THE NATIONAL RIGHT TO HOUSING NETWORK

National Right to Housing Network
Submission to the UN Committee on Economic, Social, and Cultural Rights on the Right to Adequate Housing (Articles 2 and 11 of the ICESCR) for the 66th Pre-Sessional Working Group (09 March 2020 – 13 March 2020)

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INTRODUCTION

The National Right to Housing Network (NRHN) is a group of key leaders, thinkers, experts and people with lived experience of housing precarity and homelessness, with a mission to fully realize the right to housing for all in Canada. The NRHN is made up of a Steering Committee and membership of over 75 organizations and individual advocates committed to the meaningful implementation of the right to housing in Canada. Please find attached as Appendix I a list of the NRHN's Steering Committee members.

The NRHN submits this report to the Committee on Economic, Social, and Cultural Rights the Committee) in advance of the Committee's list of issues prior to Canada's 7th review under the *International Covenant on Economic, Social, and Cultural Rights* (ICSECR).

We support the submissions presented by the Feminist Alliance for International Action (FAFIA) with regards to implementation of the right to housing for First Nations, Métis, and Inuit women as they relate to the fulfillment of the recommendations of the Missing and Murdered Inquiry on Indigenous Women and Girls. We support the submission by Ontario Federation of Indigenous Friendship Centres, in particular the questions and analysis relating to Article 11. **We join the call for an adequately resourced Urban and Rural Indigenous Housing and Homelessness Strategy that is developed and implemented by urban, rural and Northern Indigenous housing and service providers, with recognition of these organizations as expressions of Indigenous self-determination, consistent with Canada's obligations under UNDRIP.** We also support the submissions of the Social Rights Advocacy Centre and the Charter Committee on Poverty Issues on access to justice and effective remedies for ESC rights.

PART 1: GOOD PRACTICES AND ONGOING IMPLEMENTATION OF THE COVENANT

1.1 The National Housing Strategy Act (2019): Recognizing the Right to Housing and Establishing a Rights-Based Housing Strategy in Accordance with the Committee's Recommendations

In Canada, a country with one of the highest per capita Gross Domestic Products in the world, an estimated 235,000 people experience homelessness each year, 35,000 on any given night. Canada's housing and homeless crisis is significant disproportionate to its wealth of resources, and it demands urgent action from all levels of government. While in previous years, Canada has consistently ignored the Committee's recommendations to recognize housing as a human right in domestic law and to implement a rights-based housing strategy to reduce and eliminate homelessness, that is no longer the case. **Canada's new National Housing Strategy Act provides opportunities to exercise the right to housing, and the movement within civil society and among Indigenous Peoples for the right to housing in Canada has unprecedented momentum.**

Canada's failure to recognize housing as a fundamental human right and to address a growing crisis of homelessness by implementing a rights-based national housing strategy has been a dominant concern raised of the CESCR for more than twenty years. The Committee has repeatedly urged Canada to adopt a rights-based national housing strategy that includes "measurable goals and timetables, consultation and collaboration with affected communities, complaints procedures, and transparent accountability mechanisms, in keeping with Covenant standards".[1] The former UN Special Rapporteur Miloon Kothari reiterated the Committee's recommendation in his 2009 Report following his 2007 visit to Canada, calling for a national strategy with all of the elements that had been identified by the CESCR.[2] In 2017 four Special Rapporteurs submitted an allegation letter to Canada regarding its failure to address the homelessness crisis and its continued refusal to implement the CESCR's recommendation for a rights-based housing strategy, noting that this had led to significant increases in homelessness and death. [3]

After years of civil society advocacy and litigation and recommendations from every quarter for a rights-based national housing strategy affirming the right to housing, the federal government finally responded. On November 22, 2017, it introduced the National Housing Strategy (NHS), committing to reduce chronic homelessness by 50% by 2028 and promising to introduce rights-based legislation to implement the government's commitment to the progressive realization of the right to housing, as guaranteed in the International Covenant on Economic, Social and Cultural Rights (ICESCR). After

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[1] *Concluding Observations*: Canada (1998) para 62.

