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Submission to the Human Rights Council Advisory Committee on the Achievement of Social Justice through the Legal Enforcement of Economic, Social and Cultural Rights by National Courts in Canada: Lessons Learned

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I. Overview and Key Principles

1. The Social Rights Advocacy Centre welcomes the opportunity to contribute to the Human Rights Council Advisory Committee's study on the achievement of social justice through the legal enforcement of economic, social and cultural rights by national courts. This submission is intended to convey some of the lessons learned from the Canadian context, drawing on litigation, advocacy, and engagement with international human rights mechanisms over a sustained period of time.
2. There are seven key principles of general application regarding the legal enforcement of economic, social, cultural (ESC) and environmental rights that emerge from our work both in Canada and internationally that we hope might inform the Committee's recommendations:
 - i) The obligation to ensure access to justice and effective remedies applies to all components of ESC and environmental rights and should not be restricted to, or conceptually confused with, the concept of minimum core content of ESC rights;
 - ii) The obligation to progressively realize ESC and environmental rights must be subject to judicial oversight and effective remedies, including the obligation to implement and comply with plans and legislative measures that include goals, targets and timelines for the realization of ESC and environmental rights in the shortest possible time, to the maximum of available resources and by all appropriate means;
 - iii) Legal culture that neglects ESC rights should be challenged and legal advocates should help to initiate and support systemic claims challenging states' failures to progressively realize ESC and environmental rights;

- iv) The obligation to ensure access to effective remedies for ESC rights applies equally in States where ESC rights are not constitutionally recognized as freestanding rights, and in which effective legal remedies are to be ensured through appropriate interpretations of existing constitutional rights, particularly rights to life and equality, and by adopting necessary legislative measures and inter-governmental agreements;
- v) States such as Canada with dualist legal systems may not rely on the lack of incorporation of ESC rights as justification for noncompliance with the obligation to ensure access to effective legal remedies;
- vi) The right to life in article 6 of the ICCPR and the right to non-discrimination and equality in articles 2(2) of the ICESCR and in article 2(1) of the ICCPR are inextricably tied to the dignity of the human person from which all human rights derive and should be recognized as central to both civil and political and ESC rights.
- vii) Identifying the appropriate role and respective competencies of courts in relation to other branches of government in the realization of ESC and environmental rights should be addressed by way of remedies that engage the respective competencies of the different branches while ensuring access to justice and the protection of fundamental rights in all areas of governance;
- viii) While counsel for governments may be required to defend against allegations that rights have been violated, they should do so without undermining the obligation of States Parties to implement international human rights obligations in good faith and to ensure access to justice and effective remedies.

II The Constitutional Context for ESC Rights Claims in Canada

3. Canada ratified both the *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights* when they were opened for ratification in 1976. Ratified treaties are not directly enforceable in Canadian courts unless incorporated into domestic law and Canada has not directly incorporated human rights treaties by way of legislation. Instead, Canada has undertaken to adopt necessary legislation to provide effective remedies and to ensure that rights in the *Canadian Charter* are interpreted where possible to provide at least the same level of protection as similar provisions in ratified international human rights treaties,¹

4. By virtue of the interpretive presumption of conformity with international human rights law, the *Canadian Charter*, particularly the rights to life, liberty and security of the person in s. 7 and the right to equality in s.15, functions as the primary vehicle for the implementation of international human rights.²

5. In practice, however, the dualist nature of Canada's legal system has been repeatedly invoked by governments to resist the legal enforcement of ESC rights by Canadian courts. Governments have argued that because the ICESCR has not been directly incorporated into domestic law, obligations arising under it cannot ground justiciable claims or remedies, even where violations directly engage constitutional rights such as the rights to life and non-discrimination. They argue that Canada has chosen to treat ESC rights as policy aspirations and has chosen to interpret rights such as the right to life to exclude threats to life that are caused by violations of ESC rights, such as homelessness, lack of access to health care, or inadequate measures to address climate change.

¹ *Quebec (Attorney General) v 9147-0732 Québec inc*, 2020 SCC 32 at paras 31–32.

