to housing and to issue declaratory findings and recommendations to relevant ministries. The hearings should provide communities with a venue in which to claim rights that is accessible to all concerned.

3. The role of the Housing Council

As described in the National Housing Strategy, the Housing Council "will bring together representatives from the federal government, provinces and territories, municipalities, the housing sector, the research community and people with lived experience of housing need to provide ongoing input on the National Housing Strategy."

²⁴ For a description of this procedure, see Office of the High Commissioner on Human Rights, Communications, online at <http://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>.

It is not clear from the description how representatives will be selected and how independent the Council will be of CMHC and other governments. If the Council is to monitor progress and ensure accountability, it needs to be independent, as required by Principle 7 of the Special Rapporteur's report on the requirements of rights-based housing strategies.²⁵

It is unclear in the proposed architecture which body will perform the critical function of adopting and monitoring compliance with goals and timelines for the reduction and elimination of homelessness and for ensuring access to adequate housing for all by 2030 as per Canada's commitments in Agenda 2030 for Sustainable Development. The Housing Council, properly constituted as independent and resourced with expert assistance, would seem to be the appropriate body to monitor progress and compliance with goals and timeliness.

Another important role for the Housing Council should be the appointment of an adjudicative panel to hear systemic claims. The legislation should mandate the Housing Council to appoint the panel, based on criteria to be elaborated in the legislation describing necessary expertise, diversity and participation and ensuring representation of those with lived experience. An advantage of having the panel appointed by the Council would be that it might have more legitimacy with all levels of government having some say in the appointments. Other options to consider would be to have the panel appointed by the minister or by the Parliamentary Human Rights Committee, based on criteria laid out in the legislation.

It might also be worth considering the idea of adjusting the make-up of the panel depending on the nature of the issue being addressed, perhaps with one or two additional members of the panel chosen for any particular case. In that case, summaries of claims could be submitted to the Council and an expert panel could be appointed based on the nature of the issues raised.

Panels should have at least one member with lived experience of housing need and all members should receive training in the right to adequate housing under international human rights law. They should have access to independent expertise and assistance and should be resourced to hold hearings in a place that is accessible to communities involved.

25 Special Rapporteur, Rights Based Housing Strategies, [A/HRC/37/53](#) at paras.

4. The role of community-based initiatives and the public engagement

It is critical to a rights-based approach to a national housing strategy that there be adequate support at the local level for rights-based advocacy and human rights education through public engagement. Support for local and community based advocacy should be provided through an expanded role for what is referred to in the NHS as “community-based tenant initiatives.” The community-based tenant initiatives are described as fostering inclusion and “ensuring that those in housing need have the ability to participate in decisions that affect them.” The name should be altered so that the initiatives embrace more than tenants, including those who are homeless, living in shelters or those in precarious ownership situations. Local initiatives should be clearly framed around the right to housing and support should be provided for local organizations to work with those in housing need to identify solutions and advocate for their right to housing. These organizations would then be able to identify important systemic issues to be communicated to the Office of the Housing Advocate and addressed either through a communications procedure or through hearings before an adjudicative panel.

D. Conclusion

The options presented here for consideration and discussion are informed by a recognition that if the right to housing is to be effective, it must be supported by strong institutions and procedures that empower rights-holders to claim their rights and ensure meaningful accountability of governments to comply with their obligations to implement the right to housing. The procedures put in place within the National Housing Strategy can only be one dimension of a more vigorous culture of human rights in housing, but it is essential that at least the rights-based approach in the NHS be real, effective and meaningful.

There are very real concerns within civil society and the housing rights community that the heralded rights-based approach may turn out to be rhetoric lacking in substance. The rights-based approach will not work if the necessary resources and institutional mechanisms are not put in place to support it. If we consider the resources and institutional structures that have been necessary to promote and implement other human rights in Canada, however inadequately, it is obvious that the right to housing will require significant institutional support for there to be any meaningful progress. Human rights need infrastructure, just as housing programs do, and those to whom the housing strategy needs to be most accountable do not have the resources to become active “consultants.” They need to be given the support and resources necessary to advance their claims to adequate housing and to participate meaningfully in housing policy as rights-holders.

The National Housing Strategy must create a new culture of human rights in housing in which the idea that everyone has the right to adequate housing takes root and flourishes, creating innovative solutions and responses to housing need and homelessness from the local to the national level. That aspiration is not unrealistic, but it will take sincere commitment on the part of governments and significant institutional support to make it happen.