[2] UN Human Rights Council, *Report of the Special Rapporteur on Adequate Housing, Miloon Kothari : addendum : mission to Canada (9 to 22 October 2007)*, 17 February 2009, A/HRC/10/7/Add.3, available at: https://www.refworld.org/docid/49b7af2c2.html [accessed 2 February 2020]

[3] Special Rapporteur on the right to housing, Communication to Canada (June 22, 2018) Available at https://www.ohchr.org/Documents/Issues/Housing/OL%20CAN%2022.06.18.pdf.

receiving a large number of submissions from civil society and Indigenous Peoples, including specific proposals for the content of the legislation, the government passed the National Housing Strategy Act and it became law on June 21, 2019.[4]

The historic legislation:

- Declares that the Government of Canada recognizes housing as a fundamental human right and commits to progressively realizing this right in accordance with the ICESCR;
- Requires future governments to develop and maintain a national housing strategy to further this commitment, taking into account key principles of a human rights-based approach;
- Establishes a National Housing Council, which will include people with lived expertise of homelessness and inadequate housing as well as persons with human rights expertise, to further the commitment to the right to housing and advise the Minister on the effectiveness of the Housing Strategy;
- Establishes a Federal Housing Advocate, supported by the Canadian Human Rights Commission to:
    - Assess and advise the federal government on the implementation of its commitment to the right to housing, particularly with respect to vulnerable groups and those who are homeless;
    - Initiate inquiries into incidents or conditions in a community, institute, industry or economic sector;
    - Monitor progress in meeting goals and timelines;
    - Receive and investigate submissions on systemic issues from affected groups;
    - Submit findings and recommended action to the designated Minister to which the Minister must respond within 120 days; and
    - Refer key systemic issues for accessible hearings before a Review Panel.
- Provides for a Review Panel, made up of three members appointed by the National Housing Council including at least one member with lived expertise, to hold hearings into selective systemic issues affecting the right to housing and submit its findings and recommended measures to the government through the designated federal Minister to which the Minister must respond to findings and recommendations of the review Panel within 120 days.

[4] National Housing Strategy Act, 2019. https://laws-lois.justice.gc.ca/eng/acts/N-11.2/FullText.html

i. Welcoming the National Housing Strategy Act

We suggest that the Committee welcome the National Housing Strategy Act as a significant "best practice" in ensuring accountability for the progressive realization of the right to housing. The Committee could note that if Canada commits to making this legislation effective, it will provide a model for other States parties to follow.

The Committee should take note of the fact that the NHS Act reflects constructive engagement with the CESCR and with Special Rapporteurs, meeting the criteria listed by the Committee in its previous concluding observations. The Committee should also commend Canada's meaningful engagement with civil society in developing the legislation and its commitment to continued engagement through the mechanisms provided under the Act. The Committee should emphasize the importance of goals and timelines to reduce and eliminate homelessness, noting that these must be based on the "**maximum of available resources**" and ensure that homelessness is eliminated in the shortest possible time.

The Committee may also note that in accordance with Covenant requirements, the Act provides for independent monitoring; a complaints procedure through which systemic issues can be raised and remedies identified; hearings in which rights holders should have the opportunity to fully participate; and a mechanism to ensure that the government responds meaningfully to remedial recommendations. **If properly operationalized in a manner consistent with the obligations to ensure access to effective remedies, the NHS Act represents a significant advance in the domestic implementation of the right to adequate housing in Canada**.

1.2 Follow-up Information Regarding the National Housing Strategy Act

i. Details on Systemic Issues Addressed by the Housing Advocate and the Review Panel

We recommend that the Committee ask Canada for details of all systemic issues that have been the subject of investigations by the Housing Advocate or of hearings conducted by the Review Panel and describing how the government has responded to each remedial recommendation. Canada should also explain how systemic issues that relate to areas that fall within provincial/territorial jurisdiction or that engage with businesses or private actors have been addressed, both by the federal government and by subnational levels of government.

ii. Implementation of Recommendations

The Committee would benefit from information regarding the implementation of remedial recommendations of the Federal Housing Advocate or the Review Panel, including independent assessments by the National Housing Council, the Federal Housing Advocate, the Canadian Human Rights Commission, civil society organizations or relevant experts.

iii. Implementing Goals and Timelines in accordance with Article 2(1)

It will be critical for Canada to adopt goals and timelines that comply with Covenant standards. The NRHN does not believe that the goal that was adopted in the 2017 National Housing Strategy, of reducing "chronic homelessness" by 50% by 2028 is consistent with Covenant standards. Canada can do much better than this. Finland, with a comparable economic capacity and climate, has virtually eliminated homelessness. A focus on "chronic homelessness" also fails to address many of the urgent homelessness issues affecting women and families with children.