² *R. v. Ewanchuk*, 1999 711 (SCC), [1999]

6. It will be important, therefore, for the Committee to clarify that ensuring access to justice and effective remedies is not a legitimate “choice” that may be exercised by State parties to the ICESCR and other treaties. As the CESCR stated in General Comment No. 9, “The adoption of a rigid classification of economic, social and cultural rights which puts them, by definition, beyond the reach of the courts would thus be arbitrary and incompatible with the principle that the two sets of human rights are indivisible and interdependent. It would also drastically curtail the capacity of the courts to protect the rights of the most vulnerable and disadvantaged groups in society.”³

7. The Supreme Court of Canada has affirmed that courts should interpret *Charter* rights based on a presumption that they provide at least the same level of protection as is afforded by similar provisions under ratified international human rights treaties.⁵ The Supreme Court has relied on General Comments from the UN Human Rights Committee and other treaty bodies for authoritative guidance as to the scope of protections afforded by similar provisions under the ICCPR.⁴ The Court has also left open the possibility that the rights to life and security of the person in section 7 of the Canadian Charter may include economic, social and cultural rights and impose positive obligations where life and security of the person are at stake.⁵

8. Canadian civil society and Indigenous organizations have historically considered broadly framed rights to equality and rights to life and security of the person in the Canadian Charter as fully inclusive of ESC rights.⁶ When the text of the Canadian Charter was being debated in 1980-81, civil society organizations successfully advocated for changes to the proposed text to include a right to the equal “benefit” of the law and to include disability as a prohibited ground of discrimination in s.15 on equality rights that

³ CESCR, General Comment No. 9: The Domestic Application of the Covenant, E/C.12/1998/24 (3 December 1998)

⁴ *Gosselin v. Québec (Attorney General)*, 2002 SCC 84, [2002] 4 SCR 429

⁵ *Irwin Toy Ltd v Quebec (AG)*, [1989] 1 SCR 927 at paras 1003–04; *Gosselin v Quebec (Attorney General)*, [2002] 4 SCR 429 at para 83.

⁶ Bruce Porter, “Expectations of Equality” (2006) 33 Sup Ct L Rev 23.

were unprecedented at the time. These changes, as well as the decision to exclude property rights from section 7 of the *Canadian Charter*, adopting instead the wording of article 3 of the UDHR, (life, liberty and security of [the] person”) were understood to have created a more inclusive framework for access to justice for fundamental rights in Canada compared to the U.S., which, unlike Canada, had not ratified the ICESCR.⁷ We have learned in Canada and elsewhere, however, that even when advocates secure constitutional or legislative protections that should ensure access to justice for ESC rights, dominant legal culture and courts tend to “read them down” based on the traditional understandings of the role of courts.

9. Dominant legal culture in Canada has not embraced the potential of the *Canadian Charter* to provide effective remedies in this sphere. The former UN High Commissioner on Human Rights, Justice Louise Arbour observed in 2005 that “the first two decades of Charter jurisprudence testify to a certain timidity – both on the part of litigants and the courts – to tackle head on the claims emerging from the right to be free from want”⁸ and this pattern has continued. Legal advocates and courts in Canada have failed to apply developments at the UN and in regional systems in recent years, during which ESC and environmental rights have been recognized and adjudicated as justiciable and the right to effective remedies more clearly defined. Many commentators have misunderstood the denial of access to justice for ESC rights in Canada as stemming from the absence of freestanding ESC rights in the Canadian Charter. In fact, the problem is that ESC rights have been “read out” of substantive protections of the rights to life, security of the person and the equal benefit of the law based on outdated assumptions that ESC rights are non-justiciable.

⁷ Martha Jackman and Bruce Porter, “*Social and Economic Rights*”, in Peter Oliver, Patrick Maklem & Nathalie DesRosiers, eds, *The Oxford Handbook of the Canadian Constitution* (New York: Oxford University Press, 2017) 843-861.

⁸ Louise Arbour, “Freedom from want’ – from charity to entitlement” (LaFontaine-Baldwin Lecture, delivered at the Institute for Canadian Citizenship, Quebec City, 3 March 2005), online at <https://www.ohchr.org/en/statements-and-speeches/2009/10/lafontaine-baldwin-lecture-2005-freedom-want-charity-entitlement>

III ESC Rights Claims to Rights to Life and Substantive Equality

10. The request for input encourages input into both “direct” and “indirect” enforcement of ESC rights. This distinction needs to be clarified, however, to ensure that claimants in legal systems such as Canada’s are not, as is alleged by respondent governments in many of our cases, attempting to secure effective remedies for ESC rights “through the back door” by expanding the scope of civil and political rights beyond their proper domain. Governments’ failures to address homelessness, food insecurity or to ensure access to essential health care may certainly be considered violations of ESC rights but when challenged as violations of rights to life and equality under the Canadian Charter, claimants are not attempting to claim ESC rights indirectly. Rather, they are asking courts to protect their rights to life and non-discrimination in contexts in which the most frequent and devastating violations of the rights to life, security of the person and the unequal benefit of law and policies occur in Canada. The rights to life, security of the person and equality should be understood in this context not as civil and political rights but as fundamental rights that span both categories of rights and infuse all international human rights treaties.