Canada should be asked to report on all goals and timelines adopted under the National Housing Strategy and to explain how these have been determined to be consistent with the "maximum of available resources" standard of article 2(1) of the ICESCR as well as with target 11.1 of the SDGs.

Canada should be asked to provide information on its overall budgetary allocation to housing and provide comparisons to allocations in similarly situated countries. Canada should be asked to provide information on how progress toward each goal is monitored and assessed and what recourse is available if goals and timelines are not met.

Canada should be asked if it is willing to review whether the goal of reducing chronic homelessness by 50% by 2028 is consistent with its SDG commitments and with the urgency of eliminating homelessness in the shortest possible time, based on the maximum of available resources.

iv. Providing Necessary Resources to Civil Society and Community Based Organizations

The NHS Act will only be effective if stakeholders are able to bring forward systemic issues for investigation and hearings, and promote the implementation of the right to housing locally and regionally. Community initiatives, in collaboration with advocates knowledgeable about human rights and the right to housing, must be able to advance systemic claims and identify effective remedies in submissions to the Housing Advocate. Research into systemic issues and relevant international human rights jurisprudence will be necessary to properly identify issues of non-compliance with the right to housing and to design appropriate remedies.

Canada should be asked to report on the level of financial support it has provided for community organizing, advocacy and research into the right to housing by civil society and community-based organizations to support the submissions by affected groups on systemic issues as described in the NHS Act. Canada should also be asked to provide information on funding for community initiatives, explaining how this funding will assist those who are homeless or whose right to housing has been violated to advance systemic claims to ensure the realization of the right to housing.

v. Outstanding Issues with Respect to Provincial/Territorial and Municipal Jurisdiction

While some communities have reported significant success in reducing homelessness due to support from federal assistance, the NHS Act is formally restricted to federal jurisdiction and does not address the Committee's longstanding concerns about ensuring provincial/territorial and municipal compliance

with the right to housing. For the *National Housing Strategy Act* to be effective, all provinces, territories and municipalities must adopt similar legislation and strategies to implement the right to housing in areas of their jurisdiction, in co-operation with other levels of government. **The federal government must ensure that compliance with the right to housing is incorporated into federal/provincial/territorial agreements.**

Canada should be asked to explain how compliance with the right to housing is to be ensured within areas of provincial/territorial jurisdiction. It should provide information from each province and territory about legislation or policies in their jurisdiction that recognizes the right to housing and provides for accountability comparable to the *National Housing Strategy Act.* Provinces and Territories should also be asked to provide information about what their human rights institutions are doing to promote the right to housing and to ensure access to justice and effective remedies on systemic issues.

vi. Recourse to Courts and Human Rights Tribunals

The National Right to Housing Network is fully supportive of the innovative model for accountability to progressive realization of the right to housing under the NHS Act, but we note that it does not provide for enforceable remedies and should not be seen as a substitute for recourse to courts as required by the CESCR's General Comment No. 9. Canada has failed to ratify the Optional Protocol to the ICESCR. Concerns raised by the Committee in previous concluding observations regarding Canadian governments' failure to promote interpretations of rights to life, security of the person and equality under the Canadian Charter to address violations of the rights of those who are homelessness have still not been addressed. **The Government of Canada and provincial governments have continued to argue before courts that the right to housing is "non-justiciable" and that courts should not require governments to adopt measures to address homelessness, even where it results in death or severe health consequences.** This was the position taken by the Attorneys General of Canada and of Ontario in *Tanudjaja et al v Canada et al* [5].

[5] The pleadings and court decisions are available at http://socialrightscura.ca/eng/legal-strategies-charter-challenge-homlessness-motion-to-strike.html.

We recommend that the Committee ask Canada whether the recognition, in the *NHS Act,* of the right to housing as "a fundamental human right affirmed in international law" and that "housing is essential to the inherent dignity and well-being of the person" will be reflected in its interpretation of rights under the *Canadian Charter of Rights and Freedoms*. Canada should be asked specifically whether the Attorney General of Canada and provincial/territorial Attorneys General will affirm the interdependence of the right to housing with the rights to life, security of the person and equality in future cases under the Canadian Charter and ensure access to justice and effective remedies where failures to take reasonable measures to address homelessness have deprived members of vulnerable groups of personal security, health or a dignified life. The Committee should further ask Canada if it is reviewing its previous decision not to ratify the OP-ICESCR in light of its commitment to accountability and access to justice for the right to housing as evidenced in the NHS Act.

1.3 Implementing the right to housing at the municipal level: The City of Toronto

In December 2019, Toronto City Council adopted a ten-year action plan on housing and homelessness, the *HousingTO 2020-2030 Action Plan*.[6] Following the model of the National Housing Strategy Act, the HousingTO Action Plan recognizes the human right to adequate housing, and states that it is the City's policy "to move deliberately to further the progressive realization of the right to adequate housing recognized in the International Covenant on Economic, Social, and Cultural Rights." The updated Toronto Housing Charter included in the *Action Plan* recognizes the right of all residents to a safe, secure, affordable home, in a good state of repair, that is accessible, culturally appropriate, and meets the needs of marginalized groups. Among other actions, the Charter commits the City to

- Advance the progressive realization of the right to adequate housing through all means within its authority, including planning, zoning, licensing, regulation, enforcement, taxation, and creating affordable housing;
- Require a housing rights analysis of City decisions, policies, services, and programs;
- Prevent arbitrary eviction, homelessness, and other threats to human security and dignity;
- Revise policies, programs, and by-laws that criminalize homelessness;
- Allocate the maximum available resources to advancing the right to housing, within the City's means and jurisdiction;
- Provide for participation by members of affected communities in decision-making about housing and homelessness;
- Provide regular, public reports on its plans, actions, targets, and progress.

The City will establish the Toronto Housing Commissioner to provide independent monitoring of the City's progress in meeting the goals of the housing strategy and in furthering the progressive realization

[6] City of Toronto, 2019. *HousingTO 2020-2030 Action Plan.* https://www.toronto.ca/legdocs/mmis/2019/ph/bgrd/backgroundfile-140651.pdf

of the right to adequate housing.

i. Welcoming the *Toronto Housing Charter* and *HousingTO Action Plan*

As Canada's first municipal housing plan based in human rights, the *HousingTO Action Plan* provides a model for the recognition and implementation of the right to adequate housing at the local level. If implemented properly, the Plan will provide for rights-based policy-making in areas within municipal jurisdiction, such as planning, zoning, regulation, licensing, enforcement, public space by-laws, and service provision. These policy areas have a major, direct impact on the affordability and adequacy of housing, and on responses to homelessness. While its role and mandate are yet to be determined, the establishment of the Toronto Housing Commissioner could also provide a local mechanism for access to justice for persons directly affected by inadequate housing and homelessness.

We recommend that the Committee acknowledge the *HousingTO 2020-2030 Action Plan* as a very positive development.

ii. Implementing the Right to Housing in Sub-National Jurisdictions

We further recommend that the Committee ask Canada for details on

- What it is doing to encourage other sub-national jurisdictions - including provinces, territories, municipalities, regions, and districts - to recognize the human right to adequate housing and adopt human rights-based housing and homelessness plans;
- What independent mechanisms for monitoring, enforcement, and recourse are provided for in sub-national jurisdictions, and how these are functioning in relation to the Federal Housing Advocate and review panel.
- Whether the City of Toronto has received resources from other levels of government necessary for it to meet its obligations with respect to the right to housing in Toronto. Canada should provide additional information on measures taken by all governments to implement the recommendation in paragraph 8 of its 2006 concluding observations, with particular reference to agreements with municipalities. Do these agreements provide adequate resources to eliminate homelessness by 2030 and ensure that all municipally administered programs comply with the right to housing?

PART 2: ISSUES OF PARTCULAR RELEVANCE

2.1 Progressive Realization of Article 11 through the National Housing Strategy Act as it Intersects with Article 2 on Non-Discrimination, Equality, and the Prioritization of the Most Marginalized

i. Canada's current National Housing Strategy

The National Housing Strategy Act requires Canada's federal government to develop and maintain a national housing strategy to further the policy commitments in the Act, taking into account key principles of a human rights-based approach.