11. Effective advocacy for legal remedies to ESC rights violations in Canada is grounded in two of the most transformative and important developments in the UN human rights system. The first is the adoption of the Optional Protocol to the ICESCR in 2008, recognizing the justiciability of all components of ESC rights, including positive obligations to ensure the progressive realization of ESC rights by adopting all appropriate means, including legislative measures and to the maximum of available resources, based on a robust standard of reasonableness.⁹ The adoption of the OP-ICESCR by the UN General Assembly on the sixtieth anniversary of the UDHR provided for an optional complaints procedure for ESC rights but more fundamentally, it ushered in a new era in which claims

⁹ Bruce Porter, "Reasonableness and Article 8(4)", in M Langford, B. Porter, R Brown 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).

that require positive measures to realize rights over time can no longer be declared to be non-justiciable. Former Supreme Court of Canada Justice and then High Commissioner of Human Rights appropriately described this historic achievement in as “Human Rights Made Whole.”¹⁰

12. The second transformative development was the adoption of General Comment No. 36 on the right to life by the UN Human Rights Committee in 2018, after extensive consultation. General Comment 36 establishes that the right to life requires States to address general conditions in society that give rise to direct threats to life or prevent individuals from living with dignity, including homelessness, access to health care, climate change, and substance use.¹¹ In other words, it clarified that access to justice for systemic violations of ESC rights is frequently required in order to ensure the protection of the right to life.

13. These two developments established the framework for a new recognition of the reality of interdependence and indivisibility which should ensure access to justice for ESC rights within a wide range of constitutional contexts, including Canada’s.

14. The Canadian experience, however, demonstrates both the potential of this new understanding of interdependence and indivisibility and the ongoing challenges in bringing it to fruition before domestic courts. Claims in Canada continue to run up against doctrinal reluctance to recognize positive obligations and the persistent mischaracterization of claims to rights to life or equality engaging homelessness or access to health care as attempts to read into the Canadian Charter “freestanding socio-economic rights”.¹² Governments routinely argue that claims to rights to life and equality that could also be characterized as ESC rights claims should be dismissed, even where

¹⁰ Louise Arbour, High Commissioner on Human Rights, [Human Rights Made Whole](#) (OHCHR, 2008)

¹¹ UN Human Rights Committee, [General Comment No 36: Article 6 \(Right to Life\)](#), CCPR/C/GC/36 (2019) at paras 3, 26, 30.

¹² Martha Jackman and Bruce Porter (eds) [Advancing Social Rights in Canada](#) (Toronto: Irwin Law, 2014) “Introduction”

the effects on life and security are uncontested. And although Canadian jurisprudence has left open the possibility of positive obligations to ensure socio-economic rights as components of rights to life, security of the person and equality, governments continue to argue that ss. 7 and 15 of the Canadian Charter impose no positive obligations to address systemic inequality and deprivation.

15. Although the Supreme Court of Canada has directed courts to adopt flexible and creative remedies to ensure the vindication of Charter rights, remedies have rarely been sought by lawyers or ordered by courts to address systemic conditions, requiring ongoing action and strategies based on goals, targets and timelines.¹³

IV Case Example: *Toussaint v Canada*: The right to life and non-discrimination and the right to health

16. In the well-known case of *Nell Toussaint v Canada*, Ms. Toussaint was denied access to essential health care because of her irregular immigration status. When she challenged this as a violation of her right to life and to non-discrimination under the Canadian Charter, the courts agreed that her life had been placed at serious risk with long-term health consequences but found, shockingly, that the violation of the right to life was in accordance with principles of fundamental justice because it was a means of discouraging irregular migration and that there is no freestanding right to health in the Canadian Charter. Having exhausted domestic remedies, Ms. Toussaint filed a petition under the OP-ICCPR. Canada argued before the UN Human Rights Committee that access to publicly funded health care is not required to protect the right to life and that Ms. Toussaint's claim was about the right to health, not the right to life. The Committee rejected Canada's argument, noting that "she does not claim a violation of the right to health but of her right to life, and that the State party had failed to fulfil its positive