Major programs of the current National Housing Strategy (NHS) include

- **Support for local homelessness programs,** through the Reaching Home program, which provides transfers to other levels of government to address homelessness;
- **Support to social housing,** through the federal-provincial Canada Community Housing Initiative; transfers to the provinces and territories for ongoing Social Housing Agreements; and the Federal Community Housing Initiative funding for social housing that remained in federal jurisdiction after most social housing was transferred to the provinces and territories;
- **Direct support for new construction and renovation,** through the National Co-Investment Fund (NCIF), which provides capital funding and low-interest loans for new construction, repair, and renovation of affordable housing; the Rental Construction Financing Initiative (RCFI), which provides low-interest loans for rental housing construction; and the Federal Lands Initiative, which makes surplus federal lands available to affordable housing providers at little or no cost;
- **Support to households in need of assistance,** through the Canada Housing Benefit (CHB), a cost-shared portable housing benefit to be delivered through bilateral agreements with provincial and territorial governments.

The National Housing Strategy is grounded in Gender-Based Analysis Plus, aiming to support equity-seeking and vulnerable groups including survivors fleeing family violence, northern and remote residents, newcomers, aging adults, and people with disabilities.[7] The NHS commits to allocating at least 25% of its investments to projects that specifically target the unique needs of women and girls.[8]

Notwithstanding these commitments, there are questions about the extent to which the measures funded through the NHS prioritize those most in need. A 2019 report by the Parliamentary Budget Officer notes that projected federal allocations under the NHS represent "a $325 million/year (14%) reduction in funding for Assistance for Housing Needs programs intended to help low-income

[7] National Housing Strategy (NHS), 2017. https://www.placetocallhome.ca/-/media/sf/project/placetocallhome/pdfs/canada-national-housing-strategy.pdf p. 24-26

[8] NHS, p. 29

households. The decline in funding for Assistance for Housing Needs programs is offset, in terms of aggregate spending, by a $664 million / year increase in funding for Financing for Housing programs which are not necessarily targeted to low-income households."[9]

We recommend that the Committee acknowledge Canada's commitments, through the National Housing Strategy, to prioritize those in greatest need, focus on vulnerable groups, and commit at least 25% of its investments to projects benefiting women and girls.

We further recommend that the Committee ask Canada how it is implementing and monitoring its obligation to progressively realize the right to adequate housing, with priority to those most in need, and with attention to the needs of equity-seeking and vulnerable groups, through the programs of the National Housing Strategy and other housing and homelessness policies. In particular:

- How are rights-based criteria, including meeting the needs of the most vulnerable, implemented in the allocation of funds and review of project proposals through the National Housing Strategy?
- What data has Canada collected to demonstrate the impact of investments so far under the NHS, in terms of:
    - affordability levels of the units created
    - incomes of households housed
    - proportion of income these households now pay in housing costs
    - proportion of these households that are Indigenous
    - proportions of these households that belong to equity-seeking and vulnerable groups, including households that are women-led, racialized, immigrant or refugee, and / or include members with disabilities?
- What measures have been taken to address the concerns in the Parliamentary Budget Officer report, and to better target NHS investments to helping those in greatest need?

ii. Preventing, reducing, and eliminating homelessness

The National Shelter Study shows that shelters across the country are operating close to or at capacity[10],

[9] Parliamentary Budget Officer, 2019. *Federal Program Spending on Housing Affordability.* p. 1 https://www.pbo-dpb.gc.ca/web/default/files/Documents/Reports/2019/Housing_Affordability/Federal%20Spending%20on%20Housing%20Affordability%20EN.pdf

[10] National Shelter Study, https://www.canada.ca/en/employment-social-development/programs/homelessness/reports-shelter-2016.html

and numbers of people facing homelessness are increasing in major cities, with a few notable exceptions including Edmonton.[11] **Canada's homelessness crisis disproportionately affects First Nations, Inuit, and Métis people, and equity-seeking groups.** Across Canada, 28-34% of those accessing homeless shelters identify as Indigenous, while they constitute less than 5% of the population.[12] Persons with disabilities, lone-mother-headed families, refugee claimants, older adults, and youth are also over-represented among those accessing shelters.

In urban centres, Indigenous persons make up the largest group of those sleeping rough, living outside even in Canada's harsh winters. People who use drugs, those with mental health and developmental disabilities, survivors of trauma, and people with physical disabilities and chronic medical conditions, face barriers to access the homeless shelter system. Instead, they must seek shelter in last-resort "low-barrier" services that are inconsistently available, and in which standards of service and support are extremely low, often failing to meet international standards for emergency shelter. Most jurisdictions lack appropriate, accessible, and safe shelters for members of sexual and gender minority communities including lesbian, gay, bisexual, trans, queer, non-binary, and two-spirit people, who face overt violence and daily discrimination in the shelter system.

For women with or without children in their care, visible homelessness and shelter use pose threats to safety, and increase the risk of child apprehension. As a result, many women without a home are forced into "hidden homelessness," staying temporarily with acquaintances or family members, remaining in dangerous or substandard conditions, unable to leave abusive relationships, and /or trading sex and companionship for a place to stay.

Deaths caused by homelessness continue to rise: Toronto's Homeless Memorial, for example, now includes more than 1000 people who have died while homeless. Civil society organizations and persons facing homelessness are calling on local governments to declare homelessness an emergency, and to take immediate intergovernmental action to ensure access to shelter. **Indigenous organizations have called for an adequately resourced Urban and Rural Indigenous Housing and Homelessness Strategy that is developed and implemented by urban, rural and Northern Indigenous housing and service providers, with recognition of these organizations as expressions of Indigenous self-determination, consistent with Canada's obligations under UNDRIP.**

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[11]For example, Toronto's 2018 Street Needs Assessment found 8715 persons experiencing homelessness on a single night, a % increase since 2013 when 5253 persons were identified. See Toronto Street Needs Assessment 2018 https://www.toronto.ca/wp-content/uploads/2018/11/99be-2018-SNA-Results-Report.pdf and 2013 https://www.toronto.ca/legdocs/mmis/2013/cd/bgrd/backgroundfile-61365.pdf . In Vancouver, 2223 persons were identified in 2019, up from 1847 in 2016. See Vancouver Homeless Count 2019 https://vancouver.ca/people-programs/homeless-count.aspx and 2016 https://vancouver.ca/files/cov/homeless-count-2016-report.pdf

[12] Gaetz, S., Dej, E., Richter, T. & Redman, M. (2016). State of Homelessness in Canada 2016. https://homelesshub.ca/sites/default/files/SOHC16_final_20Oct2016.pdf

We recommend that the Committee acknowledge Canada's resource commitments under the Reaching Home program, which represent an increase in comparison with past federal homelessness funding and have resulted in significant reductions in homelessness in some communities.

We further recommend that the Committee ask Canada:

- What additional resources and intergovernmental actions are required to ensure access to appropriate, accessible, and humane emergency shelter, in compliance with international humanitarian and human rights standards, for all persons facing homelessness, including those who encounter barriers in access to existing shelters?
- What detailed information can Canada provide on the impacts of Reaching Home and other programs, including
    - Shelter conditions across the country, including capacity, accessibility, and adequacy of conditions
    - Numbers of households assisted through these programs, and proportions who are members of Indigenous and other vulnerable and equity-seeking groups
    - Numbers of households moved out of homelessness and into permanent, appropriate housing, and numbers for whom homelessness has been prevented?
- What mechanisms are in place to enable rights-based participation of people facing homelessness in policy and program decisions at the local, provincial, and federal levels?

iii. Building new affordable housing

In jurisdictions across Canada, including urban centres such as Vancouver and Toronto where development is booming, the vast majority of new units are built for the ownership market, with prices far out of reach of low- and moderate-income households. These trends disproportionately exclude groups facing structural income inequality, including Indigenous persons, women-headed households, members of racialized groups, immigrants and refugees, persons with disabilities, older adults, and young people.