¹³ *Doucet-Boudreau v Nova Scotia (Minister of Education)*, 2003 SCC 62 at paras 55–59.

obligation to protect her life in circumstances where access to essential health care was required.”¹⁴

17. The Committee’s Views in Toussaint required appropriate compensation for Ms. Toussaint and further required Canada to “take all steps necessary to prevent similar violations in the future, including reviewing its national legislation to ensure that irregular migrants have access to essential health care to prevent a reasonably foreseeable risk that can result in loss of life.”¹⁵ In its response to the Committee’s Views, Canada informed the Committee that it would be taking no further steps to implement the remedy required in the Views because it does not accept the Committee’s interpretation of the right to life. Canada stated that:

Economic and social rights, including the right to the highest attainable standard of health, are protected by the International Covenant on Economic, Social and Cultural Rights (ICESCR). While Canada recognizes the interdependence and interrelatedness of rights, the Committee’s approach in its views essentially conflates the right to health under the right to life, resulting in an apparent conclusion that a certain level of health care, or of health insurance, may be “necessary” to protect the right to life.¹⁶

18. The result of Canada’s position, accepted by some courts, is that depriving affluent individuals from access to private health care violates the right to life but depriving low-income individuals who cannot afford private health care access to publicly funded health care, and putting their lives at risk, does not.

19. In an unprecedented legal action, Ms. Toussaint challenged Canada’s refusal to implement the Committee’s Views so as to protect the lives of irregular migrants as a violation of the right to life under the Canadian Charter, which, she argued, must now be interpreted in light of the Committee’s Views. In addition, she argued that principles of

¹⁴ *Toussaint v Canada* CCPR/C/123/D/2348/2014 (30 August 2018), at para 10.9

¹⁵ *Ibid* at para 13.

¹⁶ *Response of the Government of Canada to the Views of the Human Rights Committee Concerning Communication No. 2348/2014 Submitted by Ms. Nell Toussaint* (January 29, 2019)

fundamental justice under section 7 of the Canadian Charter must include the universally recognized principle of *pacta sunt servanda*, the good faith implementation of international human rights treaties. She argued that Canada's refusal to implement the Views of the Committee on the basis that it disagreed with the Committee's interpretation of the right to life was not consistent with good faith obligations under the OP-ICCPR.

20. Canada brought a motion to strike Ms. Toussaint's claim, arguing again that it was a socio-economic rights claim outside the scope of the Canadian Charter, characterizing her claim as a claim to "free health care." The Ontario Superior Court of Justice harshly criticized Canada's mischaracterization of the claim as follows:

[133] The preliminary matter is to properly focus the substantive legal analysis. For reasons that will shortly become apparent, it pains me to have to say that Canada's argument that it is plain and obvious that Ms. Toussaint's claim is doomed to fail does it no pride, because Canada pejoratively mischaracterizes Ms. Toussaint's human rights claim and thus its rhetorical and largely conclusory argument misfires and is also unfair.

[134] In a dog whistle argument that reeks of the prejudicial stereotype that immigrants come to Canada to milk the welfare system, Canada mischaracterizes Ms. Toussaint's *Charter* claim as a right to receive free health care anywhere in the world, regardless of one's lack of status" or as a right to receive "an optimum level of health insurance and as a claim for a purely socio-economic right which is outside the guarantees of the *Canadian Charter of Rights and Freedoms*.¹⁷

21. Nell Toussaint continued to fight for access to an effective remedy to Canada's refusal to implement the Human Rights Committee's Views and to the ongoing denial of access to essential health care for migrants in Canada after she herself had secured residency status and full access to publicly funded health care. She fought on in spite of a stroke, blindness and the amputation of her leg – outcomes that were predicted by medical experts as resulting from the denial of access to essential health care. Sadly, she died on January 9, 2023. Her mother, Ann Toussaint, is carrying on with Nell Toussaint's

¹⁷ *Toussaint v. Canada (Attorney General)* 2022 ONSC 4747 at paras 133–134.

claim and continuing to resist Canada’s attempts at preventing this critical claim from being heard, including by arguing that the claim died with Nell Toussaint’s death and that Canada is free to interpret the right to life as providing no protection to persons requiring access to publicly funded health care for life-saving health care.

22. This ongoing struggle for inclusive interpretations of the rights to life and equality in Canada are far from academic. The most pressing human rights issues in Canada are related to failures of a very affluent State to address the conditions in society that were identified by the UN Human Rights Committee’s General Comment 36 as systemic violations of the rights to life. Cases are now before courts in Canada in which courts may consider the scope of rights to life and equality in the context of homeless encampments¹⁸ access to essential publicly funded health care,¹⁹ safe consumption sites,²⁰ climate change²¹ and access to water and sanitation.²²

23. UN human rights treaty bodies have, on a number of occasions, expressed concern and made recommendations with respect to Canada’s attempt to deny access to justice and effective remedies for violations of rights to life and equality where these may also be characterized as violations of ESC rights. The CESCR has drawn Canada’s attention to the obligations outlined in its General Comment 9, urged “federal, provincial and territorial governments promote interpretations of the Canadian Charter of Rights and other domestic law in a way consistent with the Covenant.”²³ It has recommended that all orders of government “adopt positions in litigation which are consistent with their

¹⁸ *Heegsma v. Hamilton (City)*, 2024 ONSC 7154 (under appeal to the ONCA)

¹⁹ *Toussaint v. Canada (Attorney General)* 2022 ONSC 4747 (Dismissing Motion to Strike and allowing the claim to proceed to trial); *Ontario Health Coalition and Advocacy Centre for the Elderly v. His Majesty the King in Right of Ontario*, 2025 ONSC 415.

²⁰ *Brown v Alberta*, 2025 ABKB 179 (under appeal to the ABCA)

²¹ *La Rose v. Canada*, 2023 FCA 241 (permitting amended claim to proceed); *Mathur v Ontario*, 2023 ONCA 544 (setting aside the motion judge’s dismissal and remitting the Charter claim for trial.

²² *St. Theresa Point First Nation v. Canada*, 2025 FC 1926

²³ CESCR 2006, E/C.12/CAN/CO/4; E/C.12/CAN/CO/5, para. 41

obligation to uphold the rights recognized in the Covenant.”²⁴ At its most recent review of Canada, the CESCR expanded on its broad concerns about ensuring access to effective remedies through appropriate interpretation of rights to life, freedom from cruel or inhuman treatment and the right to equality:

The Committee recommends that the State party implement its commitment to review its litigation strategies in order to foster the justiciability of the economic, social and cultural rights. The State party should engage civil society and organizations of indigenous peoples in that revision, 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. The Committee also recommends that the State party improve human rights training programmes in order to ensure better knowledge, awareness and application of the Covenant, in particular among the judiciary and law enforcement and public officials. The Committee refers to its general comments No. 3 (1990) on the nature of States parties’ obligations and No. 9 (1998) on the domestic application of the Covenant.²⁵

24. In Canada’s Universal Periodic Review, Uruguay recommended that Canada “interpret the Charter of Rights and Freedoms confirming the interdependence and indivisibility of all human rights with a view to ensuring access to food, health and adequate housing for all those living in the country.”²⁶ Canada did not accept this recommendation.²⁷

25. At its 2026 review by the UN Human Rights Committee, the Committee expressed ongoing concern about Canada’s position that the right to life does not impose positive obligations as recognized in General Comment 36, including in relation to climate change.²⁸

²⁴ CESCR 1998, E/C.12/1/Add.31, para. 50

²⁵ CESCR 2016, E/C.12/CAN/CO/6, para. 6

²⁶ UPR 2018, A/HRC/39/11, reccs. 142.149 and 142.151

²⁷ A/HRC/39/11/Add.1 at para

²⁸ UN Human Rights Committee 2026, CCPR/C/CAN/CO/7, para. 31

V Legislation Implementation Case Example: *The National Housing Strategy Act*

26. Canada's National Housing Strategy Act 29(NHSA) provides an important example of how international human rights obligations related to economic and social rights can be implemented through domestic legislation without relying solely on judicial enforcement. The NHSA explicitly recognizes housing as a fundamental human right affirmed in international law and commits the federal government to the "progressive realization" of the right to adequate housing as recognized under the ICESCR. It thus incorporates into Canadian law the obligation under article 2(1) of the ICESCR to take deliberate and concrete steps, using maximum available resources and all appropriate means, toward the elimination of homelessness and the realization of the right to adequate housing. The legislation requires the designated Minister to adopt and maintain a national housing strategy to further the progressive realization of the right to housing, applying a rights-based approach. The housing strategy must set out a long-term vision for housing and the achievement of social, economic, health and environmental goals; establish national goals relating to housing and homelessness and identify related priorities, initiatives, timelines and desired outcomes; focus on improving housing outcomes for persons in greatest need; and provide for participatory processes to ensure the ongoing inclusion and engagement of civil society, stakeholders, vulnerable groups and persons with lived experience of housing need or homelessness.³⁰