It is not clear that the National Housing Strategy programs to fund new development are adequately meeting the needs of these groups. Projects funded under the National Co-Investment Fund (NCIF) are only required to offer 30% of their units at 80% of median market rent for at least twenty years. In most jurisdictions, and particularly in large cities where rates of homelessness and core housing need are highest, 80% of median market rent exceeds the affordable range for households on low incomes, including those on social assistance, disability benefits, old-age pension, or minimum wage. For projects receiving financing from the Rental Housing Construction Initiative, affordability criteria are even farther out of reach for low- and moderate-income households. These projects are required to have only 20% of units priced at 30% of the median total income for all families in the area, for a period of ten years. **In one recent Toronto example, the "affordable" units in a NHS-funded project will be unaffordable to**

between 75%-90% of Toronto's renter households.[13] In many cases, funded projects in fact contribute to the inflation of housing costs in the neighbourhoods in which they are built.

Further, there does not appear to be any provision to engage stakeholders, including members of communities directly affected, in the evaluation of proposals or planning of new developments funded under the NCIF or the RCFI.

We recommend that the Committee ask Canada:

- How are rights-based criteria, including meeting the needs of the most vulnerable, implemented in the assessment of proposals and allocation of funds under the National Co-Investment Fund and Rental Construction Financing Initiative?
- What proportion of privately developed housing is required to be affordable and what definition of "affordable" is used? What percentage of income would a household working at minimum wage or in receipt of social assistance in each province have to pay to rent a rental unit based on this definition?
- What mechanisms are in place to engage stakeholders, and particularly members of communities directly affected by homelessness and housing need, in the evaluation of proposals and in planning and development of funded projects under the NCIF and RCFI?
- What measures are in place to ensure that affordable units created through these programs are rented to households most in need of affordable housing?
- What data has Canada collected to demonstrate the impact of investments so far under the NHS, including through the NCIF, RCFI, and CHB, in terms of affordability levels of the units created, the incomes of households housed, the proportion of income these households now pay in housing costs, and the proportions of these households that are Indigenous, women-led, racialized, immigrant or refugee, and / or include members with disabilities?

2.2. Other Issues Affecting the Right to Adequate Housing

i. Financialization of Housing

Canadian housing markets have been dramatically effected by the financialization of housing, as described in the Special Rapporteur's 2017 Report on this issue (A/HRC/34/51). Massive private equity firms, offshore investors looking for places to park capital, tax evaders and an increasing number of wealthy investors within Canada treat housing as a commodity through which to accumulate wealth and leverage debt, rendering housing in cities such as Toronto and Vancouver among the most unaffordable

[13] Custom analysis provided by Jeremy Withers, PhD Candidate, drawing on data from Canada Mortgage and Housing Corporation, Statistics Canada, City of Toronto, and the Parliamentary Budget Officer. On file with authors.

in the world.

In the context of low vacancy rates and stagnant new rental development, rents are fast increasing in housing types that have long provided relatively affordable homes in the private market, such as purpose-built rental apartment buildings, rooming houses, and secondary rental suites. This stock is increasingly the target of acquisition and aggressive rent inflation by investors, or is lost to the short-term-rental market. [14] **Evictions are on the rise, including new trends of "renovictions" and "demovictions" targeting tenants of units slated for redevelopment or upgrading.** Communities such as the Herongate neighbourhood in Ottawa, which was comprised predominantly of recent immigrants, racial and religious minorities, have been displaced en masse from their housing and communities to make way for housing for the more affluent.

Canadian law and practice in relation to upgrading and displacement is entirely at odds with international human rights norms. Communities are redeveloped without meaningful engagement with residents; residents are evicted without the provision of alternative accommodation; and affordable housing is replaced by unaffordable housing, making it impossible for residents to return to their communities after they have been redeveloped. Residents of the Herongate Community have filed an application before the Ontario Human Rights Tribunal, arguing that developers should be required to consider and address the needs of disadvantaged groups relying on housing slated for redevelopment, consistent with obligations under the ICESCR.

Canada should be asked:

- What measures have been taken to address the financialization of housing, and in particular to address speculation, vacant housing, short-term rentals, and the loss of affordable housing stock through renovations and redevelopment?
- In the context of private development of housing, are existing residents guaranteed the right to be involved in planning and design; are developers required to ensure that new development provides housing that is affordable to current residents; and if relocation is necessary, are adequate and affordable alternative accommodation required to be provided?
- What measures are in place to ensure that projects funded through National Housing Strategy programs are not contributing to displacement of low-income and vulnerable households?
- What protections are afforded under human rights legislation from development that disproportionately impacts protected groups?