27. A central innovation of the NHSA is the creation of accessible accountability and review mechanisms designed to provide meaningful access to justice for systemic violations of the right to housing. The Federal Housing Advocate and Review Panels provide forums in which affected individuals and communities can bring forward claims addressing systemic failures, including homelessness, inadequate housing conditions,

²⁹ [National Housing Strategy Act](#) S.C. 2019, c. 29, s. 313. Assented to 2019-06-21

³⁰ *Ibid*, s.5.

and discriminatory impacts. Participatory review processes grounded in human rights principles allow those affected by housing deprivation to be heard and require governments to publicly respond to findings and recommendations.

28. At the same time, by legislating obligations tied to international human rights obligations for the progressive realization of the right to housing, the NHSA provides standards against which the adequacy and reasonableness of measures may be assessed. Recently, Canadian courts considering claims that inadequate targets for greenhouse gas reduction violate the right to life have rejected arguments by federal and provincial governments that there is no judicially ascertainable standard against which the adequacy of measures to address climate change can be assessed. The courts have pointed out that governments have themselves adopted legislation based on a stated commitment to international agreements on climate change and have thereby given these commitments legal content. The same is now true in the housing context. If a housing strategy fails to establish goals and timelines for the reduction and elimination of homelessness based on the maximum of available resources and all appropriate means, and thereby put more lives at risk, this could be challenged as a violation of the right to life and security of the person in the same way that inadequate targets and timelines to reduce greenhouse gas emissions can now be challenged. Where governments fail to adopt reasonable measures to address known risks, or where adopted measures are inadequate, incoherent or exclusionary, courts are able to find that constitutional rights have been violated.

VI Remedies and effective enforcement

29. Effective enforcement of ESC and environmental rights requires access to remedies that are capable of addressing systemic violations linked to States' failures to adopt measures required for the progressive realization of ESC rights. Canadian courts have recognized that such remedies may include declaratory relief, structural orders, and supervisory jurisdiction where necessary to ensure compliance.

30. In *Doucet-Boudreau v Nova Scotia*, the Supreme Court of Canada affirmed that courts may retain jurisdiction to ensure that remedies are implemented effectively, particularly where ongoing supervision is necessary to achieve compliance with constitutional obligations.¹⁶ The Court emphasized that remedies must be responsive to the nature of the violation and effective in securing the protection of rights.

31. In the context of socio-economic and environmental rights claims, this may require orders requiring governments to develop and implement plans, to report on progress, or to meet specified standards within defined timeframes. Such remedies are consistent with the standard of reasonableness formalized in the Optional Protocol to the ICESCR, which directs the Committee to assess “the reasonableness of the steps taken” by a State Party, while recognizing that a range of policy options may be available. This formulation draws directly from the jurisprudence of the South African Constitutional Court, particularly *Government of the Republic of South Africa v Grootboom*, in which the Court held that State measures must be comprehensive, coherent, coordinated, and responsive to the needs of those in desperate circumstances. The remedy in such cases may require governments to revise their strategies, improve implementation, or meet specified standards within defined timeframes.

32. The reasonableness standard developed under the Optional Protocol aligns with evolving approaches to systemic rights adjudication in domestic courts. It provides a principled and workable framework through which courts can give effect to obligations of progressive realization without exceeding their institutional role. The CESCR has established an important framework to be followed by domestic courts, by ensuring that in every evictions case, both an individual remedy requiring access to alternative accommodation is required and a systemic remedy to address the structural causes of homelessness and inadequate housing. In all cases, the CESCR states that:

The State Party has an obligation “[t]o develop and implement, to the maximum of its available resources, a comprehensive plan to guarantee the right to adequate housing for low-income persons, in keeping with general

comment No. 4 (1991). This plan should provide for the necessary resources, indicators, time frames and evaluation criteria to guarantee these individuals' right to housing in a reasonable, timely and measurable manner.³¹

33. An exemplary remedy in this respect is the negotiated remedy in the case of *Disability Rights Coalition v. Nova Scotia*, requiring a remedy to violations of the rights of persons with disabilities to live with dignity in the community, with necessary support services.³²

34. The negotiated remedy in this case reflects many of the core elements increasingly recognized as necessary for effective remedies for systemic ESC rights violations that take time to implement. It establishes a structured, multi-year process with ongoing and meaningful engagement with rights holders and their representative organizations. It establishes detailed action plans, annual indicators, timelines, targets, and measurable outcomes directed toward ending unnecessary institutionalization, eliminating delays and waitlists, and ensuring meaningful access to community living supports as of right.

35. The process is grounded in principles of participation, transparency, and accountability, recognizing the need for the active involvement of those most affected in the design, monitoring, and evaluation of structural reforms. The remedy unfolds over a five-year implementation period from 2023 to 2028, with detailed annual benchmarks and progressively expanding obligations. Early stages focus on closing institutional facilities, moving residents into community settings, creating individualized planning and support mechanisms, and establishing the workforce and governance structures necessary for long-term transformation. Subsequent years require the expansion of individualized funding, reduction of waitlists and delays, development of community-based supports

³¹ [Hamid Saydawi and Masir Farah v. Italy](#) E/C.12/75/D/226/2021 at para 13(d).

³² [Disability Rights Coalition v. Nova Scotia \(Attorney General\)](#), 2021 NSCA 70. Nova Scotia Human Rights Board of Inquiry, [Interim Consent Order](#),. Board File No.51000-30-H14-0148

across the province, and measurable progress toward ensuring that persons with disabilities receive supports in their communities of choice rather than in segregated settings. By the conclusion of the five-year period, the Province is expected to demonstrate the elimination of systemic barriers and waitlists, and establishment of a rights-based system of community inclusion and support.

36. The remedy creates robust mechanisms of accountability and continuing supervision. The Human Rights Board of Inquiry retains jurisdiction to oversee implementation and ensure that the agreed measures produce meaningful progress. Independent experts, monitoring processes, public reporting requirements, and review mechanisms have been incorporated to assess compliance and identify failures or delays. The parties have expressly recognized that if the implementation process proves inadequate or misguided, issues may be returned to the tribunal for further directions and enforcement. Twice-yearly public reporting, annual assessments by an independent monitor, and the possibility of additional orders by the Board ensure that implementation remains subject to ongoing scrutiny and correction. If the Board determines that the Province has failed to achieve substantial progress or comply with the purposes of the order, it may impose further directions or remedies.

37. In this way, the remedy combines negotiated collaboration with enforceable oversight, reflecting an emerging international understanding that effective remedies for systemic violations of economic and social rights require clear goals, measurable benchmarks, ongoing monitoring, public accountability, and accessible recourse to adjudicative bodies capable of ensuring compliance and addressing shortcomings over time.

VII Conclusion

38. The Canadian experience demonstrates that the legal enforcement of economic, social and cultural rights should be understood as equally applicable in states that have

not incorporated the ICESCR into domestic law and have not included ESC rights as freestanding constitutional rights. Modern understandings of the right to life as recognized in General Comment No. 36 of the UN Human Rights Committee and of substantive equality, of the justiciability of ESC rights claims engaging positive obligations to address systemic violations such as homelessness, food insecurity, access to health care and social services and new approaches to remedies that respect and draw on the different competencies of courts, legislatures and administrative agencies – all of these advances in recent years can and should be translated into a new, holistic approach to access to justice and effective remedies.

39. The key point that emerges from the Canadian experience is that when governments and courts mischaracterize claims to the rights to life, security and equality that intersect with ESC rights claims as being non-justiciable or outside the scope of these rights, they not only deny access to justice for ESC rights, they deny access to justice for the rights to life and equality for the most disadvantaged members of society, and to those who are most egregiously affected by systemic violations.

40. The central challenge is not the classification of claims as direct or indirect, but the avoidance of interpretations that exclude socio-economic and environmental contexts from the scope of fundamental rights. Effective enforcement requires that courts be available to assess such claims and to provide remedies that address systemic violations.

All of which is respectfully submitted

Bruce Porter
Executive Director