[14] See for example August and Walks, on the acquisition of purpose-built rental buildings in Toronto, and Parkdale Neighbourhood Land Trust on the upgrading of rooming houses. M. August & A. Walks (2018) Gentrification, suburban decline, and the financialization of multi-family rental housing: The case of Toronto. *Geoforum* 89, 124-136. Parkdale Neighbourhood Land Trust, 2017, *No Room For Unkept Promises*, http://www.pnlt.ca/wp-content/uploads/2017/05/Parkdale-Rooming-House-Study_Full-Report_V1.pdf

ii. Forced Evictions

Most provinces and territories fail to publicly release data on the number of evictions authorized by courts or tribunals, the reasons for the evictions, or the outcomes for those affected. Studies conducted on the basis of available data, however, suggest that thousands of households are unnecessarily evicted for relatively small amounts of arrears in rent, for unnecessary renovations or because landlords claim use of the rental unit for themselves or their families – often simply in order to force tenants out and to raise rents. **In many jurisdictions, tenants can be constructively evicted simply by raising the rent to a level they are unable to afford.**

We recommend that the Committee ask Canada to clarify:

- Whether legislation governing evictions in each province ensures that households will not be evicted into homelessness and that reasonable measures will be taken to ensure that alternative housing is available prior to any eviction.
- Whether tribunals or courts hearing eviction cases take into consideration the right to housing under the ICESCR and the requirement that no one be evicted into homelessness, providing examples of how this has been applied.
- What legal recourse is available to residents of housing that is slated for renovation, upgrading or redevelopment, to ensure that they are meaningfully engaged in development plans; provided with adequate alternative housing if relocation is necessary; and guaranteed a right of return to their communities, to housing that they can afford.

iii. Criminalization and Discrimination against those who are homeless

Homeless persons continue to experience widespread discrimination in Canada. **Provincial laws and municipal bylaws often prohibit begging, panhandling, sleeping or setting up tents of other protection from the elements**. This mean that homeless people are subject to constant harassment by police, persons living in encampments are evicted from their sole source of shelter and their belongings confiscated, and persons who are homeless often owe thousands of dollars in fines.

We recommend that Canada be requested to provide information on measures taken to combat discrimination based on housing status or homelessness, including information on the outcomes of challenges to this kind of discrimination under human rights legislation or the Canadian Charter of Rights and Freedoms, explaining the position taken by the governments in these cases as well as the decisions of courts or tribunals. Information should be requested regarding references to Canada's international human rights obligations in these cases.

Canada should also be asked what legal protections are in place for persons living in homeless encampments from forced evictions or "sweeps" from public or private land.

iv. Right to Housing of Persons with Disabilities

Data suggests that approximately **45% of persons who are homeless have disabilities or live with a psychosocial disability, while women with disabilities are disproportionately represented among those who are the most marginalized**.[15] Yet courts and tribunals have failed to recognize this as evidence of systemic discrimination which must be addressed through positive measures. In Nova Scotia, persons with intellectual disabilities have been forced to remain in institutions for many years because of a lack of housing with supports. They have challenged the province's failure to adequately provide for supportive housing but have been denied a systemic remedy that would require the province to adequately fund a program for community housing and supports.

We recommend that Canada be asked to provide information on the percentage of homeless people who have a mental health or other disabilities, explain whether the government recognizes the disproportionate effect of homelessness on persons with disabilities as evidence of a failure to adequate accommodate their housing and other needs and explain what measures are being taken to remedy this.

We recommend that the Committee ask Canada for information on the availability of housing in the community for residents of Emerald Hall in Nova Scotia and explain what remedies are available for those affected under human rights legislation or the Canadian Charter when governments fail to provide enough housing with supports for people with disabilities so that they are forced to remain in institutions.

[15] Rajan, Doris. (2018). Women with Disabilities and Housing. Learning Network Brief (35). London, ON: Learning Network, Centre for Research and Education on Violence Against Women. http://www.vawlearningnetwork.ca

APPENDIX I

National Right to Housing Network Steering Committee Members